

REGISTERED  
SPEED POST



F.No. 196/33/ST/2016-R.A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue.....

ORDER NO. 27/2018-ST dated 14-3-2018 OF THE GOVERNMENT OF INDIA,  
PASSED BY SHRI R.P.SHARMA, PRINCIPAL COMMISSIONER & ADDITIONAL  
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 83 OF THE Finance  
Act, 1994 read with Section 35EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed under Section 35EE of the  
Central Excise Act, 1944 read with section 83 of Finance  
Act, 1994, against the Order-in-Appeal No. 141/ST-  
II/KOL/2016-17 dated 25.08.2016 passed by  
Commissioner of Central Excise, (Appeals-II), Kolkata.

APPLICANT : M/s. Linc Pen & Plastics Ltd., Kolkata

RESPONDENT : Commissioner of Service Tax - II, Kolkata

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**ORDER**

A revision application No. 196/33/ST/16-RA dated 13/10/2016 is filed by M/s Linc Pen & Plastic Ltd, 3, Alipore Road, Kolkata (hereinafter referred to as the applicant) against the Order-in-Appeal No.141/ST-II/KOL/2016-17 dated 25/08/2016, passed by the Commissioner of Central Excise (Appeals-II), Kolkata.

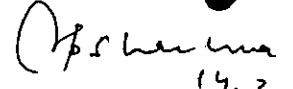
2. The brief facts leading to the present proceeding are that M/s Linc pen & plastic filed a refund claim on 30/06/2014 for Rs. 3,00,382/- under Notification 41/2012-ST dated 29/06/2012 in respect of service tax paid on services used in the export. Subsequently, the claimant withdrew the claim of Rs. 1,93,400/- on 12/08/2014 and the remaining claim of Rs 1,06,982/- was sanctioned by the Deputy Commissioner vide Order in Original No. R/101/ST/D-III/KOL/14-15 dated 19/08/2014. Being aggrieved, the department filed an appeal before the Commissioner (Appeals) on the grounds that the lower authority has wrongly applied the rate of 0.12, instead of rate of 0.06 prescribed for the "plastic pen" as per which rebate of Rs. 92,822/- could only be admissible under Para 2 of notification no 41/2012-ST, and rebate of duty of Rs. 1,06,982/- could not be granted by the Deputy Commissioner under Para 3 of the said notification as the difference between the amount of rebate under Paragraph 2 and 3 is of Rs. 14,160/- only (Rs. 1,06,982/- minus Rs. 92,822/-) which is lesser than 20% of Rs. 92,822/-. The Commissioner (Appeals) set aside the impugned refund order and the appeal of the department was allowed. Consequently, the above revision application is filed before the Government mainly on the ground that the Order-in-Review was barred by limitation, the Order-in-Appeal has been passed in complete defiance of the notification no 41/2012, original claim was filed for an amount of Rs. 3,00,382/- and the difference between Paragraph 2 and Paragraph 3 is not less than 20%.

3. Personal hearing was offered on 06/02/2018 which was attended by Sh. Abhishek Jalan, Advocate, on behalf of the applicant in this case who reiterated the grounds of revision application and also furnished additional submissions. Sh. Malsawmtluanga, Assistant Commissioner of Goods and Service Tax, Kolkata, appeared for the respondent and opposed the revision application for the reason already discussed in the Order-in-Appeal.

4. On examination of revision application and the additional submissions of the applicant, the government finds that the applicant has not disputed the legal position that rebate of duty under Para 3 of the notification no. 41/2012-ST can be granted only when the difference between the rebate claim under Para 3 and the rebate claim admissible under Para 2 of this notification is more than 20% of the claim under Para 2. The Commissioner (Appeals) in his order has clearly noted that the difference between the amount of rebate under Paragraph 2 and Paragraph 3 of the above notification is of just Rs. 14,160/- which is lesser than 20% of Rs. 92,822/- which could be claimed under Para 2. This finding is not doubted by the applicant also and it has only been contented that they had originally claimed the rebate of Rs. 3,00,382/- and if this amount is considered then the difference between the amount of rebate under Para 2 and Para 3 will exceed 20% of the rebate admissible under Para 2. However, this plea is found completely misplaced as the fact of the matter in this case is that the applicant himself had reduced the original rebate from Rs. 3,00,382/- to Rs. 1,06,982/- and thus the rebate claim was for Rs. 1,06,982/- only to determine the difference between the amount of rebate claimed under Para 2 and Para 3. Moreover, only the actual amount of rebate admissible under Para 2 and 3 is only to be considered and no other hypothetical amount claimed by the applicant, as was done earlier, can be taken in to account. Since the difference between rebate of duty claimed under Para 3 and under Para 2 is undeniably Rs. 14,216/- only in this case which is lesser than 20% of Rs. 92,822/- under Para 2, the applicant's claim of Rs. 1,06,982/- is not admissible as per condition stipulated under Para 1(c) of the notification no. 41/2012-ST.

5. As regards the applicant's other arguments that the order of the Deputy Commissioner was reviewed beyond the prescribed period of three months, the government has observed that no evidence in this regard has been produced by the applicant along with the revision application or otherwise in support of their above claim. No reference about this claim of the applicant has also been made in the Order-in-Appeal from which it can be implied that the applicant had not raised any such argument before the Commissioner (Appeals) and it has been advanced for the first time before the Government. Since Order-in Appeal is the only subject matter for revision and not the Order-in-Original, the Government is of the view this is not otherwise also relevant for the present proceeding.

6. In view of above discussion the Government does not find any fault in the Order-in-Appeal and the Revision Application is rejected.

  
(R. P. Sharma)  
14.3.18

Additional Secretary to the Government of India

M/s. Linc Pen & Plastics Ltd.,  
3, Alipore Road, Kolkata – 700 027.

ORDER NO. 27/2018-ST dated 14.3.2018

Copy to: -

1. The Commissioner of Service Tax, Service Tax – II Commissionerate, 3rd Floor, Kendriya Utpad Shulk Bhavan, 180, Rajdanga Main Road, Shantipally, Kolkata – 700 107.
2. The Commissioner of Central Excise (Appeals – II), Kolkata, Bamboo Villa, 3rd Floor, 169, A.J.C. Bose Road, Kolkata – 700 014.
3. Deputy Commissioner of Service Tax, Rashbehari Division, Service Tax-II Commissionerate, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107.
4. P.S. to A.S.
- ✓ 5. Guard File
6. Spare Copy

  
14/3/18

(निर्मला देवी / NIRMALA DEVI)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi