आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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क फाइल संख्या :File No : **V2(GST)18/EA2/North/Appeals/2018-19**

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-002-APP-179-18-19** 26/3/2019.

दिनाँक Date :**15/02/2019** जारी करने की तारीख Date of Issue:

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग _____आयुक्त, केन्द्रीय GST, अहमदाबाद North आयुक्तालय द्वारा जारी मूल आदेश : दिनाँक : से सृजित

Arising out of Order-in-Original:**Div-VII/GST-Refund/40/Final/Plastene/2018,** Date: **07/03/2018**Issued by: **Assistant** Commissioner ,CGST, Div: VII, Ahmedabad North.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Plastene Polifilms Limited

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

\भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

Conti....2

घ अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनॉक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में **दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात** 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियॉं सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नागित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall beer a court fee stamp of Rs.6.50 paisa as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत निर्धारित रकम

(ii) सेनवैट जमा की ली गई गलत राशि

(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→**Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.**

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.

ORDER-IN-APPEAL

The Assistant Commissioner,Division-VII,CGST & Central Excise, Ahmedabad-North (henceforth, *"appellant"*) has filed the present appeal against GST RFD-06 Order No.Div-VII/GST-Refund/40/Plastine/2018 dated 07.03.2018 (henceforth, *"impugned order"*) passed in the matter of refund claim filed by M/s. Plastine Polifilms Limited, HB Jirawala House, 13-Navbharat Society, Opp-panchshil Bus Stop, Ushmanpura, Ahmedabad (henceforth,"respondent').

2. Briefly stated, the facts of the case are that the respondent/claimant had filed a refund claim RFD-01A under sub-section (3) of Section 54 of the CGST Act, 2017 of Rs.18,893/-for IGST, Rs.9,32,783/- for CGST and Rs.7,77,387/- for SGST for the month of August 2017 on account of ITC credit accumulated due to Zero rated supply of goods which was sanctioned by the adjudicating authority vide impugned order sanctioned.

3. The impugned order was reviewed by the Commissioner, CGST & Central Excise, Ahmedabad-North under Review Order No.33/2018-19 dated 31.10.2018 for filling an appeal under Section 107 of Central Goods and Service Tax Act, 2017 on the ground that though there were no unutilized Input tax credit available in respect of CGST and SGST with the claimant, the adjudicating authority has wrongly sanctioned the refund. The appellant alleged that the impugned order is not legal and proper. The appellant claimed that it was observed by the Assistant Commissioner, Audit Cell,CGST & C.Ex. Ahmedabad-North vide letter dated 30.05.2018 that *"it is observed that as per GSTR-3B the claimant has shown eligible ITC of Rs.1,25,339/- of IGST Rs.50,80,076/- of CGST and Rs. 50,80,076/- of SGST. The total input tax credit shown as eligible ITC is Rs.1,02,85,491/-. Further, it is observed that they have utilised IGSTcredit of Rs.3,98,132/-, CGST credit of Rs.50,19,823/- and SGST credit Rs. Rs.50,19,823/- for payment of duty during August,2017. Thus it appears that they have utilised total input tax credit of Rs.1,04,37,778/- and they have no unutilised input tax credit during the relevant period. Further, it is observed that neither purchase invoices nor any details of the input tax credit availed during August, 2017 have been submitted by the claimant."* It is contested that as per GSTR-3B the respondent had eligible input tax credit of IGST Rs.1,25,339/- CGST of Rs.*50,80,076*/- and SGST of Rs. *50,80,076*/- (total Rs.1,02,85,491/-) and utilised IGST Rs. 3,98,132/-, CGST Rs.50,19,123/- and SGST Rs.50,19,123/- (Total Rs.1,04,37,778/-) for payment of duty for August,2017. Thus the claimant has

utilised IGST Rs.1,25,339/- CGST of Rs.50,80,076/- and SGST of Rs. 50,80,076/- (total Rs.1,02,85,491/-) as per GSTR-3B for the payment of August, 2017 and hence they has no input tax credit unutilised for the period for which the refund claim has been filed. In view of this the jurisdictional Deputy Commissioner has erred in sanctioning the refund claim of 2017 of Rs.18,893/-for IGST, Rs.9,32,783/- for CGST and Rs.7,77,387/- for SGST(Total Rs.17,29,063/-) for the month of August 2017 under Section 54(3) of the CGST Act,2017 by considering the ITC amount which was utilized by the claimant for payment of tax for August, 2017. The respondent in their submission dated 03.12.2018 stated that application of refund for August,2017 was made by them on 29.11.2017 claiming Rs.18,893/-for IGST, Rs.9,32,783/- for CGST and Rs.7,77,387/- for SGST (Total Rs.17,29,063/-) on account of ITC credit accumulated due to Zero Rated Supply of Goods as per calculation formula available on the GST portal at the time of making application of refund i.e. 29.11.2017; that according to formula, they are eligible for refund and that is why they were able to make application for refund; if the refund was not allowable then why system accepted refund application; that if it was not eligible then how department issued refund as per calculation for the month of August, 2017; that they are having mostly export turnover, so the ITC balance is always carry forwarded in electronic credit ledger, therefore even if not eligible for the refund, it should be debited from electronic credit ledger without interest as sufficient balance is available and issue is revenue neutral. Etc.,

4. The respondent filed additional submission under letter dated 08.01.2019 contesting interalia that appeal of the department is ex-facie illogical and bad in law as the same is filed by ignoring the provisions of refund; that it is against the legislative intent of the government to promote exports; that no care has been taken to discuss the provisions of Section 54(3) of the CGST Act,2017 and OIO needs to be upheld; that unutilidsed Input tax credit was Rs.82,82,603/- at the end of August,2017 and considering the provisions of Section 54(3) of the CGST Act,2017 and Rule 89(4) of CGST Rules, 2017 refund application was filed; that refund application was made on portal and amount was worked by portal and then it was manually submitted alongwith all documents,; that department's ground of not having balance at the end of August, 2017 is based on assumption and presumption and without taking any facts on record; that if refund was wrongly claimed then it is mandatory for the department to explain how the amount was debited from electronic credit ledger; that

ledger; that the portal works on dual mechanism wherein the claimant has to submit the Turnover of Zero rated supply of goods, adjusted Total Turnover and Net ITC and the basis of which GST portal on its own calculates refund by auto populates on RFD-01A; that as per Circular No. 59/33/2018-GST dated 04.09.2018, the claimant was required to utilise IGST first against refund claim and remaining balance was to adjust equally among balance of CGST and SGST and GST portal was accordingly modified. Thus prior to July/August 2018, the claimant did not have any role to play in calculating refund; that from the clarification under circular it transpires that the intention of the legislation is not to sanction the refund from balance ITC available during the month but is related to sanction of refund of unutilsed ITC lying unutilised at the end of the tax period; that even if refund in excess is granted it requires to be credited to electronic credit ledger by refund sanctioning authority through RFD-01B resulting in to revenue neutral exercise; that legislative intent is to give the refund of unutilised ITC at the end of the period; that entire process of calculation of refund has been carried out by GST portal and the same has been endorsed by refund granting authority, the OIO may be uphelded. Etc,.

5. In the personal hearing held on 17.01.2019 wherein Shri Anil Gidwani, tax constant reiterated the points mentioned in their written submission.

6. I have gone through the facts of the case, the impugned original orders, the grounds raised in the review orders mentioned *supra* and the cross objections filed by the respondent and the oral averments raised during the course of personal hearing. I find that the only question to be decided is whether the refund granted to the respondent vide the impugned OIOs, are erroneous or otherwise.

7. The matter deals with refund of unutilized input tax credit, and therefore before moving forward, let me first reproduce the relevant section, rules which enable a person to seek refund of tax in such a situation, viz.

SECTION 54. Refund of tax. —

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed :

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

A specialised (2) Organisation or any Multilateral Financial agency of the United Nations Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section

55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

(3) ***Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period*** *:*

Provided that no refund of unutilised input tax credit shall be allowed in cases other than —
(i) zero rated supplies made without payment of tax;
(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council :
Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty :
Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

[emphasis added]

SECTION 2. Definitions. — In this Act, unless the context otherwise requires, —

(106) "tax period" means the period for which the return is required to be furnished;

RULE 89. for refund of tax, Application interest, penalty, fees or any other amount. —

In the case of zero-rated supply [(4) or services or both without payment of tax under bond or letter of goods of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula -

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of Adjusted Total Turnover services) x Net ITC ÷

Where, -

(A) "Refund amount" means the maximum refund that is admissible;
(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;
(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;
(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely :-
Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;
[(E) "Adjusted Total Turnover" means the sum total of the value of -
(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and
(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,
excluding -
(i) the value of exempt supplies other than zero-rated supplies; and
(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any,
during the relevant period.]
(F) "Relevant period" means the period for which the claim has been filed.

8. Now from what is understood on the reading of the Review order, when summarized in a table, is as follows:

(Table A)

Credit Availed in August 2017			Credit utilized in August2017			Refund granted vide the impugned OIO		
IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST
125339	5080076	5080076	398132	5019823	5019823	18893	932783	777387

The Review order therefore further states that the excess refund sanctioned is as follows:

(Table B)

Month	IGST	CGST	SGST
August 2017	18893	932783	777387

9. The primary ground raised by the department is that when the mandate of Section 54(3) of the CGST Act, 2017, clearly states that a registered person may claim refund **of any unutilised input tax credit** at the end of any tax period, the question of granting refund, especially when there was no balance of unutilized ITC credit, [refer Table A], is not tenable and therefore legally not correct and hence, erroneous. I have no hesitation in stating that the refund in such cases can be sanctioned purely by the mandate of Section 54(3) of the CGST Act, 2017. The respondents submission - that they had only filled up the columns pertaining to details of turnover and net input tax credit in respect of Statement 3A of the GST RFD 01A and the rest of the amounts were auto populated by the system and therefore he cannot be blamed, is again not a tenable. What is not legally permitted as refund cannot be given via any other means, even if it be an error on the GST portal as far as computing refund is concerned. Notwithstanding any grounds raised, I am of the firm belief, that once their was no unutilized ITC credit lying in the balance in respect of the refunds erroneously granted [refer Table B], it was incumbent on the respondent not to have claimed it in the first place.

10. It was a fact that the portal during the said period when the erroneous refund was granted, computed the refund amount based on the lowest of the below mentioned three amounts:

[a] Value as per Statement 3A

[b] Balance in electronic credit ledger and

[c] Tax credit availed during the period.

11. However, I find that subsequently, vide Circular No. 59/33/2018-GST, dated 4-9-2018, it has been clarified as follows:

*3.**System validations in calculating refund amount***

Currently, in case of 3.1 refund of unutilized input tax credit (ITC for short), the common portal calculates the refundable amount as the least of the following amounts :

(a) The maximum refund amount as per the formula in rule 89(4) or rule 89(5) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") [formula is applied on the consolidated amount of ITC, i.e. Central tax + State tax/Union Territory tax + Integrated tax + Cess (wherever applicable)];

(b) The balance in the electronic credit ledger of the claimant at the end of the tax period for which the refund claim is being filed after the return for the said period has been filed; and

(c) The balance in the electronic credit ledger of the claimant at the time of filing the refund application.

Thus the ground raised in the departmental appeal, stands vindicated meaning if the balance in the electronic credit ledger of the claimant is zero as is the present case of the respondent, the question of granting refund of unutilized credit does not arise, because there was no unutilized credit in the first place. Further, I find force in the observation of the appellant wherein it is stated that neither purchase invoices nor any details/summary statement of invoices of the input tax credit availed during August, 2017 have been submitted by the claimant on the basis of which credit availed can be scrutinized.

12. In view of the foregoing, I find merit in the departmental appeal and therefore I allow it and set aside the impugned OIO. The prayer of the department for the recovery of the erroneous refund along with interest is also allowed.

13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the department-appellant stands disposed of in above terms.

(उमा शंकर)
प्रधान आयुक्त (अपील्स)
Date:

Attested

(D.A.Parmar)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,

M/s. Plastine Polifilms Limited(24AAFCP2956A1ZR),
HB Jirawala House, 13-Navbharat Society, Opp-Panchshil Bus Stop,Ushmanpura, Ahmedabad.

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, SGST, Government of Gujarat, Rajya Kar Bhavan, Ashram Road, Ahmedabad- 380 009.
3. The Commissioner of Central Tax, Ahmedabad - North.
4. The Additional Commissioner, Central Tax (System), Ahmedabad North.
5. The Asstt./Deputy Commissioner, CGST Division-IV, Ahmedabad - North.
6. Guard File.
7. P.A. File