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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8952/2018, C.M. Appl. No. 34408/2018

JAHANPANAH CLUB

..... Petitioner

Through: Mr. Sumit K. Batra, Advocate

versus

ASSISTANT COMMISSIONER & ANR.

..... Respondent

Through: Mr. Harpreet Singh Senior Standing Counsel with Mr. Abhishek Ghai, Advocate

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **27.08.2018**

The petitioner had approached this court previously by filing W.P.(C) No. 6343/2018 contending that the credit it was entitled to, was not granted. The court had disposed of the writ petition on 01.06.2018 directing the concerned officer (Assistant Commissioner, GST) to consider the representation. By letter dated 05.06.2018, the Assistant Commissioner, Central GST Division, rejected the representation stating as follows:

"Sir/Madam,

Sub:- Compliance of Hon'ble Delhi High Court order Dated 01.06.2018 in W.P(C)No. 6343/2018 in the *matter of M/s. Jahanpanah Club versus Commissioner of GST & Anr. -regarding.*

Please refer to the above subject.

In this regard, enclosed documents and other supporting documents viz. photocopies of Service tax Input Credits invoices for the period 01.05.2015 to 30.06.2017, ST-3 for the period 2011-12 to 2016-17(April to June), payments details of service tax input supplier for the period 01.05.2015 to 30.06.2017, submitted to this office vide your letters dated 21.05.2018, 23.05.2018 & 25.05.2018 have been examined to verify the admissibility of the Input service tax as per provisions of CENVAT credit Rules, 2004 as amended.

Pursuant to the examination, your eligible Input service tax for the period 2011-12 to 2016-17(upto 30.06.2017) is as under:-

1. *Service tax input Credit (including EDU Cess and SHE Cess) amounting to Rs.18,48,187/-*

2. *Krishi Kalyan Cess amounting to Rs.33,559/-.*

Further, it is informed that liabilities arising on account of interest and penalties cannot be adjusted from input Cenvat credit.

Yours faithfully,

Sd/-
Assistant Commissioner,
Central GST Division, Nehru Place
Delhi-East."

It is contended that without a formal order, on the merits, mere rejection cannot be appealed. Learned Standing Counsel who accepts notice on behalf of the respondent stated that a formal order examining the petitioner's contentions on the merit and adducing reasons would be made. The respondent shall ensure that the concerned Assistant Commissioner or appropriate Adjudicating Authority, completes the proceedings in this regard and passes a reasoned order within six weeks from today, after granting appropriate opportunity to the petitioner to adduce all arguments available to it.

The writ petition is disposed of in the aforesaid terms.

Order dasti.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

AUGUST 27, 2018

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