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

***Reserved on: 21st December, 2020***
***Pronounced on: 27th May, 2021***

**+ W.P.(C) 13375/2019**

M/S JAHANPANAH CLUB ..... Petitioner

Through: Mr. Sumit K. Batra and Mr. Manish Khurana, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Amit Bansal, Sr. Standing Counsel with Ms. Vipasha Mishra, Advocate for R-2 & 3.

**CORAM:**
**HON'BLE MR. JUSTICE MANMOHAN**
**HON'BLE MR. JUSTICE SANJEEV NARULA**

**JUDGMENT**

**[VIA VIDEO CONFERENCING]**

**SANJEEV NARULA, J.**

1. The controversy and the issues involved in the present petition are quite similar to those arising in a batch of petitions which have been heard along with the present petition. However, since the facts of the present case are slightly distinct, it is felt appropriate to decide the present petition separately.

2. Briefly stated, the facts of the case are that the Petitioner- M/s Jahanpanah Club is operating at Alaknanda, New Delhi. It asserts that it is entitled to claim CENVAT credit on the inputs utilized for providing output services. Initially, due to lack of awareness and knowledge, CENVAT was not availed for the years 2012-13 to 2017-18. The Petitioner was issued show cause notices raising service tax demands on their operations/services. The Petitioner earlier approached this Court by way of W.P.(C.) No. 6343/2018 seeking a direction to the Adjudicating Authority to verify the CENVAT credit claim. The said petition was disposed of vide order dated 1st June, 2018 with the following directions:

> "*Counsel for the respondent states that appropriate orders would be passed on or before 5th June, 2018 and the order would be sent by e-mail to the petitioner and his counsel.*
>
> *In view of the statement made, counsel for the petitioner states that the writ petition may be disposed of without commenting on merits.*
>
> *In view of the statement made by the counsel for the parities, the writ petition is disposed of without any comments and observations on merits.*"

3. Pursuant thereto, the Adjudicating Authority permitted the Petitioner to avail ITC to the tune of Rs. 18,48,187/- and Krishi Kalyan Cess ('KKC') amounting to Rs. 33,599/- for the period from 2015-16 to 2017-18. The claim of CENVAT credit for earlier years was rejected. The Petitioner again approached this Court in W.P.(C.) 8952/2018 which was disposed of vide order dated 27th August, 2018 wherein it was observed:

> *"It is contended that without a order, on the merits mere rejection cannot be appealed. Learned Standing Counsel who accepts notice on behalf of the respondent stated a formal order examining the petitioner's contentions on the merit an adducing reasons would be made. The respondent shall ensure that the concerned Assistant Commissioner or appropriate adjudicating authority, complete 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.*"

4. Pursuant to the aforesaid directions, Respondent No. 3 herein- Assistant Commissioner, Central Tax, *vide* its order dated 5th October, 2018 allowed the Petitioner to avail input CENVAT credit including Education Cess and Secondary Higher Education Cess amounting to Rs. 18,48,187/- and KKC amounting to Rs. 33,559/- for the year 2015-16 to 2017-18. The other input CENVAT credits were denied. Petitioner then preferred an appeal against the said order before the Commissioner (Appeals) who vide order dated 8th May, 2019 allowed the appeal and the claim of CENVAT credit for the years 2012-13, 2013-14 and 2014-15 amounting to Rs. 16,37,722/- were allowed. Petitioner then preferred an appeal before the CESTAT, challenging the show cause notice, wherein services of the club were held to be taxable. The same is stated to be pending adjudication. Petitioner, who is the appellant before the CESTAT submits that as a condition precedent to entertaining an appeal, the mandatory pre-deposit of 7.5% of the basic demand is required to be deposited. Under law, Petitioner is permitted to pay the mandatory pre-deposit of 7.5% from the accumulated CENVAT credit and accordingly, it requested the CESTAT to allow adjustment against the CENVAT credit by virtue of the orders passed by the Commissioner as well as the Commissioner (Appeals) respectively. However, Respondent No. 3 has objected to the adjustment.

5. Then on 20th November, 2019, Respondent No. 3 raised an objection that the CENVAT credit was not carried forward from service tax to GST regime or availed on the strength of GST input invoices through the GST TRAN-1 form (hereinafter "**TRAN-1 Form**"). In this backdrop, the Petitioner

submits that since TRAN-1 Form was not filed, the entire amount of CENVAT credit will become redundant. It is also contended that since the CENVAT credit was granted pursuant to the order dated 5th October, 2018 passed by the Commissioner and the order dated 8th May, 2019 passed by the Commissioner (Appeals), which is after the appointed date of 1st July, 2017 when the GST regime came into force, the Petitioner should be allowed to file the necessary form for transitioning the accumulated credit. Thereafter by way of a communication dated 20th November, 2019, Petitioner was intimated that in order to carry forward the said taxes under the GST regime in terms of Section 140 and Section 174 of the CGST Act, 2017 (hereinafter "**the Act**"), it is required to file the TRAN-1 Form. The Petitioner could not do so as the last date of filing the claim for credit expired on 27th December, 2017. It is further contended that on account of system failure and glitches in the system, the Petitioner could not upload the TRAN-1 Form, even though his substantive right accrued prior to the introduction of GST. Petitioner has also made a representation to the GST Council on 6th December, 2019 requesting for permission to file TRAN-1 Form in view of the peculiar circumstances of the case, however the said request has yet not been accepted.

6. The Respondents in their counter-affidavit have controverted the contentions of the Petitioner and have relied upon the judgment of the Gujarat High Court in ***Willowood Chemicals Pvt. Ltd. vs. Union of India***,[1] and the judgment of the Bombay High Court in ***JCB India Ltd. Vs. Union***

[1] 2018 (19) G.S.T.L. 228.

***of India***.[2] It is further contended that even if the proceedings regarding the eligibility of the Petitioner to input tax credit were pending, it ought to have made a claim for the same by filing the TRAN-1 Form, within the time, as prescribed under the CGST Rules, 2017 (hereinafter "**the Rules**").

**Analysis and Findings**

7. We have perused the records and considered the rival contentions of the parties. There were technical glitches/shortcomings persisting in the GST portal and as a result thereof, the cut-off dates and timeline prescribed were extended pursuant to GST notifications. This Court has been extending benefit on account of the aforesaid shortcomings to several taxpayers. This factor alone would have been sufficient to allow the present petition. However, in the instant case, there is an additional factor which goes in favour of the Petitioner, i.e the CENVAT credit has been allowed in favour of the Petitioner pursuant to the orders passed by the authorities in 2018-19 i.e., after the cut-off date. In these circumstances, the Petitioner may not have genuinely anticipated that he would be required to file TRAN-1 Form particularly since the said amount could not have been reflected in the tax return. We have already observed in ***Brand Equity Treaties Limited v. Union of India & Ors.***,[3] that the period prescribed under Rule 117 of the Rules has to be regarded as directory and not mandatory. Considering the peculiar facts and circumstances of the case and for the other reasons as stated in several judgments of this Court including ***Bhargava Motors v.***

[2][2018] 53 GSTR 197 (Bom), Pending SLP (***JCB India Ltd. v. Union of India***, SLP(C.) No. 30204/2018)
[3] 2020[38] G.S.T.L. 10, Pending SLP (***Union of India v. Brand Equity Treaties Limited & Ors***., SLP (C) No. 7425-7428/2020).

***Union of India and Ors.,***[4] ***Blue Bird Pure Pvt. Ltd. v. Union of India & Ors.,***[5] and ***Krish Automotors Private Limited v. Union of India & Ors.***[6], in our view, even if the Petitioner was late in filing the TRAN-1 Form, the delay could not be attributed to the Petitioner and as a result, it could not lose its vested right over the accumulated CENVAT credit.

8. We have already considered and examined the judgment in ***Willowood Chemicals*** (*supra*) which has been relied upon by the Revenue and distinguished the same in the judgment in ***Brand Equity*** (*supra*). In ***Brand Equity***, the Court observed as under-

> *"…… Likewise, the judgment of the Gujarat High Court in* ***Willowood*** *(supra) is also not relevant. Moreover, the Punjab and Haryana High Court in* ***Adfert Technologies Pvt. Ltd. vs. Union of India*** *[CWP No. 30949/2018 (O&M) decided on 04.11.2019], took note of the decision in* ***Willowood*** *(supra), and observed that the Gujarat High Court itself, as well as this Court in subsequent judgements, has taken a contrary view to that expressed in* ***Willowood*** *(supra) [Ref:* ***Siddharth Enterprises v. The Nodal Officer*** *2019-VIL-442-GUJ,* ***Jakap Metind Pvt Ltd v Union of India*** *2019-VIL-556-GUJ and* ***Indsur Global Ltd. v. Union of India*** *2014 (310) E.L.T. 833 (Gujarat)]."*

It is clear from the above discussion that the judgment in ***Willowood Chemicals*** (*supra*) has not found favour with subsequent benches of the Gujarat High Court and thus, it is of no use to the Revenue. As for the other judgment relied upon by the Revenue, i.e., the case of ***JCB India*** (*supra*), it is interesting to note that the same was briefly discussed by the Gujarat High Court in ***Willowood Chemicals*** (*supra*) and the Court observed therein that

---

[4] 2019[26] G.S.T.L. 164, Pending SLP (***Union of India v. Bhargava Motors***, Diary No. 38404/2019).
[5] 2019[29] G.S.T.L. 660. Pending SLP (***Union of India v. M/s Blue Bird Pure Pvt. Ltd***., SLP(C.) No. 4916/2020).
[6] 2019[29] G.S.T.L. 584, Pending SLPs (***Department of Trade and Taxes (Now the State Goods and Service Tax Department) through the Commissioner GST v. Krish Automotors Private Limited***, Diary

the judgment in ***JCB India*** was not followed by the same bench of the Gujarat High Court in a prior decision being ***Filco Trade Centre Pvt. Ltd. v. Union of India***[7]. Therefore, the judgment in ***JCB India*** (*supra*) would not be useful to the case of the Respondent.

9. In the present case, the Court is satisfied that the Petitioner's difficulty in filling up the correct credit amount in the TRAN-1 Form is a genuine one which should not preclude him from having his claim examined by the authorities in accordance with law. Accordingly, a direction is issued to the Respondents to either open the portal so as to enable the Petitioner to file TRAN-1 Form electronically or to accept a manually filed TRAN-1 Form on or before 30th June, 2021. The Respondents shall thereafter process the same in accordance with law.

10. The present petition is allowed in the above terms.

**SANJEEV NARULA, J**

**MANMOHAN, J**

**MAY 27, 2021**
*nk*

---

No. 5317/2020 and ***Union of India v. M/s Krish Automotors Private Limited***, SLP(C.) No. 6737/2020).
[7] 2018[17] G.S.T.L. 3, Pending SLP (***Union of India v. Filco Trade Centre Pvt. Ltd***., SLP (C.) Nos. 32709-32710/2018)