IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7045 of 2019

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Polycab Wires Pvt. Ltd. (now Known as Polycab India Ltd.) a Company Incorporated Under the Companies Act having its Head Office at Poy Cab House 771 Mogul Lane Mahim (W) Mumbai and Branch Office at Jakariyapur, Plot No. 372, Mauja Jakariyapur, Agamkuan, Jakariyapur, Patna through its Manager Accounts Deepak Gopaldas Hinduja, son of Late Gopaldas Hinduja resident of Flat No.4, Jeevan Tower, C Block 608/1216, Ulhasnagar, Thane, Maharashtra.

... ... Petitioner

Versus

1. The Union of India, through the Secretary Department of Revenue, Ministry of Finance Government of India, North Block, New Delhi-110001.
2. The State of Bihar, through the secretary Finance Department, Patna.
3. Commissioner, Central Goods and Service Tax, Division-Patna, Bihar.
4. Assistant Commissioner, Central Goods and Service Tax, Division-Patna, Bihar.
5. Nodal Officer, IT Grievance Redressal Transitional Credit, Patna, Bihar.

... ... Respondents

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy, Adv.

For the CGST & Ex : Mr. S.D.Sanjay, Sr. Adv.
Mr. Alok Kumar Agrawal, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 27-06-2019

Heard Mr. D. V. Pathy, learned counsel appearing for the petitioner and Mr. Alok Kumar Agrawal, learned counsel appearing for the respondent authorities in the Central Goods and Services Tax Division, Office of the Central Excise Bihar, Patna i.e. respondent no. 3 to 5. Learned counsel for the Union of India and the State are also present.

Even though the petitioner complains of discriminatory action by the respondent no. 3 and 4 in not extending the benefit of Notification No. 31 of 2018 dated 06.08.2018 in so far as it accords benefit of carrying forward of CENVAT Credit as a transitional credit by virtue of enforcement of the Central Goods and Services Tax Act, 2017 with effect from 01.07.2017 but a plain reading of the pleadings made in the writ petition would confirm that a representation has been filed raising such grievance and a copy is enclosed at Annexure-2 series, which has also been received in the Office of the Commissioner, who according to Mr. Agrawal, is the appointed Nodal Officer for examining any grievance of the present kind. The grievance raised is that the representation has remained pending and not adjudicated upon.

For the sake of facilitation to the respondents to appreciate the grievance which allows the petitioner to approach this Court, we are persuaded to take note of his statement made in paragraph 5 of the writ petition which runs under:

> “ The petitioner is constrained to file the present writ petition against the actions of the respondents in denying the transition of the closing balance of CENVAT Credit pertaining to its Service Tax registration which was not migrated to the Goods and Services Tax (hereinafter referred to as ‘GST’) regime. The petitioner inadvertently missed to include its Service Tax registration in Part B of Form GST REG-26 due to which the said registration was

not migrated to the GST regime. Consequently, the petitioner was unable to carry forward the closing balance of CENVAT Credit pertaining to the said registration through filing of Form GST TRAN-1. The respondent no.3 vide Notification No.31/2018-Central Tax dated 6.8.2018 (hereinafter referred to as 'Notification 31/2018') opened the migration window for such class of persons who had filed Part A of Form GST REG-26 but could not file Part-B till 31.12.2017, and thereby allowed such class of persons to file belated returns, including Form GST TRAN-1. The petitioner having missed to migrate the said Service Tax registration by inclusion in Part B of Form GST REG-26 claimed the consequential benefit of transition of credit under Notification 31/2018. However, the respondents have denied the benefit under Notification 31/2018 on the premise that the petitioner is not covered under the class of persons entitled to claim the benefit under Notification 31/2018. Such action of the respondent is completely perverse and discriminatory, as the petitioner is on the same footing as such class of persons who have not filed Part B of the Form GST REG-26. The respondents have failed to appreciate that the denial of benefit under Notification 31/2018 amounts to discriminatory classification without any intelligible differentia which distinguishes the petitioner from the class of persons covered under Notification 31/2018."

In our opinion, while a detailed discussion is present in the representation of the petitioner dated 11.07.2018 at Annexure-2 and a copy of which has been received in the Office of Commissioner on 27.08.2018 as manifest from the copy present at running Page-73 of the pleadings but the substance of the grievance, we have noted above and since the laches is on the part of the Nodal Officer, the respondent no. 5 in not taking necessary steps for disposal of the grievance so raised, that the writ petitioner is before this Court when understandably Mr. Pathy, learned counsel appearing for the petitioner makes an attempt to address the Court on the inter-party merits but considering that the relief prayed in the writ petition would invite a direction in the nature of mandamus, we would allow the concerned respondent authority i.e. respondent no. 5 to address on the issue and take all necessary steps for its disposal in accordance with law with opportunity of hearing to the petitioner or his representative within a period of six weeks of the receipt/production of a copy of this order.

With the observations and direction above, the writ petition is disposed of.

(Jyoti Saran, J)

(Partha Sarthy, J)

Anjula/Surendra

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.07.2019
Transmission Date	NA