IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.8918 & 8920 of 2008
and M.P.Nos.1 and 1 of 2008

M/s.Hardcastle & Waud Manufacturing Co. Ltd.,
104 (Old No.64), Moore Street,
Chennai - 600 001.
Rep. by its Senior Accounts Executive,
Vijaykumar J. Trivedi ... Petitioner in both WPs

Vs.

1. The Commercial Tax Officer,
Harbour-I Assessment Circle,
Chennai - 600 001.

2. The Secretary to Government,
Commercial Taxes Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009. ... Respondents in both WPs

Prayer in W.P.No.8918 of 2008: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in TNGST 0000094/2004-05 dated 30.04.2007 and 24.09.2007 of the 1st Respondent relating to the Assessment Year 2004-05 and quash the same.

Prayer in W.P.No.8920 of 2008: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in TNGST 0000094/2005-06 dated 31.12.2007 of the 1st Respondent relating to the Assessment Year 2005-06 and quash the same.

For Petitioner : Mr.Mallika Srinivasan
in both WPs

For Respondents : Mr.V.Haribabu
Special Government Pleader (T)
in both WPs

O R D E R

These Writ Petitions have been filed to call for the records of the first respondent in TNGST 0000094/2004-05 dated 30.04.2007 and 24.09.2007 for the Assessment year 2004-05 and TNGST 0000094/2005-06 dated 31.12.2007 for the Assessment year 2005-06 and quash the same.

2. The learned counsel appearing for the petitioner would submit that the petitioner is not entitled to recover any due made by the first respondent in terms of Entry at Sl.No.9 of the XIth Schedule to the TNGST Act in respect of sale of Aerosol in the State of Tamil Nadu.

3. The learned counsel for the Tax Department Mr.V.Haribabu would submit that the petitioner can file an appeal before the Appellate Authority and the petitioner may be permitted to file an appeal along with the stay petition within a period of 3 weeks from the date of receipt of a copy of this order. The Appellate Authority may also be directed to consider the stay petition within a period of 3 weeks from the date of filing the Appeal.

4. On 11.04.2008, an interim stay was granted by this Court and which has been further extended on 22.12.2008.

5. In view of the similar order placed before this Court, this Writ Petition is disposed of with liberty to the petitioner to approach the Appellate Authority to file an appeal against the said impugned order along with the necessary applications within a period of 3 weeks from the date of receipt of a copy of this order. The Appellate Authority is also directed to consider the same on merits and pass an order as expeditiously as possible. Till such time, no steps with regard to recovery of tax is to be taken by the department. No Costs.

Sd/-
Assistant Registrar(CO)

//True Copy//
Sub Assistant Registrar

To

1. The Commercial Tax Officer,
Harbour-I Assessment Circle,
Chennai - 600 001.

2. The Secretary to Government,
Commercial Taxes Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

copy to

The Section Officer,
ER Section, High Court,Madras.

+2cc to Mr.Mallika Srinivasan, Advocate, S.R.No.36518

+1cc to Special Government Pleader, S.R.No.36723 & 36724

W.P.Nos.8918 & 8920 of 2008
and M.P.Nos.1(2) of 2008

SSV(CO)
GSP(21/06/2018)