(2009) 06 MAD CK 0279

In the Madras High Court

Case No : Writ Appeal No''s. 2719 and 2720 of 2001

Ram Theatre — APPELLANT

Vs

The Deputy Commissioner, C.T. Madurai Division, The Assistant Commissioner, C.T. and The Entertainment Tax Officer — RESPONDENT

Date of Decision : 17-06-2009

Acts Referred:

Citation : (2009) 06 MAD CK 0279

Hon'ble Judges : F.M. Ibrahim Kalifulla, J;B. Rajendran, J

Bench : Division Bench

Advocate : R. Subramanian, for the Appellant; Haja Naziruddin, Spl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J.—These are the writ appeals filed against the common order dated 23.06.2000 passed in Writ Petition Nos. 13468 and 13469 of 1993.

2. The appellant filed writ petitions praying for the issuance of a writ of certiorarified mandamus to call for the records on the file of the first respondent in R.P. Nos. 245 and 247 of 1992 filed under the Tamil Nadu Entertainment Tax Act and Tamil Nadu Legal Authorities Finance Act respectively, dated 12.1.1993, quash the same and direct the first respondent to re-hear the revision petitions in R.P. Nos. 245 and 247 of 1992 on merits. The said writ petitions were dismissed on the ground that the appellant had already exercised his right and preferred an appeal in R.A. No. 1 of 1993 before the Assistant Commissioner (CT) Madurai viz., the Appellate Authority and the Appellate Authority passed an order dated 22.03.1993, dismissing the appeal. Hence, the appellant has not chosen to question the original order of the Appellate Authority in A.P. No. 1 of 1993 dated 22.03.1993 by way of revision and the order passed by the Appellate Authority has become final and therefore, the writ petitions were dismissed. Aggrieved by the same, the present writ appeals have been filed.

3. The appellant would submit that the original order of the Deputy Commissioner of Commercial Tax, dated 12.01.1993 passed in R.P. No. 247 of 1992 was legally not sustainable on the following facts.

The main contention of the appellant seems to be that the order of remand, against which the appellant has preferred a revision before the competent authority when pending, the same was complied with by giving individual notices for every assessment order to the appellant. At this point of time, it is pertinent to mention that the main contention of the petitioner that the notices issued by the authority for cumulative period of 5 years in one notice is legally not sustainable. The appellate authority accepted the contention that the notices cannot be issued cumulatively and remanded the matter to the original authority with a specific direction that the individual notices have to be served on the appellant and that he should be given sufficient opportunity to defend the same. Though the appellant accepted such subsequent notices, unfortunately, he has not participated in the enquiry and he only sent a letter stating that a revision was pending. He fairly conceded before this Court that there was no stay pending revision. In view of the fact that there was no stay during the pendency of the revision proceedings and as the appellant did not participate in the remanded proceedings after notice, nor raised any of the grounds which he alleges now or in the writ petitions, the Assessing Officer was right in holding and coming to a conclusion and passing orders on merits after remand. It was also admitted by the appellant that subsequent to the remand order, he has preferred an appeal against that order and that appeal was also dismissed by the appellate authority. Therefore, it was correct on the part of the revisional authority, when the revision order came for final disposal on 12.01.1993, by which time the remand order was complied with and necessary orders have already been passed, naturally the revision was dismissed as it has become infructuous. Aggrieved against this, the appellant preferred the revision petitions. But, as rightly pointed out by the learned single Judge, since pending revision itself, the original authority has passed the final order and that order has become final, it may not be proper for this Court at this point of time to interfere and no ground is available for interference by this Court. We respectfully agree with the findings of the learned single Judge that in view of the subsequent developments after the remand order, whereby the Assessing Authority''s order has become final and inasmuch as the appellant has not taken recourse to law as contemplated in respect of the original order passed, we do not find any reason to interfere with the orders of the learned single Judge. Hence, the writ appeals are dismissed. If at all the appellant has got any remedy available in law as against the order passed in Appeal No. 1 of 1999, it is open to the appellant to work out the same in the manner known to law. No costs.

