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(1974) 07 OHC CK 0005

In the Orissa High Court

Case No : S.J.C. No''s. 51-53 of 1971

Bhanja Bhandar APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 09-07-1974

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 12(5)

Citation : (1976) 37 STC 169

Hon'ble Judges : G.K. Misra, C.J;B.K. Ray, J

Bench : Division Bench

Advocate : D. Bhuyan, for the Appellant; Standing Counsel (Sales Tax), for the Respondent

Judgement

G.K. Misra, C.J.—The question referred to this court runs thus:

Whether, in the facts and circumstances of the case, imposition of penalty u/s 12(5) of the Orissa Sales Tax Act in regard to the quarters ending June and September, 1962, is called for ?

2. Material facts may be stated in short. The petitioner is a partnership firm carrying on business at Raikia in the District of Phulbani. It was assessed to sales tax u/s 12(5) of the Orissa Sales Tax Act, 1947 (hereinafter to be referred to as the Act), for quarters ending on 31st March, 1962, to 30th September, 1962, and penalties under that section were imposed on it for quarters ending on 30th June, 1962, and 30th September, 1962, on the footing that the petitioner was an unregistered dealer. It had applied for registration as a dealer under the Act on 14/16th February, 1962, but the registration certificate was granted to it on 16th December, 1962. All the taxing authorities including the Tribunal assessed the petitioner as an unregistered dealer for three quarters ending on 31st March, 1962, to 30th September, 1962, and imposed penalty for two quarters ending on 30th June, 1962, and 30th September, 1962. The Tribunal refused to refer a case to the High Court on the conclusion that no question of law arose out of its order. On an application for reference being filed in the High Court, a statement of facts

relating to the aforesaid question was called for.

3. Section 12(5) of the Act runs thus:

If upon information which has come into his possession, the Commissioner is satisfied that any dealer has been liable to pay tax under this Act in respect of any period and has nevertheless without sufficient cause failed to apply for registration, the Commissioner shall, after giving the dealer a reasonable opportunity of being heard, assess, to the best of his judgment; the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and the Commissioner may direct that the dealer shall pay, by way of penalty, in addition to the amount so assessed, a sum not exceeding one and a half times that amount :

Provided that no penalty shall be levied for the quarter during which the dealer first or again becomes liable to pay tax under this Act.

This sub-section directly came up for consideration of the Supreme Court in Commissioner of Sales Tax, Cuttack, Orissa v. Brijraj Rameshwar [1966] 17 S.T.C. 295. Their Lordships held that the expression "nevertheless wilfully failed to apply for registration" connotes a deliberate failure to apply for registration in order to avoid taxation. In this case, registration certificate was granted on 16th December, 1962, though the application had been filed on 14/16th February, 1962. As in respect of the impugned quarters the dealer applied for registration long before, the question of the dealer''s wilfully failing to apply for registration does not arise.

In Subhash Chandra Ghosh v. State of Orissa [1970] 26 S.T.C. 211, a Bench of this Court held under the corresponding provisions of the Central Sales Tax Act that the registration certificate when granted is operative from the date of the application. This decision was followed by a Division Bench of the Punjab and Haryana High Court in Chandra Industries v. Punjab State [1972] 29 S.T.C. 558 and by a Division Bench of the Calcutta High Court in Hind Ceramics Limited v. Member, Board of Revenue, West Bengal [1973] 32 S.T.C. 419. The principle laid down in Subhash Chandra Ghosh v. State of Orissa [1970] 26 S.T.C. 211 fully applies to the facts of this case.

4. The petitioner is to be treated as a registered dealer with effect from 14/16th February, 1962, and it cannot be assessed as an unregistered dealer for the impugned three quarters nor can penalty be imposed upon it for the two quarters ending on 30th June, 1962, and 30th September, 1962.

5. On the aforesaid analysis, the question referred is answered in the negative that no penalty is called for in respect of the two quarters ending June and September, 1962.

6. The reference is accepted with costs. Hearing fee of Rs. 100. Reference fee deposited be refunded to the petitioner.

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B.K. Ray, J.

I agree.

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