(1987) 07 OHC CK 0025

In the Orissa High Court

Case No : Special Jurisdiction Case No. 12 of 1981

Deepak Medical Store APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 03-07-1987

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 24(1), 9A

Citation : (1988) 68 STC 293

Hon'ble Judges : H.L. Agrawal, C.J;S.C. Mohapatra, J

Bench : Division Bench

Advocate : A.K. Roy, for the Appellant; Additional Government Advocate (CT), for the Respondent

Judgement

H.L. Agrawal, C.J. and S.C. Mohapatra, J.—In this reference u/s 24(1) of the Orissa Sales Tax Act, 1947 (for short "the Act"), the Member, Sales Tax Tribunal, Orissa, has referred the following questions of law for opinion of this Court:

(i) Whether, on the facts and in the circumstances of the case, the Member, Sales Tax Tribunal, is legally right to hold that the dealer is liable to pay tax with effect from 5th April, 1975, that is, the date of its application for registration ?

(ii) Whether, on the facts and in the circumstances of the case, the Member, Sales Tax Tribunal, is legally correct to hold that the order annulling the assessment for the period 30th June, 1975 by the Assistant Commissioner of Sales Tax is contrary to law ?

2. The dealer had made a voluntary application for registration u/s 9-A of the Act on 5th April, 1975 and received the registration certificate on 11th July, 1975. In these circumstances, the Sales Tax Officer held the petitioner liable to pay sales tax for the very first quarter of 1975-76, i.e., 1st April, 1975 to 30th June, 1975, and completed the assessment accordingly taking the G.T.O. at Rs. 25,768.46. The dealer disputed the order of assessment on the ground that though it had made the application u/s 9-A of the Act, the certificate of registration was

received by it after the end of the quarter in question, i.e., on 11th July, 1975, and, therefore, it did not incur any liability for payment of sales tax for the first quarter. It is in this way that the matter has been referred to this Court as all the authorities have rejected the stand of the dealer.

3. We, however, need not detain ourselves as a similar question has already been answered by this Court in State of Orissa v. Bhagabati Timber [1982] 50 STC 134 where it has been held that the liability in such a case would be from the date when the certificate of registration is received by the dealer. Following the view taken by this Court in the aforesaid case, the answer to the questions must be given in favour of the dealer and against the department, namely, that the liability would commence only from the date of receipt of the registration certificate by the dealer.

We, however, make no order as to costs.

