

(1962) 10 OHC CK 0019

In the Orissa High Court

Case No : S.J.Cs. No's. 38 and 39 of 1961

Hassam Vali Mohammed

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 22-10-1962

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 12(5), 9A

Citation : (1963) 14 STC 150

Hon'ble Judges : R.L. Narasimham, C.J.;S. Barman, J

Bench : Division Bench

Advocate : P.K. Bose, for the Appellant; R.K. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Narasimham, C.J.—These two special jurisdiction cases arise out of the statement of a case made by the Member, Sales Tax Tribunal, Orissa, under the directions of this Court, referring the following question for the opinion of this Court:-

Whether on the facts and circumstances of this case, where a dealer applies for voluntary registration u/s 9-A of the Orissa Sales Tax Act, he can be assessed to sales tax u/s 12(5) for the period commencing from the date of the application for registration till the date on which the certificate is granted u/s 9-A.

2. The facts found are as follows : The petitioner started his business as a petty dealer on 1st February, 1957. But at that time his turnover was below the minimum prescribed for the purpose of assessment to sales tax. Nevertheless he applied for voluntary registration u/s 9-A of the Orissa Sales Tax Act (hereinafter referred to as the Act) on 23rd February, 1957. There was considerable delay on the part of the Sales Tax Authorities in granting the certificate applied for. It was granted only on 25th July, 1957, and it was actually received by him on the 1st August, 1957. Till then he continued to be a mere unregistered dealer. But by the 31st March, 1957, the total transaction of the petitioner rose to Rs. 12,856-15-0

above the prescribed limit. Hence he became liable to pay sales tax u/s 4(2) of the Act for the next quarter, April to June, 1957. Similarly for the next quarter ending the 30th September, 1957 also, he became liable to pay sales tax. He admitted his liability to pay sales tax so far as his turnover after the 1st August, 1957, was concerned, but denied his liability to pay sales tax for the period anterior to that date mainly on the ground that though he had applied for voluntary registration as early as on the 23rd February, 1957, the delay in granting registration certificate was entirely due to the Sales Tax Authorities and he was not liable to be assessed to sales tax u/s 12(5) of the Act. This argument found favour with the Appellate Assistant Commissioner but on second appeal the learned Member, Sales Tax Tribunal, held that Section 12(5) related to an application for registration u/s 9 of the Act and not to an application for registration u/s 9-A. The correctness of this view is under challenge in these two applications.

3. The liability of a dealer to pay sales tax is described in Section 4 of the Act and it depends on the annual turnover. If the turnover exceeds the prescribed limit, the dealer will be liable to pay tax for the quarter of the next year immediately following the period in which the turnover exceeded the prescribed limit. The liability does not depend on whether the dealer is registered or not. Sections 9 and 9-A deal with registration of dealers. Section 9 says that the dealer while being liable to pay sales tax u/s 4 shall get himself registered on pain of being subjected to penalties for non-registration as provided in the Act itself. The very language of this section makes it clear that as soon as the turnover of a dealer exceeds the prescribed limits [described in Section 4(2)] he must get himself registered and on his failure to do so he is subjected to penalties under the Act. Section 9-A however is a new section inserted in the Act by the amending Act of 1950 providing for voluntary registration of dealers who are not liable to pay tax u/s 4. This section says that any dealer whose turnover did not exceed the prescribed limit u/s 4 may nevertheless get himself registered u/s 9-A. This is further made clear in Form No. 11 prescribed by the rules for application for registration under Sections 9 and 9-A of the Act. Where the application for registration is made u/s 9, paragraph 5 of the said form requires him to declare that the gross turnover of the business prior to the commencement of the quarter in question exceeded the prescribed limit. In an application u/s 9-A of the Act however he is required to declare that the turnover for the twelve immediately preceding months was below the limit and as such his liability for registration u/s 9 has not ensued.

4. Section 12 is the assessing section. Sub-section (4) of that section deals with the assessment of a registered dealer. Sub-section (5) is as follows :-

(5) 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. * * * *

The words "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", occurring in the aforesaid Sub-section (5) of Section 12 show that the dealer should first be liable to pay sales tax, secondly he must have failed to apply for registration when the liability arose and thirdly such failure must be without sufficient cause. From the very language of this sub-section therefore it must be held that it has no application to a case of voluntary registration when there is no liability to pay tax at the time of applying for such registration. Section 9-A, as already pointed out, was a later amendment, whereas Sub-section (5) of Section 12 was already in the original Act from its inception. On a careful scrutiny of the language of Section 12(5) along with that used in Section 4(2) of the Act the reasonable inference is that where the liability to pay sales tax accrued prior to registration the proper section to apply for the purpose of assessment would be Section 12(5) as has been done by the learned Tribunal.

5. In this connection the decision of the Patna High Court in *Shri Parwatiji Mills v. The State of Bihar* [1957] 8 S.T.C. 653, may be cited. That case dealt with the interpretation of Section 13(5) of the Bihar Sales Tax Act (which corresponds to 12(5) of the Orissa Act) and the learned Judges observed:

The proper interpretation of Section 13(5) (of the Bihar Sales Tax Act) is that the imposition of the penalty is subject to the condition precedent that the dealer had wilfully failed to apply for registration for the period in question. But the assessment of an unregistered dealer u/s 13(5) is not subject to any such condition. The only condition for making such assessment is that the Commissioner should be satisfied upon information which has come into his possession that the unregistered dealer has been liable to pay tax in respect of any period.

6. Mr. Bose for the petitioner attempted to distinguish the aforesaid case by saying that here an application u/s 9-A of the Act had been made long before the period for which the assessment had been made. Hence according to him neither the Patna decision (in which no application for registration had at all been made) nor the language of Section 12(5) of the Act, would operate against him. But once it is held, as a matter of construction, that an application u/s 9-A is outside the scope of Section 12(5) of the Act altogether the mere fact that an application for such registration was pending becomes immaterial. The registration contemplated in Section 12(5) is registration u/s 9 and as no application for such registration had been made at any time there was failure to apply for registration "without sufficient cause" within the meaning of Section 12(5). Mr. Bose also relied on some observations of a Division Bench decision of this Court in *S.J.C.*

No. 3 of 1959 (decided on the 28th February, 1961). But that case is clearly distinguishable. There an application for registration u/s 9 of the Act was made as early as 22nd August, 1949. That application was kept pending for a long time by the Sales Tax Authorities but ultimately that application was filed, and the party was directed to apply for fresh registration. He applied for fresh registration in October, 1951, and a fresh registration certificate was granted to him in November, 1951. The question arose as to whether he should be assessed u/s 12(5) of the Act for any quarter prior to the date of the second application for registration. The learned Judges held that as there was sufficient cause he was not liable u/s 12(5) though he might be liable u/s 12(4) read with Section 12(2) of the Act. In that case, Section 9-A of the Act did not come up for interpretation because when the first application for registration was made, that section was not found in the statute book. Hence, the aforesaid Division Bench decision will not assist us in deciding the main controversy here, namely, whether an application for registration u/s 9-A is also contemplated by Sub-section (5) of Section 12 of the Act.

7. We must accordingly hold that the learned Member, Sales Tax Tribunal, took the correct view. The answer to the question referred to this Court is in the affirmative.

The application is dismissed with costs. The petitioner should pay a consolidated cost of Rs. 50 (Rupees fifty) only for both the applications.

S. Barman, J.

8. I agree.