(1981) 09 OHC CK 0021

In the Orissa High Court

Case No : S.J.C. No. 112 of 1976

State of Orissa APPELLANT

Vs

Bhagabati Timber RESPONDENT

Date of Decision : 10-09-1981

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 4, 9

Citation : (1982) 53 CLT 76 : (1982) 50 STC 134

Hon'ble Judges : R.N. Misra, C.J;N.K. Das, J

Bench : Division Bench

Advocate : A.B. Mishra, D.C. Ray and P.N. Mohapatra, for the Respondent

Judgement

R.N. Misra, C.J.—The Member, Sales Tax Tribunal, has stated this case and referred the following question for opinion of the court:

Whether, in the facts and circumstances of the case, the Member, Sales Tax Tribunal, is right in holding that the dealer is liable to pay sales tax with effect from the date of receipt of the registration certificate, namely, 12th May,1972, instead of the date of registration, namely, 4th May, 1972, or with effect from the date of application for registration, namely, 22nd, April, 1972 ?

2. The assessee in the instant case made an application u/s 9-Afor registration as a dealer under the Orissa Sales Tax Act. Admittedly, by then on account of his turnover exceeding the prescribed limit, no liability had accrued to him. There is no dispute that the certificate of registration was received by the assessee on 12th May, 1972. The learned standing counsel relying upon the decision of this Court in the case of Bhanja Bhandar v. State of Orissa [1976] 37 STC 169(SC) contended that once registration is granted, it shoulder late back to the date of the application and liability must commence from thatdate.

In Bhanja Bhandar''s case [1976] 37 STC 169 registration was u/s 9 of the Act. In a case of that type, the liability accrues from the date when u/s 4 of the Act the dealer becomes liable to pay sales tax on his turnover. The position u/s 9-A of the Act would be very different. Here, there is no liability with reference to Section 4 of the Act and before the dealer becomes statutorily liable to pay tax, with a view to deriving advantages provided under the statute he makes an application for voluntary registration In such a case, if the liability is made to run from the date of the application, certainly the dealer would have prejudice instead of deriving any advantage. We are, therefore, inclined to take the view that the ratio of the decision in Bhanja Bhandar''s case [1976] 37 STC 169 would not apply to a case of this type and the appropriate way to fix liability is from the date when the certificate of registration is received by the dealer. Our answer, therefore, in the instant case is that liability would commence from 12th May, 1972, and not earlier.

No costs.

N.K. Das, J.

3. I agree.