**(1972) 09 OHC CK 0019**

**In the Orissa High Court**

**Case No :** S.J.C. No. 320 of 1969

State of Orissa APPELLANT

Vs

Vijoy Laxmi Trading Co. RESPONDENT

**Date of Decision :** 29-09-1972

**Acts Referred:**
Orissa Sales Tax Act, 1947 — Section 4, 9A

**Citation :** (1973) 31 STC 438

**Hon'ble Judges :** R.N. Misra, J;B.K. Ray, J

**Bench :** Division Bench

**Advocate :** Standing Counsel Sales Tax, for the Appellant; R. Mohanty, for the Respondent

# Judgement

R.N. Misra, J.—The following question was asked to be referred by this court by order dated 8th July, 1971, at the instance of the assessee u/s 24(2)(b) of the Orissa Sales Tax Act (hereinafter referred to as the Act):

Whether the liability to pay tax u/s 4 of the Orissa Sales Tax Act accrues on the date of the application for obtaining the certificate of registration, or from the date when the certificate of registration is granted ?

2. The facts giving rise to the dispute are these: The assessee commenced business in January, 1959 and applied for registration u/s 9-A of the Act on 29th May, 1959. On 10th June, 1960, the certificate of registration was granted. Upon independent enquiry, the taxing authorities were satisfied that the assessse attracted liability for assessment in terms of Section 4 of the Act from 1st April, 1960. Assessment for the quarter ending 30th June, 1960, was taken up and the Sales Tax Officer, Cuttack II Circle, assessed the assessee u/s 12(2) of the Act and raised a demand of Rs. 1,056.25. The assessee carried an appeal, but the Assistant Commissioner of Sales Tax affirmed the demand and dismissed the appeal. Upon a further appeal to the Tribunal by the assessee the learned Additional Tribunal relying upon some observations of the Patna High Court in The Commissioner of Commercial Taxes Vs. Sharda Automobiles of Bhagalpur, ,

 

held that the assessee had no liability for payment of sales tax until the date of grant of registration certificate on 10th June, 1960. Thereupon the taxing department applied for a reference to this court u/s 24(1) of the Act. When the Additional Tribunal rejected this prayer, this court was moved as already indicated.

3. Liability for taxation is provided u/s 4 of the Act and under Sub-section (1) thereof, as the law stood when the assessment came to be made, every dealer whose gross turnover during the year immediately preceding the date of commencement of the Orissa Sales Tax (Amendment) Act, 1958, exceeded Rs. 10,000 became liable to pay tax under the Orissa Act. The liability to pay tax has nothing to do with registration or non-registration. Duty is cast u/s 9 of the Act that every dealer who became liable u/s 4 to pay tax must get registered and possess a certificate in evidence of registration. Certain benefits are available to a registered dealer under the Act. Penalty is provided if Section 9 is violated. Even before liability u/s 4 accrues, option is given to a dealer to get registered by making a voluntary application u/s 9-A of the Act. Whether a dealer gets registered or not, if liability u/s 4 comes upon him he has got to pay tax under the Act. This position has been settled beyond doubt by the Supreme Court in Central Potteries Ltd. Vs. State of Maharashtra and Others, . Venkatarama Aiyar, J., delivering the judgment of the court analysed the corresponding provisions of the Central Provinces and Berar Sales Tax Act and said :

This liability is not conditional on the registration of the dealer u/s 8 (Section 9 in Orissa). Section 8(1) enacts that ''no dealer shall, while being liable to pay tax under this Act, carry on business as a dealer unless he has been registered as such and possesses a registration certificate''. Section 11(1) (Section 12 in Orissa) provides that ''if the Commissioner is satisfied that the returns furnished by a registered dealer in respect of any period are correct and complete, he shall assess the dealer on them''. These provisions do not, to any extent, affect the substantive liability to be assessed to tax which is imposed by Section 4. A dealer who fails to get himself registered would be hit by Section 8(1) and may lose the benefit conferred by Section 11(1) but the Act does not put him in a better position than a dealer who has got himself registered u/s 8(1) and absolve him from his liability to pay tax u/s 4.

4. The assessee has not been disputing any longer that the determination of liability u/s 4 from 1st April, 1960, is bad. Once that liability has accrued, the obligation to pay tax under the Act cannot be disputed and the date of grant of certificate of registration cannot arrest or shift that liability.

5. The considerations of equity seem to have weighed with the learned Judges of the Patna High Court in the case referred to by the Additional Tribunal. Equity has no place in administering a taxing statute. We would accordingly hold that the Tribunal was in error in holding that liability to pay tax under the Act would accrue only from the date of grant of certificate of registration in the facts of the case. Our answer, therefore, shall be "the liability to pay tax u/s 4 of the Orissa

 

Sales Tax Act accrues as and when the condition laid down in Section 4 itself is satisfied and without reference to the date of application for obtaining the certificate of registration or the date when the certificate of registration is granted." We make no order as to costs of this reference.

B.K. Ray, J.

6. I agree.

 