ALLAHABAD HIGH COURT

Modi Food Products Ltd.

Vs.

Commr. of Sales Tax U. P

Civil Misc. No. 26 of 1951
(V. Bhargava and Upadhya, JJ.)

25.04.1955

JUDGMENT

V. Bhargava, J.

1. The Modi Food Products, Limited, Modinagar, district Meerut, the applicant in this reference under the U.P. Sales Tax Act, is a manufacturer and dealer in non-edible oils. The U.P. Sales Tax Act came into force with effect from 1-4-1948, and, under Section 3 of that Act, tax was payable on sales of various goods including non-edible oils at the uniform rate of 3 pies per rupee on all sales. In Section 3 of that Act, as originally passed, it was laid down that tax was to be paid on the turnover in an assessment year by every dealer but there was no clear specification as to which turnover was to be taken into consideration. In Section 7 of the Act, it was laid down that, for purposes of assessment, every dealer was to file a return of his turnover of the previous year within 60 days of the commencement of the assessment year. This provision in Section 7 was amended by the U.P. Sales Tax (Amendment) Act U.P. Act No. 25 of 1948) which came into force in the month of June 1948. By this amendment, a proviso was added to Section 7, permitting the State Government to give an option to a dealer to file returns of sales of the assessment year itself in lieu of the returns of the turnover of the previous year under certain circumstances. The mode of assessment was also laid down but, for purposes of this reference, it is not necessary to give the details of that procedure. The dealer had the option of electing whether lie would like his assessment to be made on the basis of the turnover of the previous year, or, on the basis of the return of sales for the current assessment year. The applicant, the Modi Food Products Limited, Modinagar, chose to be assessed on the basis of the turnover of the previous year and, consequently, in the assessment year 1948-49, it filed its returns for the turnover of the previous year which, according to the system of accounting adopted by the applicant company, covered the period from 1-6-1946 to 31-5-1947. Under Section 3-A, U.P. Sales Tax Act, as amended by the U.P. Amendment Act No. XXV of 1948, power was granted to the State Government to lay down that, instead of sale of certain goods being taxed at the time of every sale, tax may be imposed only at a single point in the series of sales by successive dealers. There was a further provision that, in such circumstances, the State Government could lay down that the tax on the sales of those goods at the single point of taxation may be assessed at a higher

rate not exceeding one anna in the rupee. The exact language of these provisions of law, which need be considered by us, shall be quoted later on. In exercise of the power under Section 3-A, the State Government issued a notification dated 8-6-1948, in the U.P. Gazette (Extra-ordinary) of that date, declaring that, with effect from 9-6-1948, the proceeds of sale of goods entered in column 2 of the schedule annexed to the notification shall not be included in the turnover of any dealer, except at the point in the series of sales by successive dealers mentioned in column 4 thereof under the circumstances shown in column 3 thereof.

It was further laid down that, with effect from 9-6-1948 the rate of tax in respect of the turnover of the aforesaid goods shall be as entered in column 5 of that schedule. As a result of this notification, non-edible oils had to be taxed at single points at the time of sale either by the importer or manufacturer depending on whether those non-edible oils were imported from outside U.P., or were manufactured inside U.P. The rate of tax in respect of non-edible oils was declared to be 6 pies in the rupee. During the assessment proceedings of the applicant company, the Sales Tax Officer considered the question whether, while assessing the company for the assessment year 1948-49, the uniform rate of 3 pies per rupee should be applied to all the sales of the previous year in respect of tax which had to be assessed, or whether, the applicant company being the manufacturer, the enhanced rate of 6 pies per rupee laid down in the notification dated 8-6-1948, should be applied for any period. The Sales Tax Officer held that the notification dated 8-6-1948, came into effect after the expiry of 69 days of the assessment year 1948-49 and, consequently, the rate of 3 pies per rupee was to be applied to the turnover of the previous year proportionate to this period of 69 days. When assessing the tax on the remaining turnover, the Sales Tax Officer applied the rate of 6 pies per rupee. Not satisfied with this decision of the Sales Tax Officer, the applicant company filed an appeal before the Judge (Appeals) who disagreed with the Sales Tax Officer and held that the rate laid down in this notification could not be applied, when assessing the tax on the turnover of the previous year in the assessment year 1948-49 and the tax had to be calculated at the uniform rate of 3 pies per rupee. The Commissioner of Sales Tax filed a revision against this judgment of the Judge (Appeals). The Judge (Revisions), dealing with the revision filed by the Sales Tax Commissioner, agreed with the view that had been taken by the Sales Tax Officer and held that even though the applicant company was being assessed to sales tax on the basis of the turnover of the previous year, the new rate applicable to sales of non-edible oils by a manufacturer laid down in the notification of 8-6-1948, must be applied to this assessment. When actually applying this new rate, the learned Judge held that, for the period between 1-4-1947, and 8-6-1947, the rate applicable was 3 pies per rupee and, for the remaining period from 9-6-1947, to 31-3-1948, it was 6 pies per rupee. It appears that the Judge (Revisions) made a mistake about dates and proceeded on the assumption that the previous year of this assessee company was from 1-4-1947 to 31-3-1948. As we have mentioned earlier, the previous year, according to the accounts of the applicant company, was from 1-6-1946 to 31-5-1947. The criterion, that had been adopted by the Sales Tax Officer of dividing this period of one year in respect of the previous year in proportion to the periods in the assessment year falling before and after me notification came into effect was clearly the correct method of proceeding if the new rates, laid down in the notification, were at all to be applied.

The learned Judge (Revisions), instead of proceeding on the basis of proportionate division of the two years, tried to take corresponding dates of the two years which was not at all possible. In the operative portion of the order, however, no error crept in as the learned Judge, when allowing the revision, set aside the order of the Judge (Appeals) and restored and confirmed the order of the Sales Tax Officer which had been passed on a logical basis. After the order of the Judge (Revisions), the applicant company moved the learned Judge to matte a reference to this Court on the question of law arising in these circumstances. That application was dismissed and thereupon the applicant company moved this Court. A Bench of this Court, on 31-7-1951, held that a question of law did arise and directed the learned Judge to formulate a question and refer it to this Court with a statement of the case. The statement of the case has been received and the learned Judge has formulated the question as follows :

> "Q. Whether a manufacturer of a non-edible oil electing the previous year is liable to pay tax at the flat rate of 3 pies on the turnover of the whole year or at the rate of 3 pies on the turnover from 1st April, 1947 to 8th June, 1947, and at the rate of 6 pies in accordance with the notification issued under Section 3-A on 8th June, 1948, on the turnover from 9th June, 1947 to 31st March, 1948 ?"

2. It is obvious that, in framing the question also, his impression that the previous year run from the learned Judge (Revisions) has been misled by 1-4-1947, to 31-3-1948. Obviously, the question requires to be re-framed so as to correspond to the actual previous year which was accepted by the Sales Tax Officer whose assessment was restored and confirmed by the learned Judge (Revisions). The question can be put in proper form as follows :

> "Q. Whether the assessee, who is a manufacturer and dealer of non-edible oils and who elected the previous year as the basis of his assessment in the assessment year 1948-49, is liable to be assessed at the flat rate of 3 pies per rupee on the whole of the turnover of the previous year, or whether he is liable to be assessed at the rates of 3 pies per rupee and 6 pies per rupee on the turnover of the previous year in proportion to the two periods from 1st April to 8th June, 1948, and from 9th June, 1948 to the 31st of March, 1949" ?
> (2) In dealing with this question, we have first to take notice of the fact that the provisions of Sections 3, 3-A and 7, U.P. Sales Tax Act, as they stand now, are considerably different from what they were in the assessment year 1948-49. The U.P. Sales Tax Act 1948 (U.P. Act No. 15 of 1948), as originally passed and as it came into force on 1-4-1948, laid down only one method of assessment of tax. Section 3 of the Act, as it then stood, laid down :
> "(3) Subject to the provisions of this Act, every dealer shall pay on turnover in each assessment year a tax at the rate of 3 pies a rupee :"

There were two provisos to this section of which only the first proviso need be quoted. It is as follows :

"Provided that a dealer, whose turnover, in the previous year, is less than twelve thousand rupees, shall not be liable to pay the tax under this Sub-Section for that assessment year."

3. There was no provision permitting the State Govt., to lay down that sales were not to be taxed at every point of sale in successive sales of the same goods. Sub-Section (1) of Section 7 at that time was to the following effect :

"7(i). Subject to the provisions of Section 18, every dealer whose turnover in the previous year is Rs. 12,000/- or more in a year shall submit such return or returns of his turnover of the previous year within sixty days of the commencement of the assessment year in such form and verified in such manner as may be prescribed. Provided that the assessing authority may in his discretion extend the date for the submission of the return by any person or class of persons."

It is obvious that, at that time it was contemplated that all the tax payable under the U.P. Sales Tax Act was to be assessed on the turnover of the previous year relating to the assessment year in question. It was subsequently amended by the U.P. Sales Tax (Amendment), Act 1948 (U.P. Act No. 25 of 1948) when an alternative mode of assessment was provided. The main taxing section, viz., Section 3, was retained in its original form though the provisos to that section were amended. In Section 7, a new proviso was added as follows :

"Provided that the Provincial Government may prescribe that any dealer or class of dealers may submit, in lieu of the return or returns specified in this section, a return or returns of his turnover of the assessment year at such intervals, in such form and verified in such manner as may be prescribed, and thereupon, all the provisions of this Act shall apply as if such return or returns had been duly submitted under this section."

The existing proviso to Sub-section (1) of Section 7 was slightly altered by the addition of the word 'further'so as to indicate that it became the second proviso to it. A new Section 3-A was introduced as follows :

3-A (i). Notwithstanding anything contained in Section 3, the Provincial Government may, by notification in the official Gazette, declare that the proceeds of sale of any goods or class of goods shall not be included in the turnover of any dealer except at such single point in the series of sales by successive dealers as may be prescribed.

(2) If the Provincial Government makes a declaration under Sub-Section (1) of this section, it may further declare that the turnover of the dealer, in whose turnover the sale of such goods is included, shall, in respect of such sale, be taxed at such rate as may be specified not exceeding one anna per rupee if the sale relates to goods specified below :

This provision is followed by a list of goods on which the maximum rate of one anna could be prescribed. Lastly, there is a clause that if the turnover related to goods other than those specified goods, the maximum rate, which could be prescribed by the Provincial Government, was 9 pies per rupee. Non-edible oils, with which we are concerned, are governed by this last clause and, obviously, it was in exercise of these powers under Section 3-A that the Provincial Government issued the notification dated 8-6-1948, with which we are concerned. This notification contains three principal clauses besides the schedule. These clauses are as follows :

> "In exercise of the powers conferred by Section 3-A of the United Provinces Sales Tax Act, 1948, as amended by the United Provinces Sales Tax (Amendment) Act, 1948, the Governor is hereby pleased to declare that, with effect from June 9, 1948, the proceeds of sale of goods entered in column 2 of the schedule hereto shall not be included in the turnover of any dealer except at the point in the series of sales by successive dealers mentioned in column 4 thereof under the circumstances shown in column 3 thereof.

4. The Governor is further pleased to order that as from June 9, 1948, the rate of tax in, respect of the turnover of the aforesaid goods shall be as entered in column 5 of the schedule hereto.

5. Every dealer, by or on whose behalf goods mentioned in the schedule aforesaid are held at the close of the 8th day of June, 1948, shall submit a statement showing the quantity and price of such stock and of the stock of such goods held on the 24th day of May, 1948, to the appropriate assessing authority by the 30th day of June, 1943."

These clauses are followed by a schedule which is divided into two parts : The first part is divided into two lists. Item 14 of the first list is the relevant item covering oils of all kinds excluding edible oils but including Vanaspati. The notification thus lays down a declaration that, with effect from 9-6-1948, the proceeds of sale of non-edible oils shall not be included in the turnover of any dealer except at the point of sale by the importer or manufacturer depending on whether it be imported from outside or manufactured inside U.P. The second clause of the notification further proceeds to direct that as from 9-6-1948, the rate of tax in respect of the turnover of non-edible oils shall be 6 pies per rupee. The question is whether the provision made in Section 3-A of the Act and the declaration and orders passed by the Provincial Government in the notification dated 8-6-1948, have to be construed to mean that the actual sales of non-edible oils, which a dealer makes on or after 8-6-1943, are the sales covered by this notification, or, whether the sales of non-edible oils, which had been made even in the previous year, are affected by the rate laid down in this notification, so that, if the dealer happened not to be a manufacturer or an importer, they were not to be included in his turnover of the previous year. It appears to us that the language of Section 3-A itself gives an indication that the power of the Provincial Government is to be exercised only with respect to actual sales that may be carried out by any dealer subsequent to the date on which the State Government, in exercise of its powers, issues a notification under that section. Under Sub-Section (1) of Section 3-A, the declaration is to be that the proceeds of sale of any goods or class of goods shall not be included in the turnover of any

dealer, except at such single point in the series of sales by successive dealers as may be prescribed. This Sub-Section thus empowers the State Government to lay down a principle by which the proceeds of sale are not to be included in the turnover. Obviously, the question of including sales in the turnover would only arise in the case of those sales which would be effected after this direction had been made by the Procial Government. There could be no intention that the Provincial Government could, under this provision of law, regulate calculation of the turnover in respect of sales that had been carried out prior to the issue of the notification under that section. It is to be noticed that Section 3-A was introduced in the principal U.P. Sales Tax Act, 1948, by a subsequent amending Act but this provision was not given retrospective effect and it was not laid down that it would be deemed to have come into force from 1-4-1948, the date on which the principal Act came into force. The principal Act having already remained in force for some time before this amendment, there was clearly a possibility that assessment of some of the dealers under that principal Act might have been completed before the Amendment Act came into force. As we have mentioned earlier, under the Act as it was originally in force, there was only one method of assessment which was based on the turnover of the previous year; the return of the turnover had to be filed within 60 days of the enforcement of the Act, so that every dealer was required to file his return in the assessment year 1948-49 by 31-5-1948. There could be case's where the return might have been filed very promptly and even assessment proceedings might have been completed before this Amendment Act came into force in the month of June 1948.

If the intention had been that, under Section 3-A, the turnover of the previous year was to be affected by any notification issued by the Provincial Government, some specific provision would have been made to make it clear that any notification, issued under this section of the Act, would even affect assessments in which proceedings had been completed before this new section was introduced in that Act. The language of Sub-Section (2) of Section 3-A is also significant, it lays down that while making a declaration under Sub-Section (1), the Provincial Government may further declare that

> "the turnover of the dealer, in whose turnover the sale of such goods is included, shall, in respect of such sale, be taxed at such rate as may be specified.,...."

Firstly, this power of the Provincial Government to impose a higher rate of tax is limited only to those cases where the Govt. first makes declaration that the tax is to be imposed at a single point only and multiple point taxation at every stage of the sales of the goods is given up. The power of imposing the higher rate under Sub-Section (2) of Section 3-A cannot, therefore, be exercised until the Government first exercises its power of declaring that the tax is to be a single point tax only. When that, power of declaration that the tax is to be a single point tax was itself prospective and not retrospective, the Provincial Government could not bring about any increase in the rate of tax with retrospective effect so as to affect sales that had been carried out prior to the exercise of powers by the Provincial Government. Secondly, the clause "in respect of such sales" in this Sub-Section seems to indicate that the higher rate is to be calculated in respect of the proceeds of

each individual made and is not to be applied to the turnover as a whole. Obviously, if each individual sale is to be taken into consideration, it must be those sales only which are effected after the enhanced rate is brought into effect by the notification. If the intention had been that, irrespective of the date of each sale, the turnover was to be taxed at a higher rate, whether it included sales prior or subsequent to the enforcement of the new rate, there was no need of laying down that the declaration by the Provincial Government of the new rate should be in respect of each sale. It should have been sufficient to say that the turnover in respect of those goods may be taxed at a higher rate.

This intention of the Legislature in Section 3-A seems to have been carried out by the Provincial Government in its notification dated 8-6-1948, where the language used corresponds to the language used in Section 3-A. The first and the second clauses of that notification closely follow the language of Section 3-A and need not, therefore, be discussed as the view, that applies to the language of that section, would also equally apply to the interpretation of these clauses of the notification. The third clause of the notification, however, gives a clearer indication that the notification, was intended to cover sales actually carried out subsequent to the notification and not earlier sales irrespective of the fact whether those sales were being assessed to tax in the very year in which they were carried out, or were to be the basis of assessment of tax in any subsequent year. In any case, the sales prior to 8-6-1948, were not contemplated as being affected by that notification. This third clause requires every dealer, dealing in goods mentioned in the notification, to submit a statement showing the quantity and price of his stock and of the stock of such goods held by him on 24-5-1948, to the appropriate assessing authority by 30-6-1948. Obviously, the notification required details of stock held by a dealer on 8-6-1948, for the purpose of finding out which of those stocks would, in future, be liable on sale to the single point tax, as laid down in the notification, and which of the stock would not be so liable.

There could have been dealers who might, on 8-6-1848, have had stocks of goods with them imported from outside U.P. as well as of goods manufactured in U.P. and even possibly, goods manufactured by themselves in U.P. Details of all these facts would be necessary in order to determine which sales would be liable to single point tax and which would not be so liable. Such facts were not required to be furnished in respect of sales of those goods in the previous year. If the intention had been that the previous year's sales of the goods by importers and manufacturers would also be subject to single point taxation, the statement asked for would have included information as to the goods imported or manufactured during the previous year by those dealers. The requirement of the statement relating to the position on 8-6-1948, is, therefore, a clear indication that these new rates were to be applied only in respect of actual sales carried out on or after 9-6-1948. The notification was, therefore, a notification laying down prospective rates which were to affect the sales after the notification came into effect and not the earlier sales. There is no indication in the notification that the sales, included in the previous year's turnovers, were also to be governed by these new rates and, in fact, if there had been any such indication, the notification to that extent might have been challenged as being beyond the scope of the powers conferred on the Provincial Government. A legislature can certainly give retrospective effect to pieces of legislation passed by it but an executive Government exercising subordinate

and delegated legislative powers, cannot make legislation retrospective in effect unless, that power is expressly conferred. We, of course, express no opinion on the question whether, if such express power is conferred, it will or will not be a valid power. It is to be kept in view that the principal charging section, which makes sales liable to tax, is Sub-Section (1) of Section 3 which prescribed a uniform rate of tax of 3 pies per rupee on the proceeds of all sales by a dealer. The legislature, by laying down in Section 3 that the tax is to be imposed on turn-over of the previous year and further by laying down in Section 7 that the return of the turnover, which is to be submitted, must relate to the previous year, clearly intended imposition of tax retrospectively on sales which had taken place even before the U.P. Sales Tax Act came into force.
The power granted to the Provincial Government to alter the method of taxation by directing that sales of certain goods shall be taxed at single point only and may then be taxed at higher rate was not specifically indicated to be exercisable retrospectively, nor was there any need that this should be done. It was not, necessary that, simply because the legislature imposed the tax retrospectively, the power of varying the rate and method of assessment granted to the Provincial Govt. should also have been exercisable retrospectively. On the language of these provisions of law and the notification, therefore, we have come to the conclusion that the rates laid down in the notification dated 8-6-1948 can only be applied to sales which are actually carried out subsequent to that notification having come into force.

6. It was urged by the learned Advocate General, arguing on behalf of the Department, that this interpretation would result in discrimination between various dealers who chose different methods of assessment and should not, therefore, be accepted as the correct interpretation. His argument was that, when assessment proceedings in respect of a particular assessment year take place, the law gives to the dealers the option to choose whether they should be assessed on the basis of the previous year's turnover or on the basis of the assessment year itself. According to the view that we have held, dealers, who choose the assessment year's turnover as the basis of their assessment, would become liable to the higher rate of tax in that very assessment year in which the higher rates are brought into effect, as the sales actually carried out by them after the date of the enforcement of the enhanced rates would come for assessment in that very year; whereas a dealer, who chooses the previous year's turnover as the basis of assessment, would escape the liability to that enhanced rate in that assessment year. Firstly, it cannot be said that this is a discrimination which is brought about by law. Law provides for a choice by the assessee himself of the manner in which he is going to be assessed; if one manner is more advantageous to the assessee than the other one, it is for him to choose the more advantageous one. If he voluntarily gives up that choice, he cannot subsequently complain that he is being discriminated against and is being taxed more heavily than others who chose the other alternative. Secondly, even on the interpretation which we have given, it does not appear that any assessee can evade any taxation at the higher rate. The assessee, who chooses to be assessed on the basis of the current year's turnover in the assessment year itself, would become liable to tax at the enhanced rate on all sales subsequent to the date of the enforcement of the enhanced rate in that assessment year itself and would continue to be so assessed in future assessment years. So far as the

assessee, who chooses the previous year's turnover as the basis of assessment, is concerned, he may not be liable to enhanced rates in the assessment year during which the higher rates are in force but he would be liable to higher rates in subsequent assessments. In both cases, however, all sales effected by either of them after the enforcement of the notification would, in some year or the other, be taxed at the higher rate. In fact, the only difference would be as to the time when these sales are assessed to tax. The assessment on those sales, which may have been carried out after the enforcement of the notification, would, in all cases, be at identical rates. The interpretation placed by us does not therefore, give rise to any discrimination, as suggested by the learned Advocate General.

7. There is also an alternative point of view from which we may examine this case. In Section 3 what is laid down is that every dealer shall pay on turnover in each assessment year a tax at the rate of 3 pies a rupee. As we have indicated earlier, the particular turnover, referred to in Section 3 had to be discovered by reference to Section 7 under which, originally, the only turnover was that relating to the previous year but, subsequent to the Amendment Act No. 25 of 1948, there could be considered in lieu of that turnover the turnover of the current assessment year itself.
The Act, as it originally stood, created a liability to tax in each assessment year on the basis of the turnover of the previous year. This liability, according to Section 7, had to be assessed by asking for a return within 60 days of the commencement of the assessment year. Obviously, the requirement of the section about the submission of the returns and the commencement of the proceedings can only be justified after the liability or obligation to pay the tax has already arisen. The scheme of the Act, therefore, indicates that it was contemplated that the liability to pay sales tax would arise at the very commencement of the assessment year in cases where the liability had to be assessed on the basis of the turnover of the previous year. It is true that the provisions of Section 3 are not so worded as to indicate that those provisions were for the purpose of only creating a liability or obligation to pay tax. The language appears to go a little further by indicating a direction that the dealer is to pay the tax in the assessment year. It however, appears that though this was the language used, this provision of law was intended only for the purpose of indicating what the liability to tax was to be. The actual mode of payment is dealt with in subsequent provisions of the Act. The question of payment only arises after the assessment has been made. The words 'shall pay on turnover ‘in Section 3 mast, therefore, be interpreted as indicating that he is liable to pay the tax on turnover in each assessment year. It is not to be interpreted to mean that actual payment of the tax to the Government has to be made before the expiry of the assessment year. The liability to tax being fixed by Section 3, the method of assessment adopted required immediate proceedings to be taken inasmuch as the assessee was directed to file his returns within 60 days of the commencement of the assessment year. All these provisions thus indicate that the liability to tax arises on the first day of an assessment year and is not a liability in respect of each day of that year. In the present case, if we take into consideration this point of view, we have to hold that the liability of the applicant company to pay tax on the turnover of the previous year arose on the 3-4-1948. On that date, the rate applicable was 3 pies per rupee under Section 3. It is obvious that, a liability to tax having already arisen at a particular

rate, the State Government could not vary that liability by a subsequent notification. Even the legislature, in ruler to do that would have to make a provision which must be clearly retrospective, indicating that the legislature intended to alter that pre-existing liability. The interpretation, sought to be put on behalf of the Department on the provisions of Section 3. A and the notification issued by the Provincial Government on 8-6-1948, would result in, enhancement of the liability which had already arisen in the case of the applicant company before either Section 3-A was introduced in the Act by the legislature or the notification was issued by the Provincial Government. Such retrospective operation of the notification not being permissible, it must be held that this notification would not govern these assessment proceedings against the applicant company which are based on its turnover of the previous year.

8. The last point, that has been urged by the learned Advocate General, is that, under Section 7-B(2) which has been introduced in the U.P. Sales Tax Act by the U.P. Sales Tax (Amendment) Act, 1954, all previous assessments for the purpose of assessment in an assessment year, even if completed, are to be re-opened in cases where the rate of tax in respect of the turnover of any goods or class of goods has been varied during the course of that assessment year and, in the reassessment proceedings the tax is to be levied at the new rate which came into force after the variation. Applying this principle, it was contended that the new rate, which came into force on, 8-6-1948, should be applied to the assessment of tax on the applicant company in the assessment year 1948-49. This argument proceeds on the basis that Section 7B(2), though introduced in 1954 applies retrospectively to assessments of the previous years and even to cases where the question arises as a result of a variation that was made prior to the introduction of this section. In our opinion, no such retrospective effect can be given to Section 7-B(2).

The language of this section clearly indicates that it will only apply when there is any variation in the rate subsequent to the date on which that provision of law was introduced and came in force. The words are :

> "if the rate of tax in respect of the turnover of any goods or class of goods is varied during the course of an assessment year...." and not "is or has been varied The latter form of language would have been used if the intention had been that the variations in rate prior to the enactment of this provision of law were also to be taken into account when applying this provision so as to re-open assessment previously made.

Absence of the words "has been" and the use of the word 'is'are indications that this Sub-Section is to be applied when a variation is brought about subsequent to this provision of law. Consequently, in our opinion, Section 7-B(2) is not applicable to the case before us and must be ignored.

9. For the reasons given above, our answer to the question, that was referred to us and which has

been re-framed by us, is that the applicant company is liable to pay tax for the assessment year 1948-49 on the turnover of the previous year in respect of sales of non-edible oils at the flat rate of 3 pies per rupee. The applicant company shall be entitled to its costs from the Department which we assess at Rs. 500/-.

Answer accordingly.