Supreme Court of India
Commissioner Of Sales Tax,Uttar ... vs The Modi Sugar Mills Ltd on 31 October, 1960
Equivalent citations: 1961 AIR 1047, 1961 SCR (2) 189
Author: S C.
Bench: Das, S.K., Hidayatullah, M., Gupta, K.C. Das, Shah, J.C., Ayyangar, N. Rajagopala

PETITIONER:
COMMISSIONER OF SALES TAX,UTTAR PRADESH

Vs.

RESPONDENT:
THE MODI SUGAR MILLS LTD.

DATE OF JUDGMENT:
31/10/1960

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
DAS, S.K.
HIDAYATULLAH, M.
GUPTA, K.C. DAS
AYYANGAR, N. RAJAGOPALA

CITATION:
1961 AIR 1047 1961 SCR (2) 189
CITATOR INFO :
D 1962 SC 745 (5)
R 1964 SC1594 (4,5,6)
R 1966 SC1385 (11)
RF 1977 SC 513 (4,5,10)
R 1979 SC1495 (10)
RF 1986 SC1518 (8)
R 1989 SC2227 (37)
F 1990 SC 781 (26)

ACT:
Sales Tax Previous year turnover opted for assessment--Change of law and tax rates during assessment year-If applicable to previous year turnover-Modification in the tax levied-If Permissible-United Provinces Sales Tax Act, 1948 (XV of 1948), ss. 3, 3A, 7, 10 and 22-U. P. Sales Tax Rules, Yule 39-U. P Government Notification dated June 8, 1948.

HEADNOTE:
The respondent company was a manufacturer of edible and non-edible oils and was registered as a " dealer " under the

United Provinces Sales Tax Act, 1948. Its year of account commenced on June 1, and ended on May 31 of the next year. Under S. 7(1) of the Act read. with rule 39 of the rules framed thereunder the respondent exercised the option of being assessed on the turnover of the previous year and submitted its return for the assessment year 1948-49 on its taxable turnover of the previous year ending May 31, 1947. The Sales Tax Officer assessed the turnover in respect of edible oil at 3 pies per rupee under S. 3, but in respect of non-edible oil he held that since a notification dated June 8, 1948, issued under S. 3(A) had come into force from June 9, of the assessment year providing for the levy of tax at 6 pies per rupee, the assessee was liable to be assessed at 3 pies per rupee on the turnover during the first 69 days of the year and at 6 pies per rupee for the remaining days of the year. On appeal by the assessee the appellate authority modified the order and directed that the tax be levied at a flat rate of 3 Pies on both edible and non-edible oils. This order was set aside by the revising authority and the order of the Sales Tax Officer was restored. On a direction made by the High Court the revising authority submitted a question for opinion. The High Court held that the assessee was liable to pay the tax at a flat rate of 3 pies per rupee. On appeal by the Commissioner of Sales Tax by special leave,

Held (per Hidayatullah, Das Gupta and Sliah, jj.), affirming the view of the High Court, that the assessee who elected to submit his return on the turnover of the previous year, is liable to be assessed to sales-tax at the rate in force on the first day of the year of assessment because the liability arises on that date, and any subsequent enhancement of the rate by virtue of a notification under S. 3(A) does not alter that liability.

A taxing statute must be interpreted in the light of what

190

is clearly expressed therein and nothing can be implied nor can provisions be imported into them so as to supply an assumed deficiency.

Per S. K. Das and Ayyangar, JJ.-The rate of tax as applied by the sales tax officer was in accordance with law.

Having regard to the scheme underlying the option to elect for a previous year turnover conferred by s. 7(1) of the Act the change in the law and in the rate of tax effected during the assessment year must apply to the turnover of the previous year which is deemed to be the turnover of the assessment year and sales effected during that period have to be assessed at the rate prevailing in that year.

Although the notification was prospective and was made with the object of changing the rate of taxation during the assessment year, the date mentioned therein did not prevent the application of the assessment year rate to the opted previous year turnover.

It is not correct to say that there is absence of machinery

for reassessment and refund of tax to justify the conclusion that the basis of the tax liablity for an assessment year is that which prevailed on the first day of that year since there are provisions in the Act such as for instance ss. 10 and 22 which provide for reductions, refunds and rectification of errors regarding taxation and even for enhancement of the tax already levied.
There was no ambiguity in the notification and the principle of resolving ambiguities in favour of the assessee could not be applied in this case.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 443 of 1957. Appeal by special leave from the judgment and order dated April 25, 1955, of the Allahabad High Court in Civil Misc. Case No. 26/1951.

C. B. Aggarwala, C. P. Lal for G. Ar. Dikshit, for the appellant.

S. K. Kapur and Mohan Behari Lal, for the respondent. 1960. October 31. The Judgment of Hidayatullah, Das Gupta and Shah, JJ., was delivered by Shah, J., and the judgment of Das and Ayyangar, JJ., was delivered by Ayyangar, J. SHAH J.-Judge (Revisions) exercising authority under s. 11 of the United Provinces Sales Tax Act XV of 1948 drew up a statement of case and referred to the High Court of Judicature at Allahabad the follow- question :

" Whether the assessee, who is a manufacturer and a 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 March, 1949 ?"

The High Court answered the question as follows: " 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."

Against the order of the High Court recording its answer, this appeal with special leave is preferred. The facts which give rise to the appeal are briefly these :

The Modi Food Products Co., Ltd.-hereinafter referred to as " the assessee ", manufactures oils edible and non-edible in its factory at Modinagar, District Meerut, State of Uttar Pradesh. The assessee is registered as a "dealer" under the United Provinces Sales Tax Act XV of 1948. The assessee's year of account commences on June 1, and ends on May 31, next year. For the year of account 1946-47, the assessee's sales of edible and non-edible oils amounted to Rs. 63,02,849-7-7. The U. P. Legislature enacted with effect from April 1, 1948, the United Provinces Sales Tax Act XV

of 1948 providing for the levy of a tax on sales of certain commodities. This act was amended by Act XXV of 1948 with retrospective operation from April 1, 1948. By the Act, " assessment year " was defined as meaning the twelve months ending on March 31 and " previous year " was defined as meaning the twelve months ending on the 31st March next preceding the assessment year, or, if the accounts of the dealer had been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st March then, at the option of the dealer, the year ending on the day to which his accounts had so been made up. ,Turnover " was defined as meaning the aggregate of the proceeds of sale by a dealer. By s. 3, a tax at the rate of 3 pies per rupee of turnover was, subject to certain exceptions, made payable by every dealer in each assessment year whose turn. over in the previous year exceeded Rs. 12,000 or such larger amount as may be prescribed; the Provincial Government was however authorised to reduce the rate of tax on any dealer or class of dealers on the turnover in respect of any goods or class of goods. By s. 3-A, the Government of U. P. was authorised to introduce instead of the multiple point scheme of taxation provided by s. 3 a single point system of taxation and by notification to declare that the proceeds of sale of any goods or class of goods shall not be included in the turnover of any dealer except to such single point in the series of sales by successive dealers as may be prescribed; and if the Government made such a declaration, the turnover of the dealer in whose turnover the sale of such goods was included was in respect of such sale to be taxed at such rate as may be specified not exceeding one anna per rupee. By s. 7, every dealer whose turnover in the previous year was Rs. 12,000 or more was directed to 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. By the proviso, the Government was authorised to prescribe that any dealer or class of dealers may submit in lieu of the return or returns specified in that section, a return or returns of his turnover of the assessment year at such intervals as may be prescribed. Provision was made by the Act for appeals against the order of assessment and revision against the order of the appellate authority. By s. 11, the High Court of Judicature at Allahabad was authorised to decide questions of law raised in any case in the course of assessment and referred to it on a statement of the case drawn up by the Revising Authority. By s. 24. the Provincial, Government was invested with power to make rules to carry out the purposes of the Act and in particular in respect of certain specified matters.

In exercise of the powers conferred by s. 24 of the Act, the Government of U. P. framed rules. Rule 39 of the U. P. Sales Tax Rules gave to every dealer an option to submit his return of the turnover of the assessment year in lieu of the return of the turnover of the previous year. A dealer who did not carry on business during the whole of the previous year had no option, but was bound to submit his return of the turnover of the assessment year. By r. 40, it was provided that every dealer who elected to submit a return of the turnover of his previous year shall within sixty days of the commencement of the assessment year, submit to the Sales Tax Officer a return showing his turnover of the previous year. By r. 41, it was provided that every dealer whose estimated turnover during the assessment year was not less than Rs. 15,000 and who elected to submit his return of such year shall before the last day of July, October, January and April submit to the Sales Tax Officer, a return of his gross turnover for the quarters ending June 30, September 30, December 31 and March 31.

In exercise of the authority conferred by s. 3-A which was incorporated in the Act by Act XXV of 1948, the Government of U. P. issed the following notification : " In exercise of the powers conferred

by s. 3-A of the United Provinces Sales Tax Act, 1941, 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. (2) The Governor is further pleased to order that as from June 9, 1948, the rate of tax in respect of the column 5 of the schedule hereto.

(3) 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, 1948." To this notification was appended a schedule which set out the descriptions of diverse commodities, the "circumstances under Which the turnover was to be calculated " the point of tax and the rate of tax. Item 14 of the schedule was " oils of all kinds excluding edible oils but including Vanaspati " and sales thereof by manufacturers in the U. P. were liable to tax at the rate of 6 pies per rupee. By virtue of this notification, non-edible oils became liable to a single point tax as from June 9, 1948, at the time of sale by an importer or manufacturer in the United Provinces. The assessee submitted its return for the assessment year 1948-49 on its taxable turnover of the previous year ending on May 31, 1947, to the Sales Tax Officer, Meerut Range. On the assessee's return, the Sales Tax Officer assessed the tax at Rs. 1,16,238-12-0, holding that sales of non-edible oils for the first 69 days out of the year of the turnover were to be taxed at the rate of 3 pies, and sales for the remaining 296 days were to be taxed at the rate of 6 pies per rupee. Against the order passed by the Sales Tax Officer, Meerut Range, an appeal was preferred to the Judge (Appeals), Sales Tax, under s. 9 of the Act. The appellate authority modified the order and directed the assessee to pay tax on non-edible oils on the turnover of the previous year at the flat rate of 3 pies per rupee and reduced the tax liability-to Rs. 1,08,477-0-3. This order of the Judge (Appeals) was set aside by the revising authority and the order of the Sales Tax Officer was restored. On, a direction made by the High Court, the revising authority drew up a statement of the case and submitted for opinion a question which in his opinion arose out of the assessment. The High Court re-framed the question as set out hereinbefore, and answered it in favour of the assessee.

By s. 3 and s. 3-A, which are the charging sections, the liability to pay sales tax in each assessment year is charged on the total turnover of a dealer. By s. 7, read with r. 39, the assessee has the option to adopt the turnover of the previous year as the taxable turnover for the year of assessment: and if he does so, he has to submit within sixty days of the commencement of the assessment year returns showing his turnover for that previous year. If, however, the assessee adopts the turnover in the year of assessment as his taxable turnover, he has to submit returns before the last day of July, October, January and April his gross turnover for each of the four quarters ending 30th June, 30th September, 31st December and 31st March. The tax is evidently levied in respect of the year of assessment : it is not levied in respect of the business carried on in the previous year. Again, the rate applicable in assessing the tax is the rate in force in the year of assessment. That is clear from the terms of ss. 3 and 3-A. But the taxable turnover for the year of assessment may, except in certain cases not material for the purpose of this appeal, at the option of the tax payer be either the turnover of the previous year or of the year of assessment. If the assessee adopts the turnover of the previous

year, by the provisions contained in s. 3 and s. 7 and rr. 39 and 40, the liability to pay tax arises on the 1st of April and the rate applicable is the rate in force on that date. The liability of the assessee adopting the turnover of the year of assessment arises by virtue of ss. 3 and 7 and r. 41 at the end of each quarter. When the taxable turnover is based on the turnover of the previous year, the tax is assessed on an artificial turnover not related to the actual sales of the year of assessment: whereas the levy of tax on a return made on the turnover of the year of assessment is made on actual sales of that year. The tax paid on the turnover of the previous year is not related to the actual sales provision for making adjustments in the liability to tax on ascertainment of the actual turnover at the end of the year of assessment.

The Government of the United Provinces had by notification dated June 8,1948, altered the rate of tax in the matter of various commodities including nonedible oils with effect from June 9, 1948. The Sales Tax Officer was right in his view that the levy of tax at the altered rate was not to operate on sales effected before June 9, 1948. Initially, when the liability of the assessee to pay tax on edible oils for the assessment year arose, the rate was undoubtedly 3 pies per rupee on the turnover, and the question which falls to be determined is whether by reason of the alteration of the rate and its incidence in the course of the year, the assessee became liable to pay tax at the higher rate on a part of the turnover of the previous year and if so, on what basis. A tax payer who adopted the previous year's turnover bad under s. 7 and r. 40 to submit his return within sixty days of the commencement of the assessment year, and no provision for submission of any supplementary returns in the case of alteration of rates in the course of the year was made in the Act or the Rules: nor was any method provided for retrospective modification of an assessment once made. There were under the Act and the Rules two distinct and clear-cut schemes to assess sales tax, (1) where the tax payer elected to submit his return based on the turnover of the previous year and (2) where he elected to or was bound by law to submit his return on the turnover of the year of assessment. Under these two schemes the points of time at which liability arose and the turnover on which liability was to be assessed were in their nature not identical. The tax payers paying tax under the first scheme paid it on the turnover of the previous year and at the rate in force after the end of the period and applicable to it. The tax payer paying tax under the second scheme paid tax in quarterly installments based on the previous quarter's actual turnover and at the rate or rates prevalent in the quarter or applicable to it. Was it intended, when alteration was made in the rate of tax or its incidence during the course of the year, to assimilate these two schemes of taxation so as to, permit of a departure from the one to the other ? There is no express provision in the Act or in the Rules in that behalf. Nor does the notification suggest that it was so intended. In the case of a dealer who adopts the turnover of the year of assessment for purposes of taxation, the application of the notification altering the rate of tax and the incidence of tax does not present any difficulty. The notification enjoins levy of the tax at the altered rate only in respect of sales taking place after the fixed date, and all sales which preceded that date are to be taxed at the original rate. In the face of the language employed sales anterior to the date specified could not be affected. The question next arises: Is any machinery provided in the Act or the Rules for projecting this division of the year of assessment, into the previous year, and for apportioning the turnover of that year ? Express provision in that behalf there is none : and it is difficult to imply such a provision in the Act. The dates of commencement and closure of the previous year of a tax payer may vary according to the system of accounting adopted by the assessee. The year may commence from any day of any recognised

calendar year, and the year may not consist of 365 days. The method of antedating by one year the date on which the alteration is made in the rate or incidence will be manifestly inappropriate. The method of division of the turnover proportionate to the period of the assessment year before the alteration of the rate and after such alteration though prospective, must be deemed to have been made retrospectively in the previous year, and on a day which is removed from the commencement of the year of account by the number of days by which the date of alteration of rate is removed from the commencement of the year of assessment. But the adoption of the turnover of the previous year as the taxable turnover for the year of assessment is itself based on a fiction and, in the absence of any express provision either in the Act or the Rules or even in the notification setting out machinery for such a division of the year, we are unable to hold that this scheme of a fictional division may be projected into the previous year to make an artificial division of the turnover for imprinting thereon the altered rate of assessment as from the date of the division. Counsel for the State of Uttar Pradesh submitted several hypothetical cases suggesting that by refusing to adopt this method of division of the previous year of assessment for the application of the altered rate, several anomalies may arise in working out the liability to tax. He submitted that a person who was not a manufacturer or an importer of goods included in the schedule to the notification under s. 3-A may, if he has adopted the turnover of the previous year as his taxable turnover be liable even though it was the intention of the Government to absolve him from liability to pay tax. But a tax payer adopting the turnover of the previous year for payment of tax makes his choice 'voluntarily and subject to the advantages and disadvantages which that step involves. The fact that he may have to pay tax from which persons choosing the alternative method of submitting of return may partially be exempted, because of an exemption granted in the course of the year, may not, in our judgment, be a ground for not giving full effect to the provisions of the Act as they stand. In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions'. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed it Cannot imply anything which is not expressed it cannot import provisions in the statutes so as to supply any assumed deficiency.

Section 18 el. (c) of the Act which provides for proportionate reduction of tax when in the case of a change or discontinuance taking place in the course of the assessment year of a firm which has been assessed for such year on the turnover of the previous year does not support the contention that an artificial divisions of the turnover of the previous year is intended in cases of alteration of circumstances during the course of the assessment year. It may be noticed that, the provision is limited to changes in or discontinuance of the business of a firm, in terms it does not apply to individuals. It is not for us to consider why the Legislature has not chosen to make a similar provision in respect of individuals. But the fact that the Legislature has made an express provision dealing with changes or discontinuance of business of firms in the course of the assessment year enabling a reduction proportionately to the tax already paid would be a ground indicating that in cases not governed by that provision, no alteration in the liability was permissible when the taxable turnover was based on the previous year's turnover. It is not provided that in giving effect to the alteration of the rate during the course of the year of assessment an artificial division of the turnover of the previous year should, in applying the altered rate be made. The Legislature having failed to provide machinery for working out the liability, the attempted projection becomes unworkable. A

legal fiction must be limited to the purposes for which it has been created and cannot be extended beyond its legitimate field. The turnover of the previous year is fictionally made the turnover of the year of assessment: it is not the actual or the real turnover of the year of assessment. By the imposition of a different tariff in the course of the year, the incidence of tax liability may competently be altered by the Legislature, but for effectuating that alteration, the Legislature must devise machinery for enforcing it against the tax payer and if the Legislature has failed to do so, the court cannot resort to a fiction which is not prescribed by the Legislature and seek to effectuate that alteration by devising machinery not found in the statute.

We are therefore of the view that the conclusion of the High Court is correct. The appeal therefore fails and is dismissed with costs.

AYYANGAR J.-We regret we are unable to agree with the judgment just now pronounced.

The facts giving rise to this appeal are briefly these:A company called The Modi Food Products Ltd.' (amalgamated with the respondent) which will be referred to hereinafter as the assessee, was during the years 1946 & 1947 a manufacturer of and dealer in vegetable oils-both edible and non-edible. During that year there was no legislation imposing any tax on sales. The U. P. legislature enacted the U. P. Sales Tax Act in 1948 and the statute received the assent of the Governor and was published in the official Gazette on June 5, 1948. Section 1 (2) of the Act enacted that it shall be deemed to have come into force on April 1, 1948. The appeal is concerned with the liability to sales-tax under the Act of the assessee company in respect of the sale of oil effected by the assessee during the period June 1, 1946 to May 31, 1947, which was the account-year of the assessee previous to the first assessment year under the Act1948-49. Section 3 of the Act, to quote only the relevant words, as it stood at the material time, enacted :

" Section 3. Liability to tax under the Act. 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 Provided that-

(i) the Provincial Government may, by notification in the official Gazette, reduce the rate of tax on the turnover of any dealer or class of dealers or on the turnover in respect of any goods or class of goods;

(ii) a dealer whose turnover in the previous year is less than Rs. 12,000 or such larger amount as may be prescribed shall not be liable to pay the tax under this Act for the assessment year."

By the U. P. Sales Tax Amendment Act, 1948 (Act XXV of 1948) this proviso was slightly modified and s. 3(A) was inserted in the Act reading as follows:

" Section 3-A. Single point taxation. (1) 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. (A list of goods was then set out) and nine pies per rupee if it relates to any other goods." Non-edible oil which is the commodity with the sale of which the assessment in the present appeal is concerned is not in the list of goods set out in s. 3(A) and would therefore be covered by the residuary clause of the section. The U. P. Government issued the following notification dated June 8, 1948, under s. 3(A) of the Act:

" 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.

2. 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 3 of the Schedule hereto.

3. 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, 1948 ".

In the Schedule annexed to this notification, nonedible oil of the type dealt with by the assessee was subject to a tax @ 6 pies per rupee if the same was manufactured in U. P.

Section 7 of the Act, as it stood at the date relevant to this appeal, enacted :

" Section 7. Determination of turnover and assessment of tax.--(1) 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 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.

Provided further that the assessing authority may in his discretion extend the date for the submission of the return by any person or class of persons ".

Rules were framed by Government inter alia under the power conferred by the 1st proviso just now set out and by rule 39 of the said rules an option was given to dealers to submit returns of their

turnover of the assessment year in lieu of the turnover of the previous year.

The assessee exercised the option of being assessed on the basis of the turnover of the previous year under s. 7(1) of the Act and in respect of first assessment year after the Act came to force-assessment year 1948-49, it filed a return in respect of the turnover of its previous year June 1, 1946 to May 31, 1947. The total turnover of the assessee during this period was Rs. 63,02,849-7-7. The Sales Tax Officer by his order dated March 12, 1949, assessed the turnover in respect of edible oil at 3 pies per rupee. As regards the sale of non-edible oil, the sales-tax officer hold that since the notification set out above under s. 3(A) had come into force as and from June 9 of the assessment year, the assessee was liable to be assessed @ 3 pies per rupee on the turnover during the first 69 days of the year and @ 6 pies per rupee in respect of the remaining days of the year and he computed the' tax accordingly. The assessee preferred an appeal to the Judge (Appeals), Meerut Range, Meerut, against the order of the Sales-Tax Officer. This officer allowed the appeal of the assessee and held that the entire turnover was liable to be taxed only at a flat rate of 3 pies per rupee under s. 3(1) of the Act on all oil sold by the assessee---edible or non-edible. The reason assigned for the order was that on the terms of the notification the new rate of tax could not be applied to sales effected in the previous year which had been opted for the purposes of assessment by the assessee and that so to apply it would be tantamount to giving retrospective effect to the notification which was contraindicated by the terms of the notification itself. The department thereupon moved the Judge (Revision) who accepted its contention and restored the order of the Sales-tax Officer applying the provisions of the notification to the turnover of the assessee. There. after the assessee made an application to the Judge (Revision) to state a case for the opinion of the High Court under s. 11 of the Act as to whether the rate of tax fixed by the notification could be applied to the sales of the commodity which factually took place on or before June 8, 1948. This petition having been dismissed, an application was filed before the High Court for directing the reference and on this being ordered the following question (as reframed by the High Court) was referred to it for determination :

" Whether the assessee who is a manufacturer and a 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 April 1 to June 8, 1948 and from to March 31 1949."

The learned Judges answered the question in favour of the assessee and held that the notification under s. 3(A) could not apply to determine the rate of tax payable by the assessee on his turnover of the previous year. The present appeal is against this answer by the High Court. As the arguments before us proceeded on practically the same lines as before the High Court, it will be convenient if we set out the reasoning by which the learned Judges upheld the asssessee's contention that the notification under s. 3(A) was inapplicable to determine the rate of tax payable by it. The grounds were mainly five: (1) The assessee could not be charged at the rates prescribed by the notification unless the new rates operated retrospectively; (2) that s. 3(A) which was introduced into the parent Act (Act XV of 1948) by the Amending Act XXV of 1948 was not enacted with retrospective effect.

Though the charge imposed by s. 3(1) of the Act read with s. 7(1) imposed tax retrospectively as and from April 1, 1948, s. 3(A) did not on its terms so operate as and from that date. Hence the liability of the assessee which had become fixed under Act XV of 1948, as it originally stood, could not be and 'Was not varied by s. 3(A) and would not therefore be affected by any notification issued under the last mentioned provision ; (3) that a notification under s. 3(A) could not have retrospective effect since s. 3(A) itself did not operate of its own force and merely empowered the Government, 'by a notification, to effect changes in the law and hence such changes when notified could not operate as from any date prior to the date of the notification ; (4) Section 3(A) which used the words " in respect of such sales " contemplated particular sales taking place after the notification issued under it and hence the notification issued under that section could not alter the rate of levy in respect of sales anterior to the date of the notification ; (5) that the terms of the notification carried out the general scheme of the Act and negatived retrospective operation and that as on its langu- age it applied only to sales which took place on or admittedly effected long prior thereto in the previous year the same could not be affected by the enhanced rate of duty. Before proceeding further it must be pointed out that the learned Judges of the High Court were not right in thinking that s. 3(A) was not enacted to operate retrospectively from the commencement of the' parent Act. Section 1(2) of the Sales-tax Amending Act XXV of 1948 which introduced s. 3(A) enacted:

" It (this Act) shall be deemed to have come into force on the 1st April, 1948."

and as s. 3(A) was one of the sections of this enactment, it would have effect from the earlier date. This inadvertent error, however, would not affect the central point of the reasoning of the learned Judges. Besides elaborating the other points in the judgment of the High Court, learned Counsel for the respondent further pressed upon us that there was no specific provision in the Act for refund or reassessment which would have been present if the levy of a rate with retrospective effect were contemplated by the Act as applicable to the assessees who bad opted for the " previous-year-turnover " basis of assessment. He pointed out that in the case of those assessees who opted for their being assessed in respect of their turn. over during the assessment year, quarterly returns were submitted along with the payment provisionally of the tax due on the basis of that return, the final assessment being completed only after the close of the year when the amount due for the year was ascertained and a demand made for the balance due after adjustment of the amounts already paid during the course of the year (Rule

41). Obviously in their case no difficulty could arise by reason of any change in the law either in the rate or basis of taxation effected during the year, as these would automatically be given effect to in the final assessment. If, however, changes made in the rate of tax payable during the year were held applicable to those assessees who had opted for the previous-year-turnover basis, necessary adjustments could not be made in their assessment for lack of specific machinery to achieve the same. From this he argued that the scheme of the Act was that in the case of the previous-year-turnover assessees, to use a convenient phrase, the tax liability had to be determined on the state of the law as it prevailed on the 1st day of the assessment year and that it got fixed and crystallised on that date and remained unaffected by any changes in the law effected during the course of the assessment year.

In view of these additional submissions, we consider that it would be convenient to examine the entire argument of learned Counsel for the respondent under three heads into which they naturally fall:

(1) Does the Act, read in conjunction with the Rules framed to give effect to its provisions, contemplate any difference being drawn between the basis of the tax liability (as distinct from the quantum of the turnover) of those assessees who have opted for the previous year turnover and " the assessment-year turnover " assessees. (2) Is there any sound basis for the contention that the tax liability of the "previous-year-turnover" assessees gets crystallised on the 1st of April of the assessment year, with the result that such assessees are unaffected by any changes of the law which operate from beyond that date. (3) If the above two questions are answered in the affirmative the construction of the notification dated June 8, 1948, would not fall for consideration, for even if on its language it can apply to the turnover of a period anterior to its issue, the notification cannot be given such effect since the same would be against the basic scheme of the Act. If, however, the answer to the above two questions were in the negative, a further point would arise as to whether on the terms of the notification now under consideration the same could on its language apply so as to affect the tax-liability of the " previous-year-turnover assessees.

We shall now proceed to examine these submissions. On the scheme of U. P. Sales-tax Act, as of every other sales-tax legislation in the other Indian States, the total tax liability of an assessee is the resultant product of two factors: (1) the total of the proceeds of sales effected during a given period, universally a year, from which are deducted the turnover of the sales of commodities which are exempt from tax; for instance under s. 4 of the Act whose provisions will be referred to later; (2) multiplied by the rate of tax applicable either to the entire turnover or where' different rates are prescribed on sales of different articles, such rates in respect of such turnover. The best way to appreciate the scheme underlying the Act would be to ascertain the position at the time the Act was enacted. It received the assent of the Governor and was published in the Gazette on June 5, 1948. Section 1(2) of the Act further enacted that " It shall be deemed to have come into force on April 1, 1948 ". Except to that limited extent, the Act is prospective. The tax is on the " turnover ", i.e., on the total of the sales proceeds of taxable sales and therefore unless there were a taxable sale, its proceeds would not enter the pool which goes by the name of " turnover ". As the Act is not retrospective, the taxable turnover would normally be the total of the sales effected after the enactment became operative, i. e., from and after April 1, 1948, but for the sake of convenience of assessment, it enacts by s. 7(1), we have extracted earlier, a provision providing an option to dealers who have been in business in the year previous to the taxing enactment, to be assessed either on the turnover of the previous year, when owing to the absence of the Act their sales were not subject to tax or on the turnover of the current year. But whichever be the turnover adopted, the rate of tax or the determination of the particular sale proceeds whose total constitutes the taxable turnover, i.e., after the exclusion of the sale proceeds of the commodities listed in s. 4, does not vary. In other words, though the figure of turnover might vary between those who have opted for the one or the other mode of assessment due to the volume of the sales, no difference is maintained in the Act as regards the incidence of the tax, i.e., either in the principle underlying the computation of the total turnover or in the rate or rates applicable to the sales of particular goods or on the total turnover. This can only be on the premise or implicit assumption that the sales of the previous year are treated

by the Act for the purpose of computing tax-liability as the sales of the current year a projection forward in point of time. In other words, the entire basis underlying the charging provision s. 3(1) read with the option provided by s. 7(1) is that the sales of the previous year are fictionally treated as the sales of the current year for the purpose of the computation of the tax liability. It has to be remembered that in cases like the present, during the time when the sales were effected, the Act was not in operation and hence the sales were not taxable. But for the purpose of the imposition of the tax- liability, it is assumed that the sales are taxable and the goods whose sales become taxable are determined on the basis of the provisions of the Act. Thus, if in the current year commodities A, B and C are exempt from tax, they are not to be included in the turnover of the dealer in respect of the previous year in the case of those who have opted for the " previous-year-turnover " under s. 7(1), and the turnover thus computed is charged at the same rate of tax applicable to transactions of the current year.

So far, therefore, as the express provisions of the Act go, no difference is made between the basis of the tax liability of the " previous-year-turnover " and the " assessment-year- turnover " assessees; and though by reason of the terms of s. 7(1) the quantum of the turnover varies no other variation in the law applicable to the two types of assessees is contemplated. We must therefore start from the premise that the Act does not contemplate any difference in the incidence of the tax and the quantum of tax liability flowing from the choice of either the " previous-year " or the " assessment-year " as the basis of the determination of the turnover. We should add that learned Counsel for the respondent has not been able to point out any provision in the Act or in the Rules pointing to any such differentiation.

It was, however, submitted that though the statute might not say so in express terms, still by reason of the provisions of the Act and the Rules under, which the " previous-year-turnover " assessee had to' or could submit his return within sixty days from the commencement of the assessment year and have his assessment completed immediately thereafter-as compared to the " assessment-year-assessee " whose assessment was completed after the end of the year, coupled with the absence of any machinery for re- assessment or refunds in the event of any change in the law effected after the commencement of the financial year, it had necessarily to be held that the liability of the " previous year turnover " assessee got crystallised as on the 1st of April of the assessment year and that the Act did not contemplate this being disturbed by any subsequent changes in the substantive law relating to assessment during the assessment year. It was said that the tax liability of the dealer who had opted for the " previous-year " basis had to be determined on foot of two factors and only two: (1) the turnover of the sales of the previous year which is a definite and known figure by the 31st of March of the previous year and (2) the rate of tax on the turnover as it prevailed on the 1st of April of the assessment year when it was said that there was a "crystallisation" of the liability to tax. It was pointed out that it was possible for an assessee to submit his return on the basis of the " previous-year-turnover " even on the 1st of April of the assessment year and there being no legal impediment in the way of the figures returned by the dealer being accepted the assessment might conceivably be completed and the tax due demanded and even paid on the 1st of April, it sell If this were done, it was urged, there being no machinery for reassessment or refunds such completed assessment would become final for the year and could not be disturbed thereafter. If this were possible or were actually done in the case of one dealer who had so opted, it was urged that it would

obviously be anomalous if another dealer who happened to submit his return later and whose assessment was in consequence delayed, should be subjected to a different law or a different rate of levy.

In our opinion, this argument breaks on critical examination. Learned Counsel for the respondent, to start with, asserted that the crystallisation of the tax-liability as on the 1st of April of the assessment year was with reference to the law as it factually was on that date and that changes made subsequently even if with retrospective effect to date from the commencement of the year, would not affect that liability. This was obviously an untenable contention because if the later enactment or rule was retrospective it must be deemed in the eye of the law to have been in existence and in operation on the earlier date. Though learned Counsel withdrew this extreme argument, still the concession that changes effected with retrospective effect to date from the commencement of the assessment year would apply to determine the tax-liability even of the " previous-year-turnover " assessee serves to emphasize that little importance could be attached to the two bases on which " the crystallisation " argument was rested, viz. : (1) the obligation or freedom of the previous-year-turnover assessee to submit his return and have his assessment completed within sixty days of the commencement of the assessment year and (2) the absence of a specific provision for reassessment and refund. Under the proviso (1) to s. 3 which reads:

" the Provincial Government may, by notification in the official Gazette, reduce the rate of tax on the turnover of any dealer or class of dealers or on the turnover in respect of any goods or class of goods." the State Government could reduce the rate of tax on the turnover of dealers from the standard rate of 3 pies in the rupee under the main part of s. 3. It is also not denied that there is nothing in the terms of the proviso to confine the power to effect reductions only prospectively as distinguished from reductions having retrospective effect. If a reduction were effected say in January or February of the year, having effect as and from the 1st April preceding, on the very argument advanced, Counsel for the respondent would have to concede, that the reduced rate would govern the liability of even those dealers who were assessed on the basis of their turnover of the previous year. Let us first take a case where such a reduction in the rate is notified to be effective before an assessee submits his return. In such a case, the benefit in the reduction of the rate could not be withheld from the previous year-turnover dealers even on the theory of " crystallisation " just now referred to. Let us next take the case of a dealer who has submitted his return of the turnover of the previous year on a date anterior to the notification regarding the alteration of the rate. It might be mentioned that in the return submitted by dealers which has to be in Form IV of Appendix F to the rules, only the total of the sale proceeds of the sales of the classified items of goods have to beset out, but the return does not concern itself with the rate of the tax levied. This latter is a matter with which the assessing authority is concerned when determining the amount of tax payable. If the rates are altered subsequent to the submission of the return but before the assessment is completed, on the terms of the charging section which draws no distinction in the incidence of the tax as between the " previous year-turnover " group and the " assessment-year- turnover " dealers, the Sales-Tax Officer would have to afford every assessee, whatever be the basis of this turnover-the benefit of the tax reduction. The position reached therefore is that if the change in the rate (we have assumed it to be by way of reduction, but the argument would equally apply to variation in any kind), were effected before the actual assessment, it should be given effect to in the case of every assessee for not

merely is there no procedural complication in the shape of a need for refund- but it would be in accordance with the, law and in fact one might go further and say that any other mode of proceeding would not be countenanced by the Act, because the statute homologises the basis of the tax-whether the turnover is computed on the previous year's or the current year's sales. Next in regard to cases where the change in the law is effected after the completion of the assessment we consider that the submission regarding the absence of machinery for reassessment and refund is not well founded. It is true that there are no provisions specially so designated to meet this contingency here referred to, but that is not the same thing as saying that there is a complete absence of machinery. In the first place, s. 22 of the Act empowers authorities including the assessing officer to rectify any mistake apparent on the face of the record and by such rectification even to enhance the tax liability. If on the premises assumed, the variation in the rate of tax would on a proper construction of the Act be applicable to the turnover of the dealer who has opted for the " previous- year rule " but the assessment order does not give effect to it, it would certainly be a case of an error apparent on the face of the record, which would bring the case within the power of rectification. On the analogy of the cases under s. 35 of the Income Tax Act, 1922, the assessment officer could order rectification in such cases.

Even apart from this, under a. 10(2) of the Act the dealer or the department as the case may be may apply to the Revising authority for revision of the assessment on the ground that the same is not legal, proper or regular. This section enacts:

" The Revising Authority may in its discretion at any time suo motu or on being moved by the Commissioner of Sales Tax or on the application of any person aggrieved, call for and examine the record of any order or proceedings recorded by any appellate or assessing authority under this Act for the purpose of satisfying itself as to the legality or propriety, of such order or as to the regularity of such proceedings and may pass such order as he thinks fit." The orders which the Revising Authority could pass might either be by way of enhancement or reduction, and the subsequent sub-sections provide: .

"10 (4). The Revising Authority shall not pass any order under sub-section (3) adversely affecting any person unless an opportunity has been given to such person to be heard.

(5) If the amount of assessment is reduced by the Revising Authority under sub-section (3) it shall order the excess amount of tax if already realised to be refunded." It is, therefore, not correct to say that there is no machinery for rectifying errors and for making consequential orders for payment of further tax, or for directing refunds, and this argument cannot therefore justify the construction contended for by the respondent.

In the entire discussion up to now we have proceeded on the assumption that the turnover of " the previous-year " of the dealer was a fixed quantity which was finally determined once and for ever on the 31st March of that year and that the problem was merely to find the rate of tax to be applied to this predetermined factor. It will be seen from an examination of the Act that even the factor of the turnover is subject to variation. For instance, the first part of s. 4 enacts:

" The provisions of section 3 of this Act shall not apply to (1) the sale of water, salt, foodgrains, milk, gur, electrical energy for industrial purposes, books, magazines, newspapers and motor spirit as defined in the United Provinces Sales of Motor Spirit Act, 1939, and any other goods which the Provincial Government may, by a notification in the official Gazette exempt from time to time." Under this power besides the specified goods, the State Government might from time to time exempt other goods from among those whose sale proceeds have to be included in the turnover. If an exemption of that type were granted say in 1948-49, it cannot be contended that the turnover of the dealer who had opted for the " previous year " has to include these sales in the return which he submits in Form IV, If by the date of the submission of the return, the exemption has been notified, and has effect for the entire year of course he need not include these sale proceeds in his return. The computation, therefore, of the quantum of turnover of the previous year on which tax has to be levied is one which is subject to the law in relation to it in the assessment year, and any change in that law presents the same problems, as the variation in the rate of tax.

Up to now the discussion has proceeded on the basis that a change in the law made in the assessment year whether as regards the computation of the turnover or as to the rate of levy, is effective throughout that year, i.e., from the 1st April to the 31st March, and it is found that the fact that the returns of the previous year turnover dealers are required to or are submitted within the early part of the year, or the contention based on the absence of specific machinery for reassessment or refund are an insufficient basis for holding that a change in the law affecting the basis of tax-liability would not affect the previous-year turnover assessees and that the machinery provided by ss. 10 and 22 are adequate to meet the contingencies arising out of the changes being retrospectively effected after the assessments were completed.

We shall next proceed to consider whether the change in the law either as regards the computation of the taxable turnover or as regards the rate of tax becoming operative sometime after the year has commenced makes any difference. In the case of the "assessment-year-turnover " dealers, there is no problem because the sales effected during the course of the year would be governed by the law applicable from time to time. The entire basis or theory of the tax being levied on foot of the previous year's turnover is that notwithstanding that factually the sales took place in the previous year they are to be deemed by fiction to have taken place in the year of assessment. If that theory be discarded there could be no legal foundation for the tax being levied by the Act even as originally enacted on a sale which factually took place before it was operative. The only question therefore is the precise scope of that fiction and its logical implication. If the sale in the previous year is treated by the Act as a sale in the present year, then no principle is contravened, if it were held that sales during a portion of the previous year are held to be sales during a corresponding portion of the current year. If we reject the argument that it is only the law as prevailed on the 1st April of a year that forms,, the basis for the computation of the turnover and for the ascertainment of the tax-liability-as not flowing from the provisions of the Act, and indeed as contrary to the very scheme underlying the enactment, the changes in the law effected during the course of the assessment year must operate even in respect of the turnover of the previous year, which are deemed to be the turnover of the assessment year.

It now remains to deal with the question as to whether the language employed in the notification by which only sales effected after a date specified in the assessment year are to be governed by the new levy, precludes the application of the notified change to those dealers whose sales were actually effected in the previous year, but who had opted for the " previous-year-turnover " basis of assessment. The argument of learned Counsel, which found favour with the learned Judges of the High Court was briefly this. The notification expressly states that only sales effected from and after June 9, 1948, were to be charged with the new rates. In terms therefore, the change in the law is wholly prospective. If so, one cannot by any line of reasoning reach the conclusion that the new rates of levy applied to sales, as by the present respondent, more than a year earlier. So stated the reasoning appears impressive and it is true that a taxing enactment cannot be construed as levying a charge unless the words clearly do so. But the words have always to be understood and more than that applied with reference to the underlying basis of the scheme of taxation. So applied, it does not appear to us to support the contention of the respondent. The change in the rate of tax, was no doubt prospective. The phraseology employed merely means that in the case of the " assessment-year-turnover " dealers only the sale proceeds of sales effected after the specified date would be governed by the new rates. In the case of the " previous-year-turnover " dealers, the change operates to determine the amount of tax during their assessment year-just in the same manner as the original charge under the Act, of a flat rate of three pies determined the tax payable notwithstanding that none of the sales whose proceeds were included in their turnover were effected during the assessment year. We have already pointed out that the basic idea underlying the provision contained in s. 7(1) of the Act 'is that it projects the turnover of the previous year into the assessment year. Admittedly the Act itself is not retrospective, or designed to levy the charge under s. 3(1), on sales effected before April 1, 1948. If sales of the previous year are brought within the taxing provision, it is not because the sales when they took place were subject to tax, but because either

(a) the previous year's sales are deemed in law-when the assessee so opts-as the sales of the current year or (b) the previous year's turnover being opted, the provisions of the charging sections operate on that turnover. Whichever of these be the more accurate method of expressing the result, the fact is that there is no element of retrospectivity at all involved in the application of the tax law which prevails in the year of assessment to the turnover of the previous year when due to the choice of the assessee of being assessed under s. 7(1), the previous years' turnover basis is rendered applicable. Possibly the matter may be tested in this manner. Section 3(1) of the Act the charging section-imposes in effect a tax of three pies per rupee on all sales effected after the commencement of the Act, i.e., after April 1, 1948. Sup. pose that section itself, had by a proviso imposed a tax @ six pies per rupee on all sales of edible oil effected on and after June 9, 1948. Could it then be open to argument, that in respect of the previous year's sales, only a three pies tax was payable and that the result of the charging provision could be ignored. If, therefore, we are right so far, the respondent derives no advantage from the notification specifying the dates of sales effected from and after which they would be subject to the varied rate. The notification had necessarily to be worded as it was, in order to fulfil its primary purpose of effecting a change in the rate during the assessment year. The date mentioned in the notification as the date from and after which sales would be charged at the new rates would therefore not militate against the new rates being applied to the turnover of the previous year, since the turnover of the previous year has to be assessed on the rates prevailing in the assessment year.

The next question is how on the terms of the notification which came into operation after the commencement of the assessment year and during the course of it, the proportion of the turnover on the basis of which the tax-liability of a previous-year's turnover dealer could be computed. Learned Counsel for the respondent urged that no intelligible basis could be suggested for distinguishing the two periods in the previous year when the original rates and the altered notified rates would operate. Learned Counsel urged that it would be impossible to distinguish these two periods either on any theory of retrospectivity of the notification or on any theory regarding the sales of the previous year being attributed to the corresponding dates of the current year. There is no doubt that this mode of computing the proportion, viz., to treat the sales which were effected on various dates of the previous year, as if they were sales on the corresponding dates of the current year and thus to compute the two totals of turnover which would be subject to different rates of duty would not be proper. The impropriety would arise from the fact that the fiction enacted by s. 7(1) is not that each day's sale in the previous year is deemed to be a sale on the corresponding date in the current year, but only that the total taxable turnover of the previous year is deemed to be that of the current year. The method to which objection is taken is however not the manner in which the Sales-tax Officer computed the proportion which was affirmed by the Judge (Revision). If the total of the sale proceeds of the previous year is deemed to be the total of the current year, there is no illogicality or impropriety in dividing that total in accordance with the number of days in the year in which the different rates prevailed and that is precisely what the Sales-tax Officer did.

If as we hold both the computation of the turnover of the previous year, as well as the incidence of the tax leviable on it, are to be determined not merely by the law as it stood on the first day of the assessment year, but by the law applicable to assessments during the entire assessment year, the method by which the tax-liability of the respondent was computed by the Sales-tax Officer is not open to any objection.

In connection with the interpretation of the notification a minor point was suggested to which brief reference might be made. It was submitted that as the notification in effect levied a tax, if it was ambiguous, it should be resolved in favour of the subject-the tax-payer. We see no ambiguity in the notification to justify an appeal to this rule. Besides the notification in effect frees dealers other than importers and manufacturers of all tax-liability in respect of the sale-turnover of oil, though in the case of two specified classes of dealers. a single point tax at an enhanced rate is levied. In such a situation, the rule of construction invoked could hardly be applied, even if the condition as to ambiguity were present.

We, therefore, hold that the assessment to sales-tax of the respondent company by applying to its turnover of the year 1947-48, the rate of tax specified in the notification of June 8, 1948, as determined by the Sales-tax Officer was in accordance with the law. We would accordingly allow the appeal, set aside the decree of the High Court and restore the assessment order of the Sales-tax Officer with costs here and in the High Court.

BY COURT.-In accordance with the opinion of the majority, the appeal is dismissed with costs.