possible, the one which helps the citizen/assessee is to be preferred to the one which favours the Revenue. Since 'friction cloth' cannot *per se* be described as rubberised cotton fabric, the claim made on behalf of the appellant cannot be sustained.

(10) In view of the above, the view taken by the learned Single Judge is upheld and all the three appeals filed by the Union of India are dismissed. In the circumstances of the case, there will be no order as to costs.

R.N.R.

Before S. S. Sodhi & Ashok Bhan, JJ.

M/S P. S. JAIN MOTOR COMPANY PVT. LTD., JULLUNDUR,—*Petitioner.*

versus

THE STATE OF PUNJAB,—*Respondents.*

General Sales Tax Reference No. 11 *of* 1985.

26th August, 1991.

Punjab General Sales-tax Act, 1948—*Ss.* 5(2)(*a*), 21-*A*—*Rectification of mistake—Right to move for rectification vesting in person affected—Assessing authority is covered by the word 'person' within the meaning of S.* 21-*A*(1)—*Therefore, the State can move an application for rectification under S.* 21-*A.*

Held, that the person affected would include the assessee as well as the Assessing Authority. The Assessing Authority is covered by the word 'person'; as an Assessing Authority is Excise and Taxation Officer as well. Excise and Taxation Officer is affected by the non-assessment and non-recovery of the correct tax within his jurisdiction. He would, therefore, be a person affected within the meaning of S. 21-A(1) of the Act at whose instance a mistake apparent from the record can be rectified. The law permits rectification even *suo moto* and where a mistake can be corrected by an authority on its own motion it is immaterial as to what is the source which set the process in motion. It cannot, therefore, be held that the application for rectification of the order filed by the State was not maintainable. It is thus held that Assessing Authority is a person affected within the meaning of S. 21-A of the Act. (Para 6)

Punjab General Sales-tax Act, 1948—S. 21-A—An order of the Tribunal at variance with law laid down by the High Court is liable to be rectified as a mistake of law apparent on record.

Held, that when this Court in *Fancy Nets and Fabrics* v. *The State of Punjab and another,* 28 S.T.C. 433 has given a finding that second proviso to S. 5(2) (a) (ii) of the Punjab General Sales-tax Act shall be attracted to all the four eventualities referred to in the section and not to only one eventuality as held by the Tribunal in its order, then the mistake of law becomes apparent on record because the order of the Tribunal is at variance with the law laid down by this Court. The order of the Tribunal suffered from a mistake of law apparent on the record and needed to be corrected. The point in issue in this case was directly in issue in the above cited case and the Tribunal had committed an error by taking a view contrary to the law laid down by this Court. (Para 8)

Held, further, that when the Tribunal fails to take notice of a decision of the High Court which is binding on it, then the same can be said to be mistake apparent on the record and can be rectified under S. 21-A(2) of the Act. (Paras 9 & 10)

General Sales Tax Reference under Section 22(1) *of the Punjab General Sales Tax Act,* 1948, *arise out of order dated 20th November,* 1984 *passed by Shri Paramjit Singh, Presiding Officer, Sales Tax Tribunal, Punjab in Misc. (Reference)* 158 *of* 1983-84. *The Sales Tax Tribunal Punjab, referred the following question of law to the High Court for opinion* :—

> *"Whether on the facts and circumstances of the case the State can apply for rectification under Section* 21-*A of the Punjab General Sales Tax Act* ?"

Vinod Aggarwal Advocate and S. P. Jain, Advocate, *for the Petitioner.*

Rajiv Raina A.A.G. Punjab, *for the Respondent.*

JUDGMENT

Ashok Bhan, J.

(1) This judgment shall dispose of General Sales Tax References No. 11 of 1985 and 64 of 1990. On an application filed under section 22(1) of the Punjab General Sales Tax Act. 1948, the following one question of law was referred to by the Presiding Officer. Sales Tax Tribunal, Punjab (hereinafter referred to as the Tribunal) to this Court for its opinion,—*vide* order dated 20th November, 1984:—

> Whether on the facts and circumstances of the case the State can apply for rectification under Section 21-A of the Punjab General Sales Tax Act 1948.

Accordingly, General Sales Tax Reference (for short G.S.T.R.) No. 11 of 1985 was made to this Court only on the above referred question.

(2) Dissatisfied by the order, the assessee filed general sales tax case seeking *mandamus* to the Tribunal to refer to this Court the following question of law as well which according to the assessee arose out of the order of the Tribunal and which had been declined by the Tribunal:—

> Whether on the facts and in the circumstances of the case, the order of the Sales Tax Tribunal dated 12th August, 1975 suffers from mistake of law apparent on record needing rectification ?

(3) This Court held that the second question also arose out of the order of the Tribunal and directed the Tribunal to refer the second question as well to this Court for its opinion. Accordingly, the Tribunal referred the second question of law to this Court for its opinion. Accordingly, the Tribunal referred the second question of law to this Court for its opinion,—*vide* order dated 6th February, 1990. G.S.T. No. 64 of 1990 arises out of the second order of the Tribunal and that is how both the references, referred to above, are being disposed of by this Common judgment.

(4) The following facts shall bring out the controversy giving rise to the present questions of law:—

M/s P. S. Jain, Motor Company (Pb.), Pvt. Ltd. Jalandhar (hereinafter referred to as the assessee) deals in tractors and their parts and is a registered dealer under the Act. Assessee filed quarterly return showing gross turnover at Rs. 44,94,292.79. Deductions were allowed in respect of sales of tax free goods and sales made to the registered dealers. Assessing Authority Jalandhar created an additional demand of Rs. 56,220.00,— *vide* order dated 12th August, 1971. Assessee filed an appeal before the Deputy Excise and Taxation Commissioner who dismissed the appeal of the assessee,—*vide* his order 16th May, 1974. Assessee carried the second appeal before the Tribunal who,—*vide* its order dated 12th August, 1975 allowed the appeal and set aside the order of the Deputy Excise and Taxation Commissioner and that of the Assessing Authority. State of Punjab filed an application before the Tribunal for rectification of the order dated 12th August, 1975 under section 21-A(2) of the Act. It was pleaded that the Tribunal erred in holding that second proviso to section 5(2) (a) (ii) of the Act was

attracted only in the contingency when goods were used by the purchasing dealer for use in manufacture and would not apply to other three contingencies of re-sale without manufacture; that this was contrary to a decision of this court in *Fancy Nets and Fabrics* v. *The State of Punjab and another,* (1). The Tribunal,—*vide* its order dated 28th October, 1983, came to the conclusion that earlier order of the Tribunal dated 12th August, 1975 was at variance with the law laid down by this Court in *Fancy Nets and Fabrics' case* (supra) and, therefore, a mistake of law was apparent on the face of the record. Rectification application was accepted and the order of the Tribunal dated 12th August, 1975 was re-called and it was held that the Assessing Authority was right in law and facts in bringing to tax the purchase value of the goods under second proviso to section 5(2) (a) (ii) and that the Deputy Excise and Taxation Commissioner correctly upheld the order of the Assessing Authority. As a consequence of the rectification of the order of the Tribunal, the appeal of the assessee before the Tribunal was ordered to be rejected. At the instance of the assessee, the mentioned two questions of law have been referred to this court for its opinion.

(5) The two statutory provisions, that is section 5 and 21 of the Act as they stood at the relevant time (amendments have been made in these two sections lateron) are reproduced below:—

"5. Rate of tax: (1)xx xx xx

(2) In this Act the expression "taxable turnover' means that part of a dealer's gross turnover during any period which remains after deducting therefrom:-

(a) his turnover during that period on—

(i) the sale of goods declared tax-free under section 6;

(ii) sales to a registered dealer of good other than sales of goods liable to tax at the first stage under sub-section (1-A); declared by him in a prescribed form as being intended for resale in the State of Punjab or sale in the course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India, or of goods specified in his certificate of registration for use by him in the

(1) 28 S.T.C. 433.

manufacture in Punjab of any goods, other than goods declared tax free under section 6, for sale in Punjab, or sale in the course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India and on sales to a registered dealer of containers or other materials for the packing of such goods:

Provided that in case of such sales, a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing prescribed particulars on a prescribed from obtained from the prescribed authority is furnished by the dealer who sells the goods:

"(Provided further that when such goods are used by the dealer to whom these goods are sold for purposes other than those for which these were sold to him; he shall be liable to pay tax on the purchase thereof at such rate, not exceeding the rate of tax leviable on the sale of such goods, as the State Government may by notification direct in respect of class of dealers specified in such notification, notwithstanding that such purchase is not covered by clause (ff) of section".

(iii) Deleted by Punjab Act VI of 1952.

(iv) sales to any undertaking supplying electrical energy to the public under a licence or section granted or deemed to have been granted under the Indian Electricity Act, 1910, of goods for use by it in the general or distribution of such energy;

(v) sales or purchases of goods falling under section 29;

(vi) the purpose of goods which are sold not later than six months after the close of the year, to a registered dealer, or in the course of inter-state trade or commerce, or in the course of export out of the territory of India:

Provided that in the case of such a sale to a registered dealer, a declaration, in the prescribed form and duly filled and signed by the registered dealer to whom the goods are sold, is furnished by the dealer claiming deduction;

(vii) such other sales or purchases as may be prescribed;

(b) the amount of sales tax included in the gross turnover.

(3) xx xx xx xx"

"21-A. Rectification of Mistakes.—(1) The Commissioner or the officer on whom powers of the Commissioner under sub-section (1) of section 21 have been conferred by the State Government may, at any time within two years from the date of any order passed by him, of his own motion, rectify any mistake apparent from the record, and shall within a like period rectify any such mistake which has been brought to his notice by any person affected by such order :

Provided that no such rectification shall be made if it has the effect of enhancing the tax or reducing the amount of refund, unless the Commissioner or the officer on whom powers of the Commissioner under sub-section (1) of section 21 have been conferred by the State Government has given notice in writing to such person of his intention to do so and has allowed such person a reasonable opportunity of being heard.

(2) The provision of sub-section (1) shall apply to the rectification of a mistake by a Tribunal as they apply to the rectification of a mistake by the Commissioner.

(3) xxx xxx xxx

(4) xxx xxx xxx

(6) The first question relates to the maintainability of the rectification application. It was argued by the learned counsel appearing for the assessee that under section 21-A(1) of the Act, the Tribunal can rectify its own order *either of its own motion* or *rectify any such mistake which has been brought to his notice by any person affected by such order.* Since the Tribunal has rectified the order on the application filed by the Assessing Authority/State of Punjab, the same being not a person affected, the order of rectification is bad in law. We do not find any substance in this submission of the counsel appearing for the assessee. The person affected would

include the assessee as well as the Assessing Authority. The Assessing Authority is covered by the word 'person'; as an Assessing Authority is Excise and Taxation Officer as well. Excise and Taxation Officer is affected by the non-assessment and non-recovery of the correct tax within his jurisdiction. He would, therefore, be a person affected within the meaning of section 21-A(1) of the Act at whose instance a mistake apparent from the record can be rectified. The law permits rectification even *suo moto* and where a mistake can be corrected by an authority on its own motion; it is immaterial as to what is the source which set the process in motion. It cannot, therefore, be held that the application for rectification of the order filed by the State was not maintainable. It is thus held that Assessing Authority is a person affected within the meaning of Section 21-A of the Act.

The question referred to this Court is answered in affirmative i.e., in favour of the State and against the assessee.

QUESTION NO. 2:

(7) The Tribunal,—*vide* its order dated 12th August, 1975 while putting interpretation to second proviso to section 5(2) (a) (ii) of the Act held as follows :—

> "It is clear that this proviso only refer to that contingency when "goods" are "USED" by the dealer to whom these are sold for purposes other than those for which these were sold to him." The connotation of the word "USED" in the second proviso must be construed with reference to and in connotation with the word 'Use', in the main sub-section to which the second proviso is appended. It will be noticed that it is only in category (d) that the word "USE" has occurred in the main sub-section namely, "goods specified in his certificate of registration for use by him in the manufacture in Punjab of any goods other than goods declared tax-free under section 6, for sale in Punjab. Thus the goods specified in the certificate of registration have to be used by the purchasing dealer for manufacture in Punjab of other goods for sale in Punjab and these must be goods other than those declared tax-free under section 6. If the purchasing dealer does not do so but uses the goods for any other purpose, then the second proviso would apply and the dealer would be

liable to pay tax on the purchase of the goods which he has not properly used although no purchase tax is leviable on such transactions under the other provisions of the law. It appears to me that the intention of the second proviso to section 5(2) (a) (ii) is only to cover case, of misuse of purchased goods by dealers who are supposed to use such goods specified in their certificate of registration in the manufacture in Punjab of any goods, other than goods declared tax-free under section 6, for sale in Punjab. The second proviso does not apply to the other three contingencies shown at (a), (b) and (c) of the classification above, and if a dealer does not comply with the provisions of law with regard to those sales, he shall not be entitled to deduct such sales from his taxable turnover. But there is no question of imposing a purchase tax upon such dealers by virtue of the second proviso cited above. The second proviso would thus come into play and would be attracted only in respect of goods purchased for use in the manufacture of Punjab of any goods and not in respect of any other purchases."

"From the above, it is clear that the second proviso to section 5(2) (a) (ii) cannot be invoked for taxing transfer of goods to a branch. I would accordingly allow this appeal and set aside the order of the lower authorities in so far as they taxed the transfer of goods to the Branch at Delhi. Any refund due as a result of these orders, may be made on a separate application."

(8) In *Fancy Nets and Fabrics'* case (supra), this Court had taken the following view :—

"The object of the second proviso to section 5(2)(a)(ii) is that where certain goods liable to sales tax were not made liable because of a declaration furnished under the registration certificate of a purchasing dealer and in the hands of the purchasing dealer those goods have not earned the tax which they would have earned when the purchasing dealer disposed them of in one of the four methods mentioned in form ST XX that tax which would have been recovered at the stage of the first sale is made recoverable by fiction of law in the hands of the purchasing dealer."

Since the view taken by the Tribunal was contrary to an earlier decision of this Court in *Fancy Nets and Fabrics'* case (supra), the State of Punjab filed an application for rectification of the order of the Tribunal dated 12th August, 1975 on the plea that there is a mistake of law apparent on the face of the record of order of Tribunal as the order of the Tribunal runs counter to the law laid down by this Court in *Fancy Nets and Fabrics'* case (supra). It is apparent from the perusal of the order of the Tribunal dated 12th August, 1975 and the law laid down by this Court in *Fancy Nets and Fabrics'* case (supra); that the order of the Tribunal is at variance with the law laid down by this Court. This Court held that second proviso to section 5(2)(a)(ii) of the Act would be attracted to any one of the four eventualities mentioned in the section whereas the Tribunal had held that only in one eventuality i.e. 'manufacture', the second proviso would be attracted and not in the other three eventualities. The instant case was of purchase of vehicles on the strength of registration certificate on furnishing of Declaration in Form ST XXII and thereafter transfer of goods without making sales to other dealers. The Tribunal rectified its mistake and fell in line with the law laid down by this Court in *Fancy Nets and Fabrics'* case (supra). Now the question for consideration is as to whether under the circumstances the order dated 12th August, 1975 passed by Shri I.C. Puri, Presiding Officer, Sales Tax Tribunal, Punjab, suffers from a *mistake of law apparent on record.* Learned counsel appearing for the assessee contended that judgment of this Court in *Fancy Nets and Fabrics'* case (supra) was not applicable to the instant case and further that this authority was not an authority for the proposition as to whether the second proviso to section 5(2)(a)(ii) of the Act would be attracted to any one of the four eventualities mentioned in the section on to only one eventuality, that is, activity of 'manufacture'. No doubt, a precedent is an authority only for what it actually decides and not for what may remotely flow therefrom as held by this Court in *Bata India Limited* v. *The State of Haryana and another* (2). We do not find any substance in this submission of the learned counsel appearing for the assessee. This Court in *Fancy Nets and Fabrics'* case (supra) has given a categorical finding that second proviso to section 5(2) (a)(ii) of the Act shall be attracted to all the four eventualities referred to in the section and not to only one eventuality as held by the Tribunal in its order dated 12th August, 1975.

(2) 54 S.T.C. 226.

Once it be so, then the mistake of law becomes apparent on record because the order of the Tribunal is at variance with then law laid down by this Court. The order of the Tribunal suffered from a mistake of law apparent on the record and needed to be corrected. The point in issue in this case was directly in issue in *Fancy Nets and Fabrics'* case (supra) and the Tribunal had committed an error by taking a view contrary to the law laid down by this Court. It may be mentioned that the Deputy Excise and Taxation Commissioner in its order had referred to the decision of this Court in *Fancy Nets and Fabrics'* case (supra) but the Tribunal failed to take notice of the same.

(9) The next question that arises for consideration before the Court is if a Tribunal fails to take notice of a decision of the High Court which is binding on it, then as to whether the same can be said to be a mistake apparent on the face of the record and can be rectified under section 21-A (2)of the Act? The answer to this question has to be in the affirmative, in view of the law laid down by this Court in *Jagjit Distilling and Allied Industries Limited* v. *The Assessing Authority, Kapurthala and others* (3). In this case, subsequent to the order of the Tribunal, this Court gave a decision which was contrary to the view taken by the Tribunal. Assessee filed an application for rectification or modification of the orders passed by the Tribunal but the Tribunal failed to exercise the jurisdiction vested in it by holding that it had no power of review. The Tribunal in its impugned order came to the conclusion that the decision of this Court in *Jagjit Distilling's* case (supra) was binding on it and that the assessee was not liable to pay sales tax in view of the said decision but no relief could be given to the assessee as the appeal filed by the assessee before the Tribunal had been dismissed before the decision of the High Court in *Jagjit Distilling's* case (supra). In these circumstances, this Court held as follows:—

> "xxxxxx The language of the provisions of Section 21-A is widely worded. The Tribunal is duty bound to rectify the mistake apparent on the record when it comes to its notice by the person affected by the said order. The contention of the learned counsel, that the assessee should have filed an application under section 21-A of the Act

(3) 42 S.T.C. 233.

and only then the Tribunal could exercise its jurisdiction is without any merit. The provisions of section 21-A of the Act are widely worded and nowhere restrict the exercise of jurisdiction only on making an application as the power vested in the Tribunal can be exercised on its own motion or when the mistake is brought to the notice of the Tribunal. It would thus be seen that, according to the finding of the Tribunal itself, the assessee is not liable to pay tax. The Tribunal refused to refer questions Nos. (3) and (4) to the High Court on the plea that the said questions already stand answered in favour of the assessee. The net result of these findings is that even though the assessee in law admittedly is not liable to pay the sales tax, but in fact he is being charged with the same. The prayer for rectification has been refused and his prayer for referring the questions Nos. (3) and (4) to the High Court has also been refused. The bare reading of the provisions of Section 21-A would suggest that the said provisions has been enacted by the legislature to rectify any mistake apparent on the record. This mistake can be rectified by the Tribunal on its own motion or when the matter is brought to its notice by any person affected by the said order. The mistake, which is apparent on the face of the record, was pointedly brought to the notice of the Tribunal by the assessee when a prayer was made that the orders of the Tribunal by which the appeals of the assessee had been dismissed should be rectified or modified, but the Tribunal failed to exercise the jurisdiction vested in it by holding that the Tribunal had no power to give any relief, as the appeals of the assessee had already been disposed of. It is, therefore, apparent that the Tribunal had failed to exercise the jurisdiction vested in it under the provisions of section 21-A of the Act. We, therefore, quash the order of the Tribunal wherein it was held that the Tribunal had no jurisdiction to rehear the appeals thereby impliedly refusing to rectify the mistake apparent on the record. In fact, there is no question of rehearing the appeals. The only question is of rectification of the mistake of law which is apparent on the record. We, therefore, direct the Tribunal to exercise the jurisdiction vested in it under section 21-A of the Act and rectify the mistake of law apparent on the face of the record in accordance with law."

(10) In view of the forgoing discussion, the answer to this question is also in affirmative i.e. in favour of the revenue and against the assessee and it is held that the order passed by Shri I. C. Puri, Presiding Officer Sales Tax Tribunal Punjab dated 12th August, 1975 suffered from the vice of mistake of law apparent on the record needing rectification. Thus the questions referred to this Court are answered in favour of the revenue and against the assessee. No costs.

R.N.R.

Before : Ashok Bhan, J.

SUKHWANT RAI,—*Appellant.*

versus

M/S KALU RAM KHIALI RAM, PATIALA AND ANOTHER,
—*Respndoents.*

Regular First Appeal No. 1334 *of* 1978.

14th February, 1991.

Code of Civil Procedure, 1908—*O.* 13, *rl.* 4 *provisos* (*a*) to (*e*)—*Indian Stamp Act*, 1899—*Ss.* 35, 36—*Indian Evidence Act*, 1872—*Ss.* 45, 91—*Admissibility of evidence*—*Execution of documents by defendant*—*Challenge to*—*Expert witness giving evidence that signatures on documents are of same person who had signed written statement and power of attorney in the suit*—*Witness not an attesting witness to the documents*—*No inference of execution of documents by the defendant can be drawn from such evidence*—*Exhibit marks on documents put by the trial Court inadvertently*—*Execution thereof not proved*—*Such documents not admissible in evidence*—*Suit liable to be dismissed.*

Held, that the documents (i.e. Hundis) in dispute cannot be said to have been admitted in evidence. The evidence of Dewan K. S. Puri was only to the effect that the signatures on the documents were made by the person who signed the written statement and the power of attorney available in the present suit. From this evidence, it cannot be inferred that the execution of the documents by the defendant has been proved.

(Para 9)