in the nature of an extra-ordinary power, must be used with care and circumspection, as it constitutes an inroad into the enjoyment of the right guaranted under Article 19(1)(a) and, as such, the conditions for exercising this power must be rigidly adhered to. Section 95 of the Code requires that the State Government while taking action under that section, must specifically set out not only the opinion but the *grounds* of its opinion as well to forfeit and seize the documents. This has been so held and explained by the Supreme Court in *Harnam Das* v. *State of Uttar Pradesh* (2) while dealing with section 99-A of the Code of Criminal Procedure, 1898, (which corresponds to section 95 of the Code). We are, therefore, of the opinion that this procedure must be strictly followed by the State Government or its delegatees while taking action under section 95 of the Code.

(9) For the reasons recorded above but subject to the observations made in the above paragraph, the present writ petition is dismissed, but with no order as to costs.

R.N.R.

Before I. S. Tiwana, A.C.J. & Jawahar Lal Gupta, J.

UNION OF INDIA,—*Appellant.*

versus

M/S PUNJAB RUBBER AND ALLIED INDUSTRIES, JULLUNDUR,—*Respondents.*

Letters Patent Appeal No. 343 *of* 1984.

14th August, 1991.

Central Excise and Tariff Act, 1985—*Ss.* 2(*b*), 2(*f*), 3—*Central Excise Rules*, 1944 *as amended in* 1982—*Rls.* 9, 49—*Central Excise and Salt Act*, 1944—*S.* 3—*Central Excise Tariff of India*—*Item* 19(1) (*b*)—*Excise duty*—*Friction cloth is not rubberised cotton fabric, therefore, not excisable under Item* 19(1) (*b*) *of the Central Excise and Tariff Act*—*Friction cloth used at intermediate stage of process of manufacture is neither independently marketable nor exchangeable*—*Effect of amendment to rules* 9 *and* 49—*Excise duty is not leviable on friction cloth.*

(2) 1962(2) SCR 487.

Held, that to be excisable the goods must be marketable. These should be 'exchangeable'. The goods should be capable of being bought or sold. 'Friction Cloth' is not included in the Schedule. It is not a finished product. It is not bought or sold. It is not marketable. Literally it cannot even be described as a 'cotton fabric' subjected to the process of 'rubberising'. It is only a stage, in fact an intermediary stage, for the production of transmission V-shaped belting or Conveyor belts. Therefore, friction cloth is not even a distinct marketable or 'economically exchangeable' good. It does not conform to the discription given in Item 19(1)(b) of the Central Excise Tariff. (Para 6)

Held, further, that the taxing event under S. 3 of the Central Excise and Tariff Act is the actual production or manufacture of the exciseable goods. Rule 9 only postulates that the duty has to be calculated at the time of removal of the commodity. By the amendment excise duty becomes leviable even if there is no removal. Unless it is found that an excisable good has been manufactured the liability to pay excise duty does not arise. Consequently, in spite of the amendment in Rule 9, excise duty is not leviable on 'friction cloth'. (Paras 7 & 8)

Letters Patent Appeal under Clause X of the Letters Patent Against the judgment dated 22nd December, 1983, passed by Hon'ble Mr. Justice S. S. Kang in the above noted writ Petition.

Nemo, *for the Appellant.*

R. L. Batta Sr. Advocate with S. K. Pabbi, Advocate, *for the Respondents.*

JUDGMENT

Jawahar Lal Gupta, J.

(1) The learned Single Judge posed the question—"Whether friction cloth/rubberised cloth produced at an intermediate stage in the production, by a composite, uninterrupted and continuous process of Transmission Rubber Belting, V-shaped Belts and Conveyor Belts is exigible to Central Excise Duty?"—and answered it in the negative. Aggrieved by the decision, the Union of India has filed these three Letters Patent Appeals, viz., L.P.A. Nos. 343, 344 and 345 of 1985. None has appeared on behalf of the appellant to argue the appeals. Unaided by the appellant, we are deciding these three appeals on merits.

(2) The respondents herein are manufacturing transmission rubber belting, V-shaped and conveyor belts. The process in the words of the learned Single Judge is as under :—

> "The petitioners are manufacturers and dealers of T. R. belting, V-shaped and conveyor belts. In order to manufacture these goods, the raw rubber, both natural and synthetic is compounded with various chemicals to make a master batch which is in the form of a sheet. This sheet is like a fast paste and is used in various forms in making a cushion compound, in impregnation or ply lamination. For the manufacture of the flats transmission belts the selected grade of cotton canvas is impregnated with the rubber paste in different consistency by Rolling the Paste in the fabric under pressure on a Calender Machine. The fabric thus impregnated with the rubber paste forms a ply inter-layer. The fabric thus treated-impregnated with the rubber paste is piled into layers to give a requisite thickness. While preparing this pile the thin sheet of rubber compound as described above is placed as inter-layers. The pile thus formed in required thickness is steam-heated in Hydraulic Press to heat cure. The piled cured sheets of laminated piles are out to size for ultimate conversion into flat transmission betls.
>
> The process of manufacture of V-Belts is almost similar to the process of flat transmission belts with the exception that it requires more compound to provide cushion and is shaped into a V-shape. The impregnation of fabric with rubber paste is an in-step operation."

(3) The point for consideration is as to whether or not the cotton canvas impregnated with the rubber paste which has been described as friction cloth is classifiable as rubberised cotton fabric and thus excigible to excise duty ? The appellant seems to suggest that the impregnation of the canvas cloth with rubber compound is a process of rubberisation of cotton fabric. On behalf of the respondents, Mr. R .L. Batta maintains that friction cloth is not an excisable good; it is not marketable or exchangeable as such and cannot, therefore, be subjected to excise duty.

(4) In *M/s Punjab Rubber Allied Industries* v. *Union of India and others*, 1983 (2) E.L.T. 54, a Division Bench of this Court held that the process of manufacture of transmission rubber belting/

V-shaped belts and conveyor belts involved a composite, integrated and uninterrupted process and if 'friction cloth' comes into existence at an intermediary stage, the department is not justified in demanding excise duty as the product could not be used or sold in the market as such. To take away the effect of this decision which was rendered in September, 1981, Rules 9 and 49 of the Central Excise Rules, 1944 (hereinafter referred to as 'the Rules') were amended in February, 1982. It is in the light of amendments that the claim of the appellant as raised in these appeals has to be examined. The relevant provisions of the Act and the Rules deserve to be noticed. These are extracted below:—

"*Section* 2(*d*)—"excisable goods" means goods specified in the Schedule to the Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salty;"

"*Section* 2(*f*)—"manufacture" includes any process,—

(i) incidental or ancillary to the completion of a manufactured product; and

(ii) which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture;

and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;"

"*Section* 3.—Duties specified in the (Schedule to the Central Excise Tariff Act, 1985 to be levied,—

(1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into, any part of India as, and at the rates, set forth in the Schedule to the Central Excise Tariff Act, 1985:

Provided that the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured:

(i) in a free trade zone and brought to any other place in India; or

(ii) by a hundred per cent export-orient undertaking and allowed to be sold in India, shall be an amount equal to the aggregate of the duties of customs which would be leviable under section 12 of the Customs Act, 1962 (52 of 1962), on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value. The value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975).

xx xx xx ".

"*Item* 19-1(*b*) of the Central Excise Tariff of India.

Item No.	Description of Goods	*Rate of Duty*		
		Basic duty	Addl duty	Hand loom duty
19-1(b)	Cotton fabrics, subject to the process of bleaching, mecersing dyeing, printing, water-proofing, rubberising, shrink proofing, organidie processing or any other process or any two or more of these processes".	Twenty per cent ad valorem	Five per cent ad valorem	1.9p per Sq. M.

"*Rule* 9. No excisable goods shall be removed from any place where they are produced, cured or manufactured or any premises appurtenant thereto, which may be specified by the Collector, in this behalf, whether for consumption, export, or manufacture of any other commodity in or outside such place, until the excise duty

leviable thereon has been paid as such place and in such manner as is prescribed in these rules or as the Collector may require and except on presentation of an application in the proper form and on obtaining the permission of the proper officer on the form :

Provided xx xx xx

Explanation.—For the purposes of this rule, excisable goods produced, cured or manufactured in any place and consumed or utilised—

(i) as such or after subjection to any process or processor;

(ii) for the manufacture of any other commodity whether in a continuous process or otherwise, in such place or any premises appurtenant thereto, specified by the Collector under sub-rule (1), shall be deemed to have been removed from such place or premises immediately before such consumption or utilisation."

"*Rule* 49. Duty chargeable only on removal of the goods from the factory premises or from an approved place off storage,—

(1) Payment of duty shall not be required in respect of excisable goods made in factory until they are about to be issued out of the place or premises specified under rule 9 or are about to be removed from a storeroom or other place of storage approved by the Collector under Rule 47. xx xx xx

Explanation:—For the purposes of this rule, excisable goods made in a factory and consumed or utilised—

(i) as such or after subjection to any process or processes; or

(ii) for the manufacture of any other commodity. Whether in a continuous process or otherwise, in such factory or place or premises specified under rule 9 or storeroom or other place of storage approved by the Collector under rule 47, shall be deemed to have

been issued out of, or removed from such factory, place, premises, store-room or other place of storage, as the case may be, immediately before such consumption or utilisation."

(5)A perusal of the provisions of Sections 2 and 3, quoted above, shows that excise duty is leviable on the goods specified in the Schedule. The word 'goods' has not been defined in the Act. Entry 84 in List-I of the 7th Schedule to the Constitution of India speaks of "goods manufactured or produced in India." The Supreme Court of India has considered this expression and held it to refer to articles which are capable of being sold to consumers. To become goods "an article must be something which can ordinarily come to the market to be bought or sold." Reiterating these definitions in the *Union Carbide India Ltd.* v. *Union of India and others* (1), it was held that "the aluminium cans prepared by the appellant are employed entirely by it in the manufacture of flash lights and are not sold as aluminium cans in the market." It was thus held that "aluminium cans produced by the appellant cannot be described as excisable goods and, therefore, do not fall within the terms of Section 3 of the Central Excise and Sale Act, 1944 read with entry 27 of the 1st Schedule thereto."

(6) In view of the above, it follows that to be excisable the goods must be marketable. These should be 'exchangeable.' The goods should be capable of being bought or sold. 'Friction Cloth' is not included in the Schedule. It is not a finished product. It is not bought or sold. It is not marketable. Literally it cannot even be described as a "cotton fabric" subjected to the process of "rubberising." It is only a stage, in fact an intermediary stage, for the production of transmission V-shaped belting or Conveyor belts. We are of the view that friction cloth is not even a distinct marketable or 'economically exchangeable' good. It does not conform to the description given in Item 19(1) (b) of the Central Excise Tariff.

(7) What then is the effect of the amendments in Rules 9 and 49 ? Rule as it originally stood *inter alia* provided that the excisable goods shall not be removed from the place where they are produced or any premises appurtenant thereto unless the excise duty had been paid. By the explanation added in the year 1982. it has been provided that if an excisable 'good' is consumed or

(1) A.I.R. 1986 S.C. 1097.

utilised in its original form or after subjection to any process for the manufacture of any other commodity whether in a continuous process or otherwise, it shall be deemed to have been removed from such place before "such consumption or utilisation." Similar is the position under the explanation added to Rule 49. These explanations can only mean that excisable goods obtained at an intermediate stage of continuous process of manufacture shall be deemed to have been removed when they are utilised or consumed for production of any other commodity. The rules introduce a legal faction regarding physical movement of the goods even though in fact no movement may have actually taken place. The goods are deemed to have been removed, they have actually not been removed. However, the taxing event under Section 3 of the Act is the actual production or manufacture of the excisable goods. Rule 9 only postulates that the duty has to be calculated at the time of removal of the commodity. By the amendment excise duty becomes leviable even if there is no removal. Consequently unless it is found that an excisable good has been manufactured the liability to pay excise duty does not arise. While excise duty was not leviable on any goods which came into existence at an intermediate stage under the original rules if it was used for producing another excisable good in a continuous and integrated course, the product has become subject to levy by virtue of the explanation added to Rule 9. In the present case, friction cloth was neither subject to levy originally, nor has it become exigible to excise duty after the amendments of the Rules.

(8) To illustrate, A unit manufacturing rain-coats may be producing rubberised cloth at an intermediate stage. Under the original provision the excise duty could be leviable (subject to provision in the Tariff) on the rain-coats if the item was included in the Schedule and not on the rubberised cloth as it was produced only at an intermediate stage. However, after the amendment excise duty is leviable on the rubberised cloth as also on the rain-coat. It is so because even rubberised cloth is a good which is bought and sold. It is makertable. It is used in hospitals and homes. It is 'economically exchangeable.' This, however, is not the situation in the present case. The friction cloth does not apparently conform to the description of rubberised cotton fabric. It is not marketable as such. Consequently, in spite of the amendment in Rule 9, excise duty is not leviable on 'friction cloth'.

(9) There is another aspect of the matter. In principle, a taxing statute has to be strictly construed. Even if two views are

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.