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Application of the Principles of Burden of Proof in Sales Tax Cases

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1. Duty of a party to prove disputed assertion or charge :

The question of which a person is party to a dispute on a fact must undertake to try to establish the disputed fact, the necessity of which lies, now, on one party, now on the other, of calling evidence, to prevent judgment going against him, The onus frequently shifts as the case proceeds from the person on whom it rested at first to his opponent. This occurs whenever a prima facie case has been established on any issue of fact or whenever a rebuttable presumption of law has arisen In the past ‘burden of proof has been used in two different senses. (1) The burden of going forward with the evidence. The party having this burden must introduce some evidence if he wishes to get a certain issue into the case. If he introduces enough evidence to require consideration of this issue, this burden has been met, (2) Burden of proof in the sense of carrying the risk of non-persuasion. The one who has this burden stands to loose if his evidence fails to convince the authority. A party has the burden of countering with evidence prima facie case made against that party.

The phrase ‘burden of proof is used in two distinct meanings in the Indian Evidence Act (1 of 1872), viz,, the burden of establishing a case and the burden of introducing evidence. In a criminal trial, the burden of proving everything essential to the establishment of the charge against the accused lies on the prosecution, and that burden never changes. It is only when a good prima facie case has been made out against the accused sufficient to justify his conviction of that offence, that burden shifts on the accused to prove that he is not guilty of such offence. In fiscal proceedings, it is the tax collecting agency which has to prove that the tax is payable by the assessee on particular transaction and the burden to prove that the particular transaction is exempt from payment of tax or it is taxable at the concessional/reduced rate of tax lies oh the assessee. It is always a constantly shifting burden from assessee to the Revenue and vis-a-vis depending upon how the case is placed in the initial stage.

2. 'Burden of proof' and 'onus of proof' :

There is an essential distinction between ‘burden of proof and ‘onus of proof. Burden of proof lies on the person who has to prove a fact and it never shifts, but the onus of proof shifts. Such a shifting of onus is a continuing process in the evaluation of evidence, However, the phrases, ‘burden of proof and ‘onus of proof arc used vice versa and are understood as the subject or context requires.. The technique of the Indian Evidence Act, 1872 though is not fully applicable to the sales tax proceedings, yet the principles relating to burden of proof and on whom the onus lies is more or less the same as in Civil proceedings. General principle is that onus lies upon the person to prove the fact which he has alleged. Revenue authorities have to establish charge of tax upon the. subject before imposing it. Assessee must establish if he claims that a particular transaction is exempt from tax or tax is payable at a reduced rate. Entry in the account books is a matter especially in the knowledge of the assessee and so

burden is upon him to establish its character, otherwise the presumption would be against him. Probability of the case from the view point of an ordinary prudent person i-hay have to be accepted unless department has better evidence to reject it.

3. Presumption :

3.1 A presumption is a rule of law which requires the court to draw a given conclusion on proof of evidence- of certain facts and leaves it to the party disputing the conclusion to rebut the same. Presumption may be of law or of fact, Presumptions of law may be either conclusive or rebuttable, but the presumptions of fact are always rebuttable. A presumption is an inference sanctioned by law which does not logically or necessarily follow from the proved facts. For raising a presumption, during the assessment proceedings. there must be a specific provision in the Act. In the matter of **State of West Bengal and other v. MD Khalil**,[i] it was held by the Apex Court that no provision in the Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 is brought to our notice which may enable the authority to raise the presumption that a possessor of the specified goods, who fails to produce before the authority his accounts, register or documents on being required to do so, has imported the goods into Calcutta metropolitan area without payment' of tax. On the facts and circumstances of the case, it is impossible for a court to infer that a respondent has imported the goods into Calcutta metropolitan area without payment of tax.

3.2 RVAT Act: Regarding presumption in respect of goods and documents found at the business place of a dealer during inspection of his business place, there is a specific provision under sub-section (1) of section 75 of the Raj. Value Added Tax Act, 2003 which reads as,—

"Explanation.—There shall be a presumption in respect of goods, accounts, registers or documents, which are found at any place of business of a dealer during any inspection or search that they relate to his business unless the contrary is proved by him."

It is a prudent rule that when books of account or papers indicating business transactions are recovered from the business premises of a dealer, the presumption is that these relate to the business of the dealer. The presumption can be rebutted by showing that they relate to some other transaction or business of some other person or by explaining how they happened to be in his business premises. When the assesse fails to prove this, the assessing authority would be right in presuming that they relate to the business of the assessee.[ii] It is up to the dealer to furnish satisfactory explanation with regard to the entries, reflecting business transactions, found entered in the seized loose papers, diaries and account books. It is difficult, if not impossible, for the inspecting authorities to establish that the papers recovered relate to the business of the assessee himself.

3.3 CST Act: A deeming provision, "and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale' was inserted, by the Finance Act, 2002 (Act No. 20 of 2002), received assent of the President on 11,5.2002 and published in the Gazette dated 13.5.2002, in sub-section (1) of section 6A of the Central Sales Tax Act, 1956 relating to the burden of proof, etc., in case of transfer of goods claimed otherwise than by way. of sale. The amended section 6A (1) of the CST Act runs —

"6A. Burden of proof etc., in case of transfer of goods claimed otherwise than by way of sale.—(1) Where any dealer claims that he is not liable to pay tax under this Act in respect of

any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of dispatch of such goods and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale."

Section 6 of the Central Sales Tax Act, 1956 is the charging section creating liability to tax on inter-State sales and by reason of section 6A(2) a legal fiction has been created for the purpose of the Act that the transaction has occasioned otherwise than as a result of sale. Section 6A puts the burden of proof on the person claiming transfer of goods otherwise than by way of sale and not liable to tax under the Central Act. The burden would be on dealer to show that the movement of goods had been occasioned not by reason of any transaction involving any sale of goods but by reason of such goods to any other place of business or to the agent or principal, as the case may be, for which the dealer is required to furnish prescribed declaration form. If the dealer fails to furnish such declaration, by reason of legal fiction, such movement of goods would be deemed for all purposes of the Act to have been occasioned as a result of sale. The transactions, where the goods are. sent for job work or received for doing job work, do not amount to sale would depend upon the contract entered into between the parties and would be the subject-matter of examination by the assessing authority. Even otherwise, under section 2g(ii) of the CST Act 1956, transfer of goods used in execution of works contract is. treated to be a sale. Where the dealer claims that it is not liable to tax on transfer of goods to a place outside the State, then it would have to discharge the burden placed upon it under section 6A by furnishing declaration in form F. It would be immaterial whether the person whom goods are sent for or received after job work is a bailee. The requirement to furnish declaration in form F is applicable in cases of goods return also.[iii]

Even in the absence of section 6A of the CST Act 1956, the initial burden lay upon the dealer to prove its claim that the movements of goods were by way of stock transfers and not in pursuance of contract of any sale. The assessing authority noticed that there were agreements between the petitioner and the Delhi parties to whom the goods were sold and in the stock transfer memos and the sale invoices raised from the Delhi depot the same agreement numbers were mentioned. This clearly established that the movement of goods was in pursuance of prior contracts of sale.[iv]

3.4 Presumption of sale of goods used in execution of works contract: After the forty-sixth amendment of the Constitution, the department is not required to prove that the sale of the material involved in the execution of works contract has taken place; Once it is proved that the goods are supplied or delivered in the execution of the works contract, it shall be presumed unless otherwise proved that the transfer of property in such goods has taken place. Once such goods are chargeable to tax, tax shall be levied on them, as in the case of sale of such goods.[v] In the matter of **Commissioner Trade Tax, UP. v. Samar Singh**,[vi] the respondent-dealer executed civil contracts during the year under consideration, the value of

goods involved in the execution of which was liable to tax, The dealer had not maintained any books of account. The assessing 'authority after allowing the benefit of 30 per cent for labour charges and allowing deduction for tax paid goods in respect of which the dealer had furnished the details, taxed the balance amount. The first appellate authority and the Tribunal allowed deduction in respect of the cement and bricks purchased within the State. It was held by the Allahabad High Court that the dealer having failed to prove that the tax on the value of the cement, sariya and bricks had been levied, the allowance of deduction by the first appellate authority and the Tribunal on the turnover of the cement, sariya and bricks on the ground that in respect of these items the dealer was not a manufacturer or importer was erroneous.

4. Constitutionality of a Statute :

Presumption is that Legislature does not exceed jurisdiction. Burden is on the person challenging vires to show that Legislature exceeds Constitutional limit. In considering the validity of a statute, the presumption is in favour of the constitutionality and the burden is upon him who attacks it to show that there has been a clear transgression of constitutional principles. It must always be presumed that the legislature understands and correctly appreciates the need of its own people and the discrimination, if any, is based on adequate grounds. The courts will be justified in giving a liberal interpretation to the section in order to avoid constitutional invalidity.[vii] The principle has given rise to the rule of reading down the section if it becomes necessary to uphold the validity of the section.

5. Burden of Proof on Revenue :

It is a settled principle of law that the burden lies on the Revenue to prove its case. Burden to prove that turnover had escaped assessment lies on the Revenue,

5.1 The burden of proving that the entries in certain loose papers found in the. premises of the assessee relate to the sales or purchases made by the assessee during the relevant period of assessment is on the department. Normal rules of evidence require that it is the tax collecting agency which has to prove that the tax is payable by the assessee. The burden of proving that the entries in the loose papers relate to sales made by the assessee is on the revenue. Strong suspicion, strange coincidences and grave doubts cannot take the place of legal proof. To establish the charges against the assessee, it is essential for the assessing authority to establish that the secret books of account related to the business transactions carried on by the assessee and none else. The assessing authority can establish it in a variety of ways, viz., (1) by adducing satisfactory proof to the effect that the place from which the books were seized formed the part of place of business of the assessee or was in its exclusive possession and control, '(2) that the books were maintained by or under the orders of the assessee, (3) that they were in the handwriting of either of the partners or their accountant, or clerk or some other person employed by them. The connection of the respondents with the entries in the books could also have been established by producing some of the customers whose names were found in the books to testify that the deals evidenced by the entries were transacted by them with the respondents.[viii]

5.2 Information relating to other departments: The mere information about the allotment of coal was not sufficient to conclude that coal had been purchased against the allotment and imported. The assessing authority should make some further enquiry. Burden lies upon the Revenue that turnover had escaped assessment.[ix] Where the Auction Sale Register of the

Market Committee is neither in the prescribed performa, nor the signatures of the assessee-buyer are obtained in the Auction Sale Register against the entries of the sale in the name of the assessee, it was held that in the circumstances, no presumption of the correctness of the entries in the register could be raised.[x] In the matter of **Shyam Lal Kamlesh Kumar v. Commissioner of Trade Tax, U P.**,[xi] the Allahabad High Court held that since it was the case of the assessing authority that the information had been received from the Mandi Samiti relating to the transactions under gate passes alleged to have been issued to the petitioner, in the case of denial by the petitioner, the burden lay upon the Revenue authority to prove the authenticity of the information, which could be done by confronting the petitioner with the documents relating to the Mandi Samiti, which had not been done. It was also not clear whether under the Mandi Adhiniyam, the petitioner was required to maintain satti bahi and stock register and if it was so required, whether while issuing the gate pass, entry was required to be made in the satti bahi or in the stock register. This aspect had not been considered by any of the authorities. The matter was remanded to the assessing authority.

5.3 Where the only facts that were established were that the assessee converted the latex tapped from its rubber trees into sheets and effected a sale of those sheets to its customers and that the conversion of latex into sheets was a process essential for the transport and marketing of the produce, it was held by the Apex Court that the onus of proving that the assessee was carrying on business and was, therefore, a "dealer" within the meaning of section 2(b), CST Act, 1956, was on the department and that the department had not discharged that onus.[xii]

5.4 Where the only facts found were that the respondent was a public company engaged in the business of planting and growing rubber trees and converting the latex obtained from the trees into rubber sheets and regularly selling the rubber sheets thus produced by it and that the respondent was registered as a "dealer" under section 7 of the Central Sales Tax Act, 1956, it was held by the Apex Court that the sales tax department had not discharged the onus of proving that the respondent was carrying on business and was, therefore, a "dealer" within the meaning of section 2(b) of the Act. The fact that the respondent was registered as a dealer was not decisive on the question as to whether the turnover of the inter-State sales of rubber sheets was taxable under the Act.[xiii]

5.5 The onus lies on the Revenue to disprove the contention of the dealer that sale is a local sale and to show that it is an inter-State sale.[xiv] Similarly the onus also lies on the Revenue to disprove the contention of the dealer that a sale is an inter State sale and to show that it is a local sale.

5.6 The department relied on the fact that the assessee's vendors had claimed exemption in respect of the sales made to the assessee and therefore the certificates under rule 5(l)(vi) of the Bombay Sales Tax Rules,1952 must have been given by the assessee, It was held by the Bombay High Court that even though the vendors of the assessee had claimed the sales to the assessee as exempt from tax under rule 5(I)(vi), it was not for the assessee to prove that it had not purchased the goods by issue of certificates, but the onus was on the department to prove by positive evidence that the certificates were issued by the assessee while effecting the purchases.[xv]

5.7 Unexplained acquisition of money: The approach which may be permissible for imposing liablity for payment of income-tax in respect of unexplained acquisition of money may not hold good in sales tax cases. For the purpose of income-tax, it may in appropriate

cases be permissible to treat unexplained acquisition of money by the assessee to be the assessee's income from undisclosed sources and ass.ess him as such. As against that, for the purpose of levy of sales tax it would be necessary not only to show the existence of some material to indicate that the acquisition of money by the assessee has resulted from transactions liable to sales tax and not from other sources. In order to impose liability upon the appellant for payment of sales tax by treating the unexplained acquisition of money as profits arising out of undisclosed sales of the appellant, two things had to be established: (I) The amount was the income of the appellant and not of any other person. (ii) The amount represented profits from income realised as a result of transactions liable to sales tax and not from other sources. The onus to prove the above two ingredients was upon the department. The fact that the appeliant failed to adduce satisfactory or reasonable explanation with regard to the source of that amount would not in the absence of sonic further material had the effect of discharging that onus and proving both the ingredients. In such a case no presumption arose that the amount represented the income of the appellant and not of any other person. It was necessary to produce more material in order to connect that amount with the income of the appellant as a result of sales. In the absence of such material, the mere absence of explanation regarding the source of the amount would not justify the conclusion that the amount represented profits of the appellant derived from undisclosed sales.[xvi]

5.8 Classification of tarrif item: It is a settled law that the onus or burden to show that a product falls within a particular tarrif item is always on Revenue, In the matter of **Sharma Chemical Works**,[xvii] the Apex Court held that "Banphool oil" has to be classified as an "Ayurvedic medicament" under sub-heading 3003.03 and not as "perfumed hair oil" under sub-heading 3305.10 of the Central Excise Tarrif Act, 1985, since it could be used for treatment of headache, eye problem, night blindness, reeling head, week memory, hysteria, amnesia, blood pressure, etc., the dosage was set out on the label, and the product was registered with the Drug Controller and was being manufactured under a drug licence, and when the matter was referred to the Drug Controller, he had opined that it was an Ayurvedic medicament.

5.9 Classification accepted by the department for a long time: Where the Revenue itself has been holding the assessee to be a producer of a pharmaceutical product, the burden would be on the Revenue to establish that the goods cease to fall under a given entry.[xviii] Where the classification adopted by the assessee has been accepted by the revenue for a long time, the onus would be on the revenue to show as to why a different interpretation should be resorted to, particularly in absence of no change in the statutory provisions.[xix] The assessee was carrying on the business of manufacturing and selling yeast and they were filling their sales tax returns treating "yeast" to be a chemical. For quite some time their returns were accepted and orders of assessment were passed. It was held by the Apex Court that the entry which read as, "chemicals of all kinds" took within its purview chemicals of all kinds. It did not make any distinction between inorganic and organic chemical. Yeast admittedly had a chemical composition: it had a chemical formula, It was accepted to be chemical by the assessing authority for a long time. It not only took within its sweep as to what it would be, but what it could be or what it did. It could not be said that the onus was on the assessee to prove that yeast was a chemical. The provisions of Evidence Act, 1872 had no application. The classification adverted to by the assesses had been accepted by the department for a long time. The onus, therefore, be on the department to show as to why a different interpretation

should be resorted to particularly when no change in the statutory provision had taken place.[xx]

6. Burden of proof on the assessee:

6.1 No evidence had been adduced by the dealer to show that the suppressed turnover had suffered tax. The accounts of the dealer also did not show that the added turnover had suffered any tax. The dealer had, therefore, not discharged the burden of showing that the added turnover had suffered tax,[xxi]

6.2 Where a dealer claimed to have despatched goods outside the State to the consignment agent for sale but produced neither form F nor any evidence to prove that the despatch was not in the course of inter State trade sales, under section 6A of the CST Act, 1956, the burden lies upon the dealer to prove that the movement of goods was not in pursuance of prior contract of sale in the couse of inter State trade.[xxii] This was the position before the amendment of section 6A(l) of the CST ACT, 1956 by the Finance Act, 2002. With effect from 11.05.2002 the requirement of form F is mandatory td claim sale outside the State.

6.3 A manufacture in a newly set up small-scale industrial unit is not entitled to the benefit of the exemption under Bengal Sales Tax Rules, 1941 only in respect of the goods for which the trade mark or brand name of an existing industrial unit is used. But in relation to other products for which the trade mark or brand name is not used, the manufacturer is entitled to the benefit. The burden of clearly establishing that in respect of certain goods manufactured by it, the trade mark or the brand name of an existing industrial unit is not being used, is squarely upon the manufacturer.[xxiii]

6.4 Conditional exemption: Onus lies on the dealer claiming exemption to show that the conditions have been fulfilled, Exemption on the condition of utilisation of the profit for charitable purposes: Under Notification S.R.O. No. 342/63 issued under Section 10 of the Kerala General Sales Tax Act, 1963, sales of specified goods by the charitable trust or charitable institution, the profit of which is solely utilised for charitable purposes, was exempt from tax payable under the Act. It was held by the Apex Court that the burden is on the dealer seeking the exemption to show that the profits derived by the sale of goods have been utilised for charitable purposes. The outgoings from the profits out of the sale of the specified goods must be solely utilised for charitable purposes.[xxiv]

6.5 Refund: For claiming refund of the taxes paid, the assessee has to prove that the burden of taxes paid by it had not been passed to the customers. For such purposes, the assessing authority has to decide whether any amount of tax paid by the assessee for the periods in question had actually been passed on to the customers and if is found that the burden has already been passed on, then on the principles of "unjust enrichment" the amount of tax paid by the assessee shall not be refunded to it.[xxv]

Regarding refund to the dealer or the person, who has actually suffered the incidence of tax, there is specific provision under 5.53(5), Raj. Value Added Tax Act, 2003 which reads as,—

"Notwithstanding anything contained in this section or in any other law for the time being in force, only the dealer or the person, who has actually suffered the incidence of tax or has paid the amount, can claim a refund and the burden of proving the incidence of tax so suffered or the amount so paid shall be on the dealer or the person claiming the refund."

6.6 Claim of exemption or reduced rate of tax with the support of declaration form: The selling dealer has to furnish the required declaration form or certificate to claim exemption from payment of tax on the sale of taxable goods or to claim reduced rate of tax. The form should be genuine. The onus of ensuring genuineness of the declaration form is on the selling dealer who claims exemption o: reduced rate of tax. The purchasing/buying dealer has to utilise/dispose of the goods for the purpose for which the goods were purchased. However, the conditions of the Act, Rules and notification under which exemption from payment of tax, or reduced rate of tax is claimed, are to be complied with strictly in letter and spirit. In the matter of **Hindustan Transmission Products Ltd. v. State of Kerala**,[xxvi] the Apex Court held that the selling dealer is entitled to the rate of sales tax mentioned in Section 5(3) of the Kerala General Sales Tax Act, 1963 only provided that the goods sold are capable of being used as component parts of any of the goods mentioned in the First Schedule. For the purposes of availing the benefit of the reduced rate mentioned in sub-section (3), the selling dealer must not only produce the purchasing dealer's declaration but he must also establish that the goods he has sold are capable of being used as component parts of any of the goods mentioned in the First Schedule, as stated in the second proviso thereto. There was a specific proviso that the goods sold are capable of being used as component part of any of the goods mentioned in the First Schedule. The principal question related to the interpretation of Section 5(3) of the Kerala General Sales Tax Act, 1963 which, at the relevant time, read thus:

"5. (3) Notwithstanding anything contained in sub-section (l) or sub-section (2), the tax payable by a dealer in respect of any sale of the goods mentioned in the First Schedule by such dealer to another for use by the latter as component part of any other goods mentioned in the said Schedule, which he intends to manufacture inside the State for sale, shall be at the rate of only one percent on the taxable turnover relating to such sale:

Provided that the provisions of this sub-section shall not apply to any sale unless the dealer selling the goods furnishes to the assessing authority in the prescribed manner a declaration duly filled in and signed by the dealer to whom the goods are sold containing the prescribed particulars in the prescribed form:

Provided further that the goods sold are capable of being used as component part of any of the goods mentioned in the First Schedule....."

The respondent, a registered dealer purchased certain goods from other registered dealers on the basis of declaration furnished by it for resale of the purchased goods within the State of Orissa. The goods were, however, sold in the course of inter State trade. It was held by the Apex Court that the declaration furnished by the respondent was contravened and as such the respondent became liable to pay the tax under the proviso to section 5(2)(a)(ii) of the Orissa Sales Tax Act, 1947. Under the scheme of the Act, sales tax is leviable at a single point and a registered dealer at the point of sale is entitled to pass on the incidence of sales tax to the buyer. The onus of proving that the goods at the time of contract were not within the State of Orissa was not on the sales tax authority. The assessee, on the purchase of the goods, became liable to pay tax, but he did not do so because it was a sale from a registered dealer to another against a declaration of the assessee for resale within the State. The assessee saved the tax and postponed the event by giving an undertaking that he would sell the goods within the State. True to the undertaking the onus to show that the goods were actually sold within the State of Orissa was on the assessee.[xxvii]

7. Shifting of 'onus of proof:

7.1 The 'onus of proof' is always unstable and may shift constantly throughout the proceedings. Whosoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.[xxviii] In litigation, there is always transference of the duty to prove a fact from one party to other; the passing of the duty to produce evidence in a case from one side to another as the case progresses, when one side has made a prima facie case showing on a point of evidence, requiring the other side to rebut it by contradicting evidence.

7.2 Where the assessee did not maintain manufacturing account and contended that no sale was effected inside the State during the assessment year and the assessing officer estimated the sale on the ground that the assessee had effected sales in the past inside the State. It was held by the Ahmedabad High Court that though the initial onus to establish that no sale was made by the assessee is on the assessee, no evidence could be adduced for establishing a negative fact. When the assessee denies the factum of sale, the onus shifts to the Revenue to disprove the contention of the assessee.[xxix]

7.3 In a case of undated entries in the seized books of account, the initial burden lies on the department to establish that the entries related to a particular period, because until such correlation is established the accounts cannot be utilised as the basis for a finding - even prima facie – for holding that there has been a suppression or escapement. It would always be open to the assessee to dispute the prima facie view of the assessing officer by establishing that the seized books of account do not appertain to the period indicated by the assessing officer. But, where the assessee commenced the business in the very year in which the account books were seized, there can be no room for doubt that the seized books of account related to the year in which the seizure was made.[xxx]

7.4 The materials in the compounding proceedings may be relevant and one of the factors which could be taken into account, along with others, by the sales tax authorities in the assessment proceedings. But it is open to the dealer to demonstrate by specific pleading and evidence in the assessment proceeding that the details of facts contained in the compounding proceeding are incorrect or untrue or the admissions and statements made in those proceedings were mistakenly made or rendered under peculiar circumstances. It should be so proved by cogent and substantial material. Vague generalisations or evasive references or casting doubts will not be enough. The facts found in the compounding proceedings may constitute relevant material in the assessment proceedings, though they may not be conclusive.[xxxi]

7.5 Service of order: In the writ petition, the petitioner contended that the orders dated July 2, 1996 pertaining to the assessment year 1985-86 and order dated November 5, 1996 for the assessment year 1984-85, of the Tribunal/were not communicated to it and the copies of the orders were for the first time received from the office of the Tribunal on June 24, 1997, on its application dated March 21, 1997. The copy of the order for the assessment year 1985-86 was allegedly delivered to some person allegedly on July 4, 1996 by taking signatures on the dispatch register which were not identifiable, The order dated November 5, 1996 of the appellate Tribunal pertaining to the assessment year 1984-85 was allegedly sent to the petitioner by registered post. The petitioner has denied the receipt of any such order. The presumption of service is rebuttable and the petitioner has denied the receipt of any such

communication on affidavit and has discharged the initial burden. The department has failed to prove by summoning the postal records that service of registered letter was effected on any person duly authorized by the petitioner- company.[xxxii]

7.6 When the case reaches the stage of revision, new evidence may not be permissible. If the point is not raised at the earlier stage, the parties to the case are completely shut out and there is no remedy. Understanding of the legal principles enunciated by the Apex Court in relation to the essential facts of the particular case helps the party to the case to built u the case and bring it within the pronounced decision of the Supreme Court.

End Notes and References

i (2000) 119 STC 61, 69 (SC)

ii Unnerikutty v. State of Kerala, (1979) 44 STC 94

iii Ambica Steel Ltd. v. State of U.P. and others, (2008) 12 VST 216 (All).

iv Modi Spinning and Weaving Mills v. Commissioner Trade Tax, U.P. (2008) 13 VST 432 (All).

v Kisan Traders v. Rajasthan Taxation Tribunal and another, (2003) 132 STC 443.

vi (2007) 8 VST 26 (All).

vii C.S.T. v. Radhakisan, (1978) 43 STC 4 (SC).

viii State of Kerala v. Mathew, (1978) 42 STC 348 (SC)

ix Krishna Brickfield v. Commissioner of Trade Tax, U.P., (2009) 20 VST 889 (All).

x CTO v. Ramgopal Madanlal, ST Revision No. 6/96 decided on 02.04.1996 (RTT).

xi (2007)9 VST 608 (All).

xii Dy Commr. of Agriculture Income Tax and Sales Tax, Quilon v. Travancore Rubber and Tea Co., (1970) 20 STC 520 (SC).

xiii Dy. Commr. of Agriculture Income Tax and Sales Tax, Quilon v. Midland Rubber and Produce Co. Ltd. (1970) 25 STC 57 (SC)

xiv Commissioner of Sales Tax, U.P. v. Suresh Chand Jain (1988) 70 STC 45 (SC)

xv The Commissioner of Sales Tax v, Gangadhar Sitaram (1975) 35 STC 357 (Bom)

xvi Girdharilal Nanelal v. The Sales Tax Commissioner, M.P. (1977) 39 STC 30 (SC)

xvii Commissioner of Central Excise v. Sharma Chemical Works (2003) 132 STC 251 (SC)

xviii Ponds India Ltd. v. Commissioner of Trade Tax, Lucknow (2008) 15 VST 256 (SC)

xix Mauri Yeast India Pvt. Ltd. and another v. State of U.P. and another (2008) 9 Vat Reporter 190 (SC)

xx Mauri Yeast India Pvt. Ltd. v. State of U. P. and another (2008) 14 VST 259 (SC)

[xxi] State of Kerala v. Valiakulangara Hardwares (2007) 5 VST 430 (Ker)

[xxii] Commissioner of Trade Tax U. P. v. Puttan Dal Mill (2007) 7 VST 238 (All)

[xxiii] C.T.O. v. Emkay Investments Pvt. Ltd. (1996) 101 STC 455 (SC)

[xxiv] Carmel Book Stall v. Deputy Commissioner of Sales Tax (1994) 95 STC 306 (SC)

[xxv] Chhaganmal Golchha and another v. State of Assam and others (2008) 17 VST 421 (Gauhati)

[xxvi] (2008) 18 VST 587 (SC)

[xxvii] State of Orissa v. Joharimal Gajanands (1994) 95 STC 93 (SC)

[xxviii] Section 101 of the Indian Evidence Act (1 of 1872).

[xxix] Mittal & Company v. Commissioner of Sales Tax, U.P. (1988)69 STC 42 (Ahemdabad)

[xxx] State of Orissa v. Chandra Kanta Moda (1974) 33 STC 573

[xxxi] Veriparambil Hardwares v. State of Kerala (1994) 92 STC 98 (Kerala)

[xxxii] Tele Tube Electronics Ltd. v. Delhi Sales Tax Tribunal and others (2003) 152 STC 424 (Delhi)