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# HOW TO PREPARE REPLY FOR APPEAL AND NOTICES

BY CA DR ARPIT HALDIA

# Background of Preparation of Appeal

# Background of Reply to Notices

- Statement of Facts
- Grounds of Appeal
  - Grounds raising Factual Controversy
  - Grounds raising Legal Issue
- Prayer

# Question of Facts Vs Question of Law

## Facts V/s Question of Law

- Order States that Taxpayer is not in possession of Invoice- Fact
- Whether the Invoice is valid invoice as per Rule 36-Question of Law
- Whether goods were received or not-Question of Fact
- Whether constructive delivery is delivery contemplated under Section 16(2)(b)-Question of Law

## Question of Fact Vs Question of Law

An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.-Chandrabhan v. Saraswati, 2022 SCC OnLine SC 1273, decided on 22.09.2022...

# Definition of Facts

# Definition of Facts-Indian Evidence Act

***“Fact”.—“Fact” means and includes—(1) anything, state of things, or relation of things, capable of being perceived by the senses;  
(2) any mental condition of which any person is conscious.***

## Illustrations

- (a) That there are certain objects arranged in a certain order in a certain place, is a fact.
- (b) That a man heard or saw something, is a fact.
- (c) That a man said certain words, is a fact.
- (d) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
- (e) That a man has a certain reputation, is a fact.



# Definition of Facts

## Section 58 of Indian Evidence Act-Facts admitted need not be Proved

**58. Facts admitted need not be proved.**—*No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:*

*Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.*

Can Grounds raising  
Legal Issues be raised  
at any stage of  
proceedings

## Can Grounds raising Legal Issues be raised at any stage of proceedings

19. There is no quarrel to the settled legal proposition that **a new plea cannot be taken in respect of any factual controversy whatsoever, however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings**-National Textile Corpn. Ltd. v. Naresh kumar Badrikumar Jagad, (2011) 12 SCC 695

6. On the other hand, it was submitted by Mr Vikas Singh, learned Senior Counsel appearing for the respondent Bank that the appellant had raised at an intermediate stage the plea of not being covered under the Public Premises Act, and had subsequently dropped that plea. **They had then relied upon the guidelines and, therefore, the plea, which is sought to be raised at a second stage, cannot be allowed to be raised now on the ground of res judicata, as well as constructive res judicata. As far as this objection of Mr Vikas Singh is concerned, inasmuch as the plea raised by Mr Raval is based on a legal submission, we would not like the appellant to be denied the opportunity of raising the legal plea and, therefore, we do not accept this submission**-Band Box (P) Ltd. v. Punjab & Sind Bank, (2014) 16 SCC 321

## Can Grounds raising Legal Issues be raised at any stage of proceedings

*In our view, the aforesaid succinctly sets forth the parameters of scrutiny, where the question of law is sought to be raised at the final court stage. **There are no “nice questions of fact” required to be decided in the present case which would dissuade us from examining this plea at this stage. We have set forth the undisputed facts aforesaid.** Thus, the only question is whether this is a question of law which deserves to be examined, and has ramifications in the present case.-K. Lubna v. Beevi, (2020) 2 SCC 524*

*On the legal principle, it is trite to say that a pure question of law can be examined at any stage, including before this Court. **If the factual foundation for a case has been laid and the legal consequences of the same have not been examined, the examination of such legal consequences would be a pure question of law** [Yeswant Deorao Deshmukh v. Walchand Ramchand Kothari, 1950 SCR 852 : AIR 1951 SC 16].*


*“... **When a question of law is raised for the first time in a court of last resort, upon the construction of a document, or upon facts either admitted or proved beyond controversy, it is not only competent but expedient, in the interests of justice, to entertain the plea.** The expediency of adopting that course may be doubted, when the plea cannot be disposed of without deciding nice questions of fact, in considering which the court of ultimate review is placed in a much less advantageous position than the courts below.”- Connecticut Fire Insurance Co. v. Kavanagh [1892 AC 473] in the following words: (AC p. 480)*

# Drafting of Prayer


## Importance of a Properly Drafted Prayer

**Whether relief not asked for by a party could be granted and that too without having proper pleadings:-** "It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case." - **Messrs. Trojan & Co. Ltd. Vs. Rm.N.N. Nagappa Chettiar AIR 1953 SC 235**

**No relief to be granted not prayed before the Court-**"Though the Court has very wide discretion in granting relief, the Court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner."- **Bharat Amratlal Kothari & Anr. Vs. Dosukhan Samadkhan Sindhi & Ors. AIR 2010 SC 475**



# Rule 112- Production of Additional Evidence





## Production of Additional Evidence before Appellate Authority

*Rule 112 – Production of additional evidence before the Appellate Authority or the Appellate Tribunal*

*(1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely:-*

*(a) where the adjudicating authority or, as the case may be, the Appellate Authority has **refused to admit evidence** which ought to have been admitted; or*

*(b) where the appellant was **prevented by sufficient cause from producing the evidence which he was called upon to produce** by the adjudicating authority or, as the case may be, the Appellate Authority; or*

*(c) where the appellant was **prevented by sufficient cause from producing** before the adjudicating authority or, as the case may be, the Appellate Authority **any evidence which is relevant to any ground of appeal**; or*

*(d) where the adjudicating authority or, as the case may be, the Appellate Authority **has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.***

## Production of Additional Evidence before Appellate Authority

(2) No evidence shall be admitted under sub-rule (1) unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.

(3) The Appellate Authority or the Appellate Tribunal shall not take any evidence produced under sub-rule (1) **unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity –**

**(a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or**

**(b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).**

(4) Nothing contained in this rule shall affect the power of the **Appellate Authority or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.**

# Grounds of Appeal and its consideration

## Grounds of Appeal and its consideration

**Consideration to Alternative Issues only if main submission rejected**-Consideration made by the appellate authority on the alternate issue would become operative only in the event it chooses to reject the main submission advanced by the petitioner- **Ashirwad Trading Company v. State of U.P. [2021] 127 taxmann.com 482 (Allahabad)**

**Each ground of submission be considered and discussed**-it was imperative that each ground of submission be considered and discussed-**Savvy Fabrics v. Union of India [2023] 154 taxmann.com 451 (Bombay)**

**Two well considered opinions**-Petitioner is entitled to have two occasions of the matter to be adjudicated by two Authorities, viz., the Assessing Officer and the Appellate Authority and thereby, can avail two well considered opinion-**SCM Silks (P.) Ltd. v. Assistant Commissioner (ST) [2023] 156 taxmann.com 449 (Madras)**

**Alternative arguments can never be considered as admission**-Alternative arguments can never be treated as admission-**Jar Productions (P.) Ltd. vs. Union of India [2022] 141 taxmann.com 93 (Bombay) [09-06-2022]**

# Checklist for Drafting of Appeal

## STATUS OF DOCUMENTS RECEIVED

S. No.	Particulars	Whether Documents available in File	Whether Print out taken (If Required)
1.	ASMT-10		
2.	DRC-01A		
3.	DRC-01		
4.	SCN		
5.	DRC-07		
6.	Order		
7.	Reply		
8.	Notice for Personal Hearing		
9.	Relied Upon Documents specified in Notice		
10.	Whether Serial No. have been inserted in Para of the SCN and Order		

# 1. Basic Facts

S. No.	Particulars	SCN	Order	Whether Challenging the Fact	If No, then S. No. of Fact	If Yes, then Grounds of Appeal
1.	Name of the Assessee					
2.	Address of Assessee					
3.	Status of Assessee					
4.	Period Involved					
5.	GSTIN of Assessee					

## 2. Service of Notices and Orders (Covers ASMT-10, DRC-01A, DRC-01-, Summons, any letter issued for seeking Information, DIN on the respective documents)

S. No.	Particulars	DRC-01A	DRC-01	SCN	Fact/Ground	Order	Fact/Ground	DRC-07
1	Date of Notice/Order							
2	Whether DRC-01A/DRC-01/DRC-07 separately uploaded online							
3	Date of Uploading of DRC-01A/DRC-01/DRC-07							
4	Details and Date of DIN							
5	Whether DIN is proper							



## 2. Service of Notices and Orders (Covers ASMT-10, DRC-01A, DRC-01-, Summons, any letter issued for seeking Information, DIN on the respective documents)

S. No.	Particulars	DRC-01A	DRC-01	SCN	Fact/ Ground	Order	Fact/Gr ound	DRC-07
6	Amount communicated of only Tax							
	Total inclusive amount calculated							
7	Valid Signature							
8	Interest/ Penalty Quantified							
9	Name of the Officer							
10	Whether Officer passing the order is who has issued the Notice							

## 2. Service of Notices and Orders (Covers ASMT-10, DRC-01A, DRC-01-, Summons, any letter issued for seeking Information, DIN on the respective documents)

S. No.	Particulars	DRC-01A	DRC-01	SCN	Fact /Ground	Order	Fact/Gr ound	DRC-07
11	Date, Time and Venue of Hearing							
12	Whether NA mentioned for Date, Time and Venue							
13	Whether Format for SCN reflects that DRC-01A has been copied							

## 2. Service of Notices and Orders (Covers ASMT-10, DRC-01A, DRC-01-, Summons, any letter issued for seeking Information, DIN on the respective documents)

S. No.	Particulars	DRC-01A	DRC-01	SCN	Fact/Ground	Order	Fact/Ground	DRC-07
14	Whether format for SCN Reflects that the same has been issued in DRC-01							
15	Whether DRC-01A reflects that the provides for payment of Amount rather than advising the same							
16	Whether it appears in any manner that Officer has pre-judged the Issue							

## 2. Service of Notices and Orders (Covers ASMT-10, DRC-01A, DRC-01-, Summons, any letter issued for seeking Information, DIN on the respective documents)

S. No.	Particulars	DRC-01A	DRC-01	SCN	Fact/G round	Order	Fact/G round	DRC-07
17	Whether Reply submitted							
18	Calculation for the amount in DRC-01A/DRC-01/DRC-07 provided							
19	Whether demand as provided in DRC-01A/DRC-01/DRC-07 verified for correctness							

**3. Mention the Relied Upon Documents/Evidences and the Reason for which the same have been Relied Upon – SEE GROUND NO 4**

Particulars	
RUD/Evidences for Show Cause Notice	
Reason for Relying Upon	
Whether the same have been provided	
If no then reason	
If Not provided then whether application required to be submitted	
If No/Yes, then whether required to be referred and what was the conclusion	

## 4. Consideration of Reply submitted with Order and Grounds of Appeal

S. No.	Question	Whether we are Challenging	If No, Then Why	If Yes the relevant Ground
1.	Whether reasons were given in the order or it was arbitrary and cryptic?			
2.	Whether the SCN is based on assumptions and presumptions or does it have hard evidence backing up its claims?			

## 5. Section-wise/Notification/Rule breakdown ASMT-10/Intimation, Notice and Order

5(A) Are we challenging the constitutionality of the sections/ notifications/ provisions listed below -

S. No.	DRC-01A	DRC-01	SCN	Order	DRC-07	Do we intend to Challenge constitutionality	If Yes then Relevant Ground
1	NA	NA	Section 16(2)(c)	Section 16(2)(c)	NA	No	Ground 9-17
2	NA	NA	Section 41 of CGST Act, 2017	Section 41 of CGST Act, 2017	NA	No	No
3	NA	NA	-	Rule 37A of the CGST Rules, 2017	No	No	No
4	NA	NA	Section 16(2)(d) of CGST Act, 2017 read with Rule 37(1) and (2)	NA	NA	NA	
4	NA	NA	S 50 (1) of CGST Act	Section 50 of CGST Act, 2017	NA	No	
5	NA	NA	Section 74 read with 122(2)(b) of CGST Act, 2017	Section 74 read with Section 122(2)(b) of CGST Act, 2017	NA	No	

## 5. Section-wise/Notification/Rule breakdown ASMT-10/Intimation, Notice and Order

### 5(B) Analysis of Grounds for Invoking the Section and Ingredients for invoking the Provisions

Particulars	Whether Grounds for Invoking Section Mentioned	Whether reasons quoted are same in all documents	Whether ingredients for invoking Provisions Present	Grounds of Appeal
<b>Section 16(2)(c)</b>	Yes	More detailed in Order	Yes but we are challenging the validity	
<b>Section 41 of CGST Act, 2017</b>	NA	No as no reason mentioned in the SCN	No as the amended Section with effect from 1-10-2022 has been quoted	
<b>Rule 37A of the CGST Rules, 2017</b>	NA	Rule was not mentioned in the SCN	No as the amended Section with effect from 1-10-2022 has been quoted	
<b>Section 16(2)(d) of CGST Act, 2017 read with Rule 37(1) and (2)</b>	NA	NA	NA	
<b>S 50 (1) of CGST Act</b>	Not Required	Not Required	No as this section is for Output Liability	
<b>Section 50 of CGST Act, 2017</b>	Not Required	Not Required	No as this section is for Output Liability	
<b>Section 74 read with 122(2)(b) of CGST Act, 2017</b>	No	NA	No	



**6.Content and Para wise break down of Notice and Order-Facts other than based on Notice/Order/Letter as covered in Para 2 and 3 above)**

<b>S. No.</b>	<b>SCN Para</b>	<b>Whether we are Challenging</b>	<b>If No, Then S. No. of Facts of Appeal</b>	<b>If Yes, then Grounds of Appeal Ground</b>
<b>1</b>	1	No	1,4	
<b>2</b>	1A	No	5	
<b>3</b>	2	No	6	
<b>4</b>	3	No	6	
<b>5</b>	4	No	6	
<b>6</b>	5	No	6	
<b>7</b>	6	No	6	
<b>8</b>	7	Yes	-	Ground No. 9-17
<b>9</b>	8	NA	NA	
<b>10</b>	9	Yes	-	Overall Challenge
<b>11</b>	10	No	7	
<b>12</b>	11	No	4	

**6.Content and Para wise break down of Notice and Order-Facts other than based on Notice/Order/Letter as covered in Para 2 and 3 above)**

S. No.	Order	Whether we are Challenging	If No, Then	If Yes, then Grounds of Appeal
	Para		S. No. of Facts of Appeal	Ground
<b>Ground No. 1 is general Grounds and hence not specifically assigned to the Order.</b>				
1	1A	Yes	NA	Ground No. 7
2	1B	No	NA	
3	1	No	NA	
4	2	No	NA	
5	3	No	NA	
6	4	No	NA	

## 7. Consideration of Reply in Order and Ground of Appeal – MENTIONED IN GROUND NO 3

S. No.	Details of the Ground in the Reply	Details of Rebuttal of Grounds raised in the Order	Whether we are Challenging	If No, Then reason	If Yes, then Grounds of Appeal

## 8. Facts of the Case

S. No.	Facts	Para No. of SCN	Para No of Order
1.			
2.			

## 9.Grounds of Appeal

S. No.	Grounds of Appeal	Para No. of SCN	Para No of Order
1.			
2.			

## 9. Prayer

S. No.	Prayer	Relevant Grounds Appeal to of
1.		
2.		



# Thank you

CA DR ARPIT HALDIA