

# High Court of Himachal Pradesh Shimla

STR No. 1 of 2006.

Decided on 29.5.2009.

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Excise & Taxation Commissioner.

..Petitioner.

Versus.

M/s Durga Wheat Products (P) Ltd.

..Respondents.

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Coram:

**Hon'ble Mr. Justice R.B.Misra, Judge.**

**Hon'ble Mr. Justice Surjit Singh. Judge.**

***Whether approved for reporting?***

**For the Petitioner(s)** :Mr. P.K.Sharma, Addl.AG with M/s  
P.M.Negi, Dy.AG & R.P.Singh,  
Asstt.Advocate General.

**For the Respondent(s):**Mr. M.M.Khanna,Sr.Advocate with  
Mr. Goverdhan Sharma, Advocate.

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**Per- Surjit Singh, J** (Oral).

On the motion of Excise and Taxation Commissioner, Himachal Pradesh, Shimla, present reference has been made by the Revisional Authority, Himachal Pradesh (Financial Commissioner (Appeal) ), under Section 33 of the H.P. General Sales Tax Act, 1968. Questions of law on which reference has been made are as follows:-

1. "Whether an order under section 31(3) of the Himachal Pradesh General Sales Tax Act, 1968 can be passed and a finding can be given on the basis of a material/document which was never relied upon by the assessee before the Assessing Authority or the first Revising Authority?

2. Whether under the provisions aforesaid, the documents relied upon and filed by the assessee in support of this claim could be directed to be ignored?
3. Whether passing an order under Section 31(3) ibid on the basis of entirely new material amounts to framing fresh assessment by the last Revising Authority (because no such assessment has been framed by the Assessing Authority on such points) amounts to traveling beyond the documentary evidence on record and also trenching upon the powers reserved for the Assessing Authority?

We have gone through the record and heard the learned counsel for the parties.

The alleged material/document referred to in the aforesaid three questions is in fact not an additional material or document, but is in the nature of a Notification amending the Schedule to the main Act, and an entry made in the Schedule to the Act, in accordance with the aforesaid notification amending the Schedule. There being no material/document in the nature of evidence, the so called questions of law referred to this Court do not arise. Any Revisional Authority can make reference to any Act or its Schedule etc., if the copies of the relevant provisions of the Act or the Schedule, have been made part of the record of the original forum. Thus, the alleged questions of law do not arise.

The reference is disposed of with this observation.

( R.B. Misra ),J.

May 29, 2009<sup>(s)</sup>

(Surjit Singh), J.