

**Additional Director General Adjudication,
Directorate of Revenue Intelligence
v.
Suresh Kumar and Co. Impex Pvt. Ltd. & Ors.**
(Civil Appeal No(s). 11339-11342 of 2018)
20 August 2025
[J.B. Pardiwala and K.V. Viswanathan, JJ.]

Issue for Consideration

Whether the CESTAT erred in passing the impugned order setting aside the penalty imposed upon the respondents-assessees.

Headnotes[†]

Customs Act, 1962 – ss.138C(4), 108 – Evidence Act, 1872 – s.65B – Compliance of s.138C(4) – Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence – Admissibility of electronic records – Case of the Revenue that the respondents (engaged in the business of importing branded food items) were declaring lower RSP/MRP of the imported goods, resulting in evasion of duties – Show cause notice issued – Confirmed by Adjudicating Authority, demand raised with interest and penalty – Penalty set aside by CESTAT (Tribunal) holding that the documents relied upon by the department for proceeding against the respondents were collected from their electronic devices and were not admissible in evidence in view of non-compliance of s.138C(4) – Challenge to:

Held: There was due compliance of s.138C(4) in the present case – Record of Proceedings were duly signed by the respondents, including the various statements of the respondents recorded u/s.108 – Due compliance does not mean that a particular certificate *stricto sensu* in accordance with s.138C(4) must necessarily be on record – The various documents on record in the form of record of proceedings and the statements recorded u/s.108 could be said to be due compliance of s.138C(4) – A certificate not given in the prescribed format *per se* will not make it invalid, especially when the authenticity of the marked documents is not in dispute – At no point of time the statements recorded u/s.108 were retracted –

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Even while giving reply to the show cause notice, the contents of such statements recorded u/s.108 were not disputed – However, this would be relevant only for determining whether there has been due compliance of s.138C(4) – The evidentiary value of such s.108 statements in any other proceedings, if any would have to be considered in accordance with law, including the compliance of s.138B – Order passed by Tribunal set aside – Appeals filed by the assesseees before the Tribunal restored – *Impotentia excusat legem – Lex non cogit ad impossibilia*. [Paras 43-46, 48]

Case Law Cited

Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Others [2020] 7 SCR 180 : (2020) 7 SCC 1; *Kum. Shubha @ Shubhashankar v. State of Karnataka and Another*, 2025 SSC online SC 1426 – relied on.

In Re Presidential Poll [1975] 1 SCR 504 : (1974) 2 SCC 33 – referred to.

List of Acts

Customs Act, 1962; Evidence Act, 1872; Information Technology Act.

List of Keywords

Section 138C(4) of Customs Act, 1962; Compliance of Section 138C(4) of Customs Act, 1962; Section 65B of Evidence Act, 1872; Admissibility of electronic records; Certificate under Section 138C(4) of Customs Act, 1962; Record of Proceedings; Record of Proceedings duly signed; Statements recorded under Section 108 of Customs Act, 1962; Section 108 of Customs Act, 1962 statements; Certificate; Business of importing branded food items; Lower RSP/MRP declared; Actual RSP/MRP; Evasion of duties; Penalty; Documents collected from electronic devices; Laptop; Computer; I-pad; I-Phone; Desktop; Computer print outs; *Impotentia excusat legem*; *Lex non cogit ad impossibilia*; Certifying Authority; Certificate not in prescribed format; Electronic signature; Electronic Signature Certificate; Electronic form; Electronic records; Information; Secure electronic record, Secure digital signature; Subscriber; Directorate of Revenue Intelligence; Customs, Excise and Service Tax Appellate Tribunal (CESTAT).

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CIVIL APPELLATE JURISDICTION: Civil Appeal No(s). 11339-11342 of 2018

From the Judgment and Order dated 17.04.2018 of the Custom Excise Service Tax Appellate Tribunal in CUSTA No. 50095 of 2018, CUSTA Nos. 51918, 51919, and 51920 of 2017

Appearances for Parties

Advs. for the Appellant:

Vikramjeet Banerjee, ASG, Nachiketa Joshi, Ms. Nisha Bagchi, Sr. Advs., Digvijay Dam, Amit Sharma B., Shaurya R Rai, Gurmeet Singh Makker.

Advs. for the Respondents:

Ashish Batra, Amit K. Nain, Wattan Sharma, Kartik Yadav.

Judgment / Order of the Supreme Court**Order**

1. Permission for amendment of appeal(s) is granted.
2. These statutory appeals under Section 130E of the Customs Act, 1962 (for short “the Act, 1962”) are at the instance of the Revenue and are directed against the judgment and order passed by the Customs, Excise and Service Tax Appellate Tribunal (for short “the CESTAT”), New Delhi dated 17.04.2018, by which the appeals filed by the respondents-assesseees herein came to be allowed and thereby the order in original dated 17.07.2017 passed by the Additional Director General (Adjudication), Directorate of Revenue Intelligence, New Delhi imposing penalty upon the respondents herein came to be set aside.
3. It appears from the materials on record that the respondents herein were engaged in the business of importing branded food items from various countries.
4. After the import of the branded food items, they were being sold in Delhi and Mumbai, respectively. Acting upon the information, the business as well as the residential premises of the respondents were raided, and an extensive search was undertaken by the officials of the department. In the course of various searches, the department

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was able to procure evidence which *prima facie* established that the respondents had short paid the duty on the import of the goods in question. The investigation revealed that while filing the Bills of Entry for the imported goods, there was a failure to declare the actual RSP/MRP at which the goods were being sold to the ultimate consumers.

5. Thus, it is the case of the revenue that the importers were thereby declaring lower RSP/MRP, which resulted in evasion of duties.
6. In such circumstances, referred to above, a show cause notice dated 06.06.2016 came to be issued to the respondents, calling upon them to show cause as to why the demand for differential duties of (a) Rs.9,24,50,644/- be recovered from the respondent no.1 and (b) Rs.9,83,614/- be recovered from the respondent no.2, respectively. The show cause notice also called upon the respondents to show cause as to why interest and penalty should not be imposed and the imported goods be confiscated.
7. The show cause notice was adjudicated by the Adjudicating Authority and *vide* the Order in original dated 17.07.2017, the Commissioner confirmed the show cause notice and thereby raised a demand with interest and penalty. The order in original passed by the Adjudicating Authority came to be challenged before the CESTAT by filing appeals.
8. It appears on plain reading of the entire impugned order that the CESTAT reached the conclusion that the documents relied upon by the department for the purpose of proceeding against the respondents herein could not have been made admissible in evidence, in view of non-compliance of the provision of Section 138C(4) of the Act, 1962. According to the Tribunal, all these documents relied upon by the department were collected from the electronic devices of the respondents and in such circumstances, it was expected of the officials to strictly comply with the provisions of Section 138C(4) of the Act, 1962.
9. The Tribunal, while allowing the appeals filed by the respondents herein, clarified that an argument was canvassed before it on behalf of the respondents herein as assessees as regards Section 138B of the Act, 1962, however, since the Tribunal was inclined to allow the appeals only on the ground of non-compliance of Section 138C(4) of the Act, 1962, it did not deem fit to go into any other issues.

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10. Thus, the appeals filed by the respondents before the Tribunal came to be allowed.
11. The Tribunal, while allowing the appeals, made the following observations:-

“11. Upon perusal of the judgment of the Hon’ble Supreme Court in the case of Anvar P.V.(supra), we note that the Apex Court has categorically laid down the law that unless the requirement of Section 65B of the Evidence Act is satisfied, such evidence cannot be admitted. In any proceeding. We note that the Section 138C of the Customs Act is pari materia to Section 65B of the Evidence Act. Consequently, the evidence in the form of computer print-outs etc. recovered during the course of investigation can be admitted as in the present proceedings only subject to the satisfaction of the sub-section (2) of Section 138C. This refers to the certificate from a responsible person in relation to the operation of the relevant lap-top/computer. After perusing the record of the case, we note that in respect of the electronic documents in the form of computer print-outs from the seized lap-tops and other electronic devices have not been accompanied by a certificate as required by the Section 138C(2) as above. In the absence of such certificate, in view of the unambiguous language in the judgment of the Hon’ble Supreme Court (supra), the said electronic documents cannot be relied upon by the Revenue for confirmation of differential duty on the appellant. In the present case, the main evidence on which, Revenue has sought to establish the case of under-valuation and mis-declaration of the imported goods is in the form of the computer printouts taken out from the laptops and other electronic devices seized from the residential premises of Shri Nikhil Asrani, Director in respect of which the requirement of Section 138C(2) has not been satisfied. On this ground, the impugned order suffers from incurable error and hence, is liable to be set aside.

12. The Id. AR for Revenue relied upon the decision of the Tribunal in the case of M/s. Laxmi Enterprises (supra) in which the Tribunal upheld the charge of under-valuation and

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demand for differential duty. In the said decision, Tribunal overruled the objection of the appellant in connection with Section 138C, by holding that the documents printed out from lap-top will be admissible as evidence in view of the fact that the truth of such documents stand admitted by the proprietor in his statement.

We have gone through the said decision of the Tribunal and we note that the judgement of the Hon'ble Supreme Court in the case of Anvar P.V. (supra) has not been cited and was never brought to the notice of the Bench. Consequently, we are of the view that the decision in the case of Laxmi Enterprises is not applicable to the facts of the present case.

*13. It is submitted by the Id. Counsel for the appellant that the adjudicating authority had not examined the witnesses, as per the provisions of Section 138B of the Act, 1962. He has relied upon the decision of Hon'ble Delhi High Court, in the case of J&K Cigaratte - Vs. - Collector of Customs - 2009 (242) ELT (Del.). In that case, the Hon'ble High Court, while dealing with Section 9D(1) of the Central Excise Act, 1944, (Pari materia to Section 138B of the Customs Act, 1962) have held that the procedure as prescribed in the statute is required to be followed for proving the truth of the statement. The said decision of the Hon'ble Delhi High Court has also been relied upon by the Hon'ble Punjab & Haryana High Court, in the case of G-Tech Industries - Vs. - Union of India-2016 (339) ELT 209 (P&H). We find force in the submissions of the Id. Counsel for the appellant that the adjudicating authority had not followed the procedures prescribed under Section 138B of the Act, 1962. We have already observed that the demand of duty cannot be sustained, as the evidences as available for the alleged under valuation cannot be accepted under the law, as per the mandates of Section 138 C of the Act. Hence, there is no need to discuss the said issues, as raised by the appellants regarding consideration of the Provisions of Section 138B *ibid*.*

14. In view of the above discussions and analysis, we do not find any merits in the Impugned order, In confirming

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the adjudged demands against the appellants. Therefore, the impugned order is set-aside and the appeals filed by the appellants are allowed.”

12. In such circumstances, referred to above, the revenue is here before this Court with the present appeals.
13. We heard Ms. Nisha Bagchi, the learned senior counsel appearing for the revenue and Mr. Ashish Batra, the learned counsel appearing for the respondents.
14. The learned counsel appearing for the revenue would vehemently submit that the Tribunal committed a serious error in allowing the appeals filed by the assessee on the ground of non-compliance of Section 138C(4) of the Act, 1962. She would submit that there is cogent and sufficient evidence on record to indicate compliance of Section 138C(4) of the Act, 1962 in substance.
15. She would further submit that the documents collected from the electronic devices owned by the assessees at the time of search have been duly acknowledged by the assessees in their statements recorded under Section 108 of the Act, 1962.
16. With a view to fortify her submissions noted aforesaid, she placed strong reliance on the decision of this Court in the case of *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Others* reported in (2020) 7 SSC 1, more particularly, the observations made by the Court in Paras 51 and 52, respectively.
17. The paras 51 and 52 respectively read thus:-

“51. On an application of the aforesaid maxims to the present case, it is clear that though Section 65-B(4) is mandatory, yet, on the facts of this case, the respondents, having done everything possible to obtain the necessary certificate, which was to be given by a third party over whom the respondents had no control, must be relieved of the mandatory obligation contained in the said sub-section.

52. We may hasten to add that Section 65-B does not speak of the stage at which such certificate must be furnished to the Court. In Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10

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SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108], this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the person concerned, the Judge conducting the trial must summon the person/persons referred to in Section 65-B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the CrPC.”

18. In the course of the hearing of these appeals, the learned counsel appearing for the revenue provided us with a compilation consisting of documents in the form of Record of Proceedings dated 06.07.2015, 21.07.2015 and 21.04.2016 respectively.

19. The Record of Proceeding dated 06.07.2015 reads thus:-

“In connection with the investigations in respect of imports made by M/s Suresh Kumar & Co. (Impex) Pvt. Ltd. (SKCO) A-17, Sonu Tower, IInd Floor, Dr. Mukherjee Nagar Commercial Complex, Delhi - 110 009, the officers of Directorate of Revenue Intelligence (Hqrs.), 7th floor, I.P. Bhawan, I..P. Estate, New Delhi (herein after referred to as the DRI) vide Panchnama dated 16.06.2015 drawn at office-cum-godown Building No.1092, Bhalswa Village, Near Azadpur Bypass, Delhi - 110 033, had resumed certain documents, Lenovo Make desktop and one laptops from the abovementioned office-cum- godown premises.

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2. In today's proceeding, it was proposed to take the printouts of documents from the external Hard Disk of make WD Elements, bearing S/N WXE1A255RF18, which was copied under Records of Proceeding dated 19.06.2015 and 23.06.2015. Shri Sanjay Gupta, Senior Accountant of M/s SKCO and Shri Sushil Kumar, Assistant Accountant of M/s SKCO presented themselves at DRI (Hqrs.) office to witness the proceedings. One Envelope was produced before Shri Sanjay Gupta and Shri Sushil Kumar which was sealed with a paper slip containing dated signature of Shri Sanjay Gupta, Forensic Expert and DRI Officer. The paper seals on the said envelopes was checked by Shri Sanjay Gupta and Shri Sushil Kumar, which was found intact.

3. Shri Sanjay Gupta removed the paper seal of the said envelope and took out one external Hard Disk of make WD Elements, bearing S/N WXE1A255RF18. The said external hard disk was connected to a computer installed in DRI (Hqrs.) office and certain printouts were taken from the said hard disk. The printouts were serially numbered from 1 to 103. Shri Sanjay Gupta and Shri Sushil Kumar put their dated signatures on all the said pages (s. no. 1 to 103) as a token of their authenticity and their presence during the course of printing of these documents from the said external hard disk.

4. Thereafter, the said external Hard Disk of make WD Elements, bearing S/N WXE1A255RF18 was put in an envelope and the said envelope was sealed with a paper slip bearing dated signatures of Shri Sanjay Gupta, Shri Sushil Kumar and the DRI Officer.

5. The proceedings started at 1200 hrs on 06.07.2015 and concluded at 2010 hrs on same day i.e. 06.07.2015. Shri Sanjay Gupta and Shri Sushil Kumar on being enquired by the DRI officers informed that they are fully agree to the contents of Records of Proceedings dated 06.07.2015 and that the contents were recorded as per the actual Proceedings"

20. The record of Proceeding dated 21.07.2015 reads thus:-

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"In connection with the investigations in respect of imports made by M/s Suresh Kumar & Co. (Impex) Pvt. Ltd. (SKCO A-17. Sonu Tower. IInd Floor. Dr. Mukherjee Nagar Commercial Complex. Delhi - 110 009. the officers of Directorate of Revenue Intelligence (Hqrs.). 7th floor. I.P. Bhawan. I.P. Estate, New Delhi (herein after referred to as the DRI) vide Panchnama dated 16.06.2015 drawn at office-cum-godown Building No.1092. Bhalswa Village. Near Azadpur Bypass. Delhi - 110 033 had resumed certain documents. Lenovo Make desktop and one laptops from the abovementioned office-cum-godown premises and resumed two laptops (one Sony make and one Asus make). one I-pad and one I-Phone from the residential premises vide Panchnama dated 16.06.2015 drawn at residential premises at B-111/303. 19. Rajpur Road. Delhi - 110 054. Another laptop of Sony make was submitted in DRI office by Shri Nikhil Asrani, Director of M/s Suresh Kumar & Co. (Impex) Pvt. Ltd. On 16.06.2015.

2. In today's proceeding. It was proposed to take the printouts of e mail / documents from the external Hard Disk of make WD Elements, bearing S/N WX4 IA45DUD6E, which was copied under Records of Proceeding dated 29.06.2015. Shri Nikhil Asrani, Director of M/s SKCO presented himself at DRI (Hqrs.) office to witness the proceedings. One envelope was produced before Shri Nikhil Asrani which was sealed with a paper slip containing dated signature of Shri Sanjay Gupta and DRI Officer. The paper seals on the said envelops was checked by Shri Nikhil Asrani. which was found intact.

3. Shri Nikhil Asrani removed the paper seal of the said envelop and took out one external Hard Disk of make WD Elements, bearing S/N WX41 A45DUD6E. The said external hard disk was connected to a computer installed in DRI (Hqrs.) office and certain e mail data was extracted in Microsoft Outlook and certain printouts were taken from the said data. The printouts were serially numbered from 1 to 237. Shri Nikhil Asrani put his dated signatures on all the said pages (s. no. 1 to 237) as a token of their authenticity and his presence during the course of printing of these documents from the said external hard disk.

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4. Thereafter, the said external Hard Disk of make WD Elements, bearing S/N WX41A45DUD6E was put in an envelop and the said envelop was sealed with a paper slip bearing dated signatures of Shri Nikhil Asrani and the DRI Officer.

5. The proceedings started at 1640 hrs on 21.07.2015 and concluded at 2040 hrs on same day i.e. 21.07.2015. Shri Nikhil Asrani on being enquired by the DRI officers informed that he fully agrees to the contents of Records of Proceedings dated 21.07.2015 And that the contents were recorded as per the actual proceedings.”

21. The Record of Proceeding dated 21.04.2016 reads thus:-

“In connection with the investigations in respect of imports made by M/s Suresh Kumar & Co. (Impex) Pvt. Ltd. (SKCO) A-17, Sonu Tower, IInd Floor, Dr. Mukherjee Nagar Commercial Complex, Delhi - 110 009, the officers of Directorate of Revenue Intelligence (Hqrs.), 7th floor, IP. Bhawan, IP. Estate, New Delhi (herein after referred to as the DRI) vide Panchnama dated 16.06.2015 drawn at office-cum-godown Building No. 1092, Bhalswa Village, Near Azadpur Bypass, Delhi - 110 033, had resumed certain documents, Lenovo Make desktop and one laptops from the abovementioned office-cum- godown premises and resumed two laptops (one Sony make and one Asus make), one I-pad and one I-Phone from the residential premises vide Panchnama dated 16. 06.2015 drawn at residential premises at B-III/303, 19, Rajpur Road, Delhi - 110 054. Another laptop of Sony make was submitted in DRI office by Shri Nikhil Asrani, Director of M/s Suresh Kumar & Co. (Impex) Pvt. Ltd. on 16.06.2015.

2. In today's proceeding, it was proposed to take the printouts of e mail I documents from the external Hard Disk of make WD Elements, bearing S/N WX41A45DUD6E, which was copied under Records of Proceeding dated 29.06.2015. Shri Aseem Asrani, Director of M/s SKCO presented himself at DRI (Hqrs.) office to witness the proceedings. One envelope was produced before Shri Aseem Asrani which was sealed with a paper slip containing

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dated signature of Shri Nikhil Asrani and DRI Officer. The paper seals on the said envelopes was checked by Shri Aseem Asrani, which was found intact.

3. Shri Aseem Asrani removed the paper seal of the said envelop and took out one external Hard Disk of make WD Elements, bearing S/N WX41A45DUD6E. The said external hard disk was connected to a computer installed in DRI (Hqrs.) office and certain e mail data was extracted in Microsoft Outlook and certain printouts were taken from the said data. The printouts were serially numbered from 1 to 97. Shri Aseem Asrani put his dated signatures on all the said pages (s. no.1 to 97) as a token of their authenticity and his presence during the course of printing of these documents from the said external hard disk.

4. Thereafter, the said external Hard Disk of make WO Elements, bearing S/N WX41A45DUD6E was put in an envelop and the said envelop was sealed with a paper slip bearing dated signatures of Shri Aseem Asrani and the DRI Officer.

5. The proceedings started at 1500 hrs on 21.04.2016 and concluded at 1705 hrs on same day i.e. 21.04.2016. Shri Aseem Asrani on being enquired by the DRI officers informed that he fully agrees to the contents of Records of Proceedings dated 21.04.2016 and that the contents were recorded as per the actual proceedings.”

22. Thereafter, she took us through the statements of Mr. Nikhil Asrani, recorded under Section 108 of the Act, 1962 dated 03.08.2015, 21.9.2015, 22.4.2016 and 17.5.2016 respectively wherein Nikhil Asrani, has stated as under:-

“Statement dated 03.08.2015

“I have been shown the Record of Proceeding dated 21.07.2015. I have put my dated signatures on the same as a token of having seen the same. I agree with the contents of the Record of Proceedings dated 21.07.2015 as the same have been correctly recorded. I have been shown the documents serially numbered from Page No. 1 to 237, which were printed out from e-mail data under the

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Record of Proceeding dated 21.07.2015. I was present during the course of printing of the said documents. The said documents (page No. 1 to 237) pertain to my e- mail nikhil@skco.in. I have put my dated signature all the pages as a token of their authenticity. On being asked, I explain the said documents as under.”

Statement dated 21.9.2015

“I have been shown the statement dated 11.09.2015 containing two pages of Shri Suresh Kumar Asrani recorded under section 108 of the Customs Act, 1962. I have read and completely understood the same. I have put my dated signatures on both the pages of the said statement. I fully agree with the contents of the said statement dated 11.09.2015 of Sh. Suresh Kumar Asrani.”

Statement dated 22.4.2016

“I have been shown the Record of Proceeding dated 21.04.2016 and print out of pages No. 1 to 97. I have put my dated signatures on the said Record of Proceeding dated 21.04.2016 and all the 97 pages in the token of having seen the same and their authenticity.”

Statement dated 17.5.2016

I have been shown the Record of Proceeding dated 06.07.2015 and print out of pages No. 1 to 103 I have put my dated signatures on the said Record of Proceeding dated 06.07.2015 and all the 103 pages in the token of having seen the same and their authenticity.”

23. She also invited our attention to the statement of one Mr. Aseem Asrani recorded on 04.08.2015 wherein Mr. Aseem Asrani stated as under:-

“My elder brother Shri Nikhil Asrani is the right person to tell about the same. I am also one of the two Directors in M/s Suresh Kumar & Co. (Impex) Pvt. Ltd. (SKCO). On being asked, I state that my elder brother Shri Nikhil Asrani is also a Director in M/s Suresh Kumar & Co. (Impex) Pvt. Ltd. I have been staying at the above address for the last

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ten years along with my parents and brother's family. I am looking after warehousing, logistics and dispatches of M/ s. SKCO."

24. In the last, she invited our attention to the statement of Mr. Suresh Kumar Asrani recorded on 11.09.2015, wherein the following has been stated:-

"I and my wife retired from the directorship of M/s SKCO in the year 2008. Thereafter, my sons Shri Nikhil Asrani and Shri Aseem Asrani became the directors in M/ s SKCO. Shri Nikhil Asrani is the responsible for all the imports made by M/s SKCO from 2008. On being asked, I state that my son Shri Nikhil Asrani was dealing with the foreign suppliers related supply of food stuffs and price negotiation etc. On being further asked, I state that M/s S.N. Agrotech was founded in the month of January, 2014 in my proprietorship. M/s S.N. Agrotech has its registered office at 21/31, Mall Road, Delhi working with nil staff. My son Shri Nikhil Asrani is looking after all the work of M/s S.N. Agrotech. On being further asked, I state that this is only a residential flat in the name of myself and my wife Smt. Neerja Asrani. This address is being only used as postal address of M/ s S.N. Agrotech. On being further asked, I state that it is vacant and locked since the date of purchase."

25. In such circumstances, referred to above, the learned counsel appearing for the revenue would submit that there being merit in the appeals filed by the revenue, the same be allowed and the impugned order be set aside.
26. On the other hand, the learned counsel appearing for the respondents, while vehemently opposing these appeals would submit that no error, not to speak of any error of law, could be said to have been committed by the Tribunal in allowing the appeals on the ground of non-compliance of the mandatory provision of Section 138C(4) of the Act, 1962.
27. The learned counsel would submit that recording of statements under Section 108 of the Act, 1962 containing acknowledgment of documents being collected from the electronic devices of the assessees cannot be termed as due compliance of Section 138C(4) of the Act, 1962.

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28. The learned counsel would also seek to rely upon the very same judgement of this Court upon which the revenue has placed reliance. However, he would like to place reliance on the observations made in paragraphs 38 and 45, respectively therein.
29. The learned counsel would submit that in the event this Court would like to allow the appeals of the revenue, then in such circumstances, the matter be remanded to the Tribunal for the purpose of considering the other submissions which were canvassed by the respondents before the Tribunal and the Tribunal thought fit not to deal with those submissions, as the Tribunal was inclined to allow the appeals only on the ground of non-compliance of Section 138C(4) of the Act, 1962.
30. The only question that falls for our consideration is whether the Tribunal committed any error in passing the impugned order?
31. Section 138C(4) reads thus:-

“138C. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.—

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

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and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.”

32. Sub-section 4 of Section 138C makes it abundantly clear that if any statement is to be read into evidence and such documents are computer printouts, then a certificate has to be obtained in accordance with (a), (b) and (c) of sub-section 4, referred to above.
33. The Indian Evidence Act also declares that the expressions “Certifying Authority”, “electronic signature”, “Electronic Signature Certificate”, “electronic form”, “electronic records”, “information”, “secure electronic record”, “secure digital signature” and “subscriber” shall have the meanings respectively assigned to them in the Information Technology Act.
34. At this stage, we must look into Sections 65A and 65B of the Indian Evidence Act. The same read thus:-

“65A. Special provisions as to evidence relating to electronic record. — The contents of electronic records may be proved in accordance with the provisions of Section 65B.

65B. Admissibility of electronic records. — (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely—

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(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section

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as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or

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(with or without human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.”

35. Section 65B(4) of the Indian Evidence Act is *pari materia* to Section 138C(4) of the Act, 1962.
36. Section 65B(4) of the Indian Evidence Act came up for consideration before a three judge Bench of this Court in *Arjun Panditrao Khotkar* (supra).
37. This Court was called upon to consider in what manner Section 65B(4) should be construed as mandatory and in what manner it should be understood to have been duly complied with in its letter and spirit. While explaining the mandatory nature of Section 65 B(4) this Court applied two Latin maxims.

“(i) impotentia excusat legem.

(ii) lex non cogit ad impossibilia.”

38. Two maxims referred to above have been explained by this Court in the Presidential Poll judgment reported in (1974) 2 SCC 33.
39. We quote para 15 of the judgment referred to above which reads thus:-

“15. The impossibility of the completion of the election to fill the vacancy in the office of the President before the expiration of the term of office in the case of death of a candidate as may appear from Section 7 of the 1952 Act does not rob Article 62(1) of its mandatory character. The maxim of law impotentia excusat legem is intimately connected with another maxim of law lex non cogit ad impossibilia. Impotentia excusat legem is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. ‘Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him.’ Therefore, when it appears that the

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performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance with the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See Broom's Legal Maxims, 10th Edn. at pp. 162-63 and Craies on Statute Law, 6th Edn. at p. 268.)"

40. Applying the two maxims referred to above, this Court proceeded to take the view that though Section 65B4 is mandatory, yet it would all depend on the facts of each case, how the same could be said to have been duly complied with.
41. In the facts of the said case, this Court said that the respondents had done everything possible to obtain the necessary certificate which was to be given by a third party over whom the respondents therein had no control and, in such circumstances, must be relieved of the mandatory obligation contained in the said subsection.
42. We have already reproduced paras 51 and 52 respectively of *Arjun Panditrao Khotkar* (supra) above.
43. Keeping the aforesaid in mind, we are of the view and, more particularly, considering the Record of Proceedings duly signed by the respondents, including the various statements of the respondents recorded under Section 108 of the Act, 1962, that there was due compliance of Section 138C(4) of the Act, 1962. When we say due compliance, the same should not mean that a particular certificate *stricto sensu* in accordance with Section 138C(4) must necessarily be on record. The various documents on record in the form of record of proceedings and the statements recorded under Section 108 of the Act, 1962 could be said to be due compliance of Section 138C(4) of the Act, 1962.
44. It is pertinent to note at this stage that at no point of time the statements recorded under Section 108 of the Act, 1962 came to be retracted.
45. Even while giving reply to the show cause notice, the contents of such statements recorded under Section 108 of the Act, 1962 were not disputed. This, of course, would be relevant only

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insofar as determining whether there has been due compliance of Section 138C(4) of the Act, 1962 is concerned. The evidentiary value of such Section 108 statements in any other proceedings, if any would have to be considered in accordance with law, including the compliance of Section 138B of the Act, 1962.

46. At this stage, we must also look into the observations made by this Court in the case of *"Kum. Shubha @ Shubhashankar vs. State of Karnataka and Another,"* reported in 2025 SSC online SC 1426 relied upon by the learned counsel appearing for the revenue. We quote:-

"A certificate not given in the prescribed format per se will not make it invalid, especially when the authenticity of these marked documents is not in dispute."

47. In view of the aforesaid, we partly allow these appeals of the revenue.
48. The judgment and order passed by the Tribunal is hereby set aside. The appeals filed by the assesseees before the Tribunal are ordered to be restored to its original file and to be reheard by the Tribunal on grounds other than Section 138C(4) of the Act, 1962.
49. It is needless to clarify that on remand the Tribunal shall rehear the entire appeals on their own merits without being influenced in any manner by any of the observations made by this Court. Our observations are confined only on the issue of Section 138C(4) of the Act, 1962.
50. Pending application(s), if any, stands disposed of.

Result of the case: Appeals partly allowed.