

GST ARTICLE**Raid, Record & Reliance: Electronic Evidence, Admissions and the consequence of Non-Retracted Statements under Customs & GST*****Ashwarya Sharma, Advocate | Co-Founder & Legal Head, RB LawCorp***



Search and seizure proceedings under fiscal statutes have increasingly become technology-driven. Laptops, servers, accounting software backups, pen drives and cloud extracts today form the backbone of many duty and tax demands. But does the mere seizure of digital data during a tax raid make it legally admissible in adjudication? Can every incriminating email, Excel sheet, server extract or laptop printout be straightaway relied upon simply because it was found during a search? Or must such digital material first pass through a strict statutory gateway before it can influence a demand of duty, tax, interest or penalty?

Equally significant-and often overlooked-is another practical question: what happens when, during the course of investigation, a person gives a voluntary statement acknowledging the authenticity of such electronic material and later chooses not to retract it? Can such an unretracted admission cure defects in statutory compliance? Does silence operate as affirmation? It is at the intersection of these questions-digital admissibility and evidentiary admissions-that the law assumes critical importance.

In an era where investigations are increasingly data-driven and digital trails form the backbone of fiscal enforcement, these questions assume central importance. The law does not equate seizure with admissibility. However damaging a document may appear, its evidentiary value is not automatic. The legislature has

consciously imposed procedural safeguards under tax laws to ensure authenticity, reliability and integrity of electronic records.

It is this delicate balance between investigative efficiency and evidentiary discipline that the Supreme Court has revisited and clarified in ***Additional Director General Adjudication, Directorate of Revenue Intelligence Vs. Suresh Kumar and Co. Impex Pvt. Ltd. and Ors.*** ([2025-VIL-103-SC-CU](#)). This version flows naturally into your doctrinal discussion while creating intellectual curiosity at the outset. Though rendered in the context of the Customs Act, 1962, the principles laid down therein have direct implications for GST proceedings, particularly searches conducted under [Section 67](#) of the CGST Act by DGGI and other authorities.

The decision revisits the interplay between statutory certification of electronic evidence and admissions recorded during investigation, and clarifies the contours of "mandatory compliance" in fiscal adjudication.

I. Statutory Provisions

The statutory framework governing admissibility of electronic evidence under the Customs Act, the Indian Evidence Act and the CGST Act is reproduced below in comparative form for ease of understanding:

Particulars	Section 138C(4), Customs Act, 1962	Section 65B(4), Indian Evidence Act, 1872	Section 145, CGST Act, 2017
Overriding Clause	Applies to proceedings under the Act	"Notwithstanding anything contained in this Act"	"Notwithstanding anything contained in any other law for the time being in force"

Nature of Evidence Covered	Microfilms, facsimile copies, computer printouts	Electronic records printed, stored, recorded or copied in optical or magnetic media	Microfilms, facsimile copies, computer printouts, electronically stored information and hard copies
Deeming Fiction	Computer output treated as document	Computer output deemed to be a document	Electronic information deemed to be a document for purposes of the Act
Admissibility Without Original	Admissible without production of original, subject to compliance	Admissible without production of original, subject to compliance	Admissible without further proof or production of the original
Certificate Requirement	Mandatory certificate when statement is to be given in evidence	Mandatory certificate when electronic record is to be given in evidence	Certificate required where statement is sought to be given in evidence
Certificate Must Identify	Document and manner of production	Electronic record and manner of production	Document and manner of production
Device Particulars	Must specify particulars of device	Must specify particulars of device	Must specify particulars of device
Evidentiary Value of Certificate	Certificate itself is	Certificate itself is evidence of matters stated	Certificate shall be evidence of matters stated therein

	evidence of matters stated		
Standard of Assertion	Best of knowledge and belief	Best of knowledge and belief	Best of knowledge and belief

A comparative reading makes it abundantly clear that [Section 138C](#) of the Customs Act and [Section 145](#) of the CGST Act are structurally aligned with Section 65B of the Evidence Act. Each provision creates a statutory gateway for admissibility of electronic evidence and prescribes certification as a condition precedent.

It may also be noted for interested readers that a substantially similar provision now stands incorporated in Section 63 of the Bharatiya Sakshya Adhinyam, 2023, which has replaced the Indian Evidence Act, 1872. The legislative continuity in retaining the certification requirement under the new evidentiary regime reinforces the consistent statutory policy of ensuring authenticity and reliability of electronic records before they are acted upon in judicial or quasi-judicial proceedings.

The legislative intent is unambiguous: authenticity, integrity and reliability of digital records must be demonstrated in the prescribed manner before they can influence adjudication.

II. Background of the Case

The appeals under Section 130E of the Customs Act were filed by the Revenue Department against the judgment of the CESTAT, New Delhi, whereby the appeals of the taxpayer were allowed and the order-in-original passed by the Additional Director General (Adjudication), DRI, New Delhi imposing penalty was set aside.

The taxpayer was engaged in importing branded food items from various countries and selling them in Delhi and Mumbai. Acting upon intelligence inputs, the department conducted search operations. Electronic devices were seized and computer printouts were extracted.

Based primarily on the digital material recovered, a show cause notice was issued alleging short payment of duty. The demand was confirmed by the Adjudicating Authority. The importer challenged the order before the CESTAT.

III. Issue before the CESTAT

The central issue before the Tribunal was whether the electronic documents relied upon by the department were admissible in the absence of compliance with Section 138C(4) of the Customs Act.

The CESTAT held that the documents, being computer-generated printouts and digital extracts, were inadmissible due to non-compliance with Section 138C(4). The Tribunal observed that strict adherence to statutory requirements was necessary when the case of the department rested entirely on electronic evidence.

The Tribunal relied upon the Supreme Court's decision in **Anvar P.V. v. P.K. Basheer** (MANU/SC/0834/2014), wherein it was held that unless the requirements of Section 65B of the Evidence Act are satisfied, electronic evidence cannot be admitted in any proceeding.

Since Section 65B is pari materia to Section 138C of the Customs Act, and since no certificate as contemplated under Section 138C had been produced, the Tribunal set aside the demand without examining other issues.

The Revenue's argument that admissions recorded in statements could cure the defect was rejected, particularly in light of the binding precedent in *Anvar P.V.*

IV. Contention of the Revenue Department

Before the Supreme Court, the Revenue contended that the Tribunal had adopted an unduly technical approach. It was argued that there was substantial compliance with Section 138C(4).

The documents extracted from electronic devices had been duly acknowledged in statements recorded under Section 108 of the Customs Act. These statements were voluntary and detailed.

Reliance was placed on ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors. (MANU/SC/0521/2020)***, wherein the Supreme Court clarified that although Section 65B(4) is mandatory, relief may be granted where a party has done everything possible to obtain the certificate but is prevented by circumstances beyond its control.

According to the Revenue, since authenticity was admitted and never disputed, insistence on a formal certificate was unwarranted.

V. Arguments of the Taxpayer Importer

The taxpayer maintained that Section 138C(4) is couched in mandatory terms and constitutes a jurisdictional requirement. Admissions in statements cannot substitute statutory certification.

Admissibility of electronic evidence, it was argued, is not a matter of discretion but of legislative compliance. The Tribunal had therefore committed no error.

VI. Decision of the Supreme Court

The Supreme Court reaffirmed that Section 138C(4) of the Customs Act and Section 65B(4) of the Evidence Act are mandatory in character. Ordinarily,

computer printouts sought to be relied upon must be accompanied by the statutory certificate.

Referring to *Arjun Panditrao Khotkar* (MANU/SC/0521/2020), the Court invoked two Latin maxims:

(i) *impotentia excusat legem*

(ii) *lex non cogit ad impossibilia*

The Court observed:

"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 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."

Applying these principles, the Court held that in the facts of the case, authenticity of the electronic records had been acknowledged in statements recorded under Section 108. Crucially, these statements were never retracted. Even in reply to the show cause notice, the contents were not disputed.

In such circumstances, the Court held that there was sufficient compliance in substance and that the Tribunal erred in excluding the evidence solely on technical grounds. The Tribunal's order was therefore set aside.

VII. Impact under GST Law: Role of Section 145

Under the CGST Act, 2017, Section 67 empowers officers to conduct inspection, search and seizure of books and electronic devices. However, admissibility of

electronic evidence in GST proceedings is governed by Section 145 of the CGST Act.

Section 145 creates a deeming fiction similar to Section 138C of the Customs Act and incorporates a certification mechanism when statements contained in computer-generated material are sought to be relied upon.

Thus, in GST adjudication, reliance on emails, accounting software extracts, Excel sheets or server backups must satisfy the discipline of Section 145 read with Section 65B of the Evidence Act.

The Supreme Court's reasoning in *Anvar P.V.* (MANU/SC/0834/2014), *Arjun Panditrao Khotkar* (MANU/SC/0521/2020), and *Additional Director General Adjudication, Directorate of Revenue Intelligence Vs. Suresh Kumar and Co. Impex Pvt. Ltd. and Ors.* ([2025-VIL-103-SC-CU](#)) therefore applies with equal force in GST proceedings.

VIII. Importance of Retraction of Statements

A decisive factor in the Supreme Court's reasoning was the absence of retraction. Statements recorded under Section 108 of the Customs Act similar to [Section 70](#) of the CGST Act carry significant evidentiary value when voluntary and unretracted.

Retraction operates as a safeguard against coercion or involuntariness. Where statements acknowledging authenticity of electronic records are not retracted within reasonable time, they may operate as admissions strengthening the department's case.

Thus, post-search conduct is as critical as procedural compliance. Silence may later be construed as affirmation.

IX. Conclusion

The decision in **Suresh Kumar** strikes a calibrated balance between statutory rigour and investigative practicality. It reiterates the mandatory character of Section 138C(4), Section 65B(4) and by necessary extension, Section 145 of the CGST Act-yet recognises that the law does not compel the impossible.

For GST practitioners and adjudicating authorities alike, the message is unequivocal: electronic evidence is potent, but only when procedurally sanctified. Admissions, if voluntary and unretracted, may bridge evidentiary gaps, but they cannot routinely displace statutory safeguards.

In a tax administration increasingly reliant on digital trails, this ruling reaffirms a foundational principle-technology may modernise enforcement, but legality and fairness remain its constitutional anchor.

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(The views expressed in this article are strictly personal.)