



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

FRIDAY, THE 19TH DAY OF DECEMBER 2025 / 28TH AGRAHAYANA, 1947

CUS.APPEAL NO. 1 OF 2023

AGAINST THE FINAL ORDER NO.A/20121-20127/2022 DATED 29.03.2022
IN APPEAL NO.C/21635/2015 OF THE CUSTOMS, EXCISE AND SERVICE
TAX APPELLATE TRIBUNAL, BANGALORE

APPELLANT/RESPONDENT:

CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
(ERSTWHILE CENTRAL BOARD OF EXCISE AND CUSTOMS) ,
THE COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE,
COCHIN, PIN - 682009

BY ADVS.

SHRI.THOMAS MATHEW NELLIMOOTTIL
SRI.R.HARISHANKAR

RESPONDENT/APPELLANT:

SUBAIR KALLUNGAL, TOWN APARTMENT,
VANDIPETTA, NADAKAVU, CALICUT,
PIN - 673006

BY ADVS.

SRI.K.M.FIROZ
SRI.MOHAMMED ZAHIR

THIS CUSTOMS APPEAL HAVING BEEN FINALLY HEARD ON 16.12.2025,
ALONG WITH Cus.Appeal.2/2023, 3/2023 AND CONNECTED CASES, THE
COURT ON 19.12.2025 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

FRIDAY, THE 19TH DAY OF DECEMBER 2025 / 28TH AGRAHAYANA, 1947

CUS.APPEAL NO.2 OF 2023

AGAINST THE FINAL ORDER NO.A/20121-20127/2022 DATED 29.03.2022
IN APPEAL NO.C/21661/2015 OF THE CUSTOMS, EXCISE AND SERVICE
TAX APPELLATE TRIBUNAL, BANGALORE

APPELLANT/RESPONDENT:

THE COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, COCHIN, PIN - 682009.

BY ADVS.

SHRI.THOMAS MATHEW NELLIMOOTTIL
SRI.R.HARISHANKAR

RESPONDENT/APPELLANT:

THONDANDAVIDA KANIYAN KANDI FAIZAL,
FAIZAS, PARAL P.O., KANNUR DISTRICT,
PIN - 670671

BY ADVS.

SRI.P.JERIL BABU
SHRI.S.SIVAKUMAR

THIS CUSTOMS APPEAL HAVING BEEN FINALLY HEARD ON 16.12.2025,
ALONG WITH Cus.Appeal.1/2023 AND CONNECTED CASES, THE COURT ON
19.12.2025 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

FRIDAY, THE 19TH DAY OF DECEMBER 2025 / 28TH AGRAHAYANA, 1947

CUS.APPEAL NO. 3 OF 2023

AGAINST THE FINAL ORDER NO.A/20121-20127/2022 DATED 29.03.2022
IN APPEAL NO.C/21636/2015 OF THE CUSTOMS, EXCISE AND SERVICE
TAX APPELLATE TRIBUNAL, BANGALORE

APPELLANT/RESPONDENT:

THE COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, COCHIN, PIN - 682009.

BY ADVS.

SHRI.THOMAS MATHEW NELLIMOOTTIL
SRI.R.HARISHANKAR

RESPONDENT/APPELLANT:

ASHRAF KALLUNGAL,
NO.59, M.C. RIVER SIDE ENCLAVE,
KAVUMBAGAM, THALASSERRY, KANNUR,
PIN - 670649.

BY ADV SHRI.M.AJAY

THIS CUSTOMS APPEAL HAVING BEEN FINALLY HEARD ON 16.12.2025,
ALONG WITH Cus.Appeal.1/2023 AND CONNECTED CASES, THE COURT ON
19.12.2025 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

FRIDAY, THE 19TH DAY OF DECEMBER 2025 / 28TH AGRAHAYANA, 1947

CUS.APPEAL NO. 4 OF 2023

AGAINST THE FINAL ORDER NO.A/20121-20127/2022 DATED 29.03.2022
IN APPEAL NO.C/21662/2015 OF THE CUSTOMS, EXCISE AND SERVICE
TAX APPELLATE TRIBUNAL, BANGALORE

APPELLANT/RESPONDENT:

THE COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, COCHIN, PIN - 682009.

BY ADVS.

SHRI.THOMAS MATHEW NELLIMOOTTIL
SRI.R.HARISHANKAR

RESPONDENT/APPELLANT:

THONDANDAVIDA KANIYAN KANDI FAIZ
FAIZAS, PARAL P.O., KANNUR, PIN - 670671.

BY ADVS.

SRI.P.JERIL BABU
SHRI.S.SIVAKUMAR

THIS CUSTOMS APPEAL HAVING BEEN FINALLY HEARD ON 16.12.2025,
ALONG WITH Cus.Appeal.1/2023 AND CONNECTED CASES, THE COURT ON
19.12.2025 DELIVERED THE FOLLOWING:

**"CR"****JUDGMENT**

[Cus.Appeal Nos.1, 2, 3, and 4 of 2023]

Harisankar V. Menon, J.

These four appeals have been instituted by the revenue seeking to challenge the common order dated 29.03.2022, of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Bangalore, setting aside the penalty imposed on the respondents herein under the provisions of the Customs Act, 1962 (hereinafter referred to as the "Act").

2. The short facts leading to the imposition of the penalty as above are required to be noticed as under:

On 19.09.2013, two lady passengers, accompanied by a girl child, were found near the car park area outside the Cochin International Airport. They were identified as Arifa Haris, Asifa Veerappoyil, as well as the minor daughter of Arifa. After being brought back to the arrival hall, they denied carrying gold or other articles, on being questioned. Thereupon, a personal search was conducted, which revealed that both the ladies were



wearing black coloured jackets containing pouches where gold bars were kept hidden. One of the ladies also stated that an LG brand television brought by her was handed over to an officer. Ten gold bars, each weighing one kg, were recovered from the respective ladies, which were seized under the provisions of the Act, along with the materials used for concealing the gold bars as above. The television referred to above was also seized. On the basis of the seizure as above, proceedings were initiated, leading to the revenue recording statements from as many as 33 persons. Arifa also stated that on three earlier occasions – 20.08.2013, 27.08.2013, and 12.09.2013 - gold bars were brought undeclared through the Cochin International Airport and were handed over to a person. It is alleged that one T.K. Faiz handed over the gold bars and arranged for the tickets as well as the materials used for concealing the gold bars. The quantity of gold allegedly smuggled on the three earlier occasions was stated to be 36 gold bars, each weighing one kg. On the basis of the statements recorded under Section 108 of the Act, common show cause notices were issued to various persons,



including the respondents herein. The show cause notice to Arifa proposed to confiscate the 10 kgs of gold referred to above, apart from proposing penalty under various provisions of the statute. A similar notice was issued to Asifa. One Shanavas was also proceeded against with reference to six pieces of gold seized from a shop – M/s.Ashida Jewellery - proposing to confiscate the same and to impose penalty. These proceedings were initiated against Shanavas essentially on the basis of the allegation that he had acquired possession and sold the gold bars, brought on earlier occasions. As regards the respondents in these cases, the following steps were taken:

i. **Subair Kallungal** (Respondent in Cus. Appeal No.1 of 2023)

It is alleged that the afore person had transported the smuggled gold to the premises of Shanavas. A penalty of Rs.20,00,000/- is imposed upon him under Section 112(b) of the Act.

ii. **Thondandavida Kaniyan Kandi Faizal**

(Respondent in Cus. Appeal No. 2 of 2023)

He was alleged to have obtained the gold smuggled as above on the earlier three occasions, though there was no actual seizure of gold involved, and transported the afore ladies to a hotel at Kochi. A penalty of Rs.20,00,000/- was imposed upon him under Section 112(b) of the Act.



iii. **Ashraf Kallungal**

(Respondent in Cus. Appeal No.3 of 2023)

Steps were taken leading to the imposition of penalty of Rs.15 crores under Section 112(a) and (b) of the Act on the allegation that it is he who financed the entire smuggling activities.

iv. **Thondandavida Kaniyan Kandi Faiz**

(Respondent in Cus. Appeal No.4 of 2023)

He was alleged to have abetted in the smuggling of gold bars as above. A penalty of Rs.5 crores was imposed under Section 112 (a) and (b) of the Act on him.

4. The noticees as above, including the respondents herein, preferred separate appeals before the CESTAT, Bangalore. The Tribunal, by the impugned order dated 29.03.2022, considered all the appeals together. It is to be noticed that the two ladies mentioned above did not choose to challenge the proceedings initiated against them.

5. The Tribunal considered the contentions raised by the respective parties elaborately. By the impugned order, the Tribunal found that:

- i. There cannot be any simultaneous levy of penalty under Section 112 (a) and (b) of the Act since the statute provides for the levy of either of the penalties.



The Tribunal noticed the use of the word 'or' between the two limbs of Section 112, while arriving at the afore finding. Therefore, the penalty against Ashraf Kallungal and T.K.Faiz were *set aside*.

- ii. The evidence in the form of the statements obtained was analysed critically by the Tribunal. As regards the alleged smuggling of 36 kgs on the earlier three occasions, it was found that there was no direct evidence, and the allegation was made purely on the basis of the statements of the carriers, specifically noticing that no follow-up action was taken by the revenue. The penalty as regards 36 kgs of gold was found not sustainable.
- iii. The statements relied on by the revenue were referred to in detail, and it was found that there were contradictions.
- iv. The appeal filed by Shanavas was considered, specifically noticing that the gold seized was released



to him for want of evidence linking the items to the smuggling activities. Similarly, the Tribunal noticed that the cash seized from him was also released. On the totality of the facts and circumstances noticed, the Tribunal found that Shanavas cannot be linked in any manner to the smuggled goods referred to above. The penalty imposed stood *set aside*, in such circumstances.

- v. Insofar as the penalty imposed on Shanavas was *set aside*, the Tribunal also found that the case of Ashraf Kallungal and Subair Kallungal being the other side of the same coin also requires to be cancelled.
- vi. The Appeal of Subair Kallungal was specifically considered, finding that Shanavas has named him and no incriminating materials were recovered so as to implicate Subair Kallungal with the allegations. The Tribunal also held that the ingredients of Section 112(b)



of the Act were not satisfied, consequent to which, the penalty was *set aside*.

vii. The appeal of Ashraf Kallungal was also allowed, essentially on account of the inconsistent statements relied on by the revenue.

viii. In the appeal of T.K.Faizal, only evidence against him was the statement of Faiz, which was admittedly retracted by the said person, on account of which the Tribunal *set aside* the penalty.

6. It is seeking to challenge the order of the Tribunal as above that the revenue has instituted these appeals.

7. Though these appeals were admitted as early as on 19.01.2023, the questions of law arising for consideration were not framed. Noticing this, we have formulated the following questions of law for consideration in these appeals:-

- i. Whether, on the facts and circumstances of the case, while setting aside the penalties imposed, the Tribunal went wrong in appreciating the evidentiary value of the statements



rendered under Section 108 of the Customs Act, 1962?

- ii. Whether the failure of the respondent to record a statement under Section 108 of the Customs Act, 1962, precludes them from objecting to the proceedings taken against them under the Customs Act, 1962?
- iii. Whether imposition of penalty under Section 112(b) of the Customs Act, 1962, can be effected without actual seizure of the gold allegedly smuggled?

8. We have heard Sri.R.Harisankar, the learned Standing Counsel for the appellant herein, Sri.B.Kumar, the learned senior counsel, instructed by Sri.S.Sivakumar, for the respondents in Cus. Appeal Nos.2 and 4 of 2023, Sri.K.M.Firoz, the learned counsel for the respondent in Cus. Appeal No.1 of 2023 and Sri.M.Ajay, the learned counsel for the respondent in Cus.Appeal No.3 of 2023.

9. Sri.Harisankar, the learned Standing Counsel for the appellant, would contend that the appreciation of the evidence by the Tribunal was flawed. According to him, the statements under Section 108 of the Act were recorded from as many as 33 persons, and the Tribunal only considered/evaluated/appreciated the evidentiary value of just six statements. He would further



contend that the statements under Section 108 are recorded during the course of an "inquiry," which is different from an investigation and the statements are to be taken as obtained during a judicial proceeding. Furthermore, he would contend that the statement obtained under Section 108 is not subject to the rigour of Section 25 of the Evidence Act, 1872, and the same is not taken as inadmissible under Section 24 of the Evidence Act. He would also state that the respondents in these cases, having failed to record a statement under Section 108, have to be taken as evaders, on account of which they could not be permitted to challenge the proceedings initiated under the statute. With reference to the penalty under Section 112(b) of the Act, he would contend that the statements obtained under Section 108 would prove the actual removal/smuggling of gold bars and receipt of consideration on account of which penalty under Section 112(b) can be levied.

10. *Per contra*, the learned counsel for the respondents in Cus. Appeal Nos.2 and 4 of 2023 would rely on various



judgments to contend that the Tribunal was justified in appreciating the evidentiary value as noticed above. The learned counsel for the respondents in Cus. Appeal No.1 of 2023 would contend that none of the statements obtained under Section 108 of the Act can be relied upon with reference to the provisions of Section 138B of the Act. He would also seek to rely on the judgment of the Apex Court in **Additional Director General Adjudication, Directorate of Revenue Intelligence v. Suresh Kumar and Co. Impex Pvt. Ltd. [2025 KHC Online 6762]** in support of this contention. He would further contend that even if no statements were recorded, the statute does not provide for any adverse inference to be drawn against the respondents herein, and therefore, they were justified in contesting the proceedings initiated. The learned counsel for the respondent in Cus. Appeal No.3 of 2023 would state that, as regards the non-recording of a statement, he had a valid excuse for not venturing to record a statement under Section 108. All the counsel would further contend that no substantial questions



of law, much less a question of law, arise for consideration in these appeals.

11. We have considered the rival contentions and the connected records in these appeals, noticed as above.

12. The first issue arising for consideration is with reference to the appreciation of the evidentiary value of the statements under Section 108 of the Act, by the Tribunal.

13. Sri. Harisankar would contend that though statements were recorded from as many as 33 persons, the Tribunal considered the statements of just six individuals. According to him, the very appreciation of the statements of these six noticees was flawed. Though much reliance has been placed on the provisions of Section 108 of the Act, especially the nature of the "inquiry" which has been equated to be a judicial proceeding, we notice that the provisions of Section 108 only provide for the power to summon persons to give evidence and to produce documents. The provisions of Section 108, as well as the statements obtained thereunder, have to be tested with



reference to the provisions of Section 138B, which reads as under:

"138B. Relevancy of statements under certain circumstances.—

(1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

- (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or
- (b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court."



14. A reading of the afore provision would show that sub-section (1) deals with the relevance of the statements obtained in prosecution steps as regards the offences under the Act. Clause (a) thereto provides the statement to be relevant, when the person who made the statement is dead/cannot be found/is incapable of giving evidence/kept out of the way by the adverse party, etc. In all other circumstances, the statute mandates that for a statement to be admitted in evidence, the person who made the statement is to be examined as a witness in the court, and thereafter, the court is of the opinion that the evidence requires to be admitted and acted upon. The rigour of sub-section (1) has been extended to the other proceedings under the Act through sub-section (2) thereto.

15. When that be so, the evidentiary value of the statements recorded under Section 108 of the Act in these cases has to be considered with reference to the provisions of clause (b) of Section 138B(1) of the Act. Here, the revenue has no case that the persons who gave the statements as above were



examined as witnesses in the proceedings. When that be so, we are of the opinion that the statement obtained by the revenue could not be admitted in evidence in these cases. Unless and until the persons who gave the statements are examined, the statute does not permit the authority to conclude that the statements are admissible in evidence. When such statements could not be so accepted in evidence, no proceedings could be initiated based on the same. In this regard, the judgment of the Apex court in **Suresh Kumar and Co. Impex Pvt. Ltd.** (*supra*) also requires to be noticed, wherein the court, though in the context of acceptability of evidence under Section 138C of the Act, has held that:

"45.....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 of the Act, 1962."

Thus, the evidentiary value of a statement recorded under Section 108 of the Act is subject to the compliance of the provisions of Section 138B of the Act. Here, the provisions of Section 138B have not been shown to have been complied with.



16. We may also notice the judgment of the Punjab and Haryana High Court in **Jindal Drugs P. Ltd. and Another v. Union of India and Another [(2016) 340 ELT 67]**, wherein the challenge raised against the reliance placed on the statements without admitting them under the mandate prescribed by Section 9D of the Central Excise Act, 1944, came up for consideration. It may be straightaway be noticed that the provisions of Section 9D of the Central Excise Act, 1944, are in *pari materia* with Section 138B of the Act. The court proceeded to law down the law as follows:-.

“19. Clearly, therefore, the stage of relevance, in adjudication proceedings, of the statement, recorded before a gazetted Central excise officer during inquiry or investigation, would arise only after the statement is admitted in evidence in accordance with the procedure prescribed in clause (b) of section 9D(1). The rigour of this procedure is exempted only in a case in which one or more of the handicaps referred to in clause (a) of section 9D(1) of the Act would apply. In view of this express stipulation in the Act, it is not open to any adjudicating authority to straightaway rely on the statement recorded during investigation/inquiry before the gazetted Central excise officer, unless and until he can legitimately invoke clause (a) of section



9D(1). In all other cases, if he wants to rely on the said statement as relevant, for proving the truth of the contents thereof, he has to first admit the statement in evidence in accordance with clause (b) of section 9D(1). For this, he has to summon the person who had made the statement, examine him as witness before him in the adjudicating proceeding, and arrive at an opinion that, having regard to the circumstances of the case, the statement should be admitted in the interests of justice.

21. It is only, therefore,

- (i) after the person whose statement has already been recorded before a Gazetted Central excise officer is examined as a witness before the adjudicating authority, and
- (ii) the adjudicating authority arrives at a conclusion, for reasons to be recorded in writing, that the statement deserves to be admitted in evidence,

that the question of offering the witness to the assessee, for cross- examination, can arise.

22. Clearly, if this procedure, which is statutorily prescribed by plenary Parliamentary legislation, is not followed, it has to be regarded, that the Revenue has given up the said witnesses, so that the reliance by the Commissioner of Central Excise, on the said statements, has to be regarded as misguided, and the said statements have to be eschewed from consideration, as they would not be relevant for proving the truth of the contents thereof."



(underlining supplied)

17. The Delhi High Court in **Additional Director General (Adjudication) v. Its My Name P. Ltd. [(2021) 375 ELT 545]** has also spoken about the requirement to follow the mandate under Section 138B of the Act as under:

"76.statements, under section 108 of the Act, we may note, though admissible in evidence, acquire relevance only when they are, in fact, admitted in evidence, by the adjudicating authority and, if the affected assessee so chooses, tested by cross-examination. We may, in this context, reproduce, for ready reference, section 138B of the Act, thus

.....

77. The framers of the law having, thus, subjected statements, recorded under section 108 of the Act, to such a searching and detailed procedure, before they are treated as relevant in adjudication proceedings, we are of the firm view that such statements, which are yet to suffer such processual filtering, cannot be used, straightaway, to oppose a request for provisional release of seized goods."

18. In the light of the afore, we are of the opinion that the revenue would not be entitled to place any reliance on the statements recorded under Section 108 of the Act.

19. We may also notice the provisions of Section 122A of the Act under which the adjudicating authority has an obligation to provide "an opportunity of being heard" to the noticee. When



the opportunity of hearing laid down under Section 122A is read along with the provisions of Section 138B of the Act, we are of the opinion that once the person who gave the statement is examined as a witness, the noticee who is proceeded against under the statute is also entitled for cross examining the person who gave the statement which is sought to be admitted in evidence. In other words, the finding of the Tribunal that the prayer made by some of the noticees/respondents herein for cross-examining the persons who gave the statements ought to have been allowed, gains significance. Therefore, we hold that the statements relied on by the revenue would not fall within the ambit of Section 138B of the Act, and therefore, no proceedings would lie on that basis. In the light of said conclusion, the first question framed as above does not arise for consideration in these appeals.

20. The second issue formulated as above is with reference to the failure of the respondents herein to record a statement under Section 108 of the Act, which would disentitle them from contesting the steps initiated under the Act. The afore question



requires to be analysed with reference to the provisions of Sections 122A and 124 of the Act, which read as under:-

122A. Adjudication Procedure:-

- (1) The adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.
- (2) The adjudicating authority may, if sufficient cause is shown at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during the proceeding.

.....

124. Issue of show cause notice before confiscation of goods, etc.—No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—

- (a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;
- (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified



in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned, be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

21. A reading of the afore provisions would show that the statute visualises an adjudication procedure with respect to the proceedings under Chapter XIV of the Act. Section 124 of the Act specifically provides for granting an opportunity of hearing in writing against the grounds for imposition of penalty/confiscation. The Act also requires the noticee to be given a "reasonable opportunity of being heard in the matter". In other words, the principle of *audi alteram partem* is embedded under the statute during the course of the adjudication proceedings. In the light of this, merely for the reason that no statement has been recorded under Section 108, the



respondents cannot be prevented from objecting to the proceedings taken against them. This is especially so, since the statute does not provide for any adverse inference in a situation where the statement is not recorded under Section 108 of the Act. Therefore, the second question, as formulated above, would stand answered against the revenue.

22. The last issue arising for consideration is as to whether the steps under Section 112(b) of the Act could be taken against a person without actual seizure of the gold allegedly smuggled. Here, the adjudication on the afore question requires to be made, after noticing that the proceedings have been taken against the respondents herein solely on the basis of the statements recorded under Section 108 of the Act. In answer to the first question framed as above, we have already found that the statements elicited under Section 108 could not be made use of as a reliable piece of evidence with reference to the provisions of Section 138B(2) of the Act. We have also found that Section 138B is essentially in the form of a procedural safeguard



regarding the admission of statements under Section 108 in evidence. When the safeguards under Section 138B have not been complied with, no question of proceeding under the provisions of the statute arises. Therefore, we are of the opinion that the third question formulated as above does not require to be answered.

On the whole, we find no reason to interfere in the matter, and consequently, these appeals would stand dismissed.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

Sd/-

HARISANKAR V. MENON

JUDGE

In



APPENDIX OF CUS.APPEAL NO.1 OF 2023

APPELLANT' S ANNEXURES :

- ANNEXURE A** **A TRUE COPY OF THE SHOW CAUSE CUM DEMAND NOTICE DATED 13.03.2014.**
- ANNEXURE B** **A TRUE COPY OF THE CORRIGENDUM DATED 02.04.2014 TO THE SHOW CAUSE CUM DEMAND NOTICE.**
- ANNEXURE C** **A TRUE COPY OF THE CORRIGENDEM DATED 22.04.2014 TO THE SHOW CAUSE CUM DEMAND NOTICE.**
- ANNEXURE D** **A TRUE COPY OF THE ORDER IN ORIGINAL DATED 13.04.2015.**
- ANNEXURE E** **A TRUE COPY OF THE APPEAL FILED BY THE APPELLANT BEFORE THE TRIBUNAL WITHOUT EXHIBITS**



APPENDIX OF CUS.APPEAL NO.2 OF 2023

APPELLANT' S ANNEXURES :

- ANNEXURE A** A TRUE COPY OF THE SHOW CAUSE CUM DEMAND
NOTICE NO.S-14/7A/2013 R&I CUS. DATED
13.03.2014.
- ANNEXURE B** A TRUE COPY OF THE CORRIGENDUM DATED
02.04.2014 TO THE SHOW CAUSE CUM DEMAND
NOTICE.
- ANNEXURE C** A TRUE COPY OF THE CORRIGENDUM DATED
22.04.2014 TO THE SHOW CAUSE NOTICE CUM
DEMAND NOTICE.
- ANNEXURE D** A TRUE COPY OF THE ORDER- IN-ORIGINAL
BEARING SL. NO.COC-CUSTM-000-COM-01- 15- 16
DATED 13.04.2015.
- ANNEXURE E** A TRUE COPY OF THE APPEAL NO. C/21661/2015
FILED BY THE APPELLANT BEFORE THE TRIBUNAL
(WITHOUT EXHIBITS)



APPENDIX OF CUS.APPEAL NO.3 OF 2023

APPELLANT' S ANNEXURES :

- | | |
|-------------------|--|
| ANNEXURE A | A TRUE COPY OF THE SHOW CAUSE CUM DEMANDED NOTICE DATED 13.03.2014 . |
| ANNEXURE B | A TRUE COPY OF THE CORRIGENDUM DATED 02.04.2014 TO THE SHOW CAUSE CUM DEMAND NOTICE . |
| ANNEXURE C | A TRUE COPY OF THE CORRIGENDUM DATED 22.04.2014 TO THE SHOW CAUSE CUM DEMAND NOTICE . |
| ANNEXURE D | A TRUE COPY OF THE ORDER IN ORIGINAL DATED 13.04.2015 . |
| ANNEXURE E | A TRUE COPY OF THE APPEAL FILED BY THE APPELLANT BEFORE THE TRIBUNAL WITHOUT EXHIBITS . |



APPENDIX OF CUS.APPEAL NO. 4 OF 2023

APPELLANT' S ANNEXURES :

- ANNEXURE A** A TRUE COPY OF THE SHOW CAUSE CUM DEMAND NOTICE DATED 13.03.2014.
- ANNEXURE B** A TRUE COPY OF THE CORRIGENDUM DATED 02.04.2014 TO THE SHOW CAUSE CUM DEMAND NOTICE.
- ANNEXURE C** A TRUE COPY OF THE CORRIGENDUM DATED 22.04.2014 TO THE SHOW CAUSE CUM DEMAND NOTICE.
- ANNEXURE D** A TRUE COPY OF THE ORDER IN ORIGINAL DATED 13.04.2015.
- ANNEXURE E** A TRUE COPY OF THE APPEAL FILED BY THE APPELLANT BEFORE THE TRIBUNAL WITHOUT EXHIBITS.