



Lawgics

By Nidhi, Advocate



Serial No.: 144
Dt.: 08-08-2023

Section 144 of CGST Act, 2017



<https://chat.whatsapp.com/Ie4VxuhvToe76Us7e5>

CLICK TO JOIN
WHATSAPP GROUP

144. Presumption as to documents in certain cases.

Where any document—

- (i) is produced by any person under this Act or any other law for the time being in force; or
- (ii) has been seized from the custody or control of any person under this Act or any other law for the time being in force; or
- (iii) has been received from any place outside India in the course of any proceedings under this Act or any other law for the time being in force, and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall—
 - (a) unless the contrary is proved by such person, presume—
 - (i) the truth of the contents of such document;
 - (ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
 - (b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

Our Interpretation

Section 144

The term 'document' has been defined in section 2(41) of the CGST Act, 2017 to include:

- Written or printed record of any sort, and
- Electronic record as defined in the Information Technology Act, 2000

The term 'presumption' has not been defined under the GST Act. The dictionary meaning of it is:

- A conclusion made as to the existence or non-existence of a fact
- That must be drawn from other evidence
- That is admitted and proven to be true.

Presumption means "a belief that something is true even though it has not been proved". Presumption is an inference of fact drawn from other known facts, unless there is contrary evidence. Matters that need to be proved are those that are disputed and matters that are not

disputed need not be proved. Proof varies in the degree of evidentiary value available to establish their existence or absence. More serious a matter, more persuasive should be the evidence. Presumption can be understood as an inference of a fact drawn from another known fact.

Where **any document-**

- (a) is produced by any person, or
- (b) seized from the control or custody of any person, or
- (c) received from any place outside India,

and **such document is tendered by the prosecution in Court as evidence**, the court shall-

(a) unless the contrary is proved by such person, **presume-**

- (i) **The truth of the contents** of such documents,
- (ii) **Signatures and attestation** on such documents made by such person.

(b) **Admit the document** as evidence whether it is duly stamped or not, if such document is otherwise admissible.

In general, practice the onus of proving relevance and genuineness of documents produced as evidence is on the person producing the said documents. This section has placed the onus of proving the contrary on the assessee i.e. the assessee has to prove that the documents provided by prosecution are not proper evidence.

Section 145 of CGST Act, 2017

145. Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence.

(1) Notwithstanding anything contained in any other law for the time being in force,—

- (a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
- (b) a facsimile copy of a document; or
- (c) a statement contained in a document and included in a printed material produced by a computer, subject to such conditions as may be prescribed; or
- (d) any information stored electronically in any device or media, including any hard copies made of such information,

shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, 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) In any proceedings under this Act or the rules made thereunder, where it is desired to give a statement in evidence by virtue of this section, a certificate,—

- (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,

shall be evidence of any matter stated in the certificate and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

Our Interpretation

Section 145

The following shall be deemed to be a evidence and shall be admissible in any proceedings without further proof or production of the original (direct evidence):

- (a) a micro film of a document or the reproduction of the image or images embodied in such micro film; or
- (b) a facsimile copy of a document; or
- (c) a statement contained in a document and included in a printed material produced by a computer; or
- (d) any information stored electronically in any device or media, including any hard copies made of such information

The requirement under Section 145(2) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, tablet or even a mobile phone by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. Where the computer happens to be on a system or network and it is impossible to physically bring such system or network to court, then the only means of providing information contained in such electronic record, together with the requisite certificate under Section 145(2).

Where a statement in evidence is sought to be given, Section 145(2) requires a certificate to be produced that identifies the electronic record containing the statement and describes the manner in which it is produced, and gives particulars of the device involved in the production of the electronic record to show that the electronic record was produced by a computer, either 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.

Evidence Act, 1872 provides for a certificate mechanism under Section 65-B(4) to authenticate electronic evidence.

Supreme Court of India in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal has held that Section 65-B(4) is a mandatory requirement to admit electronic evidence unless the original electronic document (e.g., a tablet, laptop or mobile phone with a recording) is produced in evidence through the document/device owner's personal authentication as a witness.

Supreme Court, hence, differentiated primary and secondary evidence standards for electronic evidence where secondary evidence for electronic evidence requires the Section 65-B(4) certificate.

Supreme Court has also put an interesting exception to the Section 65-B(4)'s certificate requirement, when even after applying to the relevant authority holding the electronic document sought to be proved in evidence, if the certificate cannot be obtained, then the production of the same is excusable in law.