

# **DRAFTING MODULE -** **DRAFTING OF PANCHANAMA,** **INSPECTION AND SEIZURE REPORTS**

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# INTRODUCTION

- At the end of this session, you will be able to know -
  - the terms - Inspection, search, seizure and confiscation
  - When to conduct search
  - How to conduct search
  - Drafting Panchanama report
  - Drafting inspection report
  - Seizure and confiscation procedures

# INSPECTION AND SEARCH

- Joint Commissioner (ST) or above authority can authorize any Officer for inspection, search and seizure (Section 67 of TGST Act)
- Condition - If he has the reasons to believe that, in order to evade tax, a person has -
  - ✓ Suppressed any transaction of supply
  - ✓ Suppressed stock in hand
  - ✓ Claimed input tax credit in excess
  - ✓ Violated any of the provisions of the Act and Rules
  - ✓ Any transporter or owner / operator of a warehouse kept goods which has escaped tax payment
- To inspect the places of business of
  - ✓ Taxable person or
  - ✓ Transporter or
  - ✓ Owner / operator of a warehouse

# SEARCH

- Search is a process used by the Tax Departments to gather direct evidence of tax evasion
- Search is intended to achieve two limited objectives (C. Venkata Reddy Vs. ITO (1967) (66 ITR 212) (Mysore HC) -
  - To get hold of evidence which a person is seeking to withhold from assessing authority
  - To get hold of assets representing undisclosed income

# Detention, Seizure and confiscation

## ➤ Detention -

- the action of detaining someone / something or the state of being detained in official custody

## ➤ Seizure -

- legal process in which law enforcement officers take assets from persons suspected of involvement with crime or illegal activity without necessarily charging the owners with wrongdoing.
- Seized property can be returned back once the owners prove it was not involved in criminal activity.

## ➤ Confiscation -

- Action of taking or seizing someone's property with authority

# PANCHANAMA

## ➤ What is a 'Panchanama'?

- Literally “record of observation by five people”
- A document recording certain things -
  - ✓ occur in presence of Panchas
  - ✓ Seen and heard by them
- Record and refresher of memory

## ➤ Importance of Panchanama in Taxation laws -

- of evidentiary value
- Plays vital role in establishing guilt of accused
- Presumption of guilt gets adduced with clear and unambiguous Panchanama

# Legal Provisions

## ➤ Code of Criminal Procedure, 1973

### ■ Section 100(4) -

- Officer / person authorized - call upon two or more independent and respectable inhabitants of the locality

### ■ Section 100(5) -

- Search shall be made in their presence
- No need for the witnesses to attend the Court, unless specifically summoned

### ■ Section 100(6) -

- Search to be made in the presence of occupant or person in charge
- Copy of list is to be provided to occupant or person in charge

### ■ Section 100(7) -

- List of things taken possession - to be provided to the occupant or person searched

### ■ Section 100(8) -

- Rejection by any person called to witness search - offence u/s 187 of IPC (Imprisonment for one month or Rs.200/- fine or both)

# Panchas

## ➤ Qualities -

- Intelligent
- Literate (as far as possible)
- Respectable citizens
- Should possess an understanding
- Impartial nature
- Good antecedents
- Not a minor
- Acceptable to the religious sentiments of the owner of the house
- Free from contagious diseases and infirmities
- No relationship with the place or persons searched
- Not the Complainant or owner of the house searched
- Can be a Government servant



# Panchas

## ➤ Functions -

- Present from time of entry into the premises
- Should have knowledge of the purpose of the search
- Present from beginning to the end of the search
- Initial the documents / records for identification of having seen it at the time of search
- Carefully watch the proceedings in the search

# Panchanama

## ➤ Guidelines for drawl of Panchanama -

### ■ Main contents -

- Heading, time and date
- Names, addresses, S/o. W/o. etc. of Panchas
- Occupation of Panchas
- Age of Panchas
- Residential address of Panchas
- Panchas should be either two or more in number
- Female Panch witness may be included where female members are present in the place of search
- Identify the suspect by taking his full name and other important details

# Panchanama

- Guidelines for drawl of Panchanama - *Contd...*
  - Take signatures of the Panchas and suspect on the Warrant / authorization
  - Give a brief and accurate description of the search carried out
  - Specify descriptively as to what article found, in what manner, its identification marks, size, numbers etc.
  - If documents are found, serially number them
  - In case of voluminous documents - tag or stitch them
  - Seal the seized articles / documents and obtain signatures of Panchas and suspect

# Panchanama

## ➤ Guidelines for drawl of Panchanama - *Contd...*

- If currency notes are found - arrange according to denominations and bundle them
- Ensure no point is left out in the Panchnama
- To be signed by the Panchas, suspect and the Officer on each page along with date
- Time and date of closure of the operation to be indicated
- Panchanama is to be drawn on the spot
- It may be drawn at any nearer place if it cannot be drawn on the spot for reasons of security, peace and tranquility - reasons to be specified in Panchanama
- It is to be written only once. No rough and fair copy.

# Panchanama

- Guidelines for drawl of Panchanama - *Contd...*
  - Neatly and legibly to be written
  - Corrections, if any, must be attested by the Panchas
  - Do not destroy a Panchanama once it is drawn
  - If any differences arise, state reasons in the same Panchanama and continue
  - Take the help of goldsmith in case of seizure of gold

# Panchanama

## ➤ Types of Panchanama -

- For search in the factory / premises of the dealer (without search warrant / authorization)
- For search in the factory / premises of the dealer (with search warrant / authorization)
- For search of residential premises
- During the course of transit checks etc.
- For service of summons, notice, refusal to sign statements etc. by way of pasting on the walls, gates etc.

# Panchanama

- Points to be incorporated in Panchanama -
  - Name, parentage, age, address and occupation of Panchas
  - Date, time and place of proceedings
  - Reason / authority for search or purpose of visit
  - Fact that the Officers have disclosed their identity to the Panchas
  - Name and designation of the Officer leading the team
  - Fact of presence of occupants of the premises to be searched
  - Execution of the search warrant upon the occupant
  - Fact of offering personal search of each member of the search team before commencing search and again after conclusion of search

# Panchanama

- Points to be incorporated in Panchanama - *Contd..*
  - Fact of presence of lady Officer
  - Important events like calling additional Officers / Photographer, detection of large amount of cash etc
  - Details of statutory documents / other records or documents produced for inspection in case of checking
  - Manner in which verification of goods / inputs was done
  - Physical verification of the stock
  - Separate annexure for inventories of records / documents
  - Grounds forming reason to believe that the goods seized are liable for confiscation under the relevant Act or Rules
  - Value, tax and other liabilities of goods seized / detained



# Panchanama

- Points to be incorporated in Panchanama - *Contd..*
  - Every page of records to be serially numbered
  - First and last page of every file / register / book etc. should be got signed by the person on which search warrant was executed or his authorized representative
  - Every loose paper / vital document should be got signed individually from the concerned person from whose seat or cabin the same was recovered, and from the person on whom search warrant was executed or his authorized representative
  - If any portion of the premises, almyrah, safe, store etc is found to be locked and cannot be opened, the same may be sealed. The sealed premises to be searched with fresh search warrant on any following day.
  - A mention of all the above facts to be recorded in the Panchanama

# INSPECTION REPORT

- Statement given to an Officer is not a valid evidence in Court of Law.
- Inspection Report should in the form of Panchaama i.e., evidence report.
- Statement shall be made before at least (2) neutral witnesses
- Under GST, the form prescribed for Inspection Report is Form GST INS-02

**THANK YOU**