

ANNEXURE - I

1. Category and qualification of Counsels:

Counsels are engaged by the department for representing the department before different High Courts/other judicial bodies in cases relating to the indirect taxation. The Counsels engaged by the department will fall into three categories viz-

- a. Junior Standing Counsels
- b. Senior Standing Counsels
- c. Standing Counsels

Qualifications of each category of counsel will be as under:

A. Junior Standing Counsel: In order to be eligible for appointment as Junior Standing Counsel a person should

- i. be enrolled/registered as an advocate with the High Court
- ii. have a minimum experience of three years of handling preferably Customs and Central Excise and Service Tax matters before High Courts or Tribunals

OR

Have been an officer of the Custom & Central Excise Department who retired/resigned from the post of Additional Commissioner of Custom/Excise or below and is enrolled/registered as an advocate in the High Court. Provided that he has not been removed/dismissed or compulsorily retired from service on account of disciplinary action against him and no disciplinary proceeding under service rules or pension rules is pending against him.

B. Senior Standing Counsels: In order to be eligible for appointment as Senior Standing Counsel a person should

- i. be enrolled/registered as an advocate with the High Court
- ii. have a minimum experience of five years of handling preferably Customs and Central Excise and Service Tax matters before High Courts or Tribunals

OR

Have been an officer of the Custom and Central Excise Department who retired/resigned from the post of Commissioner of Customs / Central Excise or above or retired/resigned as Member/Vice President/President of CESTAT/Settlement Commission and is enrolled/registered as an advocate in the High Court. Provided that he has not been removed/dismissed or compulsorily retired from service on account of disciplinary action against him and no disciplinary proceeding under service rules or pension rules is pending against him.

C. Standing Counsels: In a station where counsels do not have sufficient experience to be appointed as Senior Standing Counsels, the senior most among the panel of Junior Standing Counsels of the Department at that station may be designated by the Chief Commissioner of Custom/Central Excise as the Standing Counsel while other Counsels should be categorized as Junior Standing Counsels.

6. Termination of appointment/resignation:

The appointment/empanelment of the Counsel would be terminable on one month's notice in writing by either side without assigning any reason.

7. Duties of the Counsel

The Counsel shall:

(i) appear in the High Court in the cases assigned to him and also appear, if so required on behalf of the Department, in other High Courts, Tribunals, BIFR, AAIFR/ DRT / other Tribunals/ Settlement Commission, Commissioner (Appeals) and other courts and statutory bodies;

(ii) give legal advice to the Department on such civil, criminal and revenue matters pertaining to indirect taxes and such other matters arising in the course of administration of the Department as are referred to him by the officers of the Department including:

- (a) examination and settling of drafts of legal nature;
- (b) drafting of applications, petitions etc. to be filed in courts of law;
- (c) prompt removal/curing of defects in appeals/petitions filed, as may be pointed out by the registry.

(iii) when any case attended to by him is decided against the Department, give his opinion regarding the advisability of filing an appeal from such a decision not later than 5 working days of the order (kuchha copy).

(iv) apply for the copy of the judgement of the Court in a case attended by him on the same day or the next day and provide the same within 10 days of the receipt of the order (excluding the time taken by the Court in preparation of the copy);

(v) if required, render all assistance to the Law Officers, Advocate General of the State Government, Special or Senior Counsel, who may be engaged in a particular case before the Supreme Court, High Courts, Tribunal, etc;

(vi) keep the department informed of the important developments in the case from time to time particularly with regard to drafting, filing of papers, dates of hearing of the case, order of the Court on the date of its pronouncement, supplying copies of judgement etc;

(vii) furnish to the Department monthly statement about the cases represented by him before the High Court or any other authority.

(viii) perform such other duties of legal nature, which may be assigned to him by the Department.

8 Right to private practice

The Counsel will have the right of private practice, which should not however, interfere with the efficient discharge of work of the Department but he shall not advise, hold briefs or appear against the Department before any authority, tribunal or court in matters under the statutes relating to indirect taxes.

7. Retainership

The senior Standing Counsel and Standing Counsel will be entitled to a Retainership of Rs. 6,000/- per month (which includes charges for staff, office rent, postage and all other establishment charges).

8. Clerkage

Clerkage at the rate of 10% of the hearing fee subject to a maximum of Rs.3,600/- in a case or batch of cases before the High Court.

9. Out of pocket expenses

The amount required for court fees at the time of filing a case and other miscellaneous expenses should be paid to the Counsel in advance by the Commissioner concerned. An account of the expenses incurred should be rendered to the Commissioner while presenting the final bill.

10. Perquisite

The reimbursement of telephone expenditure, subject to a maximum of Rs. 1,000/- per month, shall be made by the Commissioner for calls that have been made in connection with Departmental litigation matters only.

11. For appearance before any other Courts, CESTAT, BIFR /AAIFR/ DRT /other Tribunals and other Statutory bodies and authorities.

(a) at headquarters: same as payable for appearance before the High Court.

(b) out of headquarters: when the Counsel is required to go out of headquarters in connection with any litigation matter e.g. for conference with a Senior Counsel/ Special Counsel or with the Law Officer or for appearance in any Courts/Tribunal/other Statutory Bodies etc. outside the headquarters, he will be entitled to a daily fee of Rs.3,600/- per day for the days of his absence from the Hqrs. including the days of departure from, intervening holidays and arrival back at the headquarters. However, no fee will be paid for the day of departure if he leaves headquarters after court hours and for the date of arrival if he arrives at the headquarters before the court hours..

(c) travel/hotel expenses : in addition to the daily fee, the Counsel will be entitled to travel expenses for travel by air (economy class) or first class AC by train. Road mileage for the journey from his headquarters to the airport/railway station and vice versa and from the airport/railway station to the place of his stay out of headquarters and vice-versa will be paid at the rates admissible to Class 1 officers of the Central Government (having basic +NPA +SI in the pay range Rs. 8000/- to Rs. 16399/-). He will also be paid a lump-sum amount of Rs. 600/- as conveyance charges for performing local journey while outside the headquarters. He will also be entitled to actual expenses for stay in hotel, subject to maximum for Rs.1,200/- per day.

drafted, the Counsel shall be paid the full fees in the main case and Rs 150/- only in each of the connected cases.

12.8.3 When substantially different affidavits are drafted in connected but uncontested cases, the Counsel shall get 1/3rd fees in the main case and Rs. 300/- in each of the connected cases.

12.8.4 When the Counsel has drafted the affidavit, petition or ground of appeal in the main uncontested case and has not drafted them in the connected but uncontested cases or the drafts in the connected but uncontested cases are substantially similar to the one in the main case, the Counsel shall get 1/3rd fees in the main case and Rs.150/- in each of the connected cases.

12.9 The fees to the Counsel will be paid on presentation of a stamped receipt, and on submission of copy of the document drafted, if it is a drafting fee and submission of minutes or gist of proceedings, or a copy of order/judgement where it is necessary in case the claim is for appearance fee. The Counsel shall submit his bills within three months from the date on which the fees have accrued.

12.10 The fees will be payable in two stages, 1/3rd fees after substantial work has been carried out and the remaining 2/3rd fees after the case has been decided. If the high court decides that no question of law is involved only 1/3rd of the fees shall be payable to the Counsel.

12.11 Where during the pendency of a proceeding, there is a change of Counsel, a fee commensurate to the work carried out by the outgoing Counsel, not exceeding 1/3rd of the total fee admissible for the case, may be paid to him. In such an event, only the balance of fee payable in the case will be paid to the new Counsel after completion of the case.

12.12 When the Counsel does not argue the case himself but only assists the Law Officer or any other special Counsel, he will be entitled to the same fee as is payable to him as if the case has been argued by him,

12.13 No fee will be admissible for preparation of cases but the Government may consider payment of separate fee for preparation in special cases involving arduous work.

12.14 When cases argued before a single judge are referred to a division bench or to a full bench, separate fee at the prescribed rates will be paid for appearance before each bench.

13. The various terms used in these guidelines will have the following meaning

13.1. Substantial and Effective hearing

A Substantial and effective hearing is one in which either one or both the parties involved in a case are heard by the Court. If the case is mentioned and adjourned or only directions are given or only judgement is delivered by the Court, it would not constitute a substantial and effective hearing.

13.2 Uncontested case

Cases shall be deemed to be uncontested if these are withdrawn by the plaintiff/appellant or are dismissed in limine or are otherwise decided by the Court ex-parte. Covered cases shall also be deemed to be uncontested cases.

Proforma - A

Particulars to be furnished by an advocate/other eligible person applying for appointment as Jr./Sr/Standing Counsel.

1. Name of the person
2. PAN - Permanent Account Number
3. Father's Name
4. Date of Birth
5. Address for correspondence
6. Permanent address
- 7* Educational Qualification
8. Category of counsel for which applied (Jr. Standing Counsel/ Sr. Standing Counsel)
- 9*. Date of enrollment in High Court as counsel.
- 10*. Date of empanelment as member of Bar Council of High Court.
11. If partner in a firm, name/names of the firm and other partners.
- 12*. Number of cases relating to indirect taxes dealt with during last 3 years as an Advocate.
13. Number of cases published in Journals/Newspapers etc.
14. Income from professional practice (copy of the latest IT return to be attached)

Verification

I, _____ D/o/S/o _____
do hereby declare that what ever has been stated in the above application is true to the best of my knowledge and belief.

Signature.

Dated :

Place :

* Applicant to submit documentary proof with respect to aforesaid items/Information.

Proforma- B

Particulars/evaluation report of a person applying for appointment as Jr./Sr./Standing Counsel.

1. Name :
2. Date of enrollment in High Court as counsel :
3. Date of empanelment as member of Bar Council of High Court :
4. Number of cases relating to Indirect Taxes dealt with during last 3 years as an Advocate. :
5. Number of cases published in Journals/ Newspapers etc.
6. Income from professional practice
7. Chief Commissioner of Custom/ Excise recommendations based on the cases dealt by the applicant with regard to flair relating to Indirect Tax knowledge emanating from the presentation by the Counsel and other factors. :

Customs /
Central Excise)

(Chief Commissioner of

Proforma - D

Annual performance report of the appointed Counsels

1.	Name of the Chief Commissionerate	
2.	Name of the Counsel	
3.	Category	
4.	Date of Birth	
5.	Date of Appointment & CBEC's ref.no.	
6.	Date of Expiry of Tenure	
7.	Ref. No. of CBEC's Sanction letter vide which last renewal was granted	
8.	Number of appeals handled during the period under report	
9.	Number of appeals out of 8 above decided by the High Court a. in favour of the department b. against the department	
10.	Number of Writ Petitions handled during the period under report	
11.	Number of Writ Petitions out of 10 above decided by the High Court a. in favour of the department b. against the department	
12.	Number of cases/appeals handled before the CESTAT/other courts	
13.	Number of cases out of those in Col.12 above, decided a. in favour of the department b. against the department	
14.	General Assessment of overall performance of the Counsel	

(Chief Commissioner of

Customs /
Central Excise)

Part - III

(To be filled by the Chief Commissioner of Customs/
Central Excise/Director General)

14.	Are you satisfied with the performance of the Counsel	
15/	Does he/she take keen interest in his work and is generally alert and responsive in Department's interest in various litigation entrusted to him/her. Specific comments should be given about his/her promptness in a. Informing the department from time to time regarding hearing of cases, supply of copies of judgement etc. b. Taking steps for vacation of sisy	
16.	Would you recommend his/her continuance	
17.	Any other remarks regarding performance of the counsel.	

Chief Commissioner of
Custom/Central
Excise/Directors General
