OFFICE OF THE CHIEF COMMISSIONER OF
CENTRAL EXCISE, CUSTOMS & SERVICE TAX,
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Central Excise, Customs and Service Tax, Kerala Zone is proposing to empanel additional Senior / Junior Standing Counsels into the Panel, for handling cases of Indirect Taxation cases before various High Courts, Tribunals and other Courts for a period of three years.

The process of empanelment of Senior / Junior standing Counsels in line with CBEC instructions dated 5/12/2007 has been initiated under Cochin, Trivandrum and Calicut Central Excise, Custom House, Cochin and Custom (Preventive), Cochin, Commissionerates, for cases relating to Central Excise, Customs and Service Tax.

Willingness from eligible advocates well versed in Customs, Central Excise and Service Tax matters who handle the cases in High Courts, Tribunals or other Courts are hereby invited. The eligible advocates may submit their willingness in the prescribed Proforma 'A/A-1' to the Chief Commissioner of Central Excise, Customs & Service Tax, C.R. Building, I.S.Press Road, Cochin-18 **on or before 30th July ,2016.**

The procedure for appointment of Counsels and Proforma 'A/A-1' is uploaded on website at **'www.cenexcisekochi.gov.in'**

(Y.C.S. SWAMY)
ADDITIONAL COMMISSIONER (CCO)

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.

ANNEXURE-I

The Standing Counsel so designated shall perform the function of arguing cases before the Hon'ble High Court/CESTAT/other forums in the absence of a Senior Standing Counsel.

2. **Appointment of Counsels.**

2.1 For the purpose of appointment, the Chief Commissioner of Custom/Central Excise will call for applications in **Proforma –A & A-I** (as applicable), either by advertisement in local newspapers, or from the Bar Council of High Court or otherwise. Terms and conditions of appointment should be in accordance with Annexure I & II as enclosed.

2.2 Particulars of the applicants' expertise in handling indirect tax matters by the applicant will be examined by the Chief Commissioner of Custom/Central Excise matters and an evaluation report along with recommendation of the Chief Commissioner concerned will be sent to the Board in **Proforma -B**

2.3. The First appointment of each Counsel shall normally be for a period of three years.

3. **Performance Review:**

The following procedure shall be adopted for reviewing performance of the Counsels appointed by the department:

a. The Commissioner of Customs /Central Excise having jurisdiction over a case shall submit a half yearly report to the Chief Commissioner in **Proforma-C** in respect of the cases represented by the Counsels.

b. On the basis of the reports received from the Commissioners, the Chief Commissioners will review the performance of the appointed Counsels every year before 30th June of each year and send an annual report to the Board in **Proforma-D**.

4. **Renewal of appointment :**

4.1 Proposals for renewal of terms of the Counsels should be submitted to the Board at least 3 months before the expiry of the existing term.

4.2 The renewal of a term of a Counsel can be made for a period of three years if his performance is found to be satisfactory. Before making recommendation for

renewal of appointment of the Counsel, the Chief Commissioner should necessarily make an evaluation of the performance of the Counsel during the preceding term and forward it to the Board alongwith the proposal for renewal in **Proforma –E.**

5. **Allocation of cases to Counsel:**

The Chief Commissioner of Customs/Central Excise will be overall in charge of entire litigation work on behalf of the Commissionerates falling within his jurisdiction. In respect of
cases taken up by the DGDRI/DGCEI, the DG concerned will be the incharge. Allocation of cases to the Counsel may be made by the Chief Commissioner/Director General or by the Commissioner/Director authorized by them.

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.

If the counsel happens to be a partner of the firm of lawyers or solicitors, it will be incumbent on the firm, not to take up any case against the Department in the same High Court, before any authority, tribunal or any case arising in other courts out of those cases e.g. appeals and revision in the High Court or the Supreme Court.

ANNEXURE – II

1 **Schedule of Fees and allowances**

The fees and allowances for Senior Standing Counsels are given hereunder: The Standing Counsels and Junior Standing Counsels shall be entitled to only 1/3rd of the amount specified against each item of work (except item no. 7). The Junior Standing Counsel shall not be entitled to retainership payable to Sr. Standing Counsel and Standing Counsel mentioned at S.No.7 below.

1. For appearance in the High Court	
Appeals under section 130/130A of the Customs Act 1962/Section 35G/35H of Central Excise Act, 1944 /Finance Act 1994/ Civil or Criminal Writ Petition under Articles 226 and 227 of the Constitution/ orders made in such Petition, including appearance at admission Stage/ for cases before other Authorities	**Rs.4500/-**

However, for each substantial and effective hearing, following the first hearing ,an additional fees of Rs.2000/- per substantial and effective hearing may be paid as refresher fees.

2. Certificate of fitness	**Rs.1500/- (for each application)**
3. For Civil Miscellaneous Application	**Rs. 1500/- per case**
4. For Civil or Criminal revision Petition	**Rs. 2100/- per case**
5. For drafting pleadings, written statements in suits,counter affidavits/returns/answers pleading to the writ petition, grounds of appeal, etc. application for leave to appeal to Supreme Court ;	**Rs. 1500/- per case**
If substantially identical affidavits,written statements etc.are drafted in connected cases, only one drafting fee will be payable in the main case and no separate drafting fee will be payable in connected cases.	
6. Written opinion Other than what is referred in Para 7(iii) of Annexure I	**Rs. 900/- per case**

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 I 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.

12.1 General

The rates specified above are primarily applicable to Central Excise/Customs/Service Tax cases but will apply mutatis mutandis to cases relating to other matters assigned by the Department. In all cases effective appearance is necessary for the Counsel to claim fee.

12.2. No fee will be payable in cases where no legal work is required to be done. For example, cases in, which the interest of the Department is to be watched pending instructions, the cases involving transmission of records to the Supreme Court, inspection of the Court record for ascertaining the position of the case or other information needed.

12.3 If the Counsel appears at the instance of the Union of India or for parties other than the Union of India whose scales of fee are not inconsistent with that of the Union of India, he will be entitled to only one set of fees.

12.4 Appeals, revision or petitions arising from one common judgement or order will be considered together as one case if they are heard together.

12.5. Uncontested matters.

In uncontested cases, the fee shall be 1/3rd of the fees otherwise payable but if such a case is later on restored and decided in contest, the remaining 2/3rd of the fee will be payable. A case shall be regarded as contested when a decision is given after hearing arguments on both sides. The case shall be deemed to be uncontested if the court decides that the case is a covered one. For example if the court follows its own judgement or judgement of the Supreme Court, the case is considered to be a covered one. In case of any dispute, the Chief Commissioner/Director General/Commissioner/Director shall decide whether the case is uncontested or not.

12.6 No fees for adjournment

No fee will be payable to the Counsel if an advance notice about the adjournment has been issued or the case has been adjourned at his request due to the reasons personal to him.

12.7 Late submission of certified copies of the judgement:

30% of the fees payable to the Counsel shall be deducted if the Certified copy of the judgement is not handed over to the Commissioner/Director of the Department within ten days (excluding the time taken by the Court) from the date of judgement.

12.8 Where there are two or more cases (but not more than 10 cases) involving substantially identical questions of law or facts, one such case will be treated as the main case and the others as connected cases. The fees in such cases will be regulated as provided in succeeding paras, irrespective of the fact whether or not such cases are heard together.

12.8.1 When the Counsel files separate and materially different affidavits, applications or grounds of appeal etc. in more than one case but the argument is heard in the main case and the other cases are decided accordingly, the Counsel shall be paid the full fees in the main case and Rs.200/- for each of the connected cases.

12.8.2 When the main case has been heard as in para 12.8.1, but in the connected cases either affidavit or grounds of appeal or petition similar to the one in the main case has been

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 connested 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.

13.3 Covered cases

Where an identical issue stands decided by the same High Court or by the Supreme Court and the judgement in the relevant case is squarely based on such earlier decision of the same High Court or by the Supreme Court, the case shall be deemed to be a covered case.

13.4 *Substantial work*

Hearing of applications u/s 130/130A of the Customs Act/Sec 35 G/Sec 35 H of the Central Excise Act and the Finance Act,1994 shall be treated as substantial work. Where a case has been admitted by the court after hearing of preliminary objections or filing of affidavits/counter affidavits etc. by the counsel, substantial work will be deemed to have been carried out.

13.5 Monthly fixed cost

Charges such as retainership fees, telephone charges and such other fixed charges, if any, payable to a Counsel shall be borne by one Commissioner only, so nominated in this regard by the Central Board of Excise and Customs .

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)

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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 A-I

Proforma for application by officers who have retired from the Custom and Central Excise Department or retired/resigned as Member /Vice President/ President CESTAT/ Chairman /Member of Settlement Commission

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. Date of joining Customs and Central Excise Department
9. Designation and office address of the last post held
10. Date of retirement/resignation from the service
11*. Date of enrollment in High Court as Counsel
15. Date of empanelment as member of Bar Council of High Court.
13 If a partner in a firm, name/names of the firm and other partners.
16. Category of counsel for which applied (Jr. Standing Counsel/Sr. Standing Counsel).

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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. I further declare that I have not been removed from the service due to any disciplinary proceeding and no disciplinary proceedings under service rules or Pension Rules are pending against me as on date.

Signature

Dated:

Place :

* Applicant to submit documentary proof with respect to aforesaid items/information