



राष्ट्रीय मुनाफाखोरी-रोधी प्राधिकरण(जीएसटी)
(राजस्व विभाग, वित्त मंत्रालय, भारत सरकार)
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**NATIONAL ANTI-PROFITEERING
AUTHORITY(GST)**

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OFFICE MEMORANDUM

The undersigned is directed to forward the enclosed Guidelines for "Empanelment of advocates/law firms for representing and assisting National Anti-Profiteering Authority (NAA) and the Director General of Anti-Profiteering (DGAP) before various Courts/Tribunals etc." formulated and duly approved by the National Anti-profiteering Authority on 20.07.2020. The said Guidelines are to be publically circulated through the Authority's official Website. A copy shall also be sent to the Director General, Directorate General of Anti-Profiteering for perusal.

For and on behalf of
National Anti-profiteering Authority

(A.K. Goel)
Secretary, NAA

Guidelines for empanelment of advocates/law firms for representing and assisting National Anti-Profitteering Authority (NAA) and the Director General of Anti-Profitteering (DGAP) before various Courts/Tribunals etc.

In exercise of the powers conferred by sub-section (3) of section 171 of the Central Goods and Services Tax Act 2017 ('the Act') read with Rule 126 of the Central Goods and Services Tax Rules, 2017 and Para (6), Para (8), Para (39) and Para (40) of the Procedure and Methodology determined by the NAA (the 'Authority') under Rule 126 of the Central Goods and Services Tax Rules, 2017, the Authority hereby frames the following guidelines to provide the manner and to regulate the procedure for empaneling the advocates to represent and assist the Authority and DGAP before the various courts/tribunals etc. and for determination of fee/payment/remuneration payable to such advocates. These guidelines shall supersede all existing instructions in this regard, if any.

1. Definitions

For the purposes of these Guidelines, the terms used will have the following meaning;

- (1) 'Advocate' means an advocate, entered in any roll of advocates under the provisions of the Advocates Act, 1961 (25 of 1961);
- (2) The competent authority shall be the Authority or any officer so designated by the Authority.
- (3) The court shall mean and include any Civil or Criminal Court or Tribunal or High Court or Supreme Court.
- (4) 'Effective Hearing' shall mean a hearing in which either one or both or all the parties involved in a case are heard by the court. If the case is only mentioned and adjourned or only directions are given or judgment is pronounced, it would not constitute an effective hearing for the purposes of these guidelines but would be non – effective hearing.
- (5) The term 'similar cases' shall mean two or more cases in which identical or substantially similar questions of law or facts are involved.

2. General

- a) The Advocates shall be engaged in cases where the Authority is a party.
- b) The size of the panel and number of Advocates in panel shall be determined by the Competent Authority from time to time based on the requirement and quantum of work. The volume of work shall be assessed on the basis of the pending cases in the preceding year and the fresh cases likely to be added in the succeeding year.

- c) Every panel shall consist of Advocates from diversified fields viz, constitutional law, civil law, criminal law, commercial law and taxation law etc. depending upon the expertise, experience, performance and conduct of advocates in general or experience in dealing with cases under the Act or cases of the Authority, if any, in particular. Preference shall be given to the Advocates having expertise and experience in the cases under the act.
- d) The Advocate shall not necessarily be empaneled for specific court and shall accept the work assigned to him and shall not refuse to accept any work without reasonable cause.
- e) Refusal by any advocate to accept any work otherwise than on grounds of conflict of interest, may entail removal of such advocate from the panel.
- f) The empaneled Advocates will not delegate cases and shall themselves deal with the same. They may have to coordinate and work with designated Senior Advocates, if any, engaged in the case as well as with the officers of the Authority, if required.
- g) The advocates empaneled under these guidelines shall not be employees of the Authority and therefore, shall not be eligible for any benefits available to its employees.
- h) The empaneled Advocate shall maintain absolute secrecy and confidentiality about the cases of the Authority as required under the Act and rules made thereunder.
- i) The advocates shall in full accept the terms and conditions of the empanelment as determined by the Authority from time to time.
- j) These guidelines shall also be applicable to the designated Senior Advocates of the High Courts and Supreme Court for all purposes except the requirement of empanelment.
- k) In case of empanelment of Law Firms, all the terms and conditions for empanelment of the individual Advocates shall apply *mutatis mutandis* to them.
- l) If required and considered appropriate by the Competent Authority, Attorney General of India/Solicitor-General of India/Additional Solicitor General/Advocate General/Designated Senior Advocates may be engaged to argue the cases on behalf of the Authority and DGAP keeping in view the urgency and importance of a particular matter. They shall be engaged on case to case basis with the approval of the Competent Authority.

3. Tenure/term of Empanelment

The initial empanelment will be for three years or until further orders whichever is earlier. Performance of empaneled advocates shall be reviewed on annual basis. However, on completion of the term and satisfactory performance of the advocate, the empanelment may be renewed for a period of another three years by the Authority. The Authority reserves the right to terminate the empanelment of any advocate at any time.

4. Eligibility for Empanelment

- a) The Advocates should be familiar with various branches of law especially those concerning indirect taxation, constitutional law and commercial law etc.
- b) In addition to above, the Advocates are required to have the minimum professional/court practice experience as under:
 - (i) For empanelment for the Supreme Court of India- 10 yrs. experience in Supreme Court.
 - (ii) For empanelment for the High Court in India- 7 yrs. experience in High Court.
 - (iii) For empanelment for the Subordinate Courts/Tribunals- 5 yrs. experience in Subordinate Courts/Tribunals,

Provided that the Competent Authority may relax the above conditions at its discretion, if otherwise found suitable in certain cases,

- c) For considering empanelment for the Supreme Court, generally those Advocates who are regularly practicing before the SC including Advocates-on-Record of the Supreme Court would be considered, if they are otherwise found to be competent and suitable.

5. Payment of Fee and Other Conditions

- a) The fee payable to the Advocate shall be governed by the Schedule of fee annexed with these guidelines as amended from time to time.
- b) The advocate empaneled/engaged shall claim the fee for effective hearings only. For this purpose, a self-certification by the advocates by way of a proceeding note, in order to determine whether it was an effective hearing or not should be sufficient. However, in exceptional circumstances, the Authority may allow payment of fee to the engaged/empanelled lawyer on the basis of self-certification, in respect of the outstation hearings other than effective hearings, where such hearing cannot be held for reasons beyond the control of the empanelled advocate.
- c) Where two or more cases involves substantially identical or similar questions of law or facts, one of such cases will be treated as a lead case and others as identical/connected cases and the advocate/counsel shall be paid full fee for the main case and 25% of the fee of main case, for each of the identical or similar/connected case subject to a maximum of 10 cases only.
- d) If a Senior Advocate or an Advocate is required to appear in a court/tribunal which is situated at a place other than the place where he ordinarily practices he shall be entitled to travel by air (economy class) or first class by train, & road mileage for the journey from his office to the airport/railway station and vice-versa and from the airport/railway station to the place of his stay, He will also be paid conveyance charges on actuals for performing local journey while outside Delhi. He will also be entitled to the actual expenses for stay in Hotel as are admissible to a Class I officer of the Authority.

- e) The Authority shall have the power in exceptional cases to order payment of fee more than the fee mentioned in the schedule keeping in view the importance of the matter and the labour and effort put in by the advocate in a particular case. It shall also have the power to fix the fee for eventualities which have not been mentioned in the schedule or till the appropriate amendment is made in these guidelines by the Authority.
- f) No retainer fee shall be paid to any panel Advocate/law firm merely because such advocate/firm has been empaneled.

6. Procedure for Empanelment

The Competent Authority will consider the bio-data for empanelment only on merit after due notice in this regard is published on the website of the Authority. While considering the request from the advocates, following points shall be considered:

- a) Length of practice and specialization in the area of law concerning the Authority.
- b) Proper and adequate infrastructure of an advocate such as office premises, number of junior advocates, assistants, clerks, fax, mobile phone, fixed phone, internet connection etc.
- c) Annual income-tax return filed with the Tax Authorities.
- d) Track record and integrity.
- e) If considered necessary, an enquiry from the respective Bar Council/Bar Association about the claims and conduct of the advocate to be empaneled can also be made and credentials may be verified.
- f) If the advocate is empaneled by other authority/regulators/organizations, opinion of those organizations may be obtained.

The above list is illustrative and not exhaustive. The Competent Authority may also consider any other factor relevant for empanelment.

7. Documents to be obtained from the Advocate

The Advocates will be required to furnish their Bio-data as per the format given in **Annexure –**

A. The attested copies of the following documents shall be required to be submitted with the application;

- a) High School certificate in support of age
- b) Registration with Bar Council
- c) Identity card issued by Bar Association / Bar Council
- d) Copies of empanelment with other Organizations (if any)
- e) Certificates in support of educational qualifications

- f) An undertaking from the advocate to the effect that all information furnished by him is correct.

8. Communication of Empanelment

After a decision to empanel the advocate is taken, a communication in writing to this effect shall be sent to the Advocate as per **Annexure-B** with acknowledgement and acceptance due.

The process of empanelment shall be complete when the Authority receives an acceptance letter from the advocate.

9. Right to Private Practice and Restrictions

- a) An advocate shall have the right to private practice which should not, however, interfere with or be in conflict with the efficient discharge of his duties as an empaneled advocate of the Authority.
- b) An advocate shall not advise any party or accept any case against the Authority in which he has appeared or is likely to be called upon to appear or advice.

10. Disablements

Disablement on the part of the Advocate shall mean and include any of the following:

- a) Giving false information in the application for empanelment;
- b) Handing over the brief or matter to another advocate without prior written permission of the Authority;
- c) Failing to attend the hearing of the case without sufficient reason and prior information;
 - (i) Not acting as per Authority's instructions or going against specific instructions;
 - (ii) Not returning the brief when demanded or not allowing or evading to allow its inspection on demand;
- d) Misappropriation of the Authority's funds or earmarking, using the same towards his fee without Authority's permission.
- e) Threatening, intimidating or abusing any of the Authority's employees, officers/ or representatives;
- f) Making any of his associates or juniors to appear on behalf of any of the opposite parties in cases / appeals, related to the Authority.
- g) Committing an act Tantamounting to contempt of court or professional misconduct;

- h) Conviction of the Advocate in any offence resulting into arrest or detention or disbarment by the Bar Council;
- i) Passing on information relating to Authority's case to the opposite parties or their advocates which is likely to cause damage to the Authority's interests;
- j) Giving false or misleading information to the Authority relating to the proceedings of the case;
- k) Frequent adjournment being obtained or not objecting to the adjournment moved by other party without sufficient reason.

Empanelment shall be liable to be cancelled due to occurring or any of the above disablements on the part of the Advocate.

11. Engagement of Consultants: Apart from the lawyers empanelled with the Authority, the Authority may engage any legal/taxation/technical expert for her/his services on a contractual basis. The Authority may determine the scope and objectives of such engagement along with the eligibility criteria and the remuneration to be paid to the consultant engaged and the process of such engagement to be followed thereof.

12. Removal of Difficulty

In the matter of implementation of these guidelines, if any, doubt or difficulty, arises or the interpretation of any of the clause of these guidelines is required, the same shall be placed before the Authority and the decision of the Authority thereon shall be final.

ANNEXURE 'A'

FORMAT OF BIO DATA FOR ADVOCATE

- 1) Name
- 2) Date of birth.
Age (as on)
- 3) Educational qualifications
- 4) Date of Enrolment, Name of Bar Council
(enclose copy of enrolment certificate)
- 5) Period of practice
- 6) Details of Experience/practice
- 7) Area of practice
- 8) Specialization, if any (constitution/taxation etc.)
The details of a few important cases the Advocate has dealt with/handled and reported Judgment if any.
- 9) Whether Central Govt. counsel/pleader (indicate period)
- 10) Brief list of clients e.g. Govt/organisations/Commissions/PSU's, if any.
- 11) The courts where the Advocate is regularly practicing

(Enclose Bar Association Membership Certificate)

- 12) Date of enrolment as an Advocate-on-record of the Supreme Court and Registration No.
- 13) Income Tax PAN number
- 14) Experience of Indirect Taxation Law

A brief note on suitability for empanelment.

I declare that I have never been penalized by any bar council in any Disciplinary Proceedings. I also undertake to maintain absolute secrecy about the cases of the Authority as required under the Act and Rules made thereunder.

Signature of Advocate

Address Office &
residence/chamber)

Tel No.

Mobile No.

Fax No.

E-mail.

ANNEXURE 'B'

To,

Mr _____

Advocate

Dear Sir,

Sub: Empanelment as Authority's Advocate

This is with reference to your application dated _____ wherein you have evinced interest for empanelment as an advocate with the Authority, We are pleased to inform that your request has been considered favorably and you are advised to give your assent for empanelment on following terms and conditions (A copy of guidelines enclosed):

- (i) You will abide by Authority's terms and conditions and you will not claim any retainer fee or employment in Authority's service,
- (ii) You will not accept any case against the Authority,
- (iii) You will take necessary steps to protect the interest of the Authority in matters entrusted to you from time to time.
- (iv) Empanelment does not confer any right or claim that you alone should be entrusted with the Authority's work.
- (v) You will personally deal with the case assigned to you in addition coordinating and working with designated Senior Advocate, if any, engaged in some matter.

- (vi) The Authority may at any time at its discretion withdraw from you any proceedings matter, brief and may discontinue you as Authority's advocate without assigning any reason thereof and without paying any further fees,
- (vii) You will keep Authority informed about the developments in the matters entrusted to you.
- (viii) Unless a case is specially assigned to you by the Authority, you will not on your own receive Summons / Notices of the Authority's matters and even if you receive, if no Vakalatnama is given to you, you shall not otherwise deal with such cases. However, you will immediately inform the Authority in this regard.
- (ix) You shall not use Authority's name or symbol logo in your letter heads, sign boards name plates etc.
- (x) In case of any misconduct, the Authority will take appropriate action against you which includes filing complaint with Bar Council and recovery of financial loss caused to the Authority due to your misconduct.
- (xi) In case of initiation of any disciplinary proceedings/ criminal proceedings against you. the Authority may remove you from the panel even without waiting for the conclusion of such proceedings.
- (xii) Your performance will be reviewed on yearly basis and if your services are not required' found upto the mark, Authority may remove you from panel and the cases/matters entrusted to you will be taken back from you,
- (xiii) You are required to maintain absolute secrecy about the cases of the Authority as required under the Act, relevant rules and regulations and you shall not divulge any details to an outsider or opponent as the case may be without written consent of the Authority.
- (xiv) You are requested to return the duly signed duplicate copy of this letter indicating your unconditional consent.

We look forward for better cooperation and hope for good relations with you.

Yours faithfully

(Authorized Signatory)

Annexure 'C'

SCHEDULE OF FEES

1. FOR ATTORNEY GENERAL. SOLICITOR GENERAL ADDITIONAL SOLICITOR GENERAL (ASG) AND SENIOR ADVOCATE

Sr.No	Name of Advocate	<u>FEES</u>
1	Attorney General of India and Solicitor General of India	As per the Terms & Conditions discussed with the Ld Officers, on a case-to-case basis.
2	Senior Advocate (as defined under the Advocates Act, 1961 and Bar Council of India Rules) & Government Law Officers (ASGs)	At a Fee Up to Rs 2,20,000/- (Rupees Four Lakh & Forty Thousand only) {per appearance. Including other charges of conference fee and clerk age etc.}

II. FEES FOR ADVOCATE/ADVOCATE ON RECORD (AOR)/LAW CATEGORY OF SERVICES.

Sr. No	Category of services	SUPREME COURT	HIGH COURT	ANY OTHER CIVIL OR CRIMINAL COURT OR TRIBUNAL
1.	For effective hearing	Upto Rs. 25,000/-	Upto Rs. 15,000/-	Upto Rs. 10,000/-
2.	Conference Fee	Upto Rs. 5,000/-	Upto Rs. 5,000/-	Upto Rs. 3,000/-

3.(a)	Drafting / vetting charges	<u>SLP/Appeal</u> Upto Rs. 25,000/-	<u>WP/LPA</u> Upto Rs. 25,000/-	<u>Suit/Complaint</u> Upto Rs. 15,000/-
3.(b)	Drafting / vetting of reply Affidavit/Counter Affidavit	Upto Rs. 25,000/-	Upto Rs. 25,000/-	Upto Rs. 15,000/-
4.(c)	Misc. Application / Misc. Affidavit	Upto Rs. 5,000/-	Upto Rs. 5,000/-	Upto Rs. 2,000/-
5.(d)	Clerkage	Upto 10% of fee subject to a maximum of Rs. 1800.		