

Improving the quality of Departmental Representation before CESTAT

Improving the quality of Departmental representation & upgrading the level thereof before the Tribunal is a priority area and therefore Board had conveyed its decision vide D.O.F. No.390/Misc/411/07-JC dated 7th January 2008 to the Chief Departmental Representative that the following types of cases shall be taken up by the Joint CDRs before the Tribunal as far as possible:

- (i) Cases involving revenue of ₹ 3 Crores and more in Central Excise, ₹ 1 Crore and more in Customs and ₹ 50 lakh and more in Service Tax. For this purpose, total revenue, i.e. aggregate of the amount of duty/tax, penalty and interest (wherever quantified in the order), fine etc. will be the criteria.
- (ii) All matters before the Larger Benches. However, in such cases, the Jt.CDRs may take the assistance, if necessary, of the SDR/JDR who represented the Department before the Referral Bench.
- (iii) All matters remanded by the Hon'ble Supreme Court or High Courts.
- (iv) All cases involving important question of law, cases having recurring revenue implication and cases having all India ramifications.
- (v) Any other case, as may be assigned by the CDR.

2. Engagement of Special Counsels in cases involving complexities of law / high revenue stake/ having all India ramifications

A panel of retired officers of the department as Special Counsels was constituted in Aug 2006 (further expanded in 2008) to defend the cases of Revenue with their specialized knowledge in respect of cases involving complexities of law / high revenue stake/ cases involving all India ramifications. The Chief Commissioners may assign the cases to them in accordance with the guidelines laid down in this regard. The Commissioners may take stock of cases of the nature as specified above and recommend to the Chief Commissioner concerned for the engagement of the special counsel out of the said panel. The Chief Departmental Representative may also send his recommendations to the Chief Commissioner concerned for engagement of special counsels, if need be. The Chief Departmental Representative will also provide input to the Chief Commissioners in annual performance review of such special counsels.

3. Briefing the Departmental Representatives / Special Counsels by well conversant officers of the Commissionerate in important matters

Board further reiterates that well conversant officer(s) should be sent by the Commissioners to brief the Departmental Representative / Special Counsels in important matters for effective presentation of the case before the Tribunal. The Chief Departmental Representative / Joint Chief Departmental Representative should bring to the notice of the Chief Commissioners concerned, with a copy to Member (L&J), any instance of failure on the part of the Commissioner to send well conversant officer for briefing whenever it was called for. The CDR/Jt.CDR should undertake a review of the "briefing outcomes" on monthly basis in this regard.

4. Filing of written submissions in important matters:

Board desires that in every important case, a written submission should be filed before the Bench by the DR or the Special Counsel concerned. If such a submission has not been filed for any reason, then a suitable note bringing up the submission in the case file should be placed for review before the JCDR by SDR/JDR and before CDR where JCDR has appeared before the bench.