

# CLARIFICATION ON PRE-DEPOSIT PAYMENT METHOD – CASES IN CENTRAL EXCISE AND SERVICE TAX — FAQs

## Prologue

*Five years into the introduction of GST, yet litigation pertaining to the old Central Excise and Service Tax Law have yet to come to a close. This is due to the fact that erstwhile S. 11A of the Central Excise Act, 1944 and S.73 of the Finance Tax Act, 1994 (Service Tax) prescribe the time limit for issuance of Show Cause Notices (maximum of 5 years from the relevant date) only and the time limit for passing orders, though specified in the said act(s) are not legally binding, inasmuch the words “where it is possible to do so” appear in S. 11A(11).*

*In such a context, where the person has been served with an order under Service Tax, can he use the Form GST DRC-03 (or popularly DRC 03 Challan, under GST Law) for payment of such pre-deposit under erstwhile laws? This has been done by many a person, especially in cases involving CENVAT Credit disallowances under erstwhile laws, where such DRC 03 for pre-deposit has been paid by the Appellants, using e-credit ledger under GST Law.*



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## Why this Clarification?

It has been brought to the notice of the Board that appeals have been rejected by some Commissioner (Appeals) for non-compliance with pre-deposit requirements u/s 35F of the Central Excise Act, 1944 (CEA) and Sec. 83 of the Finance Act, 1994 r/w/s 35F of the CEA, where such payments have been made through Form GST DRC-03 on common GST portal, by holding that it is not a prescribed method of payment of such pre-deposit.

## Which case got the dice rolling on this issue?

The issue had also been referred to the Board by the Hon'ble High Court of Mumbai in *Writ Petition No. 6220 of 2022 in the matter of Sodexo India Services Pvt. Ltd Vs. Union of India and Ors.*, with directions to examine and issue suitable instructions in this regard.

What was the observation of the Hon'ble High Court of Mumbai in the case of Sodexo India Services Pvt. Ltd Vs Uol and Ors ?

## The observation of the Hon'ble High Court of Mumbai is as follows –

“...Para 6 We find that this is a matter that requires to be resolved by the Central Board of Indirect Taxes and Customs (CBI & C). From the affidavit filed by Mr. Lal, it appears that many appellants/assesseees were paying the pre-deposit under Section 35F of the Central Excise Act, 1944 through service tax challans, whereas few appellants/assesseees were using DRC-03 mode under CGST Act, 2017. This, in our view, could be for various reasons. It appears that this problem has been taken up by the CBI & C with the Principal Chief Commissioner, Mumbai CGST & CE Zone by a letter dated 3rd June 2022. The subject itself states “Non-acceptance of pre-deposit paid through Form GST DRC-03 for appeal under Service Tax law-Request for issuance of instructions to accept such payment as no other option available for making the pre-deposit before filing of appeals-reg.” Paragraph 2 of the said letter also reads as under : 2. Vide said representation, the party has mentioned in their letter that the numerous appeals have been rejected on the ground that the payment made for pre-deposit mandatory under Section 35F of the Central Excise Act, 1944 through CGST cannot be accepted and hence, the appellants have failed to comply with the provisions of the Central Excise Act,

1944 read with Section 83 of the Finance Act, 1994.

...

**Para 8** *Therefore, it appears that the confusion seems to be due to no proper legal provision to accept payment of pre-deposit under Section 35F of the Central Excise Act, 1944 through DRC-03. Some appellants are filing appeals after making pre-deposit payments through DRC-30/GSTR-3B. In our view, this has very wide ramifications & certainly requires the CBIC to step in and issue suitable clarifications/guidelines/ answers to the FAQs. We would expect CBI & C to take immediate action since the issue has been escalated by Mr. Lal over 8 months ago*

## Observations of the CBIC on this issue of pre-deposit?

The matter has been examined by the board, which observed as follows - It may be seen that Form GST DRC-03 is prescribed for payment of tax, interest, penalty u/s 73(5) / (8) and 74(5) / (8) and section 129 (1) of the CGST Act, 2017. It is also prescribed for any other payment due in accordance with the provisions of the Act as specified in rule 142 (2) and 142 (3) of the CGST Rules, 2017.

Further, in the GST regime, in connection with the appeal mechanism under section 107 of the CGST Act, 2017 - **Rule**

**108(1) of the CGST Rules, 2017 provides Form GST APL-01 for filing an appeal with option of payment of admitted amount and pre-deposit through electronic cash/credit ledger. Thus, under GST Act also Form GST DRC-03 is not a prescribed mode for payment of pre-deposit. (emphasis supplied)**

Is pre-deposit for appeal under erstwhile law, an arrear under GST Law?

Attention is invited to Miscellaneous transitional Sec. 142(6) (b) / (7)(a)/ (8)(a), which, inter alia, provides that any credit, tax, interest, line or penalty recoverable from the person before, on or after 1<sup>st</sup> July 2017 under the existing law (Central Excise Act and Chapter-V of Finance Act, 1994), shall be recovered as an arrear of tax under CGST Act.

It is settled that pre-deposit as a requirement for exercising the right to appeal neither is in the nature of duty nor can be treated as arrears under the existing law and hence cannot be said to be covered under transitional provisions of the CGST Act.

## Can pre-deposit for appeal under erstwhile law be made using DRC - 03?

In view of the above, it has been clarified that payments through DRC-03 under the CGST regime is not a valid mode of payment for making pre-deposits under section 35F of the Central Excise Act, 1944 and Section 83 of Finance Act, 1994, read with section 35F of the CEA.

## Then how to make such pre-deposit for appeal under erstwhile law?

There exists a dedicated CBIC-GST Integrated portal, <https://cbic-gst.gov.in>, which should only be utilized for making pre-deposits under the Central Excise Act, 1944 and the Finance Act, 1994.

**Epilogue:** One may refer to Board's Circular No. 1070/3/2019-CX, dated 24th June, 2019, in this regard, which prescribes a detailed step-by-step approach for payment of pre-deposit. To summarise this circular, the following step by steps can be adopted – (Step 1) Creation of Login in <https://cbic-gst.gov.in>- you may also take the help of your jurisdictional officer (passing the order) in this regard. (Step 2) Generation of Mandate form in the said portal using the login ID created by filling in the appropriate details and selecting the relevant tax head etc. (Step 3) Payment of the said mandate using NEFT / RTGS or approaching an authorised bank. However, this process through summarised in 3 easy steps; in reality it is easier said than done. The Tax payers



preferring appeals before the appellate fora under erstwhile law would do good to keep in mind the relevant limitations and plan to make this pre-deposit in advance and avoid last minute and at the worst, foregoing their statutory Appellate remedies! As the saying goes – ***“There may be many a slip between the cup and the lip.”***

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