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Navigating Pre-Deposit under GST - Legal Issues and Practical Challenges

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[Everything you must know]

Introduction:

Litigation under the Goods and Services Tax regime is not only a question of legal merit but also a matter of financial preparedness. The Central Indirect Tax laws (i.e., Central Excise & Service Tax) have paved way from the earlier system where taxpayers could seek waiver or stay of demand before appellate authorities as this was leading to multiplicity of the litigation on the same issue. The same is also being followed in the GST laws, wherein, the statute prescribes a structured and mandatory pre-deposit mechanism which operates as a condition precedent for pursuing appellate remedies.

Under the statutory scheme of the CGST Act, a taxpayer intending to challenge an adjudication order must deposit 10% of the disputed tax while filing the first appeal before the Appellate Authority under Section 107(6). If the dispute continues and the matter is carried further to the Goods and Services Tax Appellate Tribunal under Section 112, an additional pre-deposit of 10% of the disputed tax is required. Consequently, by the time the dispute reaches the Tribunal stage, the taxpayer would have deposited 20% of the disputed tax amount, subject to the prescribed monetary caps.

This statutory design fundamentally alters the economics of tax litigation. Appeals under GST are not cost-neutral exercises. For large demands, the mandatory pre-deposit requirement may run into several crores of rupees, resulting in substantial working capital being blocked for several years until the dispute attains finality. For businesses operating in capital-intensive sectors, the financial impact of litigation may therefore be as significant as the legal outcome itself.

The pre-deposit requirement also carries an important practical implication. If exaggerated or unsustainable demands are confirmed at the adjudication stage, the taxpayer may be compelled to deposit a significant percentage of such demand merely to avail the appellate remedy. In other words, the higher the confirmed demand, the higher the cost of accessing justice. This makes it imperative for taxpayers and advisors to actively engage at the investigation and adjudication stages and ensure that frivolous or inflated demands are challenged effectively at the earliest opportunity.

The fixed pre-deposit mechanism reflects the legislative policy underlying GST litigation. Under the earlier tax regimes, significant time and judicial resources were consumed in deciding stay applications and requests for waiver of pre-deposit. The GST framework attempts to address this by replacing discretionary waiver proceedings with a predictable and standardized deposit structure, thereby ensuring that only serious disputes travel through the appellate hierarchy.

At the same time, the mandatory nature of pre-deposit has given rise to several interpretational and procedural issues including the manner of computation, adjustment of amounts already paid, treatment of deposits made during investigation, and the consequences of non-compliance at the time of filing appeals. Courts have also been called upon to examine these issues in various factual contexts.

Given the financial and procedural significance of the pre-deposit requirement, a clear understanding of its statutory framework and judicial interpretation is essential for taxpayers, CFOs, and tax professionals. This article examines the legal provisions governing pre-deposit under GST, the practical issues that arise in appellate proceedings, and the emerging jurisprudence shaping this important aspect of GST litigation.

Q1. What is the statutory pre-deposit required for filing an appeal before GSTAT?

Ans: Section 112(8) of the CGST Act, 2017 (Act) governs the provisions regarding pre-deposit for filing appeal before GSTAT. It states that no appeal shall be admitted unless –

a) **Full payment of admitted tax, interest, fine, fee and penalty**,

b) **Additional pre-deposit of 10% of the disputed tax**,

over and above the amount deposited at the First Appellate stage. (subject to maximum of 40 crore rupees)

S.No.	Order appealed against contains the demand of	Pre-deposit
1	Tax and/or ITC dispute	10% of tax and/or in dispute
2	Erroneous refund	10% of erroneous refund in dispute
3	Penalty and/or interest (no tax demand)	10% of penalty in dispute *(effective from 01.10.2025 vide N/N – 16/2025 dated 17.09.2025)*
4	E-way bill penalties	If 200% penalty imposed was paid the same can be appropriated against pre-deposit.

		If bond is executed in lieu of payment- 10% of penalty in dispute
5	Refund orders u/s Section 54 of the Act	No requirement
6	Department appeal	No requirement (either by taxpayer or Department)
7	Party appeal, in case of department appeal got accepted	Applicable as per S.No. 1-4 above

Q2. Whether pre-deposit can be paid through E-credit ledger?

Ans: Section 112(8) has been drafted in a way to keep the interpretation wide enough to not prescribe the manner in which the said amount can be paid.

The CBIC vide Circular 172/04/2022-GST dated 6th July 2022 has clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST laws, can be made by utilization of the amount available in the electronic credit ledger. Therefore, it can safely be concluded that pre-deposit u/s 112(8) is a continuation of demand proceeding initiated under GST laws thereby permitting the use of credit ledger balance for pre-deposits.

Moreover, this issue has also been tested before multiple High Courts and even before the Supreme Court. The Hon'ble Bombay High Court in the case of **Oasis Realty**, 2022 (10) TMI 42 (Bom. HC) has held that the balance in credit ledger can be used to pay the pre-deposit where the disputed amounts are in the nature of output tax.

Relying on the judgement of Bombay High Court, the Hon'ble Gujarat High Court held in the case of **Yasho Industries** [2024 (10) TMI 1608] that pre-deposit can be paid by utilizing the credit ledger balance for the demands of erroneous refunds also. The said view was also affirmed in Supreme Court.

Lastly, there was an amnesty scheme vide Notification no. 53/2023 dated 02/11/2023 which permitted filing of delayed appeals even beyond the time limits provided under Section 107 of the CGST Act. The twin conditions to file the time-barred appeals were as follows –

a) 12.5% of the tax amount due is required to be paid
b) 20% of the 12.5% should be paid through electronic cash ledger.

Therefore, it can safely be understood that even the legislature has permitted using credit ledger for pre-deposits. Hence, pre-deposit can be paid either through the credit or cash or both.

However, dispute may arise for making pre-deposit towards the RCM liability through credit, since restriction is placed u/s 49(4) read with the definition of "Output tax" u/s 2(82) of the Act for using credit towards RCM liability. Similar dispute may arise for erroneous refunds as well.

Q3. Whether amounts paid during investigation can be adjusted against pre-deposit payable for filing appeal before the GSTAT?

Ans: Section 112(8) of the CGST Act, 2017 mandates that an appeal before the GST Appellate Tribunal shall not be admitted unless the appellant has paid an amount equal to 10% of the disputed tax, in addition to the admitted liability. The provision prescribes the quantum of deposit but does not stipulate the source or timing of such payment.

Accordingly, where amounts have already been paid during the course of investigation — whether under Section 73(5), Section 74(5), through DRC-03, or otherwise — and such amounts continue to relate to the very demand that is under dispute, the same can legitimately be adjusted towards the mandatory pre-deposit requirement.

Principle of Statutory Interpretation

The language of Section 112(8) merely requires that "10% of the disputed tax" be paid. It does not mandate that such payment must be made afresh at the time of filing appeal. In the absence of any statutory restriction, amounts already deposited against the disputed liability cannot be excluded from reckoning.

A taxing statute must be construed strictly and literally. There is no room for intendment. If the legislature intended to exclude payments made during investigation or under protest from being treated as pre-deposit, it would have expressly provided that "a fresh deposit" must be made. No such language exists.

Judicial Support

The Supreme Court in **VVF (India) Ltd. v. State of Maharashtra & Ors.**, 2021 (12) TMI 477 (SC), while interpreting analogous pre-deposit provisions, held that the amount deposited by the appellant prior to the assessment order cannot be excluded from consideration unless the statute expressly so provides.

Similarly, in **M/s Wintage Engineers & Consultants Pvt. Ltd. v. Union of India**, 2025 (11) TMI 358 (All. HC), the Allahabad High Court held that where an amount deposited under protest had not been adjusted, the petitioner was entitled to treat the same as statutory pre-deposit for the purpose of maintaining the appeal under Section 107(6) of the CGST Act.

Though the above decision relates to Section 107, the principle applies equally to Section 112, since both provisions employ identical language regarding "percentage of disputed tax."

Practical Position

However, in practice, the following conditions must be satisfied:

- The earlier payment made during investigation must have been appropriated against the demand in dispute in the notice / order issued. However, in our opinion, the position would hold good even in a situation where the tax officer has not adjusted/appropriated in the actual quantification of the demand in notice/ order.
- Where required, Form DRC-03A may be filed for reallocation (as clarified in Circular No. 224/18/2024-GST).
- The amount should not already stand adjusted against a separate liability.

Therefore, where sufficient amount has already been recovered or deposited and appropriated against the disputed demand, no fresh pre-deposit is required.

Q4. Where the tax amount is paid in full under protest, and only penalty and/or interest is disputed in appeal, whether any statutory pre-deposit is required for filing appeal before the GST Appellate Tribunal?

Ans: The answer depends upon the nature of the dispute reflected in the impugned order and the manner in which the appellant characterizes the payment.

Legislative Position:

Prior to 01.10.2025, Section 112(8) required pre-deposit only with reference to "tax in dispute." There was no specific requirement to deposit a percentage of penalty where the order involved only penalty. However, with effect from 01.10.2025, the provision has been amended to require that in cases where the order demands only penalty (without tax), the appellant must deposit 10% of the disputed penalty amount for admission of appeal.

Accordingly, the issue must be analysed in two distinct scenarios:

(1) Where Only Penalty is Disputed and Tax is Admitted:

- If the tax liability is admitted, tax is paid in full and the only surviving dispute relates to penalty (and/or interest), then a statutory pre-deposit of 10% of the disputed penalty is required at the GSTAT stage (post 01.10.2025 amendment). In such cases, the appeal would not be maintainable unless the penalty-related pre-deposit condition is satisfied.

(2) Where Tax Has Been Paid "Under Protest" but Remains Disputed

- A more nuanced situation arises where, the taxpayer has paid tax in full to future potential interest liability and the payment was expressly made under protest, wherein the legality of the tax demand continues to be challenged in appeal. In such cases, although tax has been discharged, it may still constitute "tax in dispute."

The characterization of the payment becomes critical. If the appellant clearly maintains that the tax liability is not admitted and the payment was made under protest, refund would be claimed upon success, then the dispute remains one involving tax.

In such a case, the pre-deposit computation should be aligned with the disputed tax component and not treated as a penalty-only case.

However, this position must be consistently reflected in:

- The original protest communication,
- DRC-03 narration,
- APL-01 and APL-05 forms,
- Statement of facts,
- Prayer clause,
- Covering letters and submissions.

Inconsistent drafting may lead to the department treating tax as admitted, thereby triggering penalty-only pre-deposit consequences.

Q5. What if the pre-deposit is already paid in terms of Circular No.224/18/2024-GST dated 11-07-2024?

Ans: Taxpayers couldn't file appeals against many Order-in-Appeals earlier due to non-operation of GST Appellate Tribunal. However, the department in many cases initiated recoveries, against which many taxpayers approached the High Courts seeking stay. To resolve these issues, the CBIC has issued a circular No. 224/18/2024-GST dated 11-07-2024 for *"Guidelines for recovery of outstanding dues, in cases wherein first appeal has been disposed of, till Appellate Tribunal comes into operation"* and the following instructions were issued:

Payment of pre-deposit:

- Requisite pre-deposit is to be paid by navigating to Services >> Ledgers>> Payment towards demand, from his dashboard where the taxpayer is willing to file an appeal before the GSTAT and wish to avail the deemed stay from recovery of the balance demand as per Section 112(9) of the CGST Act, 2017,

- The payment so made would be reduced in the balance liability of the demand order in the Electronic Liability Register and adjusted against the amount of pre-deposit required to be deposited at the time of filing appeal before the Appellate Tribunal.

Undertaking/declaration:

- The taxpayer also needs to file an undertaking/ declaration with the jurisdictional proper officer intimating the willingness to file appeal against the said order before the GSTAT, as and when it comes into operation, within the timelines mentioned in Section 112 of the CGST Act read with Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03-12-2019.

Consequences of non-payment of pre-deposit or non-submission of undertaking/declaration:

- In cases of non-payment of pre-deposit or non-submission of undertaking/declaration by the taxpayer, then it will be presumed that taxpayer is not willing to file appeal and accordingly recovery proceedings can be initiated as per the provisions of law.
- Similarly, when the Tribunal comes into operation, if the taxpayer does not file appeal within the timelines specified in Section 112 of the CGST Act read with Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03-12-2019, the remaining amount of the demand will be recovered as per the provisions of law.

Treatment for amounts already paid in Form GST DRC-03:

- In cases where taxpayers have already paid amounts that were intended to have been paid towards a demand through FORM GST DRC-03, an application in Form GST DRC-03A[1] is to be filed electronically on the common portal and the amount so paid and intimated through the FORM GST DRC-03 shall be adjusted as if the said payment was made towards the said demand on the date of such intimation through FORM GST DRC-03.
- The amount so paid shall also be liable to be adjusted towards the pre-deposit amount required to be deposited at the time of filing appeal before the Tribunal as explained above.
- In case the taxpayer fails to file an application in FORM GST DRC-03A on the common portal, the proper officer may proceed to recover the amount payable as per provisions of section 78 and section 79 of CGST Act.

[1] Inserted in sub-rule (2B) of Rule 142 of the CGST Rules, 2017 vide Notification No. 12/2024- CT dated 10-07-2024

Application Form GST DRC-03A for adjustment of demand liability against the payment through FORM GST DRC-03 cannot be made in cases where concerned proceedings have already been concluded by issuance of an order in FORM GST DRC-05 as per the Rule 142(3) of CGST Rules, 2017.

Where taxpayers have already paid requisite pre-deposit as per this circular, then there is no requirement for payment of pre-deposit and the same shall be sufficient compliance.

Q6. Where the Order-in-Appeal (OIA) has been passed before October 1st 2025, but the appeal before GSTAT is filed on or after October 1st 2025, is the newly introduced penalty pre-deposit requirement applicable? Can it be argued that the provision should apply only to SCNs initiated after 01 October 2025?

Ans: The statutory pre-deposit for penalty will be required if the appeal before GSTAT is filed on or after 01 October 2025, even though the OIA was passed prior to that date.

The reason lies in the settled principle that though the right of appeal is a statutory right, the legislature is competent to prescribe conditions for its exercise. What is relevant is the date on which the appeal is filed or entertained, not the date of initiation of proceedings or the date of the order challenged.

This principle was clearly articulated by the **Madras High Court in *Dream Castle v. Union of India*, 2016 (43) S.T.R. 25 (Mad.)**. The Court held that when the law substituted a discretionary waiver regime with a mandatory pre-deposit regime, the amended provision would apply to appeals filed after the amendment date. The Court observed that the earlier provision conferred only a chance or hope of waiver, not a vested right. Therefore, replacing a discretionary waiver system with a fixed statutory pre-deposit did not amount to taking away a vested right.

Applying the same reasoning, if the appeal to GSTAT is filed after 01.10.2025 and the amended provision mandates 10% pre-deposit of penalty in cases where only penalty is disputed, then compliance with that requirement becomes a condition precedent for maintainability of the appeal. The date of the OIA does not freeze the pre-deposit regime. The governing factor is the statutory framework in force on the date of filing of the GSTAT appeal.

Q7. If tax liability is accepted, should interest and penalty also be accepted, or can they be independently examined and contested?

Ans: Where the taxpayer accepts the tax liability, the statutory scheme requires that such admitted tax, along with applicable interest, penalty, fine and fee, is discharged in terms of Section 107(6) (for first appeal) and Section 112(8) (for Tribunal stage), as a condition for filing the appeal.

However, in such cases, it becomes critically important to examine whether the interest and penalty components have been correctly computed and invoked. In practice, it is often observed that while tax liability may be acceptable, the interest and penalty demands are either excessive or incorrectly determined.

For instance, interest may be wrongly computed on gross liability instead of net liability, may suffer from arithmetical or period-related errors, or may not consider the continuous availability of sufficient balance in the electronic credit or cash ledger.

Similarly, penalty provisions are frequently invoked incorrectly, such as cases where extended period under Section 74 is applied despite the matter being more appropriately covered under Section 73, or where the issue is interpretational in nature, or even where 100% penalty is imposed despite full disclosure of transactions in returns. In these cases, it is advisable to contest on interest or penalty issues to reduce the demand amounts.

Accordingly, even where tax liability is admitted, taxpayers should not mechanically accept the interest and penalty demands but should carefully evaluate their correctness and challenge them wherever warranted.

Q8. What constitutes "amount admitted" for the purpose of Section 112(8)? If a taxpayer has accepted certain liability during investigation or earlier proceedings, can the same amount later be treated as "disputed" while filing an appeal before the GST Appellate Tribunal?

Ans: The computation of pre-deposit under Section 112(8) depends upon the "amount of tax in dispute." Consequently, the determination of what constitutes "admitted liability" becomes critical while calculating the mandatory pre-deposit.

In practice, it is not uncommon for taxpayers to accept certain amounts during investigation proceedings or make payments during inquiry, audit, or search proceedings. Such acceptance may arise due to several reasons, including commercial expediency, lack of complete documentation at the relevant time, or even coercive circumstances during investigation. In certain cases, statements may also be recorded, or amounts may be paid through Form GST DRC-03.

However, the fact that an amount was accepted or paid during investigation does not necessarily foreclose the taxpayer's right to dispute the liability at a later stage, including at the appellate stage. A taxpayer may legitimately reconsider the legal position, examine the allegations in the show cause notice, and decide to contest the issue in appeal.

That said, where the taxpayer intends to dispute an amount that was earlier accepted or paid during investigation, the groundwork for such dispute must ideally begin at the earliest stage itself. Certain precautionary steps are therefore advisable:

- If statements have been recorded under pressure or without complete clarity, the taxpayer may consider issuing a prompt retraction or clarification of such statements.
- Where payments are made during investigation, they should preferably be clearly recorded as payments made "under protest."
- Taxpayers may also consider writing communications to the department clarifying that the payment does not amount to admission of liability and that the issue remains disputed.
- These positions should then be consistently reflected in subsequent submissions, including replies to the show cause notice, written submissions during adjudication, and other correspondence.

Where such precautions are taken, it strengthens the taxpayer's position that the payment or statement made during investigation was not a final admission of tax liability, but only a provisional or protective action taken during investigation. Consequently, the taxpayer may legitimately treat the amount as "disputed tax" for the purpose of appeal and compute the pre-deposit accordingly.

Conversely, where the taxpayer has unequivocally admitted liability and such admission forms part of the adjudication order, it may become difficult to subsequently contend that the same amount is disputed. Therefore, careful documentation and strategic communication during the investigation and adjudication stages play an important role in preserving the taxpayer's appellate rights.

Q9. If the Order-in-Appeal confirms ₹4 crores out of ₹10 crores and drops ₹6 crores, is the appellant required to deposit an additional 10% of ₹4 crores at the Tribunal stage, or can the earlier pre-deposit be adjusted?

Ans: The requirement at the Tribunal stage is cumulative and must be computed with reference to the disputed tax that survives after the Order-in-Appeal, not the original demand.

Under Section 107(6), 10% of the disputed tax is deposited at the first appellate stage. Under Section 112(8), an additional 10% is required at the Tribunal stage, making the cumulative requirement 20% of the disputed tax (subject to statutory cap).

In the present example:

- Original demand: ₹10 crores
- Pre-deposit made at first appeal (10%): ₹1 crore
- Order-in-Appeal confirms: ₹4 crores
- Surviving disputed amount: ₹4 crores

- Required cumulative pre-deposit at Tribunal stage (20% of ₹4 crores): ₹80 lakhs

Since ₹1 crore has already been deposited and this exceeds the required ₹80 lakhs, the statutory pre-deposit condition stands satisfied. No fresh deposit is required.

There is no legal mandate to first seek refund of the pre-deposit relatable to the dropped ₹6 crores and then re-deposit 10% on ₹4 crores. The law only requires compliance with the cumulative percentage of the surviving disputed amount.

In Ahlcons India Pvt. Ltd. v. Principal Commissioner, CGST, Delhi South [(2025) 34 Centax 331 (Del.)], where adjudicating authority in remand proceedings had confirmed demand of Service Tax in respect of mobilization advance and also in respect of Works Contract services provided through sub-contractors that was dropped originally in adjudication order passed in initial round and not challenged, the Hon'ble High Court had allowed the taxpayer to avail appellate remedy before CESTAT subject to **payment of pre-deposit of remaining amount after adjustment of amount of pre-deposit already made in earlier round of appeal but no pre-deposit in respect of dropped demand would be made.**

In Preeti Khanna v. Additional Commissioner of CGST [(2025) 31 Centax 118 (Del.)], where in 1st SCN the demand was proposed only with respect to transactions involving Petitioner's proprietary concern and another concern, but subject matter of 2nd SCN was of a much bigger network of entities alleged to be fraudulently availing ITC of Rs.1,000 crores. Considering the duplication of demands, the Hon'ble Court allowed the taxpayer to challenge against 2nd order by making the pre-deposit after adjusting the pre-deposit already made while filing appeal against the 1st order.

If the GSTAT portal does not auto-adjust the earlier deposit, the appellant should clearly explain the computation in the appeal and file an appropriate covering note demonstrating that the statutory threshold is already met.

In conclusion, adjustment of the earlier pre-deposit is legally permissible, and duplication of payment is not required where the cumulative statutory percentage is already satisfied.

Q10. If an order is passed in favor of the taxpayer, then whether the amount deposited can be claimed as refund?

Ans: Yes, the refund can be claimed. Section 54 of the CGST Act governs refund claims. In cases where the amount becomes refundable pursuant to an appellate order, the time limit of two years is computed from the "relevant date" as defined under Explanation to Section 54.

As per Explanation to Section 54, clause (d), in cases where tax becomes refundable as a consequence of any judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the relevant date shall be **the date of communication of such order**. Similarly, Clause (h) provides that in any other case, the relevant date shall be the **date of payment of tax**.

Accordingly, where the refund arises as a consequence of a favourable appellate order, the limitation period of two years should be computed from the date of communication of such order, and not from the original date of payment.

However, a practical issue may arise in cases where payments are made through Form GST DRC-03 on account of investigation or as a pre-deposit for offline appeals.

If such payments are not properly mapped or linked to the relevant demand order, the department may treat the refund claim under the residual category (i.e., "any other case") and compute limitation from the date of payment instead of the date of appellate order.

Therefore, from a practical litigation management perspective, it is critical that any amount deposited during investigation or appeal proceedings, especially through DRC-03, is properly mapped and linked to the relevant order or demand. This ensures that the refund is treated as arising from the appellate order and avoids disputes relating to limitation or characterization of the payment.

In conclusion, while refund is legally admissible, proper linkage of payments is essential to safeguard the limitation benefit under Section 54.

Q11. If the adjudicating authority drops the demand in favour of the taxpayer and later Department files an appeal and succeeds the same at first appellate level, and thereafter the assessee files a second appeal before GSTAT, then how much pre-deposit is required – 10% or 20%?

Ans: In such a scenario, the assessee would ordinarily be required to deposit only last **10% of the disputed tax** while filing appeal before GSTAT.

Let us understand the legal position in this case:

At the first appellate stage, the Department files appeal under **Section 107(3) against the favourable order-in-original**. The mandatory pre-deposit requirement under **Section 107(6)** applies only to appeals filed under **Section 107(1)** (i.e., taxpayer appeals). Therefore, no pre-deposit is payable at the first stage when the appeal is filed by the Department. In this case, the assessee, being only a respondent at that stage, does not make any deposit.

At the Tribunal stage, when the assessee files an appeal under Section 112(1), Section 112(8) requires deposit of 10% of the disputed tax in **addition to the amount paid under Section 107(6).**

Since no amount was paid under Section 107(6) (as the assessee was not the appellant at the first stage), there is no earlier deposit to be considered for cumulative purposes.

Accordingly, where the first appeal is filed by the Department under Section 107(3), and the assessee subsequently files an appeal before GSTAT under Section 112(1), the assessee is required to deposit only 10% of the disputed tax, and not 20%.

Q12. Where the Order-in-Appeal is passed in favour of the assessee and the Department files an appeal before GSTAT, whether the assessee is required to make any pre-deposit while defending the matter before the Tribunal?

Ans: No. The assessee is not required to make any pre-deposit in such a case.

Appeals before GSTAT can be filed under:

- **Section 112(1)** – Appeal by the taxpayer
- **Section 112(3)** – Appeal by the Department

The mandatory pre-deposit requirement under **Section 112(8)** is triggered only in respect of appeals filed under **Section 112(1)**, i.e., taxpayer appeals.

Where the Department files the appeal under **Section 112(3)** against an Order-in-Appeal favorable to the assessee, The assessee becomes a respondent before the Tribunal and the assessee is not invoking appellate jurisdiction. Therefore, Section 112(8) does not get triggered.

The statute does not prescribe any pre-deposit requirement for a respondent defending a favorable order. Therefore, if the Department files an appeal before GSTAT under Section 112(3), the assessee, being the respondent, is not required to make any pre-deposit. The obligation under Section 112(8) applies only where the assessee itself files an appeal under Section 112(1).

Q13. If the mandatory pre-deposit is not paid at the time of filing the appeal, but is paid later (say, before the hearing), will the appeal be treated as valid/maintainable? How does the position differ under the erstwhile Section 35F regime vs GST (Sections 107/112)?

Ans: Our considered position is that the legal framework under the erstwhile regime and GST is materially different, and therefore past precedents may not come to the rescue under GST. To understand it in more depth, let us see the provisions under both regime -

I. Position under the erstwhile Section 35F regime (Central Excise / Service Tax)

Under the earlier laws, the statute used the expression *"no appeal shall be **entertained** unless..."* the prescribed pre-deposit was made.

The Supreme Court in Lakshmi Rattan Engineering Works Ltd. (1968 AIR 488) interpreted the term "entertain" to mean the stage of taking up the appeal for consideration, thereby creating a distinction between filing of appeal and consideration of appeal. Based on this, an argument was possible that pre-deposit could be made after filing but before the matter is taken up.

II. Position under GST: Sections 107/112 shift the condition from "entertain" to "file"

Under GST, the statutory text is materially different in a way that significantly tightens the position. For Tribunal appeals, **Section 112(8)** uses the expression: **"No appeal shall be filed... unless the appellant has paid..."** the prescribed pre-deposit (in addition to the amount paid under Section 107(6), wherever applicable). This language operates as a **condition precedent to filing itself**, not merely a condition precedent to "entertainment/consideration".

Further, as a matter of implementation, the GST / GSTAT e-filing system is typically designed in a way that appeal filing will not take place unless the pre-deposit requirement is satisfied (or mapped/recognised).

There are instances where courts may take a lenient view in writ jurisdiction, such in the case of Jhabakh Auto Private Limited v. JCCT (Appeals-II), Telangana High Court Writ Petition No. 40702 of 2025, where the appeal was restored since it was filed within limitation, and pre-deposit was made during pendency, and rejection was considered hyper-technical.

While such judgments indicate that courts may, in rare cases, adopt a liberal approach, relying on this **as a strategy is extremely risky**. The statutory framework under GST is **strict and filing-linked**. The benefit of earlier jurisprudence based on "entertainment" is no longer directly applicable. Relief from courts is fact-specific, discretionary, and not guaranteed. Therefore, the litigation-safe and correct position is that pre-deposit must be paid at the time of filing the appeal itself.

Q14. Whether the requirement of pre-deposit can be waived?

Ans: Sections 107(6) and 112(8) of the CGST Act make pre-deposit a statutory condition precedent for the entertainment of an appeal. Ordinarily, failure to comply results in dismissal of the appeal as not maintainable.

The appellate authority or GSTAT does not possess any inherent discretion to waive this requirement unless expressly provided under the statute. Hence, GSTAT being a creature of the law, does not possess any power waive the pre-deposit. The same has be upheld in the past in the case of Samuvel

Chandran vs. Commissioner of Customs - 2025 (393) ELT 372 (S.C.), and in Chandra Sekhar Jha v. Union of India 2022 (380) E.L.T. 130 (S.C.)

However, constitutional courts have, in limited circumstances, intervened under writ jurisdiction. For instance, in Mohammed Akmam Uddin Ahmed (2023 (5) TMI 23), Cyquator Media Services (2018 (10) GSTL 297 (All)), P. Lakshmi Devi (2008) 4 SCC 720, the courts have granted relief for making payment of pre-deposit.

That said, such instances are extremely rare and fact-specific, and do not lay down any general principle for waiver. In certain exceptional situations, courts have granted relief under writ jurisdiction purely based on peculiar facts such as extreme financial hardship or manifest arbitrariness in demand. However, these are not precedents establishing a general right to waiver.

Therefore, while constitutional courts retain limited power to intervene in extraordinary cases, the mandatory pre-deposit requirements under Sections 107(6) and 112(8) of the CGST Act remain **legally non-negotiable**.

Conclusion:

The law on pre-deposit under GST is deceptively simple in text but highly significant in practice. What appears to be a fixed statutory percentage under Sections 107(6) and 112(8) has, in reality, given rise to a number of complex issues relating to computation, adjustment, source of payment, treatment of investigation-stage deposits, penalty-only disputes, departmental appeals, and portal-driven procedural defects.

The jurisprudence around pre-deposit demonstrates that the issue is not always mechanical. The portal design may sometimes suggest one approach, while the statute and judicial interpretation may support another. This makes careful documentation, consistent stand-taking, and proper mapping of payments absolutely critical.

Ultimately, pre-deposit under GST is not merely a procedural requirement; it is a substantive litigation checkpoint. A taxpayer who approaches it casually may end up paying more than what the law truly requires, while a taxpayer who approaches it strategically may preserve both appellate rights and cash flow. The real lesson, therefore, is that effective GST litigation begins much before the appeal is filed i.e., at the stage of investigation, adjudication, and documentation itself.

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Valluvarkottam High Road, Nungambakkam
Chennai – 600 034
Tel: 9962508380 / 044 3562 3326

Guwahati

2A, 2nd floor, Royal Silver Tower,
Near HomeTown Lachitnagar Main Road,
Ulubari, Guwahati - 781007
Phone: 91-7670087000 / 0361-3511155

Kolkata

Unit#1009, 10th Floor, Merlin Infinite
DN - 51, Street Number 11, DN Block
Kolkata, West Bengal - 700091
Phone: +33 4063 7186 , 9830682188

NCR (Gurgaon)

202-203, Vipul Trade Centre,
Sector 48, Sohna Road,
Gurugram, Haryana - 122 009
Phone: 0124- 4904994 / 8510950400

Vijayawada

D. No. 40-26/1-8, 2nd Floor,
SNR towers, Opp Deepak Silver &
Emporio,Sreeram Nagar,
Chandramoulipuram, Vijayawada - 520010
Phone: +0866-3500227, 9900068920

Mumbai

409 & 601-A, Filix, Opp. Asian Paints,
LBS Marg, Bhandup West,
Mumbai - 400 078
Phone: +22 2595 5533/ 91-9867307715

Visakhapatnam

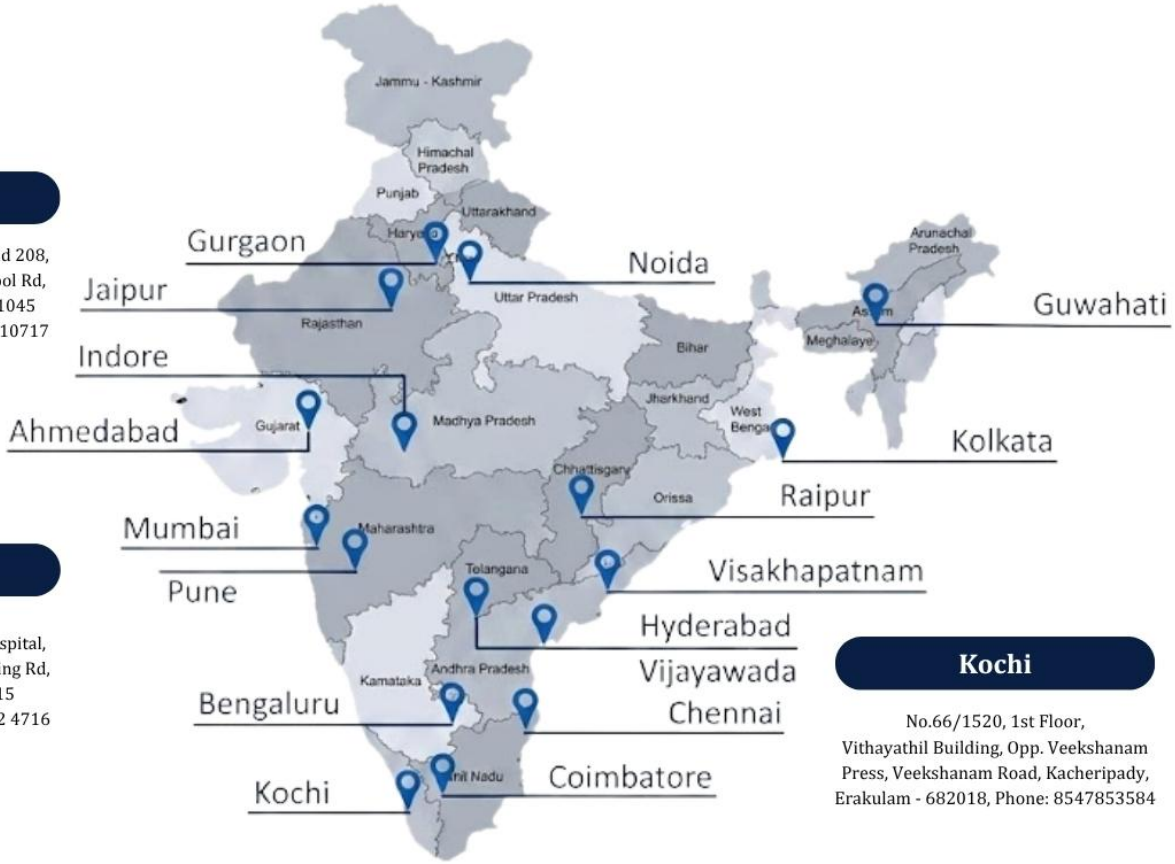
D.No 8-1-112, Premier House,
2nd Floor, Vidyanagar,
Opp.III Town Police Station, Pedda Waltair,
Visakhapatnam - 530017
Phone: +0891-2509235, 91-9133566550

Raipur

Unit-1, E-01, Garuda Offizo,
Jivan Vihar, beside Birla Open Minds
School, Chhattisgarh 492001.
Phone: 7713500251 / 7415790391

Pune

K Square, Office No 206, 207 and 208,
Second Floor, Foundry Preschool Rd,
Baner, Pune, Maharashtra 411045
Phone: 7680000205 / 020-29910717



Ahmedabad

Mauryansh Elanza
908, 9th Floor, Nr. Parekh's Hospital,
Shyamal Crossroad, 132 Feet Ring Rd,
Ahmedabad, Gujarat 380015
Phone: 9409172331 / 079 4602 4716

Kochi

No.66/1520, 1st Floor,
Vithayathil Building, Opp. Veekshanam
Press, Veekshanam Road, Kacheripady,
Erakulam - 682018, Phone: 8547853584

Coimbatore

No 92, C S Rathinasabapathi Street,
West Zone, K K Pudur Post,
Coimbatore - 641038
Phone: 9962047651

Jaipur

Office No. 301, Plot No. 153,
Amrapali Marg, Rathore Nagar,
Vaishali Nagar, Jaipur,
Rajasthan - 302021, Phone: 9782691221

Indore

107, B Block,
The One, 5 R.N.T. Marg,
Indore, M.P. - 452 001.
Phone: 6366775136 / 0731-4910923