



CBIC-240137/14/2022-SERVICE TAX SECTION-CBEC

Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect Tax and Customs)
(CX&ST Wing)

Room No. 244-C, North Block, New Delhi

Dated:- 28th October, 2022.

INSTRUCTION

To,

1. Pr. Chief/Chief Commissioners of CGST & CX (All)
2. Pr. Director-General/Director-General (All)
3. Pr. Commissioner/ Commissioner of CGST & CX (All)
4. webmaster.cbic@icegate.nic.in for uploading the instructions on CBIC website.

Subject: Pre-deposit payment method for cases pertaining to Central Excise and Service Tax.

Madam/Sir,

It has been brought to the notice of the Board that **appeals have been rejected** by some Commissioner (Appeals) for non-compliance of pre-deposit requirements as mandated under **section 35F of the Central Excise Act, 1944 (CEA) and Section 83 of the Finance Act, 1994 read with section 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.** The issue has also been referred to the Board by 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.**

2. The matter has been examined. It may be seen that Form **GST DRC -03** is prescribed for payment of tax, interest, penalty under sub-sections (5) and (8) of both **sections 73 and 74, and section 129 (1) of the CGST Act, 2017** or any other payment due in accordance with the provisions of the CGST Act, 2017 as specified in **rule 142 (2) and 142 (3) of the CGST Rules, 2017.** Further, in GST regime, in connection with 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.**



3. Attention is invited to Miscellaneous transitional provisions sub-section (6)(b), sub-section (7)(a) and sub-section (8)(a) of section 142 of the CGST Act, 2017, which, inter alia, provides that any credit, tax, interest, fine or penalty recoverable from the person before, on or after 1st 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, however, 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 CGST Act.

4. In view of above, it is clarified that payments through DRC-03 under 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. There exists a dedicated CBIC-GST Integrated portal, <https://cbic-gst.gov.in> (Board's Circular No. 1070/3/2019-CX dated 24th June, 2019 refers in this regard), which should only be utilized for making pre-deposits under the Central Excise Act, 1944 and the Finance Act, 1994.

5. Trade may be suitably informed. Hindi version will follow.

It means for filing appeal under existing law pre deposit is required to be paid in cash mode.

For filing appeal in GST law DRC 03 can be used.

- By utilising cash
- By utilising ITC

Read this important Judgment in MasterLearnings.com of Bombay High Court where in it has been held that pre-deposit payment can be made by utilising ITC

Oasis Realty Vs Union of India
W.P. (ST) No. 23507 of 2022

Yours faithfully,


28/10/22
(Varun Kumar Singh)

Under Secretary to Govt. of India