

# Pre-Deposit in Tax Litigation - Evolution, Framework, and Challenges in GST Era

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Pre-deposit is a requirement in tax litigation, designed to ensure a balance between protecting the government's revenue and safeguarding taxpayers' right to appeal. It mandates taxpayers to deposit a specified percentage of the disputed tax, duty, or penalty before filing an appeal, as outlined in provisions like Section 112(8) of the Central Goods and Services Tax Act, 2017 and Section 129E of the Customs Act, 1962. This mechanism discourages frivolous appeals, streamlines the appellate process, and guarantees that a portion of the revenue is secured while the dispute is adjudicated. By fostering procedural discipline and financial accountability, pre-deposit provisions compel taxpayers to carefully evaluate the merits of their cases, while also reducing the misuse of the appellate system as a delaying tactic. Legislative validation of these requirements underscores their significance in promoting efficiency, consistency, and equity in tax administration and also saving precious judicial time which was earlier spent on pursuing stay applications before the Appellate Authorities.

## History of Pre-Deposit in Indian Taxation

The concept of pre-deposit in Indian taxation has its roots in the Central Excise Act, 1944, and Customs Act, 1962, before being carried over into the Goods and Services Tax (GST) regime. Pre-deposit provisions were introduced as a means to curb frivolous litigation and ensure that taxpayers who challenge tax assessments or penalties in appeals make an upfront payment of a portion of the disputed amount.

## Pre-Deposit in the Pre-GST Era

1. **Central Excise Act, 1944:** Section 35F of Central Excise Act (which is made applicable to service tax also) [parallel section 129E of the Customs Act], as amended by Finance (No. 2) Act, 2014 w.e.f. 6-8-2014, provides that Commissioner (Appeals) or CESTAT shall not 'entertain' appeal unless specified pre-deposit of duty or penalty is made.

The pre-deposit is as follows –

1. 7.5% if appeal is filed before Commissioner (Appeals)
2. 7.5% if appeal is filed before CESTAT against order of Principal Commissioner/ Commissioner as adjudicating authority
3. 10% if appeal is filed before CESTAT against order of Commissioner (Appeals).

The aforesaid percentage is to be calculated as follows –

- (a) If both duty and penalty is confirmed, then the percentage (7.5% or 10%) is only of the duty or service tax

(b) If only penalty is imposed, then the percentage (7.5% or 10%) is of the penalty.

2. **Customs Act, 1962:** Section 129E of the Customs Act similarly imposed a pre-deposit requirement, with the same threshold of **7.5% or 10%**.

The above requirements were introduced by the Finance Act, 2014 which came into force from August 6, 2014. This amendment aimed to simplify and standardize the pre-deposit requirement, reducing subjective interpretations, and ensuring that taxpayers had to make a financial commitment when challenging a tax demand or penalty.

## VAT

Under various VAT Acts, a pre-deposit was generally mandatory for filing an appeal.

For instance, under the Maharashtra Value Added Tax (MVAT) Act, amendments made effective from April 15, 2017, stipulated that a dealer must pay a pre-deposit of **10% of the disputed tax** amount before an appeal could be admitted.

In **Karnataka**, a similar requirement exists, where a pre-deposit of 10% is also mandated, with specific limits for certain types of appeals against orders from higher authorities

The Gujarat High Court ruled that in certain cases, such as in **Vinod Kumar Dugar Vs State of Gujarat**, the pre-deposit should be quantified at **15% of the tax demand** raised rather than a broader percentage of total amounts assessed.

Other states like **Delhi** and **Tamil Nadu** have also established similar requirements, typically around 10%, but with variations in maximum limits depending on the nature and level of appeal.

## Legislative Framework

Both the provisions establish pre-deposit as a prerequisite for taxpayers seeking to file or pursue appeals against adverse orders, making it a critical element in the tax litigation process. However, there is a significant departure on the requirement of pre-deposit in the GST era. While the provisions of Central Excise Act, 1944 and The Customs Act, 1962 provided that the Commissioner (Appeals) or the Tribunal "shall not entertain any appeal" unless the required pre-deposit is made. Under Section 112(8) of the GST Act, the provision uses the phrase "**shall not be filed**," unless the taxpayer makes the required predeposit which implies a procedural bar, disallowing the filing of an appeal without meeting the pre-deposit condition. Therefore, while the provisions of the Customs Act and the erstwhile Central Excise Act did not place a bar on filing of the appeal without making the pre-deposit. Thus, allowing the Appellant some freeway, the provision of the GST Act are more stringent and forbid the filing of appeal unless the required pre-deposit is made.

Section 112(8) of CGST Act states that "No appeal shall be filed under sub-section (1), unless the appellant has paid-

*(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and*

*(b) a sum equal to ten per cent. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, subject to a maximum of twenty crore rupees, in relation to which the appeal has been filed."*

Therefore, the difference in terminology between "shall not be filed" under GST and "shall not be entertained" under Customs has significant implications for the Appellant.

## Judicial Precedent

The Supreme Court in the case of Lakshmi Rattan Engineering Works Ltd. v. Asst. Commr. of Sales Tax

[AIR 1968 SC 488] analysed the term “entertain” as follows:

Lakshmi Rattan Engineering Works Ltd. filed an appeal against an assessment order under the Uttar Pradesh Sales Tax Act, 1948. The appeal was dismissed as defective by the Assistant Commissioner (Judicial) on the grounds that it lacked a challan showing payment of the admitted tax, as required under Section 9 of the Act and Rule 66(2) of the U.P. Sales Tax Rules. Despite the appellant producing a certificate of payment before the appeal hearing, the appeal was rejected. Instead of exhausting the revision and reference remedies provided under the Act, the appellant sought special leave to appeal directly to the Supreme Court.

#### Key Legal Issue:

The distinction between the terms "entertain" and "file" in the context of Section 9 of the U.P. Sales Tax Act, which requires an appeal not to be entertained unless accompanied by satisfactory proof of tax payment. The question was whether the appeal could be considered defective if such proof was submitted after filing but before hearing.

#### Judgment:

- **Definition of "Entertain":** The Supreme Court clarified that "entertain" refers to the first occasion when the court takes up the matter for consideration, either at the admission stage or during the hearing, depending on the procedural rules. It does not equate to the mere filing of the appeal.
- **Satisfactory Proof:** The court held that Section 9 requires satisfactory proof of tax payment to be available when the appeal is considered, not necessarily at the time of filing. Rule 66(2), which prescribes a challan as proof, is directory, not mandatory. Other forms of proof, like the certificate produced by the appellant, are equally valid.
- **Procedural Justice:** The court emphasized that procedural rules should advance justice, not create undue technical barriers. The rejection of the appeal based solely on non-compliance with Rule 66(2) was deemed overly technical and contrary to the intent of Section 9.

Finally, the Court held that *“We are of opinion that by the word "entertain" here is meant the first occasion on which the court takes up the matter for consideration. It may **be at the admission stage or if** by the rules of that Tribunal the appeals are **automatically admitted**, it will be the **time of hearing of the appeal**. But on the first occasion when the court takes up the matter for consideration, satisfactory proof must be presented that the tax was paid within the period by limitation available for the appeal.”*

#### Conclusion

The pre-deposit requirement in the GST era introduces a more stringent procedural bar compared to earlier frameworks, such as those under the Customs Act or the Central Excise Act. The use of the phrase "shall not be filed" in Section 112(8) of the CGST Act creates a strict mandate for taxpayers to fulfill the pre-deposit condition before filing an appeal. Unlike the phrase "shall not entertain" used in the Customs Act, which allowed the appeal to be filed but not heard until compliance was met, the GST framework effectively prevents the initiation of the appellate process without pre-deposit compliance.

This distinction has significant implications. Taxpayers unable or unwilling to fulfill the pre-deposit requirement may find themselves barred from the appellate route, leaving them with limited recourse. One potential alternative for such taxpayers is to directly approach the High Courts under Article 226 of the Constitution of India. High Courts possess the jurisdiction to entertain writ petitions in cases where statutory remedies are unavailable or inadequate, including situations involving procedural bars or financial hardships caused by pre-deposit requirements. However, the GST Appellate Tribunals are yet to be established, which poses a significant procedural challenge. This aspect, representing a departure from the earlier regime, may be addressed by the President of the GST Tribunal through the formulation of appropriate rules under the GST Tribunal framework. Over time, jurisprudence is likely to evolve, drawing on interpretations from erstwhile laws to ensure a balanced approach. It is anticipated that strict interpretation of the wording in GST law may be tempered by judicial precedents to provide equitable relief to taxpayers, upholding the principles of fairness and justice in tax administration.

Thus, while the GST framework seeks to enhance procedural discipline, its rigidity may inadvertently push taxpayers toward constitutional remedies. The long-term impact of these provisions will depend on judicial interpretation and the ability of the system to strike a balance between procedural compliance and taxpayers' access to justice.