

The Pre-deposit Dilemma under GST

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Introduction

The GST appellate framework plays a crucial role in dispute resolution but often comes with considerable financial and procedural hurdles. Mandatory pre-deposits, limited relief for hardship cases, litigation costs, and ambiguity in payment modes particularly affect small and mid-sized taxpayers. These burdens, largely in the form of pre-deposit requirements, litigation fees, and prolonged timelines, have given rise to a new phenomenon – **the cost of justice in GST**.

This article examines the multifaceted challenges faced by businesses during the appellate process under GST, with specific emphasis on-

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[Appellate Structure and Statutory Pre-Deposits](#)

Under the GST law, appeals against adjudication orders can be filed sequentially before:

Appeal Level	Relevant Sections	Timeline
1st Appeal	Section 107	Within 3 months from date of communication of order (extendable by 1 month)
Commissioner Appeal		
2nd Appeal	Sections 112	Within 3 months from date of communication of order (extendable by 3 months on sufficient cause)
Tribunal Appeal		
3rd Appeal	Section 117	Within 180 days from date of communication of order
High Court Appeal		
4th Appeal	Sections 118	Discretionary – No fixed timeline; governed by Supreme Court Rules
Supreme Court Appeal		

However, progression through these stages is conditioned upon *mandatory pre-deposits*, which are imposed to discourage frivolous litigation and to safeguard revenue. This framework creates significant liquidity strain, particularly for medium-to-large businesses facing high-stake assessments.

Appeal Level	Pre-deposit Under GST Tax / ITC (+) fine /Penalty with orOnly Interest fee / interest /without interest penalty	Pre-deposit in Excise law (Pre-GST)
1st Appeal [Commissioner Appeal]	<ul style="list-style-type: none"> • Full payment of admitted tax liability • 10% of disputed tax <p>Up to 31/10/2024</p> <p>Max: ₹25 crore (CGST) + ₹25 crore (SGST)</p> <p>From 1/11/2024</p> <p>Max: ₹20 crore (CGST) + ₹20 crore (SGST)</p>	<p>7.5% of disputed amount (duty and/or penalty) must be deposited for:</p> <p>First appeal to CESTAT</p> <p>Max: 10 Crores</p>
2nd Appeal [Tribunal Appeal]	<ul style="list-style-type: none"> • Additional 20% of disputed tax (Sec.11 2(8)): <p>Up to 31/10/2024</p> <p>Max: ₹50 crore (CGST) + ₹50 crore (SGST)</p> <p>From 1/11/2024</p> <p>Max: ₹20 crore (CGST) + ₹20 crore (SGST)</p>	<p>10% of disputed amount required for:</p> <p>Second appeal to CESTAT (against orders of Commissioner)</p> <p>Max: 10 Crores</p>
3rd Appeal [High Appeal]	100% of the sums due as per order passed by principal/State bench of CourtAppellate Tribunal or by High Court	
4th Appeal [Supreme Court Appeal]	(i.e. Tax + Interest + Penalty)	

****[Substituted by the Finance Act, 2025, with effect from a date yet to be notified. Prior to its substitution, proviso as inserted by the Finance Act, 2021, w.e.f. 1-1-2022, read as under:**

"Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to 25% of the penalty has been paid by the appellant."

GST law no-where provides for minimum pre-deposit required for stay when proceedings are pending before High court or Supreme court and the appellant need to apply to respective courts for the same and shall be available at their discretion.

Example – Consider a scenario wherein a dealer has received order levying penalty of Rs 1,00,000/- and wants to go to appeal in respect of the same. Following table stimulates pre-deposit required to be paid by him for the same in various time zones

Case Scenario	Nature of Demand	Date of filing Appeal	of Tax (₹)	Interest (₹)	Penalty (₹)	Pre-deposit Rule Applicable	Pre-deposit Amount (₹)
E-Way Violation	Bill Penalty- only under Sec. 129	Before Jan-2022	Jan-	-	₹100000	No clear rule	NA
		Between Jan-2022 and before amendment	Jan-	-	₹100000	25% penalty (as per FA 2021)	of ₹25000
		On or after-effective date of amendment		-	₹100000	10% penalty as per FA 2025	of ₹10000

Example – Consider a scenario wherein a dealer has received order levying tax, interest and penalty of Rs 21,50,000/- and wants to go to appeal in respect of the same. Following table stimulates pre-deposit required to be paid by him for the same

Nature of Demand	Date of Filing Appeal	of Tax (₹) of	Interest (₹)	Penalty (₹)	Pre-deposit Rule Applicable	Pre-deposit Amount (₹)
Tax + Interest + Penalty	Any period	₹10,00,000	₹1,50,000	₹20,00,000	10% of tax (standard rule under Sec. 107(6))	₹1,00,000

[Relief from Mandatory pre-deposit in genuine cases](#)

Pre-deposit is a **compulsory condition** for filing an appeal under the GST law. The statutory framework does **not empower appellate or tribunal authorities** to waive, reduce, or extend the timeline for the required pre-deposit. As a result, in genuine cases such as **ex-parte orders** where a taxpayer intends to challenge an adverse order but faces **financial hardship**, the legal process becomes practically inaccessible. The **only remedy** in such situations lies in filing a **writ petition before the High Court**.

However, even High Courts have, in several cases, **refused to intervene**, citing the availability of an alternative remedy under GST law. This leaves taxpayers without any effective legal recourse. Non-filing of appeal within the prescribed period **crystallizes the demand**, triggering recovery proceedings under **Section 78** of the CGST Act.

The current legal position thus places **undue burden on financially distressed taxpayers**, highlighting a procedural gap that warrants policy-level reconsideration.

Relevant Case Laws -

1. *Oberoi Constructions Ltd. Versus Union of India* [\[TS-806-HC\(BOM\)-2024-GST\]](#)

"The circumstances in which the appeals require some percentage of the demanded tax to be pre-deposited do not render the appellate remedies any less efficacious. Therefore, the petitioners cannot

urge a deviation from the general rule of exhaustion of alternate remedies based on such a contention. The practice of instituting petitions bypassing the statutory remedies only to avoid a pre-deposit cannot be encouraged”

2. *Anand Sales Enterprises Versus Assistant Commissioner State Goods and Services Tax ((2025) 30 Centax 315 (Chhattisgarh) [30-04-2025]) (Chhattishgarh High Court)*
3. *M/S Impressive Data Services Pvt Ltd. vs Commissioner (Appeals-I), Central [TS-307-HC(DEL)-2025-GST]*

[Interest on pre-deposit made](#)

As per Section 115 where pre-deposits made under **Section 107(6)** or **112(8)** are required to be refunded pursuant to appellate orders, interest is payable **from the date of deposit to the date of refund**.

While these provisions demonstrate the intent of the law to safeguard taxpayer interests. Interest is payable at rates specified in Section 56. (i.e 6%) Rate of 9% is applicable only in case of refund beyond 60 days from date of refund application and not for the entire period. Allowing enhanced interest rate of 9% for entire tenure of pre-deposit would further align with the principles of fairness and reduce the working capital pressure on taxpayers.

[Mode of Payment: e-Cash vs e-Credit](#)

A long-standing controversy surrounded the mode of payment for pre-deposits - whether such payments must be made in cash through the **Electronic Cash Ledger (ECL)**, or whether businesses can utilise their accumulated **Input Tax Credit (ITC)** from the **Electronic Credit Ledger (ECRL)**.

Historically, the GST portal never restricted the pre-deposit mechanism to cash-only payments. However, this practice was challenged by the department and judicially scrutinised.

The dispute arose from the Orissa High Court's ruling in Jyoti Construction vs. Dy. Commissioner of Central Tax & GST, Jaipur, where it was held that mandatory pre-deposit under Section 107(6) of the CGST Act must be made only through the Electronic Cash Ledger, not the Credit Ledger.

However, In Yasho Industries Ltd. v. Union of India [\[TS-708-HC\(GUJ\)-2024-GST\]](#) the Gujarat High Court ruled that input tax credit represents a vested right and qualifies as "amount paid" for pre-deposit purposes. This view was further affirmed by the Hon'ble Supreme Court in May 2025, effectively allowing taxpayers to utilise ITC for pre-deposit obligations. [\[TS-415-SC-2025-GST\]](#)

Held: Instant SLP was to be dismissed as High Court rightly held, relying on CBIC Circular dated 06.07.2022, that pre-deposit under Section 107(6)(b) of the CGST Act can be validly made through the Electronic Credit Ledger.

[Filing Fees and Other Incidental Costs](#)

In addition to the statutory pre-deposits, appellants are also required to pay filing fees as prescribed under the **CGST (Appeals) Rules**:

Appeal Level	Fees Payable	Legal Provision
1st Appeal (Before Appellate Authority - Commissioner (Appeals))	No Fee	Not specified in Section 107
2nd Appeal (Before Appellate Tribunal Principal/State Bench)	GSTBased on amount involved -break-up below)	Rule 110(5) & 110(6)

- If Tax/ITC + interest/penalty ₹1,000 per ₹1,00,000 of Tax/ITC Rule 110(5) involved
 involved Min: ₹5,000 + ₹5,000
 Max: ₹25,000 + ₹25,000

If only penalty/fine/fee involved	₹1,000 per ₹1,00,000 of Rule 110(5) penalty/fine/fee Min: ₹5,000 + ₹5,000 Max: ₹25,000 + ₹25,000
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If no tax/ITC/penalty/fine/fee involved	Flat ₹5,000 + ₹5,000	Proviso to Rule 110(5)
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Rectification of mistake (Sec 112(10))	No Fee	Rule 110(6)
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3rd Appeal (Before High Court)	No Fee	Not prescribed
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4th Appeal (Before Supreme Court)	No Fee	Not prescribed
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Appeal Filing Fees Pre-GST

The fee structure for filing an appeal to the Appellate Tribunal (CESTAT) under the Central Excise Act, 1944 in a tabular format:

Amount of Duty, Interest, and Penalty in Appeal Fee

Dispute

₹5 lakh or less	₹1,000
More than ₹5 lakh but not exceeding ₹50 lakh	₹5,000
More than ₹50 lakh	₹10,000

While relatively modest for large corporations, these costs can be prohibitive for MSMEs and become substantial in cases involving multiple appeals across different States or for different years.

Example - Mr. A operates a dairy business across 15 states. DGGI had initiated action against him regarding classification of Flavour Milk and consequentially adjudicating authorities have passed demand orders for 5 years under Section 74. Currently MR A has 75 adjudication orders (15 states × 5 years) disputing the GST rate on flavoured milk (5% vs. 12%), with a **disputed tax demand of ₹25,00,000 CGST and SGST each per order.**

As per **Rule 110(5)**, the **filing fee for each appeal is ₹1,000** per ₹1 lakh of disputed tax, capped at ₹25,000 CGST + **₹25,000 SGST**, i.e., **₹50,000 per appeal.**

Thus, the total **GSTAT filing fees** for 75 appeals amount to **₹37.5 lakhs.**

Conclusion

While the GST framework aspires to ensure equitable tax administration, the current appellate structure places a disproportionate cost burden on taxpayers seeking judicial relief. The pre-deposit mechanism, though rationalised through recent judicial interpretations, continues to be a material factor in determining the accessibility of justice. Unless further reforms are implemented - including reduction in deposit thresholds, centralised appellate processing, and functional GSTAT benches - the "cost of justice" will remain a significant compliance challenge under India's GST regime.

In our next article, we will explore further aspects of the GST appellate process, focusing on procedural gaps, administrative challenges, and areas where greater clarity or reform may be needed to strengthen the redressal mechanism for taxpayers.

Author's Note:

This article is intended for informational purposes only and does not constitute legal advice. Businesses are advised to consult professional advisors for tailored litigation and compliance strategies.