The Pre-deposit Conundrum in GSTAT Era

Oct 17, 2025

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Introduction

With the commencement of the Goods and Services Tax Appellate Tribunal ("**GSTAT**"), the long-missing second appellate tier under the GST regime is finally becoming operational. The GSTAT Procedural Rules, 2025 ("**GSTAT Rules**") envisage a fully digital filing process, marking a significant step towards modernization of the Tribunal. Given the long impending status of the GSTAT, a tidal wave of appeals is ready to hit the shores the moment the portal becomes fully operational. Considering the likelihood of technical glitches arising from the sheer volume of appeals to be filed before the GSTAT, it is only natural for assessees to brace for some turbulence.

The Staggering Order dated 24.09.2025 from the GSTAT President sought to stagger the filing of appeals to avoid overloading the GSTAT portal. Yet, even the first window, which opened on 24.09.2025, has not become fully functional as of today and the 'Total E-filed Appeals' on the GSTAT Portal reads zero. Such delays, coupled with interpretational uncertainties under the provisions of the Central Goods and Services Tax Act, 2017 ("**CGST Act**"), may impede a smooth rollout of the appellate process.

One of the most significant areas of ambiguity is the requirement of pre-deposit under Section 112(8)(b) of the CGST Act. The provision mandates that no appeal shall be filed before the GSTAT unless the taxpayer has paid a sum equal to ten percent of the remaining amount of tax in dispute, in addition to the amount paid under Section 107(6) of the CGST Act. The expression *"in addition to"* employed in Section 112(8) has created interpretational and practical concerns, particularly where the effective disputed tax has already been discharged or substantially reduced at the first appellate stage.

Practical Scenarios: Consider the following scenarios to illustrate practical concerns:

Scenario 1: Partial relief by the First Appellate Authority

The demand confirmed in the Order-in-Original ("**OIO**") was Rs. 100. The taxpayer, while filing an appeal before the Appellate Authority under Section 107 of the CGST Act, paid Rs. 10 (10 percent of Rs. 100) as pre-deposit. Subsequently, the First Appellate Authority reduced the demand to Rs. 10.

The question that arises is whether the taxpayer must now pay an additional Rs. 1 (10 percent of Rs. 10) under Section 112(8)(b) of the CGST Act, or whether the earlier pre-deposit should suffice, considering that pre-deposit more than 20 percent of the disputed tax amount already stands paid. Another question is whether the taxpayer would be entitled to a refund of the excess pre-deposit paid at the first stage.

Scenario 2: Entire demand paid under protest

The demand confirmed in the OIO was again Rs. 100, with Rs. 10 deposited as pre-deposit at the first stage. During pendency of the said appeal, the taxpayer discharged the remaining Rs. 90 under protest. The First Appellate Authority, however, upheld the OIO in its entirety.

The issue here is whether a further 10 percent pre-deposit must still be paid to file an appeal before the GSTAT, even though the entire demand already stands paid.

Analysis

In both the situations discussed above, the core question is whether Section 112(8)(b) of the CGST Act requires payment of an additional pre-deposit at the time of filing an appeal before the GSTAT, even where the taxpayer has already paid 20 percent or more of the disputed tax amount.

The legislative intent behind Sections 107(6) and 112(8) of the CGST Act is to safeguard the interests of Revenue while ensuring that taxpayers have access to appellate remedies and not to create a scenario where the pre-deposit exceeds the amount actually under dispute. Once the taxpayer has already deposited a sum equal to or greater than 20 percent of the disputed tax, the requirement under Section 112(8) must be considered as fulfilled. Insisting upon an additional pre-deposit when 20 percent of the disputed tax (or the entire tax amount) already stands discharged would result in an absurd and inequitable outcome.

In the erstwhile regime, the Board had, vide Circular No. 984/08/2014-CX dated September 16, 2014, explicitly clarified that any payment made during investigation or audit, prior to the filing of an appeal, could be treated as pre-deposit for that purpose. The approach has been accepted by several appellate authorities even under the GST regime and should be accepted by the GSTAT as well.

However, given the fully electronic nature of the GSTAT filing process, the Authorities or the GSTAT portal may mechanically adopt a literal interpretation and insist upon payment of an additional 10 percent to enable electronic submission of appeals. In such circumstances, taxpayers may either challenge such insistence before the jurisdictional High Court or, as a practical measure, make the additional payment and subsequently seek refund of the excess pre-deposit corresponding to the demand already set aside by the Appellate Authority.

Consequences and the Way Forward

While such interim measures may facilitate compliance, such a stopgap approach is not

sustainable. If left unaddressed, the present wording of Section 112(8) may impose unnecessary financial strain on taxpayers, compelling pre-deposits exceeding the actual tax amount in dispute and thereby creating avoidable cash flow constraints.

To prevent procedural bottlenecks and unnecessary litigation, the Board should issue a clarification clarifying that where the taxpayer has already paid an amount equivalent to 20 percent of the disputed tax, whether by way of pre-deposit or payment under protest, the condition under Section 112(8)(b) stands substantially complied with.

In conclusion, the establishment of the GSTAT marks a defining milestone in the evolution of India’s indirect tax appellate framework. However, its success will depend not merely on institutional readiness but also on the removal of procedural hassles. A purposive clarification on Section 112(8)(b) is therefore essential to ensure that this long-awaited reform does not transform into yet another procedural hurdle in the path of justice.