

■ **REPORTS**

705 – 820

■ **MAGAZINE**

119 – 140

■ **STATUTES**

75 – 78

GOODS & SERVICE TAX CASES

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Analysis of GST Model Law :

- ◆ **Relation between GST and Income Tax (Mag.) 126**
- ◆ **Filing Appeals in GST – A Costly Affair! (Mag.) 132**
- ◆ **Imports – Valuation under GST regime (Mag.) 123**
- ◆ **Transitional Provisions under Draft Model GST Law (Mag.) 135**

◆ **CST/VAT**

- Uniform prices at exempted as well as taxable unit – No presumption that “price at exempted unit includes tax and hence, tax is collected even at exempted unit” (SC) 705 & (vii)
- Recovery – Dues of principal, cannot be recovered from his agent (Kar.) 767

◆ **Service Tax**

- Access to premises – Rule 5A(1) of Service Tax Rules – “Power to access premises” under rule 5A(1) stayed, as it is *prima facie* ultra vires to ‘power to search’ (Cal.) 717
- Service – By SEZ to its DTA counterpart – Services by SEZ unit to DTA unit of same company, not taxable if no consideration charged for such services (Guj.) 719
- Service v. Manufacture – Chilling of milk for Dairies amounts to ‘manufacture’ and is, therefore, not liable to service tax (CESTAT – New Delhi) 784

- ◆ **Cenvat Credit – Refund under rule 5 v. 100% exporter – In case of 100% exporter, there is no need to apply turnover-based formula and hence, entire Cenvat Credit (including opening balance) is eligible for refund (CESTAT – Mumbai) 796**

[2016] 56 GST 132 (Mag.)/72 taxmann.com 74 (Article)

GST MODEL LAW : FILING APPEALS IN GST – A COSTLY AFFAIR !

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Introduction

1. The government is propagating much about simplicity and uniformity of the proposed GST regime but the Model GST Draft Act, 2016 does not compliment the avowed promises made. The dual control of the Central and State Government with different provisions regarding filing of appeals and mandatory pre-deposit to be made itself reflect the complexity the assessee would face in the upcoming so called 'revolutionary taxation reform'. This piece of write up is to address the provisions regarding mandatory pre-deposit incorporated in the Draft GST Act, 2016.

Backdrop of prevalent provisions regarding mandatory pre-deposit:-

2. At present, the provisions regarding mandatory pre-deposit in Central Laws like Excise, Customs and Service Tax are similar and summarized as follows:-

Appellate Authority	Quantum of Mandatory Pre-Deposit
Commissioner (Appeals)	7.5% of the duty determined in the order if duty and penalty are involved. 7.5% of the penalty determined in the order if only penalty is involved. Ceiling of Rs. 10 Crores. No pre-deposit for interest component
Tribunal (If order is passed by Commissioner or officer above rank of Commissioner)	7.5% of the duty determined in the order if duty and penalty are involved. 7.5% of the penalty determined in the order if only penalty is involved. Ceiling of Rs. 10 Crores. No pre-deposit for interest component
Tribunal (If order is passed by Commissioner Appeals)	10% of the duty determined in the order if duty and penalty are involved. 10% of the penalty determined in the order if only penalty is involved. Ceiling of Rs. 10 Crores. No pre-deposit for interest component

Under VAT Laws, the provisions vary from State to State. In case of Rajasthan VAT Act, assessee is required to pay 10% of the disputed tax amount and 5% of the disputed tax amount in case of *ex parte* assessment order.

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Provisions proposed in Model GST Act, 2016

3. There are different provisions regarding filing of appeals in GST regime. It appears that the government will develop a dual mechanism of assessment and appellate remedies available to assessees. The provisions proposed with respect to mandatory pre-deposit are summarised as follows:-

Appellate Authority	CGST Law	SGST Law
First Appellate Authority and Second Appellate Authority being Tribunal	<p>10% of the amount in dispute arising from the said order.</p> <p>Amount in dispute means amount determined including amount of fee or penalty levied. If interest is determined by order, interest is also included.</p>	<p>Amount of tax, interest, fine, penalty admitted by assessee in full is to be deposited.</p> <p>Apart from admitted liability, a sum equal to 10% of remaining amount in dispute.</p> <p>Amount in dispute means amount determined including amount of fee or penalty levied. If interest is determined by order, interest is also included.</p> <p>Departmental authorities also have right to apply for ordering higher pre-deposit, upto maximum 50% of the amount in dispute if the case is considered as 'serious case'.</p> <p>Serious case means case involving disputed tax liability of Rs. 25 Crores or more and department believes it is good case for them.</p>

Comparative Analysis of the Provisions:-

4. The following is a comparative analysis —

- ◆ There is no difference in the percentage of mandatory pre-deposit at different appellate stages in contrast to 7.5% for first appellate stage while 10% for second appellate stage thereby leading to increase in the quantum of mandatory pre-deposit in GST regime.
- ◆ Presently, mandatory pre-deposit is computed only on duty component or penalty component if only penalty is in dispute. However, the computation of mandatory pre-deposit in GST regime includes fine, penalties and even interest, if ascertained by the order. This also leads to increasing the mandatory pre-deposit in absolute terms in the proposed GST regime.
- ◆ There is wide variation in the provisions of CGST and SGST Laws. The mandatory pre-deposit provision in SGST is harsher. Firstly, if assessee admits certain tax as its liability, then such tax, interest, fine and penalties are required to be paid in full and further 10% is required to be paid of amount in dispute. Not only this, the departmental authorities have also been empowered to

request for ordering more pre-deposit in serious cases which can extend upto 50% of the amount in dispute. This appears to be unfair as assesseees have not been given any option to dispense with the condition of mandatory pre-deposit in deserving cases and apply for stay. It is practical phenomenon that futile demands are raised against assesseees and in meritorious cases, it is burdensome to even comply with mandatory pre-deposit of 10%. When no option of complete stay is provided to assessee, power to departmental officers for enhancing mandatory pre-deposit in serious cases is very biased.

- ◆ There is no ceiling on the amount of mandatory pre-deposit as is presently prevalent thereby leading to diminishing the right of appeal in cases involving Crores of demand wherein it may not be possible to comply with even 10% of the mandatory pre-deposit.

Before Parting

5. It has been concluded in various judicial pronouncements that appellate remedy is granted under the provisions of Statue and the option of filing appeal can be granted on satisfaction of certain conditions but the conditions cannot be too harsh and stringent so as to disable assesseees from filing appeals. The provisions of mandatory pre-deposit incorporated in the Model GST Act, 2016 deserves prompt attention by trade and industry so that the *pros* and *cons* can be communicated to the authorities drafting the GST legislation.

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