

**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:- 18<sup>th</sup> April, 2023.

To,

1. The Pr. Chief / Chief Commissioners, CGST & CX Zones (All)
2. The Pr. Commissioner/ Commissioners, CGST & CX Zones (All)
3. Commissioner of CGST & CX (Appeals) (All)

Sir/Madam,

**Subject: Pre-deposit payment method for cases pertaining to Central Excise & Service Tax- Issues faced by the taxpayers who have paid the pre-deposit amount through FORM GST DRC-03 in GST Appeals-reg.**


Kindly refer to Instructions CBIC-240137/14/2022-Service Tax Section-CBEC dated 28.10.2022 on the issue of pre-deposit payment method for cases pertaining to Central Excise and Service Tax wherein it has been clarified that payments made through FORM GST DRC-03 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.

2. It has been brought to the notice of the Board that certain appeals filed under section 107 of the CGST Act, 2017 in manual mode, where pre-deposit amount has been deposited vide FORM GST DRC 03, are being rejected by some of the appellate authorities considering that FORM GST DRC 03 is not a prescribed mode of payment for filing appeals under GST, based on para 2 of above mentioned instructions.

3. In this regard, it may be noted that the above mentioned Instructions were meant for the cases of appeals belonging to the Central Excise/ Service Tax only and any reference to the GST Act was unintentional and for the limited purpose of drawing a parallel between provisions of the GST Act and Central Excise Act, 1944/ the Finance Act, 1994. Hence last line of para 2 of the said instruction may be considered as infructuous.

4. This clarification may be given wide publicity to prevent any implication upon the appeals made under the provisions of the CGST Act.

Yours faithfully,



(Varun Kumar Singh)  
Under Secretary, CX-8

Copy for information to:

The Pr. Commissioner, GST Policy Wing  
CBIC, North Block

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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:- 28<sup>th</sup> 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 24<sup>th</sup> 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.

Yours faithfully,



**(Varun Kumar Singh)**

Under Secretary to Govt. of India