

TAX INFO

Dated 01/11/2022

Latest update on GST Law: HC directed the appellate authority to accept payment of pre-deposit of Excise and Service Tax through Form GST DRC-03 as the CBIC was yet to issue guideline in this regard as given in judgement by Bombay High Court.

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Name of Petitioner	Sodexo India Services Pvt. Ltd.
Name of Respondent	The Union of India
Court	BombayHigh Court
Date of Judgement	03.10.2022
Appeal No.	WRIT PETITION NO.6220 OF 2022

Brief Facts of the Case Law:

Petitioner had made a pre-deposit in cash through Form GST DRC-03 as required under Section 85 of the Finance Act, 1994 read with Section 35F of the Central Excise Act, 1944. The appeals were accepted and registered and appeal numbers were allotted. Thereafter, petitioner was called for personal hearing and petitioner made submissions on merits of the matter. To petitioner's surprise, all the appeals came to be dismissed without going into the merits of the submissions made by petitioner only on the ground that the pre-deposit made by petitioner while filing the appeal was improper. According to appellate authorities, petitioners could not have made the deposit in the manner they made and, therefore, should be construed to have not complied with the precondition of pre-deposit. Strangely in the order, it was not stated how the deposit should have been made. According to petitioner, even during the personal hearing, appellate authority was totally silent and never brought to the notice of petitioner as to how the deposit should have been made.

Commissioner (Appeals), who had passed the order impugned in the petition had filed an affidavit dated 29th September 2022 wherein he has expressed his helplessness since according to him the law as well as the circulars issued does not permit pre-deposit in the manner made by petitioner. The proceedings under Central Excise Act, 1944 or Finance Act, 1994 and CGST are separate proceedings and, therefore, payment method used under the old laws, i.e., Central Excise Act, 1944 and Finance Act, 1994 cannot be used for payment under CGST Act. The tools available under the CGST laws may be utilised for making payment under the CGST laws.

Findings and Decision of the Court:

This is a matter that requires to be resolved by the Central Board of Indirect Taxes and Customs (CBIC). From the affidavit filed by Commissioner (Appeals), it appears that many appellants were paying the pre-deposit under Section 35F of the Central Excise Act, 1944 through service tax challans, whereas few appellants were using DRC-03 mode under CGST Act, 2017. This, in our view, could be for various reasons.

Commissioner (Appeals), himself has raised this issue with the Principal Chief Commissioner, CGST and Central Excise by a letter dated 10th February 2022. Therefore, it does appear that the confusion seems to be due to there being no proper legal provision to accept payment of pre-deposit under Section 35F of the Central Excise Act, 1944 through DRC-03. Some appellants are filing appeals after making pre-deposit payments through DRC-03/GSTR-3B.

Thus, the CBIC is required to step in and issue suitable clarifications/guidelines/ answers to the FAQs.

In the circumstances, the impugned orders dated 13th April 2022 were set aside and appellate authority was directed to hear petitioner and pass such orders as he deems fit on merits in accordance with law. Before passing any order, appellate authority shall grant personal hearing and notice of personal hearing shall be communicated at least 7 working days in advance. The order to be passed shall be a reasoned order dealing with all submissions of petitioner.

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