

Office of the
Commissioner of State Tax.
Maharashtra State, 8th Floor,
GST Bhavan, Mazgaon,
Mumbai-400 010.

TRADE CIRCULAR

No. JC (HQ)-5/AR-2/GST/2024/ADM-8/B- 112

dated 13/08/2024.

Trade Circular No. 21 T of 2024.

To,

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Subject : Guidelines for recovery of outstanding dues, in cases wherein first appeal has been disposed of, till Appellate Tribunal comes into operation.

Ref. : 1. Circular No. 224/18/2024-GST dt. 11th July, 2024 issued by the CBIC.
2. Trade Circular No. 9T of 2020 dated 26.05.2020 +
3. Trade Circular No. 20T of 2023 dated 31.07.2023

Central Board of Indirect Taxes and Customs (CBIC) has issued the Circular referred at Sl.No.1 (224/18/224-GST dated 11th July, 2024). For the uniformity, it has been decided that the said Circular issued by the CBIC is being made applicable, *mutatis mutandis*, in implementation of the MGST Act, 2017. Copy of the referred CBIC Circular is attached herewith.

2. The Trade Circular No. 9T of 2020 dated 26.05.2020 and Trade Circular No. 20T of 2023 dated 31.07.2023, which were issued to clarify issues in respect of appeal due to non-constitution of Appellate Tribunal, are hereby superseded.

3. For the purpose of uniformity in procedure followed, it is decided that **Annexure-II** as appended to this Trade Circular shall be the relevant undertaking/ declaration as referred in para 5 of the CBIC Circular referred at Sl. No. 1.

4. **Payment of requisite amount u/s 112(8) in cases wherein Annexure-I is already submitted:**

4.1 Some taxpayers, in pursuance of the Trade Circular No. 9T of 2020 dated 26.5.2020, might have obtained stay to the recovery of balance GST demand by filing the requisite Annexure-I as per Trade Circular No. 9T of 2020. In view of CBIC Circular so adopted and supersession of Trade Circular No. 9T of 2020, in all such past cases wherein Annexure-I was submitted to the proper officer, such taxpayers are also required to pay the requisite amount as per section 112(8) and submit the new Annexure-II to the proper officer within two months from the date of issue of this Trade Circular to continue with the stay granted to the recovery of balance GST demand.

4.2 It is made clear that, in all such cases where Annexure-I was filed and requisite payment is not made, then unless requisite payment of amount as per the provisions of section 112(8) is made and Annexure-II is submitted to the proper officer within two months of issuance of this Trade Circular, it will be presumed that the taxpayer is not willing to file appeal against the order of first appellate authority and in such cases, recovery proceeding can be initiated as per the provisions of law.



4.3 Further, proper/recovery officers are hereby instructed to sensitise all such taxpayers, who have submitted Annexure-I to the proper officer, to pay requisite amount as per section 112(8) of the MGST Act and submit Annexure-II to the proper officer within stipulated time.

5. **Instructions to appellate authorities:**

5.1 As per the judgment of Hon'ble HC in the case of M/s Gulf Oil Lubricants India Ltd (WP No 3517 of 2022) and M/s T & M Services consulting (WP 3823 of 2023), the Trade Circular No. 20T of 2023 was issued to instruct appellate authorities to incorporate paragraph 4.3 and 5 of the Trade Circular No 9T of 2020 in the orders issued by them. Now in view of CBIC Circular so adopted and supersession of Trade Circular No. 9T of 2020 dated 26.05.2020 and Trade Circular No. 20T of 2023 dated 31.07.2023, all the appellate authorities are hereby instructed to incorporate following two paragraphs in the preamble of the appeal order.

“(a) Appeal against the order of the appellate authority may be made to the Appellate Tribunal, as and when it comes into operation, within the timelines mentioned in section 112 of the MGST Act or date on which the President of the GST Appellate Tribunal enters office, whichever is later.

“(b) The taxpayer also needs to file an undertaking/ declaration in Annexure-II with the jurisdictional proper officer and pay requisite amount as per section 112(8) of MGST Act. On submitting the said Annexure-II and on payment of an amount equal to the amount of pre deposit as per the procedure mentioned in CBIC Circular No. 224 of 2024 dated 11th July, 2024, the recovery of the remaining amount of demand as per the appeal order will stand stayed as per provisions of sub section (9) of section 112 of MGST Act.”

6. This Trade Circular is clarificatory in nature. Difficulty if any, in the implementation of this Circular may be brought to the notice of the office of the Commissioner of State Tax, Maharashtra.

(ASHEESH SHARMA)
Commissioner of State Tax,
Maharashtra State, Mumbai.

No. JC (HQ)-5/AR-2/GST/2024/ADM-8/B- 112 dated 13th August 2024.

Trade Circular No. 21 T of 2024.

Copy forwarded to the Joint Commissioner of State Tax (Mahavikas) with a request to upload this Trade Circular on the Departments Web-site.

Copy forwarded to,-

- The Deputy Secretary, Finance Department, Mantralaya, Mumbai-21 for information.
- Accounts Officer, Sales Tax Revenue Audit, Mumbai and Nagpur.

(KIRAN SHINDE)
Joint Commissioner of State Tax-HQ-5
Maharashtra State, Mumbai.

Annexure-II

(Declaration regarding proposed appeal before the GST Appellate Tribunal)

(This Annexure is part of Trade Circular No. of 2024 dated .08.2024)

To,

I/We, the undersigned, hereby declare that I/we, am/are proposing to file an appeal u/s 112(1) of the MGST Act, 2017, against the Order passed u/s 107. The details are as follows-

- (1) Name of the tax payer-
- (2) GSTIN-
- (3) Address of the place of Business-
- (4) Period of Appeal order-
- (5) Date of Appeal order-
- (6) Date of service of Appeal order-
- (7) Details of amount paid as pre-deposit as per section 112(8)-
- (8) Details of aforesaid payment made through,-
 - (a) Electronic liability ledger-Part-II: Debit entry number and amount
 - (b) DRC-03: ARN number and amount; ARN of DRC-03A.

I/We, the undersigned, hereby also declare that I/we, will file the appeal before tribunal u/s 112(1) within three months (six months in case of appeals by the Government) from the date of communication of order as per section 112 of the MGST Act, 2017 as amended from time to time or date on which the President of the GST Appellate Tribunal enters office, whichever is later.

Yours faithfully,

Date-

Place-

Signature

Name of the applicant-

Status



CBIC-20001/4/2024-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 11th July, 2024

To,

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners /
Commissioners of Central Tax (All)
The Principal Directors General / Directors General (All)

Madam/Sir,

Subject: Guidelines for recovery of outstanding dues, in cases wherein first appeal has been disposed of, till Appellate Tribunal comes into operation.

Doubts have been raised by the trade and the field formations in respect of recovery of outstanding dues, in cases where the first appellate authority has confirmed the demand created by the adjudicating authority, fully or partially, and where appeal against such order of appellate authority could not be filed under section 112 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act') due to non- constitution of Appellate Tribunal (hereinafter referred to as 'Tribunal'), as yet. Doubts have also been raised as to whether the amount that was originally intended to be paid towards the demand created but has inadvertently been paid and intimated by the taxpayer through FORM GST DRC-03 either under the 'voluntary' category or under the 'others' category, can be adjusted against the pre-deposit that is required to be paid by the taxpayer for filing appeal before the appellate authority under section 107, and before the appellate tribunal under section 112 of the CGST Act.

2. The matter has been examined. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby issues the following clarifications and guidelines.

3. In cases, where the first appellate authority has confirmed the demand issued by the adjudicating authority, partially or fully, the taxpayers cannot file appeal against the said appellate order at present due to non-operation of GST Appellate Tribunal as yet. As per Section 112 of the CGST Act, every person has statutory remedy of appeal against the order passed by the first appellate authority or by a revisional authority, before the Tribunal. As per section 78 of CGST Act, the recovery proceedings are to be initiated, if the amount

payable as per the order issued under the said act is not paid by the concerned person within the said period of three months from the date of service of the said order. It may further be noted that if any person files an appeal in accordance with the requirement of sub-section (8) of section 112 of the CGST Act (i.e., on payment of prescribed pre-deposit), the recovery proceedings for the balance amount is deemed to be stayed till disposal of the appeal as per sub-section (9) of section 112 of the CGST Act. However, as the taxpayers are not able to file appeal under section 112 in Appellate Tribunal against the orders of appellate authority and therefore, are not able to make the pre-deposit under sub-section (8) of section 112 of CGST Act, in some cases, the tax officers are taking a view that there is no stay against recovery as per sub-section (9) of section 112 of CGST Act. In some cases, taxpayers have either paid or are willing to pay the requisite amount of pre-deposit as per sub-section (8) of section 112 of CGST Act either by crediting in their electronic liability register against the demand so created, or by depositing the said amount through FORM DRC-03. However, tax officers are still resorting to recovery proceedings after completion of period stipulated under section 78 of CGST Act.

4. In order to facilitate the taxpayers to make the payment of the amount of pre-deposit as per sub-section (8) of section 112 of CGST Act, and to avail the benefit of stay from recovery of the remaining amount of confirmed demand as per sub-section (9) of section 112 of CGST Act, it is hereby clarified that in cases where the taxpayer decides to file an appeal against the order of the appellate authority and wants to make the payment of the amount of pre-deposit as per sub-section (8) of section 112 of CGST Act, he can make the payment of an amount equal to the amount of pre-deposit by navigating to **Services >> Ledgers>> Payment towards demand**, from his dashboard. The taxpayer would be navigated to Electronic Liability Register (ELL) Part-II in which he can select the order, out of the outstanding demand orders, against which payment is intended to be made. The amount so paid would be mapped against the selected order and demand amount would be reduced in the balance liability in the aforesaid register. The said amount deposited by the taxpayer will be adjusted against the amount of pre-deposit required to be deposited at the time of filing appeal before the Appellate Tribunal.

5. The taxpayer also needs to file an undertaking/ declaration with the jurisdictional proper officer that he will file appeal against the said order of the appellate authority before the Appellate Tribunal, as and when it comes into operation, within the timelines mentioned in section 112 of the CGST Act read with Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. On providing the said undertaking and on payment of an amount equal to the amount of pre-deposit as per the procedure mentioned in para 4 above, the recovery of the remaining amount of confirmed demand as per the order of the appellate authority will stand stayed as per provisions of sub-section (9) of section 112 of CGST Act.

6. In case, the taxpayer does not make the payment of the amount equal to amount of pre-deposit or does not provide the undertaking/ declaration to the proper officer, then it will

be presumed that taxpayer is not willing to file appeal against the order of the appellate authority and in such cases, recovery proceedings can be initiated as per the provisions of law. Similarly, when the Tribunal comes into operation, if the taxpayer does not file appeal within the timelines specified in Section 112 of the CGST Act read with Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019, the remaining amount of the demand will be recovered as per the provisions of law.

7.1 It has also been noticed that some taxpayers have already paid amounts that were intended to have been paid towards a demand, through FORM GST DRC-03. Attention is invited to notification No. 12/2024- CT dated 10.07.2024, vide which sub-rule (2B) of Rule 142 and FORM GST DRC-03A has been inserted in Central Goods and Services Rules, 2017 (hereinafter referred to as 'CGST Rules'), providing for a mechanism for cases where the person liable to pay tax, interest and penalty under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 of CGST Act has made payment of such tax, interest and penalty, inadvertently through FORM GST DRC-03 under sub-rule (2) of Rule 142. In such cases, the said person can file an application in FORM GST DRC-03A, electronically on the common portal, and the amount so paid and intimated through the FORM GST DRC-03 shall be adjusted as if the said payment was made towards the said demand on the date of such intimation through FORM GST DRC-03.

7.2 Accordingly, in cases where the concerned taxpayer has paid an amount that was intended to have been paid towards a particular demand through FORM GST DRC-03, has submitted an application in FORM GST DRC-03A on the common portal, the amount so paid and intimated through the FORM GST DRC-03 will be considered as if the payment was made towards the said demand on the date of such intimation through FORM GST DRC-03. The amount so paid shall also be liable to be adjusted towards the amount required to be paid as pre-deposit under Section 107 and Section 112 of the CGST Act, if and when the taxpayer files an appeal against the said demand, before the appellate authority or the appellate tribunal, as mentioned in para 4 above, and the remaining amount of confirmed demand as per the order of the adjudicating authority or the appellate authority, as the case may be, will stand stayed as per provisions of sub-section (6) of section 107 and sub-section (9) of section 112 of CGST Act. However, if the taxpayer does not file appeal within the timelines prescribed in Section 107 and Section 112 of the CGST Act, as the case may be, read with Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019, the remaining amount of the demand will be recovered as per the provisions of law.

7.3 In this regard, it is to be mentioned that the application in FORM GST DRC-03A for adjustment of demand liability against the payment through FORM GST DRC-03 cannot be made in cases where against the payment made through the said FORM GST DRC-03, proceedings have already been concluded by issuance of an order in FORM GST DRC-05 as per the Rule 142(3) of CGST Rules, 2017.

8.1 Currently, the above-mentioned functionality for filing of an application in FORM GST DRC-03A, is not available on the common portal. Therefore, till the time such functionality is made available on the common portal, in respect of cases where an amount of pre-deposit has been inadvertently paid through FORM GST DRC-03 instead of making the said payment through Electronic Liability Ledger-II against the demand created in the said ledger, the concerned taxpayer may intimate the proper officer about the same, and on such intimation, the proper officer may not insist on recovery for the remaining amount payable by the concerned taxpayer, till the time the said functionality of FORM GST DRC-03A is made available on the portal.

8.2 Once the functionality of FORM GST DRC-03A is made available on the portal, the concerned taxpayer may file an application in FORM GST DRC-03A, on the common portal, at the earliest, as mentioned in para 7.1 above and on doing so, the amount paid vide FORM GST DRC-03 may be adjusted against the pre-deposit under section 107 or section 112 of the CGST Act, as the case may be, as detailed in para 7.2 above. However, in case the taxpayer fails to file an application in FORM GST DRC-03A on the common portal, the proper officer may proceed to recover the amount payable as per provisions of section 78 and section 79 of CGST Act.

9. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

10. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal
Principal Commissioner (GST)