Tax alert: Bombay High Court says refund of statutory pre-deposit cannot be denied for portion of demand dropped in appeal

8 September 2026

The Bombay High Court has held that refund of the statutory pre-deposit attributable to the portion of demand dropped in appeal by the Appellate Authority, cannot be denied merely because the taxpayer intends to challenge the remaining demand before the GST Appellate Tribunal (GSTAT).

In a nutshell

The Bombay High Court held that the petitioner is entitled to refund of proportionate pre-deposit amount corresponding to the dropped demand, considering that department did not file any appeal against the demand dropped in appeal.

It held that to the extent of dropped demand, the proceedings had attained finality.
Once a demand is set aside, a statutory right accrued to receive refund of the corresponding pre-deposit amount.

Referring to the erstwhile regime, it noted that pre-deposit amount bore the character only of a security deposit, being a statutory condition precedent for hearing of the appeal. Such an amount needs to be returned, whether the appellant succeeds fully or partly.

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Background:

- The petitioner was subjected to a tax demand pursuant to an adjudication order. Aggrieved by the said order, the petitioner had preferred an appeal before the First Appellate Authority making the prescribed 10% pre-deposit. The First Appellate Authority partly allowed the appeal, dropping demand partially, while confirming the balance demand.
- The petitioner filed an application seeking refund of the 10% pre-deposit attributable to the portion of the demand that had been dropped by the First Appellate Authority.
- The Department rejected the refund claim on the grounds that the appellate proceedings had not attained finality, since the petitioner had expressed its intention to challenge the adverse portion of the appellate order before the GSTAT.
- Aggrieved by the denial of the refund, the petitioner filed a writ petition before the Bombay High Court.

Bombay High Court (HC) Judgement[1]:

- At the outset, Bombay HC noted that the department did not file any appeal against the order, which partially dropped the demand by the First Appellate Authority. Consequently, it held that the petitioner was entitled to a proportionate refund of the pre-deposit attributable to the portion of the demand that was dropped by the First Appellate Authority. The HC provided the following reasoning:
  - The petitioner proposed to challenge only that part of the appellate order which had gone against it. To the extent of the dropped demand, the proceedings had attained finality.
  - It was noted that the petitioner would be required to make the prescribed pre-deposit in respect of the balance demand if it preferred to make a further appeal against that portion of the order.
  - Under the erstwhile indirect tax regime, pre-deposit did not bear the character of duty but bore the character only of a security deposit, being a statutory condition precedent for hearing the appeal. Such amount is required to be returned to the appellant where the appellant succeeds, wholly or partly[2].
  - Once the corresponding demand stood set aside, a statutory right accrued in favour of the Petitioner to receive refund of the corresponding pre-deposit. Continued retention of such amount was wholly unauthorized and offended Article 265 of the Constitution.
  - The Order-in-Appeal, to the extent it set aside the demand, was binding on the Department. The Department could not refuse consequential refund of the pre-deposit attributable to the demand so set aside.
- Accordingly, the Bombay HC directed the Department to process the refund.

Comments:

The judgment is significant in clarifying the treatment of statutory pre-deposit where an appeal is partly allowed and a further appeal for the confirmed demand is contemplated by a taxpayer. The judgment proceeds on the fundamental principle that a statutory pre-deposit is not in the nature of tax or duty, but a security deposit made as a condition precedent for maintaining an appeal. Once the taxpayer succeeds in respect of a portion of the demand, the right to refund the corresponding pre-deposit crystallises.

While in this case the HC has noted that the department had not filed appeal regarding the dropped demand, a taxpayer may evaluate claiming pre-deposit refunds even in cases where Department had filed appeal and there is no stay on the order that had dropped the demand, or in cases where the matter is remanded to the

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[1] IBM India Pvt. Ltd. vs. The Union of India & Ors - 2026-VIL-955-BOM

[2] Reference was made to **Nelco Limited Vs. UoI** (2002 (144) E.L.T. 56 (Bom.)] - 2001-VIL-08-BOM-CE maintained in 2002 (144) E.L.T. A104 (S.C.)] - 2001-VIL-102-SC-CE

adjudicating authority as there is no requirement to pay pre-deposit at the adjudication stage.

Circular no. 984/2014 dated 16 September 2014 pertaining to the excise regime had clarified that if the Department contemplates appeal against the appellate/ CESTAT order, which is in favor of the appellant, refund would still be payable unless such order is stayed by a competent Appellate Authority.

Taxpayers can evaluate their scenarios and proceed to file pre-deposit refund claims wherever applicable, which would consequently enhance liquidity in their hands.