Tax alert: Pre-deposit under Section 35F of Central Excise Act can be paid utilizing CENVAT credit transitioned to GST regime – Karnataka High Court

24 August 2026

The Karnataka High Court has held that CENVAT credit transitioned to GST regime can be validly utilised for making the mandatory pre-deposit under section 35F of Central Excise Act (CEA) for legacy service tax matters.

In a nutshell

The statutory pre-deposit can be made through a mode permitted under the statutory framework, as Section 35F of CEA does not prescribe cash payment as the exclusive mode.

Section 140 of the CGST Act was enacted to protect the vested rights in unutilised CENVAT credit. Its transition to GST regime did not create new credit. Rather, it is merely preserved in a different form, with the legislative intent being continuity and not extinguishment of rights.

Once the pre-deposit amount is debited from the Electronic Credit Ledger and credited to the Government, the statutory requirement under Section 35F of CEA stands satisfied.

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Background:

- The petitioner had availed CENVAT credit under the erstwhile CENVAT Credit Rules, 2004. With the introduction of the GST regime from 01 July 2017, the petitioner transitioned its unutilised CENVAT credit by filing Form GST TRAN-1 under section 140 of the CGST Act, 2017. The transitioned credit was accepted by the Department and stood reflected in the Electronic Credit Ledger (ECrL).
- Subsequently, pursuant to an investigation, a show cause notice was issued alleging irregular availment of CENVAT credit and suppression of taxable value. The Principal Commissioner confirmed the demands. Aggrieved by the said order, the petitioner preferred an appeal before the CESTAT and made the mandatory pre-deposit by debiting the ECrL.
- The mode of payment was objected to by the Registry which the CESTAT upheld, primarily relying on the CBIC Instruction dated 28.10.2022 and held that the pre-deposit in legacy matters was required to be made only through cash payment on the designated CBIC portal.
  - The CESTAT declined to accept the pre-deposit made by debiting the ECrL as valid compliance of Section 35F of the Central Excise Act, 1944 (CEA), as made applicable to service tax matters by Section 83 of the Finance Act, 1994.
- Aggrieved by the said order, the petitioner approached the Karnataka High Court (HC).

Karnataka High Court Judgement[1]:

- The question before the Karnataka HC was whether the mandatory pre-deposit required under Section 35F of CEA could be discharged by utilisation of CENVAT credit transitioned into the GST regime and reflected in the ECrL.
- The Karnataka HC held as follows: -
  - Section 35F of CEA does not prescribe any exclusive mode of payment. It neither mandates payment in cash nor prohibits utilisation of available credit.
  - Under the pre-GST regime, the legal position was well settled that CENVAT credit could be utilised for making the mandatory pre-deposit[2].
    - The HC relied on the Delhi HC[3] decision, which specifically held that transitioned CENVAT credit constitutes a legitimate source for making pre-deposit under Section 35F of CEA in legacy matters.
  - Section 140 was enacted in GST regime, to protect the vested rights of taxpayers in unutilised CENVAT credit and its transition into the ECrL did not create a new credit, rather merely preserved the existing credit in a different form. The legislative intent was continuity and not extinguishment of rights attached to such credit. Also, such CENVAT credit transitioned to GST regime could be utilized for payment of any tax, interest or penalty under the GST regime as well.
  - Reliance was placed on the Gujarat HC[4] decision affirmed by the Supreme Court, wherein it was held that under GST regime pre-deposit can validly be made by debiting the ECrL, in the absence of any statutory mandate requiring payment only through the Electronic Cash Ledger. The Karnataka HC in this case held that the ratio can be applied to pre-GST regime as well.

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[1] Shakti Enterprises vs. The Principal Commissioner of Central Tax, GST Commissionerate, Mysore - 2026-VIL-875-KAR

[2] Reliance was placed on CESTAT Circular No. 15/CESTAT/General/2013-14 and Cadila Healthcare Pvt. Ltd. v. Union of India, 2018 (18) G.S.T.L. 30 (Guj.) - 2018-VIL-614-GUJ-CE.,

[3] M/s Army Welfare Housing Organisation v. Union of India 2025-VIL-1473-DEL

[4] Yasho Industries Ltd. v. Union of India, (2024) 24 Centax 338 (Guj.) - 2024-VIL-1156-GUJ, affirmed by the Supreme Court in Union of India v. Yasho Industries Ltd., (2025) 30 Centax 352 (S.C.) 2025-VIL-33-SC

- Careful reading of CBIC Instruction dated 28.10.2022 shows that it deals with the procedure for cash payments and does not contain any provision prohibiting utilisation of transitioned credit. An administrative instruction cannot takeaway vested rights preserved by the legislature.
- Pre-deposit is only a portion of the disputed demand intended to secure the interest of the Revenue during pendency of appeal. Once the amount is debited from the ECrL and gets credited to the Government, the statutory requirement of pre-deposit stands satisfied.

- Accordingly, the High Court quashed the CESTAT's order and held that the pre-deposit under Section 35F of CEA can validly be discharged by utilization of CENVAT credit transitioned to GST regime and reflected in ECrL.

Comments:

The ruling assumes significance in the context of the long-standing controversy surrounding the utilisation of credit for making statutory pre-deposits. Under the erstwhile Central Excise regime, the position was relatively settled that CENVAT credit could be utilised for making the mandatory pre-deposit under Section 35F of CEA. The CESTAT Circular dated 28 August 2014 had expressly recognised payment of pre-deposit from the CENVAT account, and the Gujarat High Court[5] had upheld such utilisation, observing that there was no prohibition under the applicable statutory framework against utilising available CENVAT credit for pre-deposit. Also, Karnataka High Court[6] had held that payment of the pre-deposit by a debit entry in RG23A Part II (CENVAT credit register) satisfied the direction of the payment of pre-deposit by cash.

The introduction of GST, however, gave rise to a fresh question as to whether credit transitioned from the erstwhile regime into the ECrL, could similarly be utilised for pre-deposits under Section 35F of CEA. Earlier Allahabad CESTAT[7] had issued a contrary ruling holding that payment of mandatory pre-deposit under Section 35F cannot be made by way of debit in the ECrL maintained under the GST Law. Reliance was placed on the Orissa HC judgement[8] wherein it was held that the balance in ECrL could be utilised only for payment of self-assessed output tax as defined in GST Law. Further, the Orissa HC had held that “output tax” could not be equated to the pre-deposit required to be made under GST Law. The Bombay HC[9] and Delhi HC[10] had allowed payment of pre-deposit under section 35F of CEA out of transitioned CENVAT credit.

The issue also witnessed divergent views in the GST regime itself regarding utilisation of the ECrL for pre-deposits under GST regime. While the Orissa HC[11] took a restrictive view, the Bombay HC[12] permitted utilisation of the ECrL for making the statutory GST pre-deposits. The Gujarat HC's decision[13] further supported utilisation of the ECrL for eligible GST pre-deposits in respect of which the Supreme Court[14] subsequently declined to interfere with the said decision.

The Karnataka HC in the instant case has considered the various aspects and held pre-deposit under Section 35F of CEA can validly be discharged by utilization of CENVAT credit transitioned to GST regime and reflected in ECrL. It held that that the CBIC Instruction dated 28.10.2022 merely deals with the procedure for cash payments and

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[5] Cadila Healthcare Pvt. Ltd. v. Union of India, 2018 (18) G.S.T.L. 30 (Guj.) - 2018-VIL-614-GUJ-CE

[6] UOI v. Vikrant Tyres Ltd. 1999 taxmann.com 362 (Karnataka)

[7] M/S Johnson Matthey Chemical India Pvt Ltd. v. Assistant Commissioner CGST 2022-VIL-652-CESTAT-ALH-CE

[8] M/s Jyoti Construction vs.Deputy Commissioner of CT & GST [2021 (10) TMI-524- Orissa High Court -2021-VIL-715-ORI]

[9] Commissioner v. Sapphire Cable and Services P. Ltd. 2024-VIL-927-BOM-CE

[10] M/s. Army Welfare Housing Organisation v. UOI 2025-VIL-1473-DEL

[11] M/s Jyoti Construction vs.Deputy Commissioner of CT & GST [2021 (10) TMI-524- Orissa High Court -2021-VIL-715-ORI]

[12] Oasis Realty v. Union of India - [2022] 143 taxmann.com 5 (Bombay)

[13] Yasho Industries Ltd. v. Union of India, (2024) 24 Centax 338 (Guj.) - 2024-VIL-1156-GUJ

[14] Supreme Court in Union of India v. Yasho Industries Ltd., (2025) 30 Centax 352 (S.C.) 2025-VIL-33-SC

does not prohibit utilization of transitioned credit.

The decision would be helpful in cases where transitioned credit continues to remain available in the ECrl wherein pre-deposit under CEA can be made by utilising such credit, thereby avoiding an additional cash outflow. It needs to be evaluated how it can be said that the transitioned credit is used for pre-deposit.