

When the First Pre-Deposit Is Enough: CBIC Circular No. 259/05/2026-GST and the Tribunal's Contrary Reasoning

Introduction

An assessee pays 10% of the disputed tax to reach the first appellate authority. The appeal succeeds in large part, and the demand falls sharply. When the Revenue's remaining demand is carried to the Tribunal, must the assessee deposit another 10%, although what the department already holds exceeds the amount now required?

Circular No. 259/05/2026-GST (F. No. CBIC-20001/2/2026-GST), issued on 26.10.2026, gives the Revenue's answer: the deposit is payable afresh on the reduced demand. GSTAT and the Jharkhand High Court have reasoned the other way. **In our view, the Circular's position is difficult to justify, runs against the reasoning of the judicial orders, and will create uncertainty at the admission stage of GSTAT appeals.**

The Text: Two Pre-Deposits and One Troublesome Phrase

Section 107(6) bars an appeal to the Appellate Authority unless the appellant has paid the admitted amount in full and a sum equal to 10% of the remaining tax in dispute. Section 112(8) sets the same two conditions for an appeal to the Tribunal, but words the second so that the 10% is paid:

> *"in addition to the amount paid under sub-section (6) of section 107".*

The whole controversy turns on that phrase, and on whether a deposit already made at the first stage can be counted when the demand has since shrunk.

What the Circular Says

Issued under section 168(1) of the CGST Act, the Circular deals with pre-deposit in six clarifications. Clarification 1 explains the vocabulary. The "admitted amount" is what the taxpayer accepts and does not challenge, and it must be paid in full. The balance is the "tax in dispute", on which the 10% is computed. The taxpayer makes the choice at filing, through Table 14 of APL-01 and Table 20 of APL-05.

Clarification 2 is the one that matters here. Where the Appellate Authority modifies the liability, the 10% payable for the Tribunal appeal is computed on the liability it has confirmed and the appellant disputes, and it is paid in addition to what was paid for the first appeal. That fixes the base for the second deposit at the reduced demand, not the original one, and that much helps assessees.

The Circular does not say in terms what happens to a surplus. But Clarification 5 treats the deposits at the two levels as separate payments, each with its own date for interest under section 115. Read together, the two clarifications leave little doubt about the intended working: **the section 112(8)(b) deposit is computed on the reduced demand and payable independently, with no credit for what was paid earlier.**

Connect us: 8796630295
info@ada.org.in



The remaining clarifications deal with refunds. An order in the assessee's favour need not state that the deposit is refundable. The claim is filed in RFD-01 under S. No. 7, and refund is not to be withheld merely because the department proposes a further appeal, unless the order is stayed. On a partial remand, any confirmed portion is recovered from the deposit first.

What the Courts Have Said

Ashirwad Food Industries (Jharkhand High Court, 09.02.2026)

In *M/s Ashirwad Food Industries v. Union of India* (W.P.(T) No. 469 of 2026, 2026:JHHC:3326-DB), the petitioner had deposited ₹23,85,182 at the first appellate stage against a demand of about ₹2.38 crore. The Appellate Authority cut the demand to about ₹40 lakh, so a 20% deposit on what survived came to about ₹8 lakh. The Division Bench found substance in the submission that the Tribunal should not insist on more, and agreed that, given the deposit already made, no further pre-deposit arose. It also directed that, if the portal would not accept the appeal, a physical filing be taken on record without a fresh pre-deposit.

Manoranjan Dash (GSTAT, Cuttack Bench, 21.09.2026)

The Tribunal's own reasoning is fuller. In *Manoranjan Dash v. Commissionerate of CT & GST* (INTL.APPL/2/CTT/2026 in APL/10/2026), the Bench of Suchismita Misra (Member (Judicial)) and Ranjan Kumar Sahoo (Member (Technical)) dealt with an interim application by the Revenue. By order dated 08.07.2026, the Tribunal had admitted the appeal without requiring any further deposit under section 112(8)(b). The Revenue had not been heard at that stage, and asked for the finding to be recalled, or at least clarified as laying down no general proposition. The Bench declined to interfere.

The facts were stark. The assessee had paid ₹1,13,448 under section 107(6) against disputed tax of ₹11,34,474, and the Appellate Authority reduced the disputed tax to ₹1,02,012. Ten per cent of the surviving demand is roughly ₹10,200, so the deposit already held is more than eleven times the amount required. (That computation is ours, not the order's.)

The Bench reasoned that the pre-deposit is not a payment towards a separate or independent liability. It is a specified portion of the disputed tax itself, and the demand that survives the first appeal becomes the tax in dispute for the second. If the amount already deposited equals or exceeds the prescribed percentage of that surviving tax, a further deposit cannot justifiably be required, and a provision framed in general terms should not be applied mechanically. The Bench also tested the literal reading against an anomaly: an assessee who pays the entire disputed tax under protest would, on that reading, still have to make a fresh pre-deposit. Treating *Ashirwad* as identical on the facts and as persuasive, it held that no further pre-deposit was needed.

Two features limit the reach of the order. First, the Bench framed its conclusion by reference to the facts before it, and its logic depends on the first-stage deposit being equal to or more than the amount required on the surviving demand; on that reasoning, a shortfall would still have to be made good. Second, the order is dated more than a month before the Circular, so the Bench did not have the Circular before it.



Where the Circular and the Orders Part Ways

Issue	CBIC Circular (26.10.2026)	Ashirwad and Manoranjan Dash
Nature of the section 107(6) deposit	A separate payment, with its own date for interest under section 115 (Clarification 5)	A specified portion of the disputed tax itself, not a separate liability
Base for the section 112(8)(b) deposit	The liability confirmed by the Appellate Authority and still disputed (Clarification 2)	The demand surviving the first appeal
First-stage deposit equals or exceeds the requirement on the surviving demand	No credit; a fresh 10% is payable	No further deposit; the earlier amount counts
First-stage deposit falls short	Fresh 10% on the reduced demand, on the independent-payment reading	Not decided; the logic points to the shortfall alone

Why Clarification 2 Is Hard to Defend

The observations that follow are our analysis, not a holding of any court.

1. **The deposit is part of the disputed tax, not a fee.** Once it is accepted that the section 107(6) amount is a portion of the tax in dispute, it stays with the department as security for the demand. A fresh deposit demanded when that security already exceeds the statutory percentage achieves nothing the provision is concerned with.
2. **The Circular's own refund scheme produces a circuit.** Clarifications 3 and 4 entitle the assessee to a refund where the order is favourable, even if the department means to appeal, unless the order is stayed. Where the first appeal largely succeeds, the excess deposit is therefore refundable, yet Clarification 2 would require a fresh deposit to get to the Tribunal. The department would be refunding with interest under section 115 on one hand and collecting afresh on the other.
3. **The phrase "in addition to" does no useful work here.** It does its job where the demand survives intact, by preventing an appellant from treating the first deposit as sufficient for both stages. It does nothing where the first deposit already covers the whole requirement on the surviving demand. Insisting on a second payment then converts a condition of maintainability into a penalty for success at the first appellate stage, the anomaly the Bench identified.
4. **The result is uncertainty.** A Division Bench order of the High Court and an order of GSTAT excuse the further deposit, while the department's published position requires it.

Does the Circular Bind the Tribunal?

Section 168(1) lets the Board issue orders, instructions or directions to central tax officers for uniformity in the implementation of the Act, and the officers must follow them. The Circular states that it is issued in exercise of that power. It therefore binds proper officers and departmental representatives, and the department cannot ordinarily argue against its own circular.



It does not bind GSTAT, the High Courts or the Supreme Court. The Tribunal is a quasi-judicial body that construes the statute for itself, and a circular records only the executive's understanding of the law. It cannot override the Act, create liabilities or rights beyond it, or prevail over judicial interpretation. Taxpayers are not bound either, though they may rely on a circular that benefits them, and Clarification 2 does not benefit them on the surplus point. The Supreme Court has held that circulars bind the department but not the courts, and that a circular contrary to the statute has no legal force [citation to be inserted].

So the real question is how the Tribunal treats the Circular once the issue is argued with the Circular on record. Whether other benches follow *Manoranjan Dash* or confine it to its facts, and whether the Revenue carries the matter to the High Court, are the points to watch.

Where This Leaves Appellants

Until the Tribunal speaks on the Circular, appellants should expect friction at the admission stage and prepare for it.

1. **Attach a short computation to the appeal:** the first-stage deposit, the reduced demand, 10% (and the aggregate 20%) of the surviving tax, and the surplus.
2. **Rely on** *Manoranjan Dash* **and** *Ashirwad***,** and address the Circular and its date directly.
3. **Pay any shortfall.** Where the earlier deposit falls short, the differential should be paid, because the reasoning in *Manoranjan Dash* does not clearly cover a shortfall.
4. **If a defect notice is raised on the strength of the Circular,** seek a hearing rather than paying reflexively. Whether to pay under protest instead depends on the limitation position in each case.

Conclusion

Clarification 2 does fix the base for the second deposit at the reduced demand, and that much is welcome. But it treats the section 112(8)(b) payment as wholly independent of the section 107(6) payment, which the only judicial orders we have reviewed do not accept. That body of authority is small, and one of the two orders is a consent disposal, so it would be too much to call the judicial view settled. **It is, however, consistent, and it sits uneasily with the Circular.**



*Authored by **Ashu Dalmia**, who places on record his appreciation for the research and drafting assistance provided by **Adv. Ankita Jha**.*

Disclaimer: This article reflects our own reading, interpretation and professional determination of CBIC Circular No. 259/05/2026-GST, the order of the Jharkhand High Court in Ashirwad Food Industries and the orders of the GST Appellate Tribunal, Cuttack Bench, in Manoranjan Dash, based on the text of these documents as available to us. It does not constitute legal advice and should not be relied upon or acted upon as such without independent professional consultation.