

CHAPTER II

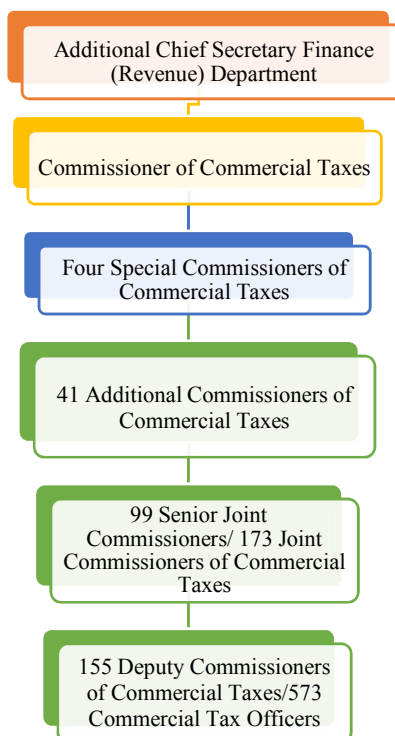
CHAPTER II

VALUE ADDED TAX AND GOODS AND SERVICES TAX

2.1 Tax administration

During 2017-18, for administering the relevant Value Added Tax (VAT) laws and rules framed thereunder the following tax administration was in place:

Chart 2.1: Tax Administration



2.2 Internal Audit

The Department has an Internal Audit Wing (IAW) under the charge of the Special Commissioner of Commercial Taxes. He is assisted by one Additional Commissioner of Commercial Taxes, one Senior Joint Commissioner and one Commercial Tax Officer. This Wing conducts scrutiny and detects irregularities in the assessments of VAT cases as well as checks different records and registers to ascertain whether internal control system as envisaged in the Acts and Rules made thereunder are properly followed.

Of the 68 Charge offices and 10 Ranges under the Directorate of Commercial Taxes (DCT), West Bengal, the IAW planned to audit seven Charge offices/Ranges during the year 2017-18 for checking 523 cases. IAW however, did not audit any case under Charge office/range. The IAW stated that the plan to conduct audit in seven Charge offices could not be executed due to shortage of manpower. They also stated that there was no internal audit manual to formulate working procedure of IAW.

There is, therefore, an urgent need to establish internal procedures for the IAW besides strengthening its manpower.

2.3 Audit Methodology

Audit Data Analytics

The IMPACT (Information Management for Promotion of Administration in Commercial Taxes) application was developed for better tax administration in the Value Added Tax (VAT) regime. The web-based application provides services such as online registration, filing of return, payment of taxes and issue of waybills. It also functions as MIS (Management Information System) to the DCT.

The Commissioner of Commercial Taxes and the other assessing authorities access the IMPACT application through a West Bengal State Wide Area Network (WBSWAN) or Managed Leased Line Network (MLLN) from BSNL where WBSWAN is not available.

Audit of VAT

Audit was not given access to data dump of VAT administration. The audit units under the Commercial Taxes Department (49 units) were selected based on risk parameters such as, revenue generated based on consolidated data provided by the Department on an annual basis.

During the field audit of selected units, the access to data was provided through a node in the audit unit. The information made available was used to verify the following.

- Discrepancies in Contractual Transfer Price (CTP) through cross verification of details available in IMPACT and Sales Tax Deducted at Source (STDS).
- Discrepancies between assessed and actual sales turnover.

Audit of GST

Audit was given access to the data related to registered dealers as on 30 June 2017 and migrated dealers in IMPACT. These two sets of data of selected audit units were analysed using data analytic tool (IDEA) to identify unmatched cases, where gross turnover exceeded the threshold limit of ₹ 20 lakh. The eligible cases were verified with data in GSTN portal with the aid of their PAN identity to ascertain their migration status. Audit was also given access to the data in mismatch reports (analysis provided by GSTN) on transitional credits for the selected audit units. Audit analysed the compliance status of this mismatch and made observation where no compliance or inadequate compliance was found.

2.4 Results of audit

In 2017-18, test check of the records of 49 units relating to VAT assessments and other records showed underassessment of tax and other irregularities involving ₹ 277.44 crore in 632 cases, which fall under the following categories as given in **Table 2.1**.

Table 2.1
Results of audit

(₹ in crore)

Sl. No.	Categories	Number of cases	Amount
1.	Incorrect determination of Contractual Transfer Price / turnover of sales	236	129.98
2.	Non/short levy of purchase tax/penalty/interest	230	103.01
3.	Irregular allowance of transfer of goods /Input Tax Credit /remission	63	18.64
4.	Application of incorrect rate of tax/mistake in computation	26	5.32
5.	Others	77	20.49
Total		632	277.44

During the course of the year, the Department accepted under assessment and other deficiencies of ₹ 99.07 crore in 383 cases, of which 356 cases involving ₹ 98.52 crore was pointed out in audit during the year 2017-18 and the rest in earlier years. An amount of ₹ 28.99 lakh was realised in 32 cases during the year 2017-18.

Compliance Audit

Audit was conducted in 49 out of 108 (45.37 *per cent*) units administering Value Added Tax during the period 2017-18. The cases mentioned in the succeeding paragraphs are those which came to notice in the course of test audit for the period 2017-18 as well as those which came to notice in 2016-17, but could not be reported in the previous Audit Report. The cases were examined to ascertain the extent of compliance of provisions of the Acts and rules framed thereunder. The audit findings in 290 cases involving ₹ 41.09 crore are discussed in the following paragraphs:

2.5 Incorrect determination of turnover of sales

In 30 cases, Assessing Authorities (AAs) incorrectly determined TOS at ₹ 2,572.16 crore instead of ₹ 2,825.34 crore. This resulted in short determination of TOS of ₹ 253.18 crore with consequent short levy of tax of ₹ 12.72 crore.

In terms of Section 2(55) of West Bengal Value Added Tax (WBVAT) Act, 2003, turnover of sales (TOS) in relation to any period, means the aggregate of the sale prices/parts of sale prices received/receivable by a dealer in respect of sales of goods made during such period which remains after making deductions prescribed under the Act. Section 16 of WBVAT Act, 2003 provides applicable rates for levy of tax on such part of the TOS which remains after making deductions therefrom as prescribed under the Act. Section 42 of the WBVAT Act, 2003 provides that correctness of TOS furnished in returns by the assessee may be verified with reference to the accounts, registers or documents including those in electronic records maintained or kept by the dealer. Information in respect of TOS is also available in the database accessible through IMPACT (Information Management for Promotion of Administration in Commercial Taxes), a web based application software developed by DCT for better tax administration.

Audit test checked assessment case records of nine Charge offices³ between September 2016 and December 2017. It found that in 30 cases⁴ of 29 dealers, the Assessing Authorities (AAs) determined TOS at ₹ 2,572.16 crore instead of ₹ 2,825.34 crore. This resulted in short determination of turnover of sales of ₹ 253.18 crore with consequent short levy of tax as detailed in the following table:

Table-2.2
Incorrect determination of TOS

(₹ in crore)

Sl. No.	No. of cases/ no. of dealers	Nature of irregularity	Name of the Charge office	TOS assessable	TOS assessed	TOS determined short (7) = (5-6)	Tax levied short (8)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	1/1	Sales as per database of Directorate of Commercial Tax was higher than that determined on the basis of returns filed.	Large Taxpayers Unit (LTU)	599.55	555.41	44.14	1.77
2.	5/5	Turnover of sales assessed by AA was short of that shown in returns.	Ballygunge, Behala, Shibpore, Siliguri Circle	29.69	9.06	20.63	2.59
3.	22/21	Turnover of sales assessed by AA was short of that shown in books of Accounts.	Asansol, Ballygunge, Bhowanipore, Fairlie Place, Jalpaiguri, LTU, Shibpore, Siliguri Circle	2,193.24	2,005.94	187.30	8.27
4.	1/1	Suppressed sale was not taken into account in the assessment order.	Ballygunge	2.18	1.75	0.43	0.06
5.	1/1	Excess deduction was allowed from aggregate sale price to arrive at TOS.	Behala	0.68	Nil	0.68	0.03
	30/29	Total		2,825.34	2,572.16	253.18	12.72

In the cases pointed out in the table, the concerned AAs did not verify the correctness of the declared TOS with reference to the other records and the discrepancies were overlooked during assessment. This resulted in under assessment of TOS and short levy of tax of ₹ 12.72 crore.

After this was pointed out, seven Charge offices⁵, while accepting⁶ the audit observations in 23 cases involving ₹ 9.75 crore, stated that:

³ Asansol, Ballygunge, Behala, Bhowanipore, Fairlie Place, Jalpaiguri, Large Taxpayers Unit (LTU), Shibpore and Siliguri Circle.

⁴ Assessed between April 2013 and June 2017 for assessment periods between 2010-11 and 2014-15.

⁵ Asansol, Ballygunge, Behala, Bhowanipore, Fairlie Place, Shibpore and Siliguri Circle.

⁶ Between March 2014 and December 2017.

- Proposal for reopening the cases would be sent to the higher authorities in eight cases involving ₹ 41.07 lakh;
- Proposals had been sent to the appellate authorities in one case involving ₹ 27.25 lakh, and
- Necessary actions were being taken in 14 cases involving ₹ 9.07 crore. They, however, did not furnish any report on realisation of tax.

In the remaining cases, the Charge offices did not furnish any reply/specific reply (December 2019).

The matter was reported to the Government in July 2018. Reply was awaited.

2.6 Irregular allowance of input tax credit

In 58 cases, the AAs allowed Input Tax Credit (ITC) of ₹ 70.56 crore instead of ₹ 60.46 crore admissible to the dealers resulting in irregular allowance of ITC of ₹ 10.10 crore.

Section 22 of the WB VAT Act 2003 read with Rules 20 and 23 of the West Bengal Value Added Tax Rules, 2005 prescribe that a registered dealer can avail the benefits of Input Tax Credit (ITC) to the extent of tax paid or payable by him in respect of purchases of taxable goods from registered dealers of West Bengal. Any amount of ITC, which remains in excess at the end of assessment period, shall be carried over to the next assessment period. Further, ITC shall not be allowed where original tax invoice has not been issued by the selling dealer from whom the goods are purported to have been purchased. Excess of ITC beyond admissible amount shall be reversed.

Audit test checked assessment case records in 15 Charge offices⁷. It found that between August 2016 and February 2018 in 58 cases of 52 dealers⁸, the AAs allowed ITC of ₹ 70.56 crore. The dealers were, however, eligible for ITC of ₹ 60.46 crore only. This resulted in irregular allowance of ITC as detailed in the following table:

Table-2.3
Irregular allowance of ITC

(₹ in crore)

Sl. No.	Nature of irregularity	Name of Charge office	No. of cases	ITC allowed	ITC allowable	ITC allowed in excess (7) = (5-6)
(1)	(2)	(3)	(4)	(5)	(6)	(7) = (5-6)
1.	ITC was allowed on purchases made from dealers whose registration certificates were cancelled before purchases were made.	Asansol, Ballygunge, Fairlie Palace, Howrah, Jorabagan	21	11.04	8.10	2.94

⁷ Asansol, Ballygunge, Berhampore, Burtola, College Street, Durgapur, Fairlie Palace, Howrah, Jalpaiguri Circle, Jorabagan, Lalbazar, LTU, New Market, Salt Lake and Shibpore.

⁸ Between June 2012 and January 2017 for assessment periods between 2008-09 and 2014-15.

(₹ in crore)

Sl. No.	Nature of irregularity	Name of Charge office	No. of cases	ITC allowed	ITC allowable	ITC allowed in excess (7) = (5-6)
(1)	(2)	(3)	(4)	(5)	(6)	(7) = (5-6)
2.	ITC was allowed on purchases made from dealers who did not file returns or did not show any purchase and sale in their returns.	Asansol, Berhampore, Burtola, College Street, Howrah, Jorabagan, Lalbazar, New Market, Salt Lake, Shibpore	16	46.13	41.68	4.45
3.	ITC was allowed on claim of purchases higher than the sales disclosed by selling dealers.	Berhampore, Burtola, College Street, Howrah, Jorabagan, LTU, New Market	10	6.86	5.93	0.93
4.	ITC brought forward from previous assessment period was allowed in excess of the amount carried forward after assessment.	Berhampore, Durgapur, Jalpaiguri, Lalbazar, Salt Lake	6	1.24	0.55	0.69
5.	Net ITC was determined excess in assessment.	Shibpore	1	0.21	0.19	0.02
6.	ITC was not/short reversed in assessment.	LTU	4	5.08	4.01	1.07
Total			58	70.56	60.46	10.10

In the cases pointed out at Sl. No.1-4 in the table, correctness of the claims of ITC in the returns were not verified by the concerned AAs with reference to the other records, while in cases pointed out at Sl. No. 5 and 6, ITC allowed by the concerned AAs was not in conformity with the provisions of the Act. This resulted in irregular allowance of ITC of ₹ 10.10 crore.

After this was pointed out, the Charge offices, while accepting⁹ the audit observations in 42 cases involving ₹ 8.42 crore, stated that:

- Proposal for suo-motu revision would be sent to the higher authorities in 14 cases involving ₹ 7.23 crore;
- Proposals had been sent to the higher authorities to reopen 22 cases involving ₹ 1.02 crore;
- Necessary action was being taken in four cases involving ₹ 15.18 lakh;
- Notice under Section 66(1) of WBVAT had been issued to the dealer in one case involving ₹ 1.16 lakh, and
- Proposal had been sent to the Appellate forum to review the order of appeal in one case involving ₹ 1.04 lakh.

Report on levy and realisation of tax was yet to be furnished. In the remaining 16 cases involving ₹ 1.68 crore, the Charge offices did not furnish any reply/specific reply (December 2019).

The matter was reported to the Government in July 2018. Reply was awaited.

⁹ Between September 2016 and February 2018.

2.7 Incorrect determination of Contractual Transfer Price

In 48 cases, the AAs incorrectly determined Contractual Transfer Price (CTP) of ₹ 91.13 crore instead of ₹ 139.17 crore. This resulted in short determination of CTP of ₹ 48.04 crore with consequent short levy of tax of ₹ 2.82 crore.

In terms of Section 2(10) the WB VAT Act, 2003, Contractual Transfer Price (CTP) in relation to any period is the amount received or receivable by a dealer in respect of transfer of property in goods in the execution of any works contract. Sections 14 and 18 of the Act prescribe that any transfer of property in goods involved in the execution of a works contract shall be deemed to be a sale by the person making such transfer. Tax at prescribed rates shall be levied on his CTP after allowing deductions towards labour, service and other like charges and payments to sub-contractors etc. Under Section 40 of the Act, a contractee shall deduct tax at source at the rate of two *per cent* from payments made to a registered dealer for execution of a works contract. Information in respect of CTP arising from execution of works contract is also available in database accessible through IMPACT, a web based application software developed for DCT for better tax administration. CTP from works contract executed in other states are not taxable in West Bengal.

Audit found¹⁰ in 10 Charge offices¹¹ that in 48 cases of 46 dealers¹², the AAs incorrectly determined CTP of ₹ 91.13 crore instead of ₹ 139.17 crore. This resulted in short determination of CTP of ₹ 48.04 crore with consequent short levy of tax of ₹ 2.82 crore as detailed in the following table:

Table-2.4
Incorrect determination of CTP

(₹ in crore)

Sl. No. (1)	Nature of irregularity (2)	Name of Charge office (3)	No. of cases (4)	CTP assessable (5)	CTP assessed (6)	CTP determined short 7 = (5-6) (7)	Short levy of tax (8)
1.	Data in respect of payments made by the contractees to the dealers in execution of works contracts as available in the IMPACT was not ascertained before assessing nil tax as per returns	Armenian Street, Asansol, Burtola, Durgapur, Park Street	32	22.98	Nil	22.98	1.24
2.	CTP as per STDS ¹³ details available in IMPACT was higher than that assessed	Asansol, Bhowanipore, Burtola, Park Street, Siliguri Circle, Taltola	14	104.66	83.60	21.06	1.28
3.	CTP as per returns was higher than the CTP assessed by AA	Budge Budge	1	1.77	1.64	0.13	0.02

¹⁰ Between October 2016 and December 2017.

¹¹ Armenian Street, Asansol, Bhowanipore, Budge Budge, Burtola, Colootolla, Durgapur, Park Street, Siliguri Circle and Taltola.

¹² Assessed between June 2015 and May 2017 for assessment periods between 2012-13 and 2014-15.

¹³ Sales tax deduction at source.

(₹ in crore)

Sl. No. (1)	Nature of irregularity (2)	Name of Charge office (3)	No. of cases (4)	CTP assessable (5)	CTP assessed (6)	CTP determined short 7 = (5-6) (7)	Short levy of tax (8)
4.	CTP in works contract executed in West Bengal by a dealer was determined short from gross CTP of works contracts executed in Sikkim and West Bengal	Siliguri Circle	1	9.76	5.89	3.87	0.28
Total			48	139.17	91.13	48.04	2.82

The case noted at Sl. No. 4 of the table pertains to execution of works contracts by a dealer in two States - West Bengal and Sikkim. The CTP in works contract executed by the dealer in Sikkim was not taxable in West Bengal. The gross CTP from works contracts executed in the two States stood at ₹ 14.42 crore. The CTP from works contract executed by the dealer in Sikkim was ₹ 4.66 crore. The AA, however, allowed deduction of CTP of ₹ 8.53 crore in respect of works executed in Sikkim from gross CTP of ₹ 14.42 crore to determine the CTP in respect of works executed in West Bengal. This resulted in short determination of CTP of ₹ 3.87 crore for works executed in West Bengal with consequent short levy of tax of ₹ 27.84 lakh.

In the cases pointed out at Sl. Nos. 1 and 2 of the table above, the AAs concerned did not verify CTP with payments received by the dealers from contractees in execution of works contract as available in the database of IMPACT. In case pointed out at Sl. No. 3, CTP disclosed by the dealer concerned was not taken into account at the time of assessment. This resulted in short levy of tax of ₹ 2.54 crore. After this was pointed out, six Charge offices¹⁴, while accepting¹⁵ audit observations in 15 cases involving ₹ 1.69 crore, stated that:

- Proposal for suo motu revision would be sent to the higher authorities in three cases involving ₹ 97.63 lakh;
- Proposals had been sent to the higher authorities to reopen seven cases involving ₹ 55.83 lakh and
- Necessary actions were being taken in five cases involving ₹ 15.64 lakh.

They, however, did not furnish any report on realisation of tax. In the remaining 33 cases involving ₹ 1.13 crore, the Charge offices did not provide any reply/specific reply (December 2019).

The matter was reported to the Government in July 2018. Reply was awaited.

2.8 Incorrect determination of taxable contractual transfer price

In five cases, the AAs allowed excess deduction towards payment to sub-contractors and labour, services and other like charges. This resulted in short determination of taxable CTP by ₹ 12.65 crore with consequent short levy of tax of ₹ 1.31 crore.

Under Section 18(2) of WB VAT Act, 2003, taxable contractual transfer price is the part of intra-State contractual transfer price (CTP), which remains after

¹⁴ Bhowanipore, Burtola, Durgapur, Park Street, Siliguri Circle and Taltola.

¹⁵ Between June 2017 and December 2017.

deducting labour, service and other like charges, payment to sub-contractors etc. In terms of Section 18(3), however, if labour, service and other like charges or the taxable CTP for applying proper rates of tax are not ascertainable from books of account maintained by a dealer, such labour, service and other like charges and the taxable CTP shall be determined on the basis of such percentage of the value of the works contract, as prescribed for different types of works contract under Rule 30(2) of WBVAT Rules, 2005. The labour, service and other like charges to be deducted from the CTP have been specified under clauses (a) to (g) of Rule 30(1) of WBVAT Rules, 2005. Plant depreciation has not been specified under any of the clauses of Rule 30(1) of WBVAT Rules, 2005.

Audit found in two Charge offices¹⁶ that in five cases of four dealers¹⁷, the AAs incorrectly allowed deductions of ₹ 20.13 crore instead of ₹ 7.48 crore from CTP of ₹ 184.38 crore. Of these, in three cases of three dealers, deductions towards labour, service and other like charges was allowed in excess by ₹ 2.21 crore. In two cases of a dealer, deduction allowed towards plant depreciation of ₹ 10.44 crore was not admissible under Rule 30(1). This resulted in short determination of taxable contractual transfer price by ₹ 12.65 crore with consequent short levy of tax as detailed in the following table:

Table-2.5
Incorrect determination of taxable CTP

(₹ in crore)

Sl. No.	Nature of irregularity	Name of Charge office	No. of dealers/cases	CTP	Deduction allowed	Deduction admissible	Excess allowance (taxable CTP) (8)= (6-7)	Short levy of tax (9)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	Percentage of CTP for deduction towards labour, service and other like charges was allowed by AA in excess of that admissible under Rule 30(2).	Bhowanipore, Siliguri Circle	2/2	32.41	7.88	5.79	2.09	0.84
2.	Deduction from CTP towards plant depreciation was allowed by AA which was not specified under clause (a) to (g) of Rule 30(1).	Bhowanipore	1/2	149.08	10.44	Nil	10.44	0.45
3.	Profit earned from labour and services was deducted twice from CTP.	Bhowanipore	1/1	2.89	1.81	1.69	0.12	0.02
Total			4/5	184.38	20.13	7.48	12.65	1.31

The cases pointed out in the table indicate that the AAs did not comply with the provisions of the Rules while determining taxable CTP of dealers concerned.

¹⁶ Bhowanipore and Siliguri Circle.

¹⁷ Assessed between June 2015 and March 2017 for assessment periods between 2012-13 and 2014-15.

This resulted in under assessment of taxable CTP and short levy of tax of ₹ 1.31 crore.

After this was pointed out¹⁸, the Charge offices accepted¹⁹ the audit observations in all cases. They, however, did not furnish any report on realisation of tax (December 2019).

The matter was reported to the Government in July 2018. Reply was awaited.

2.9 Application of incorrect rate of tax

In 13 cases involving sales of ₹ 65.52 crore, AAs levied output tax of ₹ 2.44 crore instead of ₹ 7.69 crore. This was due to application of incorrect rate of tax resulting in short levy of tax of ₹ 5.25 crore.

Section 16(2) of the WBVAT Act, 2003 prescribes the rates of tax on sale of goods according to their classification. Section 18 of the WBVAT Act, 2003 prescribes the rates of tax on CTP.

It was observed²⁰ that in eight Charge offices²¹, in 13 cases²², involving sales of ₹ 65.52 crore, the AAs levied output tax of ₹ 2.44 crore instead of ₹ 7.69 crore. This was due to applications of lower rates of tax, incorrect rates of tax and pre-revised rates of tax, resulting in short levy of tax as detailed in the following table:

Table-2.6
Application of incorrect rate of tax

(₹ in crore)

Sl. No. (1)	Nature of irregularity (2)	Name of Charge office (3)	No. of cases (4)	Taxable turnover (5)	Tax leviable (6)	Tax levied (7)	Short levy of tax (8)= (6-7) (8)
1.	Application of lower rates of tax due to misclassification of commodities.	Ballygunge, Budge-Budge, Chandney Chowk, LTU, Shibpore, Siliguri Circle	11	64.41	7.61	2.38	5.23
2.	In assessment of a case for the period 2013-14, rate of tax on medical and surgical instruments was applied at the pre-revised rate of four per cent instead of five per cent applicable from April 2013 ²³ .	Salt Lake	1	0.52	0.03	0.02	0.01
3.	Rate of tax on taxable CTP, as per table under Rule 30(2) was not applied correctly.	Siliguri	1	0.59	0.05	0.04	0.01
Total			13	65.52	7.69	2.44	5.25

¹⁸ Between July and August 2017.

¹⁹ Between August and September 2017.

²⁰ Between May 2016 and September 2017.

²¹ Ballygunge, Budge Budge, Chandney Chowk, LTU, Salt Lake, Shibpore, Siliguri and Siliguri Circle.

²² Assessed between June 2012 and May 2017 for the assessment periods from 2009-10 to 2014-15.

²³ Trade Circular No. 07/2013 dated: 1 April 2013.

The cases pointed out in the table above indicate that the AAs concerned did not assess tax on sales of goods/CTP in works contract correctly and applied incorrect rates on sales/CTP. This resulted in short levy of tax amounting to ₹ 5.25 crore.

After this was pointed out, five Charge offices²⁴, while accepting²⁵ the audit observations in eight cases, stated that:

- Proposal for suo motu revision would be sent to the higher authorities in six cases involving ₹ 4.47 crore, and
- Necessary action was being taken in two cases involving ₹ 10.32 lakh.

They, however, did not provide any report on levy and realisation of tax. In the remaining cases, the Charge offices did not furnish any/specific reply (December 2019).

The matter was reported to the Government in July 2018. Reply was awaited.

2.10 Penalty on evaded tax not levied

In 72 cases, the AAs did not initiate proceedings to levy penalty despite evasion of tax by dealers. Penalty to the extent of ₹ 58.71 crore was leviable for such evasion of tax/ineligible claim of input tax credit.

2.10.1 Section 96 of the WB VAT Act, 2003, prescribes levy of penalty if a dealer has concealed any sale/purchase/CTP or claimed excess amount of ITC but has not reversed the same within the tax period. The quantum of penalty should not exceed twice the amount of tax, which would have been avoided if such concealment was not detected. In terms of a Circular²⁶, issued by the Commissioner of Commercial Taxes (CCT), West Bengal, minimum penalty of 25 per cent of the amount of evaded tax was to be levied in cases where dealer has admitted the evasion of tax and paid the evaded tax.

- It was observed²⁷ in four Charge offices²⁸ that in six cases of five dealers²⁹, the AAs detected evasion of tax of ₹ 5.17 crore. This tax was evaded by suppression of sales/purchases. After detection of the cases, the dealers admitted the evasion of tax and paid the evaded tax. The AAs, however, did not initiate proceedings to levy minimum penalty of ₹ 1.29 crore at the rate of 25 per cent of the amount of evaded tax as per CCT's Circular issued under Section 96 of the WB VAT Act. Non- initiation of penal proceedings against dealers involved in evasion of tax amounted to violation of the provisions in the Act meant for curbing such activities.

After this was pointed out, all Charge offices accepted³⁰ the audit observation. In four cases, penal proceedings had been initiated, while in other two cases necessary action was being taken.

²⁴ LTU, Salt Lake, Shibpore, Siliguri and Siliguri Circle.

²⁵ Between March 2017 and September 2017.

²⁶ No. 793 dated 31 May 2013.

²⁷ Between August 2017 and November 2017.

²⁸ Alipore, Bhowanipore, Jorabagan and Park Street.

²⁹ Assessed between February 2014 and June 2017, for assessment periods between 2011-12 and 2014-15.

³⁰ Between September 2017 and December 2017.

- In 18 Charge offices³¹ Audit also observed³² that in 63 cases of 57 dealers³³, AAs detected evasion of tax of ₹ 23.57 crore by the dealers. This was due to claim of excess amount of ITC and suppression of sales/purchase. Though the AAs detected evasion of tax, they did not initiate proceedings to levy penalty under Section 96 of the WBVAT Act. Penalty not exceeding ₹ 47.13 crore at twice the tax evaded was leviable for such evasion of tax. Reasons for non-initiation of penalty proceedings were not available in the assessment case records.

After this was pointed out, 16 Charge offices³⁴, while accepting³⁵ the audit observations in 44 cases involving ₹ 31.37 crore, stated that

- Penal proceedings had already been initiated in 16 cases involving ₹ 11.05 crore;
- Proposal had been forwarded to the higher authorities for necessary action in one case involving ₹ 1.34 crore, and
- Necessary action was being taken in 27 cases involving ₹ 18.98 crore.

In the remaining 19 cases involving ₹ 15.76 crore, the Charge offices did not furnish any/specific reply (December 2019).

2.10.2 Section 22A of the WBVAT Act, 2003 prescribes levy of penalty if a dealer has claimed ITC without entering into a valid transaction of purchase with another dealer. Penalty at the rate of 25 *per cent* of ineligible claim of ITC is leviable, if the dealer admits in writing the fact of such ineligible claim of ITC and pays the full amount of tax involved therein within one month of inspection or enquiry. In all other cases, penalty is leviable at the rate of 150 *per cent* of ineligible claim of ITC.

It was observed³⁶ in two Charge offices³⁷ that in three cases, ITC of ₹ 6.86 crore was claimed without entering into a valid transaction with other dealers of these, in two cases, Bureau of Investigation had detected inadmissible claim of ITC of ₹ 1.16 crore between April 2013 and November 2014. In one case, AAs detected inadmissible claim of ITC of ₹ 5.69 crore in June 2014 arising out of invalid transaction. The dealers, however, neither admitted in writing the fact of such ineligible claims of ITC nor paid the full amount of tax involved therein within one month of inspection or enquiry. The AAs did not initiate proceedings to levy penalty under Section 22A of the WBVAT Act. This resulted in non-levy of penalty of ₹ 10.29 crore.

³¹ Asansol, Ballygunge, Barrackpore, Baruiapur, Behala, Bhowanipore, Budge-Budge, Burtola, Durgapur, Jorabagan, LTU, N.S. Road, Park Street, Salt Lake, Sealdah, Shibpore, Taltola and Ultadanga.

³² Between October 2016 and December 2017.

³³ Assessed between April 2013 and February 2017 for assessment period 2009-10 and 2014-15.

³⁴ Asansol, Ballygunge, Barrackpore, Baruiapur, Behala, Budge-Budge, Burtola, Jorabagan, LTU, N.S. Road, Park Street, Salt Lake, Sealdah, Shibpore, Taltola and Ultadanga.

³⁵ Between November 2016 and December 2017.

³⁶ Between August and November 2017.

³⁷ Lalbazaar and Park Street.

After this was pointed out, Charge offices accepted³⁸ audit observations in all cases. They, however, did not furnish any report on realisation of penalty (December 2019).

The matter was reported to the Government in July 2018. Their reply has not been received.

2.11 Non/short levy of interest

Interest of ₹ 6.60 crore was not levied/short levied in 46 cases.

In terms of Section 33 of the WB VAT Act, 2003, a dealer shall be liable to pay interest if he:

- fails to adjust the amount of any inadmissible ITC by way of deduction from the amount of ITC claimed for a tax period, or
- fails to make full payment of tax; or
- makes delay in payment of net tax in respect of any tax period.

The interest shall be payable at the rate of 12 *per cent* per annum up to 31 March 2015 and from 1 April 2015 at the rate as specified below: -

- (i) At the rate of one *per cent* per month up to the first 90 days of the period for which such interest is payable;
- (ii) At the rate of one and half *per cent* per month after the first 90 days and up to 300 days of the period for which such interest is payable; and
- (iii) At the rate of two *per cent* per month after the first 300 days of the period for which such interest is payable.

Audit found³⁹ in 16 Charge offices⁴⁰ that in 46 cases⁴¹ of 42 dealers, the AAs did not levy interest of ₹ 6.54 crore. In one case of a dealer, the AA levied interest short by ₹ 0.06 crore. This resulted in non/short levy of interest as detailed in the following table:

Table-2.7
Non/short levy of interest

(₹ in crore)							
Sl. No.	No. of cases/dealers	Name of the Charge office	Nature of irregularity	Tax on which interest was leviable	Interest leviable	Interest levied	Non/Short levy of Interest (8) = (6-7)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	37/33	Alipore, Ballygunge, Bhowanipore, Budge Budge, Durgapur, Fairlie Place, Jorabagan, Lalbazar, LTU, Maniktola, Park Street, Princep Street, Taltola	Interest not levied on inadmissible claim of ITC	17.65	6.23	Nil	6.23

³⁸ Between August and November 2017.

³⁹ Between April 2016 and December 2017.

⁴⁰ Alipore, Ballygunge, Barasat, Berhampur, Bhowanipore, Budge Budge, Diamond Harbour, Durgapur, Fairlie Place, Jorabagan, Lalbazar, LTU, Maniktola, Park Street, Princep Street, and Taltola.

⁴¹ Assessed between June 2011 and June 2016 for assessment periods between 2008-09 and 2013-14.

(₹ in crore)

Sl. No.	No. of cases/dealers	Name of the Charge office	Nature of irregularity	Tax on which interest was leviable	Interest leviable	Interest levied	Non/Short levy of Interest (8)=(6-7)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)= (6-7)
		LTU	Interest levied short on inadmissible claim of ITC	0.21	0.07	0.01	0.06
2.	4/4	Alipore, LTU, Taltola	Interest not levied on tax admitted but not paid by dealers within the prescribed dates	2.38	0.19	Nil	0.19
3.	5/5	Barasat, Berhampore, Diamond Harbour	Interest not levied for non-submission of return	0.36	0.12	Nil	0.12
Total	46/42			20.60	6.61	0.01	6.60

The cases pointed out in the table above indicate that provisions for levy of interest was not complied with by the AAs concerned at the time of assessment. This resulted in non/short levy of interest of ₹ 6.60 crore.

Reasons for not applying the provisions of interest were not found on records.

After this was pointed out, 12 Charge offices⁴², while accepting⁴³ the audit observations in 20 cases involving ₹ 3.30 crore, stated that:

- Proposal for suo motu revision would be sent to the higher authorities in six cases involving ₹ 58.68 lakh;
- Necessary action was being taken in 11 cases involving ₹ 2.59 crore;
- Demand was confirmed in the appeal and assessee asked to pay assessed dues in one case involving ₹ 2.05 lakh, and
- Proposal had been sent to the Appellate forum in two cases involving ₹ 9.78 lakh.

They, however, did not furnish any report on realisation of interest. In the remaining 26 cases involving ₹ 3.30 crore, six⁴⁴ Charge offices did not provide any/specific reply (December 2019).

The matter was reported to the Government in July 2018. Reply was awaited.

2.12 Short levy of tax due to mistake in computation

In 18 cases, the AAs assessed output tax of ₹ 10.61 crore instead of ₹ 11.61 crore due to error in computation. This resulted in short levy of tax of ₹ one crore.

Under the WBVAT Act, 2003, tax is to be computed at prescribed rates along with interest and penalty, if any, on the goods sold.

⁴² Alipore, Ballygunge, Berhampur, Bhowanipore, Budge-Budge, Diamond Harbour, Fairlie Place, Jorabagan, Lalbazar, LTU, Park Street, and Taltola.

⁴³ Between May 2016 and December 2017.

⁴⁴ Alipore, Barasat, Durgapur, LTU, Maniktola and Princep Street.

It was observed⁴⁵ in 12 Charge offices⁴⁶ that in 18 cases⁴⁷, the AAs assessed output tax of ₹ 10.61 crore instead of ₹ 11.61 crore. This resulted in short levy of tax due to wrong computation as detailed in the following table:

Table-2.8
Short levy of tax due to mistake in computation

(₹ in crore)

Sl. No.	Nature of irregularity	Name of the Charge office	No. of cases	Tax leviable	Tax levied	Short levy of tax (7) = (5-6)
(1)	(2)	(3)	(4)	(5)	(6)	(5-6)
1.	Tax on TOS/CTP was computed less than that payable by the dealers due to arithmetical errors	Ballygunge, Bhowanipore, Lalbazar, LTU	8	9.42	8.88	0.54
2.	Amount of tax computed at the applicable rates was less than that computable at those rates	Ballygunge, N.S.Road, Taltola	4	0.71	0.35	0.36
3.	Total of tax payable was calculated short in assessment order	Behala, Budge-Budge, Jorabagan, Maniktola, Shibpore, Ultadanga	6	1.48	1.38	0.10
Total			18	11.61	10.61	1.00

In the cases pointed out in the table above, the AAs concerned did not check the computations before passing the assessment orders. This resulted in short levy of tax of ₹ one crore.

After this was pointed out, nine Charge offices⁴⁸, while accepting⁴⁹ the audit observations in 14 cases involving ₹ 42.15 lakh, stated that

- Proposals for revision had been sent to the higher authorities in five cases involving ₹ 10.11 lakh,
- Necessary action was being taken in four cases involving ₹ 14.37 lakh,
- Proposals had been sent to the higher authorities for necessary action in two cases involving ₹ 3.94 lakh, and
- Suo motu revision was made in three cases involving ₹ 13.73 lakh.

Report on realisation of tax was, however, not furnished. In the remaining four cases, the Charge offices did not give any reply/specific reply (December 2019).

The cases were reported to the Government in July 2018. Reply was awaited.

The paragraphs discussed above bring out under assessment of VAT mainly because of inadequate compliance of the provisions of the Act and Rules framed thereunder, underutilisation of the database accessible through IMPACT software to ascertain the correctness of dealers' claim against TOS,

⁴⁵ Between February 2015 and November 2017.

⁴⁶ Ballygunge, Behala, Bhowanipore, Budge-Budge, Jorabagan, Lalbazar, LTU, Maniktola, N.S. Road, Shibpore, Taltola and Ultadanga.

⁴⁷ Assessed between June 2013 and August 2016 for assessment periods between 2010-11 and 2013-14.

⁴⁸ Ballygunge, Behala, Bhowanipore, Budge-Budge, Jorabagan, Lalbazar, N.S. Road, Shibpore and Ultadanga.

⁴⁹ Between February 2015 and December 2017.

CTP and ITC disclosed in returns etc. Accordingly, corrective measures need to be taken immediately to make good the deficiencies during assessment, to ensure that there is no shortfall in revenue realisation.

The above paragraphs are based on the results of the test check of assessment case records made available to audit. There may be similar irregularities, errors/omissions in other units under the department but not covered in the test audit. Department may, therefore, examine all the units with a view to ensure that the taxes are levied as per provisions of the Act and rules.

2.13 Status of implementation of Goods and Services Tax (GST) in West Bengal

2.13.1 Introduction

Goods and Services Tax (GST) came into effect in West Bengal on 1 July 2017. GST⁵⁰ is being levied on intra-State supply of goods or services (*except alcohol for human consumption and five specified petroleum products*⁵¹) separately but concurrently by the Union and the States/Union territories. Further, Integrated GST (IGST) is being levied on inter-State supply of goods or services (including imports) and the Central Government has the exclusive power to levy IGST. Prior to implementation of GST, VAT was levied on intra-State sale of goods as per the WBVAT Act, 2003 and Central Sales Tax (CST) on sale of goods in the course of inter-State trade or commerce as per the CST Act, 1956.

The State Government is empowered to regulate the provisions of WBVAT Act whereas provisions relating to GST are being regulated by Centre and State on the recommendation of Goods and Services Tax Council (GSTC) which was constituted with representation from Centre and all the States to recommend on matters related to GST. The West Bengal Goods and Services Tax (WBGST) Ordinance was notified by the State Government in June 2017 and subsequently the WBGST Rules, 2017 and the WBGST Act, 2017 were notified in June 2017 and August 2017, respectively. Various taxes⁵² were subsumed in the GST.

Goods and Services Tax Network (GSTN) was set up by the Government of India as a private company to provide IT services. It provides front-end IT services to taxpayers namely registration, payment of tax and filing of returns. Back-end IT services, i.e., registration approval, taxpayer detail viewer, refund processing, MIS reports, etc. are also being provided by GSTN to Model-II⁵³ States. West Bengal has opted for Model-II.

⁵⁰ Central GST: CGST and State/Union Territory GST: SGST/UTGST.

⁵¹ Petroleum products: crude, high speed diesel, petrol, aviation turbine fuel and natural gas.

⁵² Value Added Tax, Central Sales Tax, Entry Tax, Entertainment tax, Luxury tax, Taxes on Betting, Gambling and Lotteries and Taxes on Medicinal and toilet preparations.

⁵³ Model-I States: only Front-end services provided by GSTN,
Model-II States: both Front-end and Back-end services provided by GSTN.

2.13.2 Audit objectives

The Audit was conducted with a view to:

- evaluate the IT preparedness and capacity building for implementation of GST by the Government;
- assess the process of migration of taxpayers from existing laws⁵⁴ to GST and
- ascertain the compliance with the provisions of extant rules and regulation regarding transitional credits, refunds, etc.

2.13.3 Audit criteria

The provisions of the following Acts and Rules were the sources of criteria:

- West Bengal Goods and Services Tax Act, 2017;
- West Bengal Goods and Services Tax Rules, 2017;
- Integrated Goods and Services Tax Act, 2017;
- Integrated Goods and Services Tax Rules, 2017;
- West Bengal Value Added Tax Act, 2003; and
- GST (Compensation to States) Act, 2017.

2.13.4 Scope of Audit

The activities of the Directorate of Commercial Taxes (DCT), West Bengal relating to implementation of GST were reviewed. Detailed information regarding ‘Registration, Transitional Credit and Refunds’ available in the database of GST was sought for from DCT for conducting audit. The required information was however not provided by the DCT. In the absence of the detailed database, the audit was conducted mainly on the basis of MIS reports as available with the Directorate. Records of office of the Commissioner of Commercial Taxes (CCT), West Bengal and records relating to Registration, Transitional Credits and Refunds of four Charge⁵⁵ offices under the DCT were also examined.

Draft paragraphs were sent to the CCT and the Government on 28 January 2019 and June 2019. Their views have been suitably incorporated in the relevant paragraphs, wherever replies have been received.

2.13.5 Trend of Revenue from 2013-14 to 2017-18

GST was implemented from July 2017 and total receipts under pre-GST taxes⁵⁶ from April 2017 to June 2017 and GST including subsumed taxes from July 2017 to March 2018 were ₹ 23,802.19 crore against ₹ 21,904.87 crore under pre-GST

⁵⁴ “Existing law” means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passes or made before the commencement of this Act by the Legislature or any authority or person having the power to make such law, notification, order, rule or regulation.

⁵⁵ Subordinate unit of the Circle under the Directorate of Commercial Tax, responsible for assessment, levy and collection of tax.

⁵⁶ Value Added Tax, Central Sales Tax, Entry Tax, Entertainment tax, Luxury tax, Taxes on Betting, Gambling and Lotteries and taxes on Medicinal and toilet preparations.

taxes during the previous year 2016-17, which is an increase of 8.66 per cent. Actual receipts under pre-GST taxes and GST are given below:

Table-2.9
Trend of Revenue

(₹ in crore)

Financial Year	Budget Estimates (BE)	Receipts under pre-GST taxes	Receipts under GST		Total Receipts under pre-GST taxes and GST	Increase in per cent	Compensation received	Total receipts
			SGST	IGST apportionment				
2013-14	18,056.42	17,117.87	NA ⁵⁷	NA	17,117.87	-	NA	17,117.87
2014-15	21,200.40	18,466.64	NA	NA	18,466.64	7.88	NA	18,466.64
2015-16	22,317.02	20,227.78	NA	NA	20,227.78	9.54	NA	20,227.78
2016-17	24,643.33	21,904.87	NA	NA	21,904.87	8.29	NA	21,904.87
2017-18	26,555.02	8,838.45	13,652.54	1,311.20	23,802.19	8.66	1,608.00	25,410.19

*Source: Finance Accounts of the Government of West Bengal.

2.13.6 Legal/statutory preparedness

The State Government notified the WBGST Act, 2017 and the WBGST Rules, 2017. E-way bill system was implemented in the State on inter-State transactions with effect from 1 April 2018 and on intra-State transactions with effect from 3 June 2018. Further, necessary notifications/circulars/orders were issued by the State Government from time to time for facilitating implementation of GST in the State. The brief on the status of implementation of GST is given in the succeeding paragraphs:

2.13.7 IT preparedness and capacity building efforts by the Department

GSTN was to provide three *front-end services* to the taxpayers namely registration, payment of tax and filing of returns. As West Bengal had opted for Model-II for implementation of GST, *back-end applications* like registration approval, taxpayer detail viewer, Letter of Undertaking (LUT) processing, refund processing, management information system (MIS) reports *etc.* for GST administration were being developed by GSTN. As per information provided by the Department, the access for *back-end application* was available to State through State Data Centre, which in turn, is available to all officers of DCT through the internal LAN.

Under the overall supervision of National Academy of Customs, Excise and Narcotics (NACEN), Kolkata, training programme for officers (up to the level of State Tax Officer) were organised in four phases. IT training of selected Master Trainers (officers) had been organised in Chennai at *Infosys* campus under the supervision of GSTN. Further, IT in house training programmes were organised, and refresher training has been completed for 3,200 Officers, down to the rank of State Tax Officers. More than 1,000 workshops were conducted across the State where more than one lakh stake holders/taxpayers participated. A GST Policy-Planning Unit was opened, under Joint Secretary (Finance) for overall knowledge sharing and issue of notifications & circulars *etc.* Departmental websites have been updated with GST related information

⁵⁷ Not applicable since GST has been implemented from 1 July 2017.

such as Act/Rules, notifications/circulars/orders, help/FAQ, important dates, GST Service Provider (GSP) Forms, Advance Ruling, GST rate finder App, taxpayer division, e-Way bill *etc.* A 'Centralised Helpdesk' was also established to attend to the problems/queries of taxpayers. As many as 67 Helpdesks were also setup at various units (Charges) of the Department, where GST related issues were solved for taxpayers.

The Department informed that availability of hardware was sufficient for the present user base of DCT created on GSTN portal.

2.13.8 Registration

Under provisions of Rule 24 of the West Bengal Goods and Services Tax Rules, 2017, every person registered under any existing law of subsumed taxes and having a PAN shall enroll on GST common portal by validating his e-mail address as well as mobile number and such person shall be granted registration on provisional basis. Every person who has been granted provisional registration shall submit an application in Form- GST REG-26 along with the information and documents specified in the said application. If the information and particulars furnished in the application are found by the proper officer⁵⁸ to be correct and complete, a certificate of registration in Form- GST REG-06 shall be issued.

Rule 24 (3A) prescribes that where a certificate of registration has not been made available to the applicant within a period of 15 days from the date of furnishing information and particulars and no notice has been issued under Rule 24(3), the registration shall be deemed to have been granted.

Total number of dealers registered as on 30 June 2017 under VAT Act and under other State Acts⁵⁹ related to taxes subsumed under the GST, were 2,70,854 and 2,567, respectively. All such dealers were required to migrate to GST under Section 139 of the WBGST Act, 2017. As per the minutes of the meeting held on 6 November 2017 between the Central and State Authorities of the Joint Working Group constituted for the purpose of division of taxpayers, the total number of taxpayers migrated to GST regime from the old Acts (both Central and State Acts) in the jurisdiction of West Bengal was stated to be 2,86,388. Of this, final registration certificate was issued to 2,54,722 taxpayers.

Directorate of Commercial Taxes, West Bengal could not provide information about dealers whose registration were auto approved under rule 9(5) of WBGST Rules, 2017 and stated that the number of dealers auto approved were available with GSTN. The number of new taxpayers registered under GST was 3,91,053 (December 2018).

During course of audit, it was observed that dealers registering through the GSTN common portal were not allocated to their proper jurisdiction. The Competent Authority, however, has the powers to re-allot the dealers as per geographical location of the dealer's place of business. The option provided for dealers to register in a charge jurisdiction other than their place of business often creates extra work burden on tax authorities in terms of reallocation of jurisdiction and makes monitoring and supervision of the dealers more difficult.

⁵⁸ "proper officer" in relation to any function to be performed under WBGST Act, means the Commissioner or the officer of the State tax who is assigned that function by the Commissioner.

⁵⁹ Entertainment tax, Luxury tax, Betting and Gambling, Lotteries, etc. administered by the Directorate of Agricultural Income Tax.

2.13.8.1 Non-verification of documents before migration to GST

Analysis of IMPACT database (February and March 2019) in four⁶⁰ Charge offices revealed that 12,348 taxpayers had migrated to GST from VAT. As per provision of the rules, the proper officer granted certificate of registration in Form- GST REG-06 after the taxpayers submitted application in Form GST REG-26. There was no information on record to show that the proper officer, verified information and documents before allowing the taxpayers' migration in the above cases.

Further, test check of VAT registration certificate of taxpayers who migrated through VAT registration revealed that VAT registration certificates of 25 taxpayers in two⁶¹ charge offices were cancelled with effect from dates prior to the date of implementation of GST Act. Thus, the dealers were not eligible to be migrated to GST as WBGST Rules categorically states that only the dealers registered under an existing law and having a PAN issued shall be allowed to migrate under GST. The dealers with cancelled VAT registration were neither restricted in the GSTN system from migration to GST nor did the proper officers restrict such taxpayers from migration.

Reply in this regard is still awaited.

2.13.9 Distribution of migrated taxpayers between the Central and the State Authorities

A Joint Working Committee comprising officers from both the State and Centre was constituted for division of migrated taxpayers (from Central Excise, Service Tax, VAT and Other Taxes) between State and Centre. Taxpayers having turnover of more than ₹ 1.5 crore were divided between State and Centre on the ratio of 1:1 basis. Taxpayers having turnover of less than ₹ 1.5 crore were divided in the ratio of 9:1 between the State and Centre.

Accordingly, 2,09,941 registered taxpayers were allotted to the State as detailed in the following table:

Table-2.10
Distribution of migrated taxpayers between the
Central and the State Authorities
(as on 6 November 2017)

	Registered taxpayers		Total
	Total Turnover above ₹ 1.5 crore	Turnover below ₹ 1.5 crore	
State	22,553	1,87,388	2,09,941
Centre	22,553	20,792	43,345
Total	45,106	2,08,180	2,53,286 ⁶²

*Source: Minutes of the Joint Working Committee related to division of migrated taxpayers between Centre and State.

⁶⁰ Asansol, Fairlie Place, Park Street and Siliguri.

⁶¹ Asansol and Park Street.

⁶² Jurisdictional details of 1,436 (2,54,722 – 2,53,286) taxpayers could not be ascertained by the Central and State tax authorities.

The distribution of 3,91,052 new taxpayers between the Central and State Tax Authorities was made on 1:1 basis. Accordingly, the State was allotted jurisdiction of 1,95,526 new registered taxpayers (December 2018).

2.13.9.1 Non-migration of eligible taxpayers to GST

Forty three taxpayers in two Charge offices eligible for registration under GST were not registered. The Charge offices neither conducted any survey/enquiry to ensure the status of taxpayers' business nor assigned any reasons for their non-migration to GST.

Section 22(2) of the West Bengal Goods and Services Tax Act, 2017 prescribes that every person who, on the day immediately preceding the appointed date, is a registered taxpayer, shall be liable to be registered under GST Act with effect from the appointed date. Further, Section 22(1) prescribes that every supplier shall be liable to be registered under GST Act if his aggregate turnover in a financial year exceeds ₹ 20 lakh.

During test check of the VAT registration database (IMPACT) in two⁶³ Charge offices (February and March 2019) it was revealed that 8,906 dealers were registered as on 30th June 2017. Cross-verification of data with the registration database of GST, available under IMPACT, revealed that 1,472 dealers did not migrate under GST. Of these, 104 taxpayers whose aggregate turnover was more than ₹ 20 lakh as per summary of VAT returns for the year 2016-17, were selected for test check. Cross verification of information of these 104 taxpayers available on GSTN portal with their PAN revealed that 43 taxpayers had not been migrated to GST, though eligible to be migrated under the GST Act.

No survey/enquiry was found to have been conducted by the Charge offices to check whether these taxpayers were continuing their business and hence liable to migrate to GST. Further, there were no record to indicate that the reasons for non-migration of these eligible taxpayers under GST were available and action taken to get these taxpayers migrated under GST by Charge offices.

Reply in this regard is still awaited.

2.13.10 Transitional Credit

Taxpayers, who have migrated to GST from previous tax regime, are eligible for tax credit, if available, under GST and required to claim credit in the GST regime in the prescribed manner under Section 140 of the WBGST Act. Various criteria as prescribed under Rule 117 (4) (b) of the WBGST Rules, 2017 are required to be fulfilled by taxpayers for availing transitional credit. In all, 31,112 dealers had claimed transitional credit. Wherever the taxpayers had carried over credit which was not admissible, the process of reversal was taken up. With regard to verification of Central credit, it was decided by the joint working group of Central and State Authorities that all TRAN-I credit would be verified by the concerned jurisdictional offices. Further, as regards guidelines issued for verification of transitional credit claims to ensure uniformity, the DCT stated that several meetings had been held and guidelines issued in such meetings. The proceedings of the meetings, however, were not found minuted.

⁶³ Asansol and Park Street.

The date of submission of transitional credit claims (TRAN-1) was extended by the State Government upto 31 January 2019.

During the course of audit, irregularity noticed in claim of transitional credit has been discussed in the following paragraph:

2.13.10.1 Excess transitional credit of Input Tax Credit (ITC)

In two Charge offices, 55 taxpayers claimed excess transitional credit of ₹ 1.09 crore. The proper officer did not initiate recovery proceedings against taxpayers for such irregular claims.

As per provisions under Rule 117 (3) of the WBGST Rules, 2017, the amount of credit specified in the application in Form- GST TRAN-01 shall be credited to the Electronic Credit Ledger of the applicant maintained in Form- GST PMT- 02 on the common portal. Further, Rule 121 prescribes that the amount so credited under sub-Rule 3 of Rule 117 may be verified and proceedings under Section 73⁶⁴ or Section 74⁶⁵, as the case may be, shall be initiated in respect of any credit wrongly availed, whether wholly or partly.

Test check of the records (February and March 2019) in two⁶⁶ Charge offices revealed that 55 taxpayers claimed transitional credit of ITC of ₹ 2.98 crore. The taxpayers had, however, carried forward ITC of ₹ 1.89 crore for the quarter ending June 2017 as per VAT return. Thus, the taxpayers claimed ITC of ₹ 1.09 crore in excess as transitional credit under GST. Even though the Directorate of Commercial Taxes had made available the information related to excess transition credit availed by the taxpayers, the proper officer did not initiate proceeding under Section 73 or 74 of the WBGST Act against the taxpayers for such irregular claim of transitional credit. This resulted in excess credit of ITC involving ₹ 1.09 crore.

Reply in this regard is still awaited.

2.13.11 Refund

Taxpayers can claim refund of GST paid in excess or input tax credit unutilised or both during the relevant period under provisions of Section 54 of the WBGST Act, 2017. Further, in pursuance of the provisions of trade circular No. 57/2018 of the CCT, taxpayers are required to submit the prescribed forms for refund through the common portal. Thereafter, they have to submit a hardcopy of such application alongwith all relevant documents to the jurisdictional proper officer. The process of refund starts by the proper officer only after submission of the hard copy. Thus, the entire process of refund continues to be more or less manual. The Directorate has informed that the total number of refund cases received till 17 December 2018 was 7,021 involving ₹ 852.72 crore. Of these 6,311 cases involving ₹ 655.73 crore had been disposed and remaining 710 cases

⁶⁴ Section 73 of the Act prescribes initiation of demands and recovery related to determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed for any reason other than fraud or wilful misstatement or suppression of facts.

⁶⁵ Section 74 of the Act prescribes initiation of demands and recovery related to determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed for any reason of fraud or any wilful misstatement or suppression of facts.

⁶⁶ Fairlie Place and Park Street.

were pending for disposal. Regarding guidelines issued for scrutiny of refund cases, the DCT stated that guidance has been issued in the form of circulars from time to time.

During the course of audit, irregularities noticed in allowing claim of refund by the Charge offices have been discussed in the following paragraphs:

2.13.11.1 Non-raising of demand against refunds rejected

In seven cases, inadmissible claims of refund of ₹ 26.43 lakh by five taxpayers were rejected, but no action was taken to re-credit the rejected amount of refund in Electronic Credit Ledger and raise demand for recovery of the rejected amount.

Para 4.1 of Trade circular⁶⁷ issued by the CCT in pursuance of the provisions under GST Acts and Rules made thereunder prescribes that in case of rejection of claim for refund of unutilised ITC on account of ineligibility of the said ITC, the proper officer shall order for the rejected amount to be re-credited to the Electronic Credit Ledger of the claimant using form GST RFD-01B. For recovery of the inadmissible ITC, a demand notice shall be simultaneously issued to the claimant.

Scrutiny of the refund case records of GST between February and March 2019 in three⁶⁸ Charge offices revealed that five taxpayers in seven cases claimed refund of ₹ 2.20 crore. Of these, the proper officer rejected the claim of refund on account of ineligibility of ITC of ₹ 26.43 lakh. The proper officer, however, neither issued an order in form GST RFD-01B for re-credit of the rejected amount to the Electronic Credit Ledger of the claimants nor issued any demand notice for recovery of that amount.

This resulted in non-crediting of rejected amount of refund to electronic credit ledger and non-recovery of ₹ 26.43 lakh due to non-issuance of demand notice. After this was pointed out, Asansol and Fairlie Place Charge offices accepted the audit observations in five cases involving ₹ 4.02 lakh and stated that action had been/was being taken considering the audit observations. In remaining two cases, Park Street Charge office did not furnish specific reply.

2.13.11.2 Non-disposal of refund cases

In 277 cases, claims of refund of ₹ 9.71 crore remained undisposed of in three Charge offices due to inaction of the Charge offices to inform the taxpayers to submit application of refunds physically.

Under Section 54(7) of the WBGST Act, 2017, the proper officer shall issue the order of refund within 60 days from the date of receipt of application complete in all respects. Further, as per instructions issued under a trade circular⁶⁹, for refund applications that has been generated on the portal but not physically received in the jurisdictional tax offices, a communication will be sent to all such claimants on their registered e-mail informing that application needs to be physically submitted to the jurisdictional tax office within 15 days of the date of

⁶⁷ No.42/2018 dated 17-09-2018.

⁶⁸ Asansol, Fairlie Place and Park Street.

⁶⁹ No.- 57/2018 dated: 31-12-2018.

the e-mail. If the claimant does not submit the application physically within the period, the application shall be summarily rejected and amount of refund shall be re-credited to the Electronic Credit Ledger⁷⁰ of the taxpayer.

Paragraph 7 of the circular prescribes that in relation to refund of excess balance from the Electronic Cash Ledger⁷¹ which have not yet been received in the jurisdictional office, the amount debited in the electronic cash ledger in such applications may be re-credited through FORM GST RFD-01B provided that there are no liabilities in the Electronic Liability Register⁷². The said amount shall be re-credited even though the return in FORM GSTR-3B, as the case may be for the relevant period has not been filed.

Analysis of the data of the DCT in three⁷³ Charge offices (February and March 2019) revealed that in 778 cases⁷⁴, application for refund was filed by the taxpayers. On a cross-verification of these cases with the refund register along with refund case records maintained by the Charge offices, it was noticed that no action was taken by the proper officers in 277 cases involving claims of refund of ₹ 9.71 crore.

In these 277 cases of refund, the proper officers did not communicate to the claimant on their registered e-mail that the application also needed to be physically submitted to the jurisdictional tax office within 15 days of the date of the e-mail, failing which the application would be summarily rejected and the debited amount of refund claimed would be re-credited to the Electronic Credit Ledger/Electronic Cash Ledger. Inaction of the Charge offices to inform the taxpayers to submit application of refunds physically resulted in non-disposal of 277 refund cases involving claims of refund of ₹ 9.71 crore.

After this was pointed out, the Fairlie Place Charge offices, while accepting all audit observations, stated that seven cases were disposed of and in remaining cases, necessary action had been taken. Replies of the Asansol and Park Street Charge offices are still awaited.

2.13.11.3 Allowance of excess refund

In disposal of three refund cases, the proper officers made deductions of inadmissible claims of ITC of ₹ 0.15 lakh instead of ₹ 2.27 lakh. This resulted in excess allowance of refund of ₹ 2.12 lakh.

Under provision of Rule 92(3) of the WBGST Rules, 2017, where a proper officer is satisfied that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall make an order in Form GST RFD-06 sanctioning the amount of refund in whole or part or rejecting the

⁷⁰ Electronic Credit Ledger is maintained in FORM GST PMT-02 on the common portal for each registered person eligible for ITC and every claim of ITC shall be credited to this ledger.

⁷¹ Electronic Cash Ledger is maintained in FORM GST PMT-05 on the common portal for each registered person for crediting the amount deposited and debiting the payment therefrom towards tax, interest, penalty, fee or any other amount.

⁷² Electronic Liability Register is maintained in FORM GST PMT-01 on the common portal for each registered person liable to pay tax, interest, penalty, late fee or any other amount and all amounts payable by him shall be debited to the said register.

⁷³ Asansol, Fairlie Place and Park Street.

⁷⁴ Between November 2017 and December 2018.

said refund claim. Further, under provision of Section 54(3) and explanation (1) of Section 54 of the WBGST Act, 2017, the ITC for purchase of capital goods is not admissible for the purpose of refund.

Scrutiny of refund case records (February and March 2019) in two⁷⁵ Charge offices revealed that in three cases, the proper officers, while disposing of the refund cases made deduction of inadmissible claims of ITC of ₹ 0.15 lakh instead of ₹ 2.27 lakh. This resulted in excess allowance of refund of ₹ 2.12 lakh as detailed in the following table:

Table-2.11
Allowance of excess refund

(₹ in lakh)

SI. No.	Nature of Irregularity	Name of Charge offices	No. of cases	Refund claimed	Inadmissible ITC	Inadmissible ITC deducted from refund amount	Excess amount refunded
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)=(6-7)
1.	Inadmissible ITC was not deducted at the time of refund.	Park Street	1	3.57	0.61	0	0.61
2.	Inadmissible ITC was deducted short at the time of refund	Asansol	1	21.86	1.48	0.15	1.33
3.	Refund was allowed for ITC claimed on capital goods.	Park Street	1	5.23	0.18	0	0.18
Total			3	30.66	2.27	0.15	2.12

After this was pointed out, the Charge offices accepted all the audit observations and stated that taxpayers had agreed to refund the overpaid amount.

2.13.12 Status of assessment and scrutiny of returns

2.13.12.1 Assessment

Assessment under GST will be in the shape of audit conducted by the DCT, which will start after submission of annual return of the taxpayers. As per Section 44 of the WBGST Act 2017, the last date for submission of annual returns for the period July 2017 to March 2018 was 30 November 2019.

2.13.12.2 Scrutiny of returns

As per Section 61(1) of the WBGST Act, the proper officer may scrutinise the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

During course of audit, it was observed that scrutiny of returns by the Competent Authority focuses on proper noting of Harmonised System of Nomenclature (HSN) code by the dealer, which forms the basis of application of the tax rate, application of correct rate of tax and tax exemptions. The DCT, West Bengal obtains periodic reports from GSTN on dealers who have defaulted on their GST returns. The Competent Authorities contact the taxpayers, ascertain the causes of non-submission of returns and cancel the Registration Certificate (RC) of

⁷⁵ Asansol and Park Street.

the taxpayers, if necessary. Registration Certificates of 20,210 taxpayers were cancelled by DCT upto 8 February 2019.

During the course of audit, irregularity noticed in filing of returns has been discussed in the following paragraph.

Notices to return defaulters not issued

Under provisions of Section 46 of the West Bengal Goods and Services Tax Act, 2017, where a registered person fails to furnish a return, a notice shall be issued requiring him to furnish such return within 15 days in such form and manner as prescribed.

Test check of the status of filing of returns by registered taxpayers with the GST portal (February and March 2019) in three⁷⁶ Charge offices revealed that 23 taxpayers have not filed returns for varying periods between July 2017 to March 2018. The proper officers, however, did not issue notices till the date of audit (March 2019).

Further, the GSTN itself does not provide for any alert (pop up) to enable the proper officers to monitor the return defaulting taxpayers. This system deficiency of the GSTN resulted in non-monitoring of submission of returns by taxpayers with consequent non-issuance of notice to such taxpayers.

Reply in this regard is still awaited.

2.13.13 Status of Data sharing

With automation of the collection of GST having taken place, it is essential for Audit to have access to GST data to transition from sample checks to a comprehensive check of all transactions. Principal Accountant General (Economic & Revenue Sector Audit) has written to the Commissioner of Commercial Taxes (CCT), West Bengal on 5 February 2018 to provide access to the GST data followed by reminders on 30 May 2018 and 21 December 2018. However, access to data is yet to be provided. The Department could not provide access to data from the GST database. Audit, however, got access to MIS reports as available with the Directorate.

As per Section 16 of the Act, it shall be the duty of the CAG to audit all receipts which are payable into the Consolidated Fund of India and each State. Thus, not having access to the data pertaining to all GST transactions is violation of the provisions of CAG's DPC Act and has come in way of comprehensively auditing the GST receipts.

2.13.14 Conclusion

The total number of taxpayers migrated to GST regime from the old Acts (both Central and State Acts) in the jurisdiction of West Bengal was 2,86,388. Of this, registration certificate in Form GST REG 06 was issued to 2,54,722 (89 per cent) taxpayers. The number of new taxpayers registered under GST was 3,91,053 till 1 January 2019. 'Centralised Helpdesk' at 67 units of the Department were set up to attend to the problems/queries of taxpayers. The Department needs to settle cases relating to the transitional credit and refund expeditiously so as to have a smooth transition to GST.

⁷⁶ Asansol, Park Street and Siliguri.