

Chapter-II
Finance (Taxation) Department

CHAPTER - II: FINANCE (TAXATION) DEPARTMENT

2.1 Tax administration

The Finance (Taxation) Department is responsible for the administration of taxes on sales, trade, *etc.* in the State. The Commissioner of Taxes (CT), Assam is the Head of the Department who is responsible for administration of all taxation measures and for general control and supervision over the zonal and unit offices and the staff engaged in collection of taxes and to guard against evasion of taxes. The Commissioner is also the authority for disposing of revision petitions under all Taxation Acts and laws besides providing clarifications under the Assam Value Added Tax (AVAT) Act, 2003 and is assisted by Additional Commissioners of Taxes, Joint Commissioners of Taxes (JCT), Deputy Commissioners of Taxes (DCT), Assistants Commissioners of Taxes (ACT), Superintendents of Taxes (ST) and Inspectors of Taxes both at the Headquarters and zonal/ unit levels. The Commissionerate of Taxes had one Head Office/ Commissioner's Office, 10 Zonal Offices, five Appellate Offices, 34 Unit Offices and 23 Recovery Offices.

The functioning of the Department is governed by the provisions of the AVAT Act, 2003; the Assam Goods and Services Tax Act, 2017 (*w.e.f.* 01 July 2017), the Central Sales Tax (CST) Act, 1956; the Assam Professions, Trades, Callings and Employments Taxation Act, 1947; the Assam Electricity Duty Act, 1964; the Assam Taxation (on Specified Lands) Act, 1990; the Assam Agricultural Income Tax Act, 1939 and various administrative orders issued from time to time.

2.2 Working of Internal Audit Wing

Internal audit is a vital component of internal control mechanism which functions as an internal oversight mechanism of the Department and a vital tool which enables the management to assure itself that the prescribed systems are functioning reasonably well. It was observed that although an internal audit wing was created by the Government in May 1988 with staff strength of eight internal auditors in the office of the CT, Assam, no personnel was posted in the wing since February 2011.

2.3 Results of Audit

Test check of records of 20 unit offices (out of total 75 unit offices) relating to VAT/ CST/ AET/ Agricultural Income Tax assessments and other records noticed deficiencies in 276 cases which falls under the following categories as detailed in **Table 2.1**.

Table 2.1:-Results of Audit

Sl. No.	Category	Number of cases	Amount (₹ in crore)
1	Turnover escaping assessment	12	7.00
2	Irregular grant of ITC	29	10.00
3	Concealment of Turnover	35	22.00
4	Short levy of tax and interest	25	26.23
5	Irregular allowance of concessional rate of tax	28	10.27
6	Short/ non-levy of entry tax	8	1.54
7	Other irregularities ⁶	139	60.75
Total		276	137.79

2.4 Compliance Audit on “Processing of Refund claims under GST in Assam”

2.4.1 Introduction

2.4.1.1 Timely refund mechanism constitutes a crucial component of tax administration, as it facilitates trade through release of blocked funds for working capital, expansion and modernisation of existing business. The provisions to refunds as contained in the GST laws, the claim and sanctioning procedure should be completely online. Due to unavailability of electronic refund module on the common portal, a temporary mechanism was devised and implemented in December 2017⁷. Under the temporary mechanism as implemented, the applicants were required to file the refund applications in Form GST RFD-01A on common portal and a printout of the same was required to be submitted physically to the jurisdictional tax office along with all supporting documents. The processing of those applications was being done manually. From January 2019, all supporting documents were also to be submitted electronically⁸ along with application in Form GST RFD-01A for claiming refunds. However, various post submission stages of processing the refund applications continued to be manual.

2.4.1.2 Refund procedure became fully electronic from 26 September 2019, wherein all the steps from submission of application to processing were undertaken electronically (called Automation of Refund Process). However, applications submitted prior to 26 September 2019 would continue to be processed manually.

2.4.2 Audit Objectives

Audit of refund cases under the GST regime was conducted to assess:

- (i) The adequacy of Act, Rules, notifications, circulars, *etc.* issued in relation to grant of refund,
- (ii) The compliance of extant provisions by the tax authorities and the efficacy of the systems in place to ensure compliance by taxpayers,
- (iii) Whether effective internal control mechanism exists to check the performance of the departmental officers in disposing off the refund applications.

⁶ Non levy of penalty for delay in submission of audited accounts, duplicate copies of statutory forms, *etc.*

⁷ Circular No.17/17/2017-GST dated 15.11.2017 and No.24/24/2017-GST dated 21.12.2017 (No similar circular found to be issued by the Government of Assam (GoA).

⁸ Circular No. 79/53/2018-GST dated 31.12.2018 read with GoA circular No. 33-2019-GST, dated 30.01.2019

2.4.3 Scope of Audit

During field audit, the refund cases processed by the State GST offices in Assam from July 2017 to July 2020 were examined. Refund data was obtained from GSTN and a sample of refund cases under pre-automation and post-automation period had been selected for detailed examination.

2.4.4 Sample Selection

Among the refund cases processed by 34 State GST Offices in Assam during July 2017 to July 2020, 117 cases and 96 cases pertaining to pre and post automation under the jurisdiction of 24 and 21 State GST Offices, respectively, were scrutinised by the Pr. Accountant General (Audit), Assam. Details of unit wise selected sample cases are given in **Appendix-III**.

- The above sample was taken from 1,604 refund cases involving amount of ₹ 133.63 crore that were processed in 27 State GST offices⁹ during the pre-automation period and 654 refund cases involving amount of ₹ 596.16 crore processed in 31 State GST offices¹⁰ during the post-automation period.
- Audit scrutiny revealed that in 24 State GST offices during the pre-automation period, out of selected 117 cases involving ₹ 13.71 crore, 71 cases (61 per cent) involving ₹ 663.27 lakh were sanctioned, 41 cases (35 per cent) involving ₹ 4.05 crore were rejected and in respect of five cases, physical files i.e., supporting documents were not submitted to Audit for detailed check.
- Audit scrutiny revealed that all the selected 96 cases under the post-automation period in 21 units offices involving ₹ 44.08 crore were sanctioned.

2.4.5 Legal Provisions

The refund claims, processes and sanctions are guided by the following sections/ rules/ notifications:

- Section 54 to 58 and section 77 of Assam Goods and Services Tax Act, 2017.
- Rule 89 to 97 of Assam Goods and Services Tax Rules, 2017.
- Section 15, 16 and 19 of Integrated Goods and Services Tax Act, 2017.
- Applicable sections of CGST Act, 2017.
- Notifications/circulars issued from time to time.

Audit Findings

2.4.6 Compliance Issues

Audit examined compliance to the provisions of the GST Act, Rules, procedures *etc.* related to processing of refund under GST by the Assam State Tax Authority (STA).

⁹ Out of 34 units, information on processing of refund cases in respect of seven offices viz. Naharkatia, Diphu, Tezpur, North Lakhimpur, Barpeta Road, Hailakandi and Nalbari were not furnished to audit.

¹⁰ During post automation period in three Offices viz. Digboi, Biswanath Chariali and Golaghat office, no refund cases were processed

Audit noticed several shortcomings in compliance to the Act/Rules. The details regarding the nature of audit observation and the extent of deviations are included in **Table-2.2**.

Table-2.2:-Extent of Deviation noticed

Nature of Audit findings	Audit Sample		Deficiencies noticed		Deficiencies as percentage of Sample
	Number	Amount (₹ in lakh)	Number	Amount (₹ in lakh)	
Delay/non-conducting of post audit of refund claims	117	NA	71	NA	61
Improper/non-maintenance of refund registers	24*	NA	7*	NA	29
Refund sanctioned on accumulated ITC on Export of goods and services without payment of tax (EXPWOP) and irregularities noticed thereof	51	747.14	15	51.91	29
Delay in issue of acknowledgement	213	NA	53	NA	25
Non-payment of SGST refund amount sanctioned by State Authority	117	153.51	24	25.89	21
Delay in issue of Refund orders and non-payment of interest thereon	213	NA	27	4.37	13
Irregular grant of refund in respect of other categories	10	2,535.01	3	83.62	30
Refund sanctioned on ITC accumulated due to inverted tax structure (INVITC) and irregularities noticed thereof	45	1,954.49	3	12.07	7
Delay in communicating refund sanction order to counterpart tax Authority	798	NA	53	NA	7
Delay in sanction of Provisional refund on account of Zero-rated supply	51	NA	2	NA	4

* State GST Offices

2.4.6.1 Acknowledgment not issued within time

There was delay in issue of acknowledgement against 32 refund applications in pre- automation period and 21 applications in post-automation period.

Rule 90(2) of AGST Rules, 2017 provides that the acknowledgment shall be issued¹¹ within fifteen days of filing of refund claim with the Proper Officer if the application is found complete in all respects. In respect of pre-automation cases, the stipulated period of 15 days will be counted from the date of manual submission of refund application along with all specified documents.

Pre-Automation

Out of 117 selected refund cases, in 24 State GST offices, Audit noticed that in 32 refund cases under 10 State GST offices, there was delay in issue of acknowledgements ranging from 1 day to 236 days (Details in **Appendix-IV**). Age wise breakup of delays are shown in **Table 2.3**.

¹¹ In Form GST RFD-02

Table 2.3:-Age wise delay in issue of acknowledgement

Range of Delay (in days)	Number of Cases
Up to 3 months	21
3 to 6 months	10
More than 6 months	1

This has resulted in non-compliance of the provisions of Rule 90 of the AGST Rules, 2017.

On this being pointed out in Audit (December 2020 to March 2021), the Department stated (November 2021) that in pre-automation period taxpayer had to submit application online as well as manually along with all necessary documents. Analysing the case wise audit observations, the department stated that out of 32 cases, in 29 cases delay occurred due to delay in submission of required documents by the taxpayer, in two cases the Proper Officer was engaged on preparation of National Register of Citizens (NRC) and in one case delay had not occurred at the State Tax Authority (STA) level as the refund was filed with the Central Tax Authority (CTA) by the taxpayer.

Reply is not acceptable as the department is required either to issue acknowledgment in cases of applications with complete documents or deficiency memo if application was received with incomplete documents within 15 days.

Post-Automation

Out of examination of 96 selected refund cases, Audit noticed that in 21 cases there was delay in issue of acknowledgement ranging from 1 to 183 days (Details in **Appendix-V**). Age wise breakup is shown in the **Table 2.4**:

Table 2.4:-Age wise delay in issue of acknowledgement

Range of delay (in days)	Number of Cases
Up to 3 months	19
3 to 6 months	1
More than 6 months	1

This has resulted in non-compliance of the provisions of Rule 90 of the AGST Rules 2017.

Thus, delay in issue of acknowledgements when entire process was carried out electronically, indicates the Proper Officer had not attended to the cases within the prescribed time limit of 15 days.

On this being pointed out in Audit (February 2021), the Department accepted the audit findings and stated (November 2021) that there was delay in submission of required documents by taxpayers. Moreover, in certain cases, the Proper Officers faced network connectivity problem while issuing acknowledgement for the refund claim.

2.4.6.2 Refund orders not sanctioned in time

In 15 cases in pre-automation and 12 cases in post-automation period, there was delay in sanction of refund cases and department did not pay interest to claimants.

As per Section 54(7) of AGST Act 2017 read with Rule 92 of the AGST Rules, 2017, the Proper Officer shall make an order in Form GST RFD-06, sanctioning the amount of refund to which the applicant is entitled within 60 days of receipt of application complete in all respect.

Section 56 of the AGST Act, 2017 stipulates that if any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax.

As per CBIC Circular dated 18 November 2019 followed by State Circular dated December 2019¹², interest has to be calculated from the date immediately after the expiry of sixty days from the date of receipt of the application till the date the amount is credited to the bank account of the applicant.

Pre-automation

Out of 117 refund cases examined, Audit noticed that in 15 cases, there was delay in sanction of refunds ranging from 1 to 432 days (Details in **Appendix-VI**). Age wise breakup of delays are shown in the **Table 2.5**:

Table 2.5:-Age wise delay in sanction of refund

Range of Delay (in days)	Number of Cases
Up to 3 months	9
3 to 6 months	2
More than 6 months	4

This has resulted in non-observance of the provisions of Section 54(7) of the AGST Act, 2017 read with Rule 92 of the AGST Rules, 2017. Further, the Department has not paid interest under Section 56 of the AGST Act, 2017 amounting to ₹ 3.20 lakh to the claimants.

On this being pointed out in Audit (December 2020 to March 2021), the Department stated (November 2021) that delay in sanction of refunds were mainly attributed to delay in issue of acknowledgement due to late receipt of required documents, engagement of Officers in NRC duty, lack of awareness in processing of refund application by the tax payers, etc. Further, in one case, delay did not occur at the STA level as the refund was sanctioned from the CTA; however, the STA took up the matter and paid the SGST part only. As regards non-payment of interest for delay in sanction of refunds, the Department stated that the taxpayer did not claim the interest.

¹² Circular No.125/44/2019-GST dated 18.11.2019, State circular No. 79/2019-GST, Dated 23.12.2019

The reply of the Department regarding non-payment of interest is not acceptable as interest is to be paid *suo moto* by the department in case of delay in payment of refund along with payment advice (RFD-05).

Post-automation

Out of 96 refund cases examined by Audit, it was noticed that in 12 cases there were delays in sanction of refunds ranging from 1 to 186 days (Details in **Appendix-VII**). Age wise breakup of delay as shown in **Table 2.6**:

Table 2.6:-Age wise delay in sanction of refund

Range of delay (in days)	Number of Cases
Up to 3 months	9
3 to 6 months	2
More than 6 months	1

This has resulted in non-observance of the provisions of Section 54(7) of the AGST Act, 2017 read with Rule 92 of the AGST Rules, 2017. Further, for belated payment of refunds, the department did not pay interest due under section 56 of the Act of ₹ 1.17 lakh to the taxpayers.

On this being pointed out in Audit (February 2021), the Department stated that the delays were mainly due to lack of awareness in the initial stage of GST implementation, late submission of requisite documents, NRC duty etc.

2.4.6.3 Refund cases on Export of Goods and Services without Payment of Tax (EXWOP)

Out of 117 selected cases under pre-automation period and 96 selected cases under post-automation period, 30 refund cases and 21 refund cases respectively, relate to Export of Goods and Services without Payment of Tax (EXWOP). Out of which in 12 cases under pre-automation sample cases and in three post-automation sample cases, Audit noticed irregularities as enumerated below:

I. Delay in sanction of provisional refund

In two cases, there was delay in issuance of provisional sanction order.

As per Section 54(6) of AGST Act, 2017 read with Rule 91(2) of AGST Rules, 2017, in the case of any claim for refund on account of zero rated supply of goods or services or both made by registered persons, 90 per cent of refund claimed may be sanctioned on a provisional basis and thereafter an order made for final settlement of the refund claim after due verification of documents furnished by the applicant. The provisional refund shall be granted within a period of seven days from the date of acknowledgement.

Out of examination of 117 selected refund cases, Audit noticed that 30 refund cases relate to Export of Goods and Services without Payment of Tax (EXWOP). Of the total 30 cases, six cases were rejected due to absence of proper documents, nine cases were settled within the prescribed time limit, 12 cases were fully settled without provisional sanction but not within seven days from date of acknowledgement and in three cases

provisional sanctions were granted. Further, Audit noticed that out of three provisionally sanctioned cases, in two refund cases¹³ there were delays in issue of provisional sanction order by six and 18 days.

This has resulted in non-observance of the provisions of Section 54(6) of AGST Act, 2017 read with Rule 91(2) of AGST Rules, 2017.

On this being pointed out in Audit, (December 2020 to March 2021), the Department stated (November 2021) that the provisional sanction was delayed due to non-submission of requisite documents by the taxpayers. However, reply is not acceptable as the Proper Officers issued acknowledgements in Form RFD-02 after ascertaining the completeness of documents with applications. Further, audit observations are relating to delay in issue of provisional refund beyond seven days after issue of acknowledgement.

II. Sanction order rejected irregularly leading to excess accumulation of SGST credit

Refund of SGST component was not debited from Electronic Credit Ledger resulted in excess accumulation of ₹ 9.71 lakh.

Ministry of Finance, Government of India (GoI) in December 2017¹⁴ instructed all the GST offices that the payment in respect of sanctioned amount shall be made only by the respective tax authority of the Central or State Government. Thus, the sanction order issued by the Central tax authority or the State tax/UT tax authority shall be communicated to the concerned counter-part tax authority within seven working days for the purpose of payment of the relevant sanctioned refund amount of tax or cess, as the case may be.

Ministry of Finance, GoI in September 2018 followed by State circular in October 2018¹⁵ clarified that neither the State nor the Central tax authorities shall refuse/withhold to disburse the amount sanctioned by the counterpart tax authority on any grounds whatsoever.

Scrutiny of records of “Zaloni Technologies India Private Limited¹⁶” showed that the applicant had claimed refund of ₹ 32.85 lakh in December 2018 and accordingly the amount was debited from the Electronic Credit Ledger (ECL) of the applicant. The Central Tax Authority¹⁷ (CTA) sanctioned ₹ 24.24 lakh against refund claim of ₹ 32.85 lakh and communicated to the State Tax Authority (STA) in August 2019 as detailed in **Table 2.7**:

¹³ ARN AA1801191312983 Dt. 27.03.2019 (six days) and AA180119131303K Dt. 27.03.2019 (18 days)

¹⁴ Para 5.0 of Circular No.24/24/2017-GST dt.21.12.2017 (no such similar circular was found to be issued by GoA.)

¹⁵ para 6.2 of Circular No.59/33/2018-GST dt.4.9.2018, and State Circular No. 24-2018-GST, Dated, 25.10.2018

¹⁶ GSTIN-18AAACZ2899R1Z6, ARN- AA180318000731J

¹⁷ Assistant Commissioner, Range-2E, Kamrup Metro, Guwahati II Division

Table 2.7:-Component wise refund claimed and sanctioned

	IGST	CGST	SGST	Cess	Total	(₹ in lakh) Date
Refund claimed	6.19	13.33	13.33	0	32.85	21/12/2018
Refund sanctioned	4.82	9.71	9.71	0	24.24	02/08/2019

The CTA deposited refund amount of ₹ 14.53 lakh¹⁸ against sanctioned refund of IGST and CGST into the claimant's bank account in October, 2019. However, STA instead of payment of refund of SGST of ₹ 9.71 lakh into the claimant's account, rejected the sanction order of CTA due to insufficient documents submitted by the claimant and credited back the entire debited amount of ₹ 32.85 lakh into ECL of the applicant. Thus, rejection of CTA's order on refunds by STA was irregular and in contradiction to the instruction issued by GoI. In October 2020, however, refund claim was settled for ₹ 24.24 lakh involving SGST refund of ₹ 9.71 lakh by the STA and payment advice was issued. Audit further noticed that STA debited only CGST and IGST component from ECL which was re-credited on rejection, leaving SGST component of ₹ 9.71 lakh (Details in **Appendix-VIII**). This resulted in excess accumulation of SGST credit in the ECL.

On this being pointed out in Audit (January 2021), the Department informed (November 2021) that the amount was debited (October 2021) from ECL. The debit of the amount was also confirmed by the audit.

III. Excess grant of refund

Consideration of incorrect amount of adjusted total turnover and ITC resulted in excess grant of refund of ₹ 12.41 lakh.

As per section 54(3) of AGST Act, 2017, a registered person may claim refund of any unutilised ITC at the end of tax period. As per Rule 89(3), the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed. However, in case of refund on account of EXWOP of IGST/zero-rated supply of goods or services, refund shall be granted¹⁹ as per the following formula:

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC²⁰ ÷ Adjusted Total Turnover²¹

Pre-automation

On verification of records of M/s. Fuel Sources (India) Private Limited²², it was noticed that STA in March 2019 sanctioned and refunded ₹ 25.97 lakh instead of ₹ 19.23 lakh. Scrutiny of monthly returns GSTR-1 and GSTR-3B for November 2017 filed by the

¹⁸ ₹ 4.82 lakh (IGST) + ₹ 9.71 lakh (CGST)

¹⁹ Rule 89 (4) of AGST Rules, 2017

²⁰ 'Net ITC' shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rule 4(A) or 4(B) or both.

²¹ 'Adjusted Total Turnover' means the sum total of the value of the turnover in a State or a Union territory, as defined under clause (112) of section 2 excluding the value of exempt/nil rated supplies other than zero-rated supplies during the relevant period.

²² (GSTIN-18AAACF2978B2ZQ, ARN- AA181117005275H),

taxpayer revealed that the 'Adjusted Total Turnover' for relevant period was ₹ 5.28 crore²³ however, STA considered adjusted total turnover as ₹ 3.91 crore while sanctioning the refund reasons for which are yet to be provided by the department. As such, there was excess grant of refund ₹ 6.74 lakh²⁴ due to wrong consideration of adjusted total turnover during calculation.

On this being pointed out in Audit (December 2020 to March 2021), the Department stated (November 2021) that the taxpayer's export supplies were ₹ 137.13 lakh and taxable supplies were ₹ 390.97 lakh. The Proper Officer, while calculating adjusted total turnover to determine admissible refund, only considered the turnover on taxable supplies and turnover on export supply was excluded treating it as nil rated. The Departmental reply is not tenable. As per definition of adjusted total turnover, export supply is termed as zero rated supply and is included within adjusted total turnover.

Scrutiny of records in case of M/s Aayan Machineries²⁵ showed that in February 2019, STA sanctioned refund of ₹ 19.30 lakh for the period December 2018 by adopting above formula considering net ITC for the relevant period as ₹ 63.31 lakh. Scrutiny of GSTR-3B of December 2018 revealed that net ITC eligible for the period was ₹ 55.81 lakh as per details of invoice submitted by the taxpayer. As such, an amount of ₹ 17.01 lakh²⁶ was eligible for refund. Thus, there was excess grant of refund of ₹ 2.29 lakh due to excess consideration of admissible ITC for the relevant period.

On this being pointed out in audit (December 2020 to March 2021), the Department stated (November 2021) that although ITC for the month of December 2018 was ₹ 55.81 lakh as per details of invoice submitted by the taxpayer but the Proper Officer considered accumulated ITC in ECL upto December 2018 (*i.e.* ₹ 63.31 lakh) which includes earlier months ITC. However, the reply of the Department is not tenable, as per Rule 89(4) of AGST Rule, 2017, the ITC availed during the relevant period (*i.e.* December 2018) should only be considered.

Post-automation

Audit noticed that in case of M/s Bhauram Jodhraj²⁷, the STA, in March 2020, sanctioned and refunded ₹ 26 lakh instead of ₹ 22.62 lakh by adopting the formula as per GST law. Cross-check of GSTR-3B for the period from October 2019 to December 2019 filed by the taxpayer revealed that the 'adjusted total turnover' for relevant periods was ₹ 471.48 lakh; however, while finalising the refund claim, the STA considered 'adjusted total turnover' as ₹ 409.94 lakh. Thus, short consideration of 'adjusted total turnover' resulted in excess grant of refund of ₹ 3.38 lakh (Details are in **Appendix-IX**).

²³ Other than zero rated - ₹ 390.97 lakh + Zero rated T.O- ₹ 137.14 lakh

²⁴ Refund amount (₹ in lakh) = $(137.14 + 0) \times 74.05 / 528.11 = ₹ 19.23$

²⁵ GSTIN-18BEYYPB9715E1Z4, ARN- AA1812182189231

²⁶ Refund amount (₹ in lakh) = $(₹ 97.25 + 0) \times ₹ 55.81 / ₹ 318.97 = ₹ 17.01$

²⁷ GSTIN-18AABFB6682L3Z0, ARN- AA180320009305S, dt. 21.03.2020

On this being pointed out in Audit (February 2021), the Department reported (November 2021) that action was initiated²⁸ and full amount was realised along with interest of ₹ 1.13 lakh. However, documents in support of recovery are yet to be furnished to Audit.

IV. Refund rejected without re-crediting the amount in ECL

While rejecting the refund claim debited amount was not re-credited into ECL, the action of the authority deprived the tax payer from utilising the available ITC.

As per Rule 93(2) of AGST Rules, 2017, where any amount claimed as refund is rejected under Rule 92 of the AGST Rules, 2017, the amount debited to the extent of rejection shall be re-credited to the ECL by an order made in FORM GST PMT-03. A refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the Proper Officer that he shall not file an appeal. Also, where any deficiencies have been communicated in FORM GST RFD-03, the amount debited under sub-rule (3) of Rule 89 shall be re-credited to the ECL as per Rule 93(1) of AGST Rules, 2017.

Scrutiny of three refund cases in respect of M/s Maa Sherawali Minerals²⁹ revealed that the taxpayer had applied for refund of ₹ 14.61 lakh for three different periods - November 2017, January 2018 and March 2018. Accordingly, the refund claimed amount was debited from ECL. Further scrutiny revealed that the applications for the above refund cases were rejected³⁰ by the STA due to non-submission of relevant documents by the applicant; however, STA did not re-credit the debited amount in the ECL. Thus, due to non-credit of debited amount into ECL, the taxpayer remained deprived from utilising the available ITC.

On this being pointed out in Audit (December 2020 to March 2021), the Department stated (November 2021) that the applications were rejected due to incomplete refund application and amount could not be re-credited as PMT-3 was not functional. However, refunds have now been sanctioned on receipt of applications supported by complete documents. The reply of the Department was not acceptable as on rejection of refund application, amount debited from ECL needs to be re-credited.

V. Delay in finalisation of provisionally sanctioned refund cases

Provisional refund cases were not finalised, resulting in balance 10 per cent of refund claim remaining unpaid to taxpayers.

As per Section 54(6) of AGST Act, 2017 read with Rule 91(2) of AGST Rules, 2017, in the case of any claim for refund on account of zero rated supply of goods or services or both made by registered persons, 90 per cent of refund claimed may be sanctioned

²⁸ under section 73 of the AGST Act, 2017

²⁹ AA181117001637D Dt.- 15.01.2019, (₹ 8.32 lakh) and AA180118002820M Dt.- 25.01.2019 (₹ 6.16 lakh) and AA180318007713A Dt.- 25.01.2019 (₹ 0.13 lakh)

³⁰ In Form RFD-06

on a provisional basis and thereafter an order made for final settlement of the refund claim after due verification of documents furnished by the applicant.

Scrutiny of selected cases revealed that three taxpayers had claimed refund of ₹ 64.47 lakh on the ground of supply of zero-rated goods. As per provision of Section 54(6) of the AGST Act, 2017, the STA had provisionally sanctioned ₹ 58.03 lakh (90 per cent of the refunds claimed) to the taxpayers. However, these cases were not finalised till the date (March 2021) of conduct of audit. Thus, due to non-finalisation of refund cases where provisional sanction were granted, the balance 10 per cent of refund claim of ₹ 6.44 lakh remained unpaid to taxpayers even though one and half years have been lapsed from grant of provisional sanction. The details of cases where final settlement of refund cases were pending are shown in table below:

Table 2.8:-Provisional sanction cases where final settlement is pending

(₹ in lakh)						
Sl. No.	Name & GSTIN	ARN & Date	Date of provisional sanction (RFD-04)	Refund claimed amount	Amount provisionally paid (90% of sanctioned amount)	Remaining to be paid (10%)
1.	R.P. Trade Pvt. Ltd. 18AABCR6675G1Z2	AA1801191312983 Dated-27.03.2019	28.06.2019	11.62	10.46	1.16
2.	R. P. Supply Syndicate 18ADAPA0685Q2ZB	AA180119131303K Dated-27.03.2019	28.06.2019	12.92	11.63	1.29
3.	M/s Tirupati Enterprise 18ACHPA0578Q1Z7	AA1803180142868 Dated-08.03.2019	28.06.2019	39.93	35.94	3.99
Total				64.47	58.03	6.44

On this being pointed out in Audit (December 2020 to March 2021), the Department stated (November 2021) that cases have been finally settled on payment of balance admissible refund amount. However, the Department did not furnish supporting documents such as sanction order in RFD-06 and payment advice in RFD-05 for confirmation.

VI. Allowance of refund of accumulated ITC not supported by invoice

Considering ITC not supported by copies of invoices resulted in excess grant of refund of ₹ 8.74 lakh.

Rule 89(4) of AGST Rules, 2017 prescribed that in the case of refund on account of Export without payment of Tax, refund of input tax credit shall be granted as per the following formula:

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

The GoI in September 2018 followed by State circular in October 2018³¹ clarified that the refund claim shall be accompanied by a printout of monthly return (Form GSTR-2A) where inward purchases of the claimant are reflected for the relevant period for which refund is claimed. The claimant shall also submit the details (in prescribed

³¹ Para 2.3 and para 2.4 of Circular No. 59/33/2018-GST, dtd. 04.09.2018 and State Circular No. 24-2018-GST dtd. 25.10.2018

Annexure-A) of the invoices for which the refund is being claimed along with the application for refund. The Proper Officer shall rely upon the information as available in claimant's monthly returns (GSTR-2A) and copies of invoices furnished.

Similarly, as per GoI's instruction (November 2019) followed by State circular in December 2019³², the applicants claiming refunds of unutilised ITC during post-automation period, shall upload a copy of monthly return on inward purchase (FORM GSTR-2A) for the relevant period. Such applicants shall also upload the details of all the invoices (in Annexure-B).

Pre-automation

Scrutiny of records relating to selected cases revealed that in three cases the claimants did not furnish details of invoices (in Annexure A) relating to inward purchases against the refund claimed. Verification of monthly return of inward purchase (GSTR-2A) and invoices furnished by the claimant revealed that the applicant's claim on available ITC was not supported by copies of invoices furnished and monthly return of the particular period (Detailed in **Appendix-X**). However, while sanctioning the refund, the STA considered ITC as claimed by the applicant instead of considering ITC as supported by monthly return and copies of invoices. This resulted in excess grant of refund ₹ 4.70 lakh as detailed below:

Table 2.9:-Excess consideration of ITC

(₹ in lakh)						
Name/GSTIN of the Claimant	ARN & Date	Net input tax credit considered by STA	Net ITC supported by invoice	Maximum refund amount to be Sanctioned	Refund Sanctioned by STA	Irregular Sanction of Refund
Jabbar Ali 18BBGPA8170H1ZO	AA180718023401D Dated 10.04.2019	0.76	0.65	0.65	0.76	0.11
Sahidul Islam Mondal 18AVQPM3704J1Z7	AA180319192298M Dated 05.05.2019	7.37	2.91	2.91	7.37	4.45
Tamser Ali 18AYTPA0971D1ZG	AA1803182153368 Dated 07.12.2018	0.14	0	0	0.14	0.14
Total						4.70

On this being pointed out in Audit (December 2020 to March 2021), the Department stated (November 2021) that the sanctioning authority has verified the invoices, GSTR-3B while sanctioning the refund. However, Audit noticed that invoices were not reflected in GSTR-2A and the Department also could not submit invoices to audit.

Post-automation

On scrutiny of records related to refund cases, Audit noticed that in two cases, the taxpayers³³ did not upload detail of inward invoices in Annexure B along with refund application. Scrutiny of monthly returns revealed that ITC of ₹ 0.80 lakh³⁴ was

³² Circular no. 125/44/2019-GST, Dated 18.11.2019 and State Circular No. 79/2019-GST, Dtd. 23.12.2019

³³ Abdul Khalek Mondal (GSTIN-18BCPPM6468Q2ZC, ARN-AA180620003588A) and Sahidul Islam Mondal (GSTIN-18AVQPM3704J1Z7, ARN-AA180620003286K)

³⁴ ₹ 0.77 lakh + ₹ 0.03 lakh

supported by invoices against applicant's claim of ₹ 4.84 lakh³⁵. However, while finalising the refund case, the STA allowed refund of ₹ 4.84 lakh which was not fully supported by invoices. This resulted in irregular grant of refund of ₹ 4.04 lakh (Details are in **Appendix-XI**).

In reply, the Department stated (November 2021) that due to network connectivity problem, the taxpayer was unable to upload the copies of invoices; however, the tax authority had verified the invoices manually. The Department's reply is not acceptable as net input tax credit (₹ 4.04 lakh) was not reflected in the monthly return (GSTR-2A) and there was no provision for manual submission of invoices.

2.4.6.4 Irregular allowance of refund of inverted tax structure (INVITC)

Out of 117 selected cases under pre-automation period and 96 selected cases under post-automation period, 28 refund cases and 17 refund cases respectively, related to Inverted Tax Structure (INVITC). Out of which in two cases under pre-automation period and in one post-automation sample case, Audit noticed irregularities as enumerated below:

I. Irregular credit in Electronic Credit Ledger (ECL)

STA did not debit CGST component from ECL resulted in irregular credit of ₹ 0.27 lakh.

As per Rule 89(3) of AGST Rules, 2017, where the application relates to refund of input tax credit, the ECL shall be debited by the applicant by an amount equal to the refund so claimed.

Audit noticed that M/s Assam Polymer³⁶ had claimed (August 2019) refund of ₹ 9.59 lakh, ₹ 0.27 lakh and ₹ 0.27 lakh under IGST, CGST and SGST components respectively, and accordingly debited the amounts from the ECL. In October 2019, the STA re-credited the refund amount of ₹ 0.27 lakh under CGST component into the ECL without any recorded reason. However, STA (October 2020) sanctioned the entire amount of refund of ₹ 10.13 lakh (including refund of ₹ 0.27 lakh under CGST component) as claimed by claimant without debit of re-credited amount under CGST component into ECL. This resulted in irregular credit of ₹ 0.27 lakh in ECL of the applicant.

On this being pointed out in Audit (December 2020 to March 2021), the Department stated (November 2021) that the taxpayer has deposited the amount³⁷. However, no documents in support of deposit of amount into the Government account has been submitted to audit.

³⁵ ₹ 1.25 lakh + ₹ 3.59 lakh

³⁶ GSTIN-18AATFA8358E2ZY, ARN-AA180819009466R

³⁷ in DRC 03

II. Blockage of working capital

While rejecting the refund application, the STA did not re-credit IGST and CGST component, resulting in blockage of working capital of ₹ 11.59 lakh.

Section 54 of AGST Act, 2017 read with Rule 92 of AGST Rules, 2017 stipulates that refund claim, if found to be in order, is to be sanctioned and paid to the applicant within prescribed time period. Also, where any amount claimed as refund is rejected under Rule 92 of the AGST Rules, 2017, the amount debited to the extent of rejection shall be re-credited to the electronic credit ledger by an order made in FORM GST PMT-03 as per Rule 93(2) of AGST Rules, 2017.

Audit noticed that M/s Assam Polymer³⁸ claimed (February 2019) refund of ₹ 11.82 lakh³⁹ and accordingly debited the amount from ECL. The refund of ₹ 11.82 lakh claimed by the taxpayer was rejected by the STA as there was mismatch of turnover between refund claim and monthly return. Further, Audit noticed that while rejecting the entire refund claim of the applicant, the STA re-credited the debited amount of ₹0.23 lakh under SGST component only into the ECL, leaving the amounts under IGST and CGST component of ₹ 11.36 lakh and ₹ 0.23 lakh. This resulted in blockage of working capital of ₹ 11.59 lakh to the claimant.

On this being pointed out in Audit (December 2020 to March 2021), the Department stated (November 2021) that on review of the case in the system, refund claim appears to have been sanctioned and amount of ₹ 11.59 lakh was credited in the Consumer Welfare Fund. The reply of the department as regard sanction of the refund case is not tenable as the SGST amount of ₹ 0.23 lakh could not have been re-credited into ECL without rejection of refund application.

III. Irregular grant of refund

Incorrect consideration of “adjusted total turnover” resulted in excess grant of refund.

Rule 89(5) of AGST Rules, 2017 prescribes, in the case of refund on account of INVITC, refund of input tax credit shall be granted as per the following formula:

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC⁴⁰ ÷ Adjusted Total Turnover⁴¹} - tax payable on such inverted rated supply of goods and services.

³⁸ GSTIN-18AATFA8358E2ZY, ARN-AA180818139264U

³⁹ IGST- ₹11.36 lakh, CGST-₹0.23 lakh & SGST-₹0.23 lakh

⁴⁰ Net ITC – The input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed

⁴¹ Adjusted Total Turnover- the sum total of the value of the turnover in a State or a Union territory, as defined under clause (112) of section 2 excluding the value of exempt/ nil rated supplies other than zero-rated supplies during the relevant period.

On verification of refund case of Nava Ayush Fragnances (Unit - 2)⁴², it was noticed that the STA calculated refund considering ‘adjusted total turnover’ in RFD-01⁴³ which differs from actual ‘adjusted total turnover’ to be calculated as per GSTR-3B⁴⁴ filed by the applicant. This resulted in irregular grant of refund of ₹ 0.21 lakh (Detailed in **Appendix-XII**) due to consideration of wrong ‘adjusted total turnover’ while calculating refund amount.

The department while accepting the audit observation stated (November 2021) that steps have been taken to recover the excess refund amount. However, the status of recovery of excess refund along with the interest is yet to be intimated to audit.

2.4.6.5 Other cases

In two out of six cases under “Any other” category and in one out of four cases under “Excess pay” category during post-automation period, Audit noticed irregularities which are enumerated below:

I. Irregular grant of Refund

In spite of liability to pay tax on telecommunication license fees and spectrum usage charges under GST law, STA irregularly allowed refund of ₹ 53.34 lakh against tax paid on license fees and spectrum usage charges.

As per Section 7(1) of AGST Act, 2017, the taxable event under GST law is supply⁴⁵ of goods or services. As per GoI notification⁴⁶, services supplied by the Central Government, State Government, Union territory or local authority to a business entity except the services mentioned therein are taxable under reverse charge. The “activity of licensing services for right to use other natural resources including telecommunication spectrum”⁴⁷ is included in Service Accounting Code (SAC) and taxable under GST law.

Scrutiny of refund case of M/s Vodafone Idea Limited⁴⁸ revealed that the taxpayer claimed refund of tax of ₹ 53.34 lakh in January 2020 which was paid on license fees and spectrum usage charges during the month of October 2017. The STA accepted the refund claim and granted refund of ₹53.34 lakh in January 2020. However, GST law provides for tax on ‘license fees and spectrum usage charges’ paid to Government. Thus, refund of ₹ 53.34 lakh was granted irregularly in contradiction of GST law.

⁴² GSTIN-18AKYPD2803Q4ZF, ARN-AA181219003614D

⁴³ RFD-01 is an application for online processing of refund under GST. It is to be e-filed on the GST Portal to claim the refund of taxes, cess and interest.

⁴⁴ GSTR-3B is a self-declared summary GST return filed every month. It must be filed by a registered taxpayer from July 2017 onwards.

⁴⁵ The term ‘supply’ inter alia includes all forms of supply of goods/services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration in the course of furtherance of business.

⁴⁶ Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017, No similar notification was found to be issued by the GoA.

⁴⁷ SAC 997338

⁴⁸ GSTIN- 18AAACB2100P1ZW, ARN- AA180120001941W (under “XSPAY” Category)

On this being pointed out in Audit (February 2021), the Department stated (November 2021) that action was initiated⁴⁹ for recovery of refunded amount along with applicable interest and penalty as per provisions of the GST law. However, information relating to realisation of amount is still awaited.

II. Grant of refund without passing of debit entry in the Electronic Credit Ledger

The STA sanctioned the refund of ₹ 30.28 lakh without debiting in ECL

As per Rule 89(3) of AGST Rules, 2017, where the application relates to refund of input tax credit, the ECL shall be debited by the applicant by an amount equal to the refund so claimed.

In two refund cases sanctioned in respect of Khushi Energy Solution⁵⁰, it was observed that taxpayers claimed refund of ₹ 30.28 lakh⁵¹ under “Any Other” category though the refund relates to refund of ITC on “Export of Goods and Services without Payment of Tax.” The STA sanctioned the refund as claimed. Refund of ₹ 30.28 lakh was not debited from ECL.

On this being pointed out in Audit (February 2021), the Department stated (November 2021) that the refund was granted wrongly. Out of ₹ 30.28 lakh, ₹ 5.00 lakh has been realised (October 2021) and the taxpayer has agreed to deposit the balance amount within one month. However, full realisation of the amount is yet to be intimated to audit.

2.4.6.6 Evaluation of Internal Control

I. Non-payment of SGST refund amount sanctioned by the State Authority

In 24 cases, sanctioned amount (SGST component) of ₹ 25.89 lakh was not credited to the claimant accounts.

As per GoI’s notification followed by state notification in December 2017⁵², the officers appointed under SGST Act/ UTGST Act or CGST Act are empowered to sanction refund of CGST, IGST and SGST under their respective jurisdiction. During the manual processing of refund claims, the actual payment of the cross-tax components was made by the respective SGST/ UTGST or CGST authorities, as the case may be, based on the communications received from sanctioning authority.

Out of 117 selected cases, in 71 cases, refunds were sanctioned by the STA. Of the 71 sanctioned cases, 44 cases involved sanction of SGST component amounting to ₹ 1.55 crore. Verification of payment data of refund under SGST Head obtained from the Directorate of Accounts and Treasury, Guwahati, Assam revealed that out of these

⁴⁹ under Section 73(1) of the AGST Act, 2017

⁵⁰ GSTIN- 18AENPH8120D1ZN, ARN- AA180220008815K & AA180220008880N

⁵¹ ARN-AA180220008815K dated 19.02.2020 (₹ 1.95 lakh) and AA180220008880N dated 19.02.2020 (₹ 28.33 lakh)

⁵² No. 39/2017 Central Tax dated 13.10.2017 and State Notification No. FTX.56/2017/168 Dtd. 01.12.2017

44 cases, in 24 cases, SGST component amounting to ₹ 25.89 lakh (Details in **Appendix-XIII**) is yet to be deposited into the claimant accounts by the Department.

On this being pointed out in Audit (in September 2021), the Department while accepting the audit observation stated that in 12 cases payments were not made due to un-intentional delay in forwarding of payment advice to the Treasury Officer; however, the same have now been issued. In other 12 cases, the Department stated that the refunds were credited into taxpayers' accounts in time; however, documents in support of deposits were not made available to Audit.

II. Improper/Non-maintenance of refund registers

In seven offices, refund registers were either not maintained or not properly maintained.

As per CBIC circular⁵³ (November 2010), three different refund registers were to be maintained in State GST Offices for processing of refund claims. Out of 34 State GST offices, Audit scrutiny in 24 offices revealed that in five⁵⁴ offices refund registers as mandated for manual processing of refund claims were not maintained properly and in two offices⁵⁵, registers were not maintained. Due to improper/non-maintenance of registers/ records, in many cases information like ARN, ARN date, Sanction/Rejection date were not provided.

On this being pointed out in Audit (December 2020 to March 2021), the Department stated (November 2021) that registers were now being maintained properly.

III. Delay in communicating refund sanction order to Counterpart Tax Authority

In 53 cases, there were delays in communication of refund orders to CTA.

As per GoI's Circular dated 21 December 2017⁵⁶, the refund order issued either by the CTA or the STA/UTA shall be communicated to the concerned counterpart tax authority within seven working days for the purpose of payment of the relevant sanctioned refund amount of tax or cess, as the case may be.

Audit noticed that out of 798 refund orders issued by the State Tax Authority⁵⁷ during pre-automation period, 53 refund orders involving ₹ 92.21 lakh⁵⁸ (Details in **Appendix-XIV**) were forwarded to the Central Tax Authority with a delay ranging from 1 to 454 days. Age-wise breakup is given in **Table 2.10**:

⁵³ Circular No. 17/17/2017- GST, Dtd. 15.11.2017 (No such similar circular was found to be issued by GoA)

⁵⁴ ACT, SGST Guwahati Unit-A, B, C, D and Nagaon

⁵⁵ ACT, SGST Goalpara and Doomdooma

⁵⁶ Circular No.24/24/2017-GST Dtd. 21.12.2017 (No such circular found to be issued by the GoA)

⁵⁷ Name of the unit offices- ACT, Unit A, B, C, D, Guwahati, Dhubri, Bongaigaon, Silchar, Tinsukia, Jorhat, Sibasagar, Morigaon, Dibrugarh, Dhekiajuli, Dhemaji, Goalpara, Barpeta, Digboi, Doomdooma, Nagaon, Tangla, Golaghat, Haflong, Karimganj, Mangaldoi, Naharkatia, Kokrajhar, Biswanath Chariali and Hojai

⁵⁸ IGST- ₹ 18.35 lakh + CGST- ₹ 66.31 lakh + Cess- ₹ 7.55 lakh

Table 2.10:-Delay in communication of refund order to counterpart Tax Authority

Range of delay (in days)	Number of Records
Up to 3 months	38
3 to 6 months	10
More than 6 months	5

In the absence of correct date of sanction and forwarding date of refund orders to CTA, in 348 cases involving ₹ 8.07 crore, Audit could not calculate actual delays.

Further, as per data made available to Audit, it was noticed that out of 74 refund cases sanctioned by CTA upto July 2020, 12 refund orders involving ₹59.46 lakh (Details in **Appendix-XV**) were received by the STA with a delay ranging from 12 to 224 days. Age-wise breakup is given in **Table 2.11**:

Table 2.11:-Delay in receipt of refund sanction order from CTA

Range of delay (in days)	Number of Case
Up to 3 months	8
3 to 6 months	2
More than 6 months	2

Thus, the Department did not adhere to the timeline prescribed in the circular.

On this being pointed out during December 2020 to March 2021, the Department while accepting the audit observation stated (November 2021) that the delay was mainly due to inadequate awareness in the initial stages of GST implementation, delay in appointment of Nodal Officer etc.

IV. Non-production of records

Five refund cases were not made available to Audit.

Out of 117 selected refund cases pertaining to pre-automation period, 46 refund cases under the jurisdiction of ACT, SGST, Guwahati Unit-B, Guwahati Unit-C and Nagaon were called for audit. However, despite follow up, five refund cases (details in **Appendix-XVI**) were not made available to Audit. In the absence of these records, Audit could not verify department's actions and performance in these cases.

On this being pointed out in Audit (December 2020 to March 2021), the Department stated that in four cases records could not be produced to Audit as the same were not traceable during the audit period and in one case, the taxpayer falls under the jurisdiction of Central Authorities. However, Audit noticed that as per GST common portal, all the taxpayers were under the jurisdiction of the State Authorities.

2.4.7 Systemic issue

2.4.7.1 Non-conduct of post-audit of refund claims

The CBIC vide its circular⁵⁹ instructed all the refunds sanctioning authorities for continuance of post-audit of refund orders. Audit noticed lack of a similar system of post-audit in the State GST offices.

⁵⁹ Circular No. 17/17/2017- GST, Dtd. 15.11.2017 (No such similar circular was found to be issued by the GoA.)

On this being pointed out in Audit (between December 2020 and March 2021), the Department stated (November 2021) that there were no clear-cut extant guidelines/instructions from the Proper Authority for post-audit of the refund cases. However, these refund cases will be forwarded for post-audit in due course as per guidelines.

2.4.8 Conclusion

Timely processing of refund claimed by taxpayer is important, as delay in refund process may affect the working capital and cash flow of supplier. Audit of refunds processed by the department during pre-automation and post-automation period from July 2017 to July 2020 revealed various issues viz., non-adherence of the rules/orders made under GST Law, delay in issuance of acknowledgment, delay in grant of provisional refund and finalisation of refund cases, rejection of sanction orders issued by counterpart authority in violation of GoI's instruction. There were cases of excess refund due to wrong consideration of figures on 'adjusted total turnover' & 'accumulated ITC not supported by invoices' under export without payment of tax/inverted duty structure.

2.4.9 Recommendations

The Department may consider following recommendations:

- *The Department may monitor strict compliance of provisions regarding issuance of acknowledgement within the prescribed time limit.*
- *The Department needs to ensure timely processing/ payment of refunds as delayed payments would attract interest liability as well as prolonged blocking of capital.*
- *The Department may address issues relating to auto calculation of interest in the system in case of delay in sanction of refund.*
- *The Department may consider to put in place a system of post-audit of refund cases by issuing detailed instructions/guidelines.*

2.5 Compliance Audit on “Transitional Credits under GST”

2.5.1 Introduction

Introduction of Goods and Service Tax (GST) was a significant reform in the field of indirect taxes in our country, which replaced multiple taxes levied and collected by the Centre and States. GST is a destination based tax on supply of goods or services or both, which is levied at multi-stages wherein the taxes will move along with supply. The tax, which is levied simultaneously by the Centre and States on a common tax base will accrue to the taxing authority having jurisdiction over the place of supply. Central GST (CGST) and State GST (SGST)/ Union Territory GST (UTGST) are levied on intra state supplies, whereas Integrated GST (IGST) is levied on inter-state supplies. Availability of input tax credit (ITC) of taxes paid on inputs, input services and capital goods for set off against the output tax liability is one of the key features of GST. This will avoid cascading effect of taxes and ensure uninterrupted flow of credit from the seller to buyer. To ensure the seamless flow of input tax from the existing laws into GST regime, ‘Transitional arrangements for input tax’ was included in the GST Acts to provide for the entitlement and manner of claiming input tax in respect of appropriate taxes or duties paid under existing laws.

2.5.2 Transitional arrangements for input tax credit

Section 140 of Assam GST Act, 2017 (AGST), 2017 enables the taxpayers to carry forward the ITC earned under the existing laws to the GST regime. The section read with Rule 117 of the AGST Rules, 2017 under Chapter heading ‘Transitional Provisions’ also prescribes elaborate procedures in this regard. Under the transitional arrangements for ITC, the ITC of various taxes paid under the existing laws such as Central Value Added Tax (CENVAT credit), Assam Value Added Tax (AVAT) etc. are eligible to be carried forward to GST regime by filling forms TRAN-1 and TRAN-2 as under:

- (a) **Closing balance of credit in legacy return:** The closing balance of CENVAT credit /VAT credit available in the returns filed under the existing law for the month immediately preceding the appointed day can be taken as credit in Electronic Credit Ledger (ECL).
- (b) **Un-availed credit on capital goods:** The balance instalment of un-availed credit on capital goods can be taken by filing the requisite declaration in GST TRAN-1.
- (c) **Credit on duty paid stock:** A registered taxable person, other than the manufacturer or service provider, may take the credit of the duty/ tax paid on goods held in stock based on the invoices.
- (d) **Credit on duty paid stock when Registered Person does not possess the document evidencing payment of excise duty/VAT:** Traders who do not have excise or VAT invoice, are eligible to take credit on the duty paid stock, under certain conditions.

(e) Credit relating to exempted goods under the existing law which are now taxable: Input Tax Credit of CENVAT/VAT in respect of input, semi-finished and finished goods in stock attributable to exempted goods or services which are now taxable in GST.

(f) Input/input services in transit: The input or input services received on or after the appointed day but the duty or tax on the same was paid by the supplier under the existing law.

(g) Tax paid under the existing law under composition scheme: The taxpayers who had paid tax at fixed rate or fixed amount in lieu of the tax payable under existing law, now working under normal scheme under GST can claim credit on their input stock, semi-finished and finished stock on the appointed date.

(h) Credit in respect of tax paid on any supply both under Value Added Tax Act and under Finance Act, 1994: Transitional credit in respect of supplies, which attracted both VAT and Service tax under existing laws, for which tax was paid before the appointed date and supply of which is made after the appointed date.

Taxpayers claim the components of transitional credit by filling information in the appropriate tables of the two forms, TRAN-1 and TRAN-2 as mentioned in **Table 2.12**.

Table 2.12:-Various tables and Components of forms TRAN-1 and TRAN-2

Return	Table No.	Transitional Credit Component
TRAN-1	5 (c)	Tax credit carried forward
TRAN-1	6 (a)	Un-availed credit on capital goods
TRAN-1	6 (b)	Un-availed VAT /ET credit on capital goods
TRAN-1	7 (a) A	Credit on duty paid stock-with invoices
TRAN-1	7 (a) 7B	Credit on duty paid stock-without invoices
TRAN-1	7 (b)	Credit on Input/Input Services in transit
TRAN-1	7 (c)	Amount of VAT & Entry Tax paid on inputs not supported by invoices
TRAN-1	8	Transfer of credit by centrally registered units
TRAN-1	9 (a)	Details of goods sent as principal to the job worker under section 141
TRAN-1	9 (b)	Details of goods held in stock as job worker on the behalf of the principal under section 141
TRAN-1	10 (a)	Details of goods held in stock as agent on behalf of the principal under Section 142 (14) of the SGST Act
TRAN-1	10 (b)	Details of goods held by the agent
TRAN-1	11	Credit in respect of tax paid before the appointed day and supply made after the appointed day
TRAN-2	4	Credit afforded on stocks claimed without invoices

All registered taxpayers, except those who are opting for payment of tax under the composition scheme (under section 10 of the GST Acts), are eligible to claim transitional credit by filing TRAN-1 returns within 90 days from the appointed day. The time limit for filing TRAN-1 returns was extended initially till 27 December 2017. However, many taxpayers could not file the return within the due date due to technical difficulties. Thus, sub-rule 1A was inserted⁶⁰ under Rule 117 of AGST Rules, 2017 to accommodate such taxpayers. The due date for filing TRAN-1 was further extended⁶¹

⁶⁰ vide Notification 48/2018 CT dated 10.09.2018

⁶¹ vide CBIC order No.01.2020-GST dated 07.02.2020

to 31 March 2020, for those taxpayers who could not file TRAN-1 due to technical difficulties and those cases recommended by the GST Council.

2.5.3 Audit objectives

Transitional credit claims directly impact GST revenues as the credit is eligible for set off against the output tax liability of taxpayers. Thus, the audit of transitional credit was taken up with the following objectives seeking assurance on:

- i. Whether the mechanism envisaged by the Department for selection and verification of transitional credit claims was adequate and effective; and
- ii. Whether the transitional credits carried over by the taxpayers into the GST regime were valid and admissible.

2.5.4 Audit scope and Audit criteria

The Subject Specific Compliance Audit (SSCA) on Transitional Credit under GST was conducted for the period covering from 1 July 2017 to 31 March 2020. The audit scope comprised review of Transitional credit returns (TRAN-1 and TRAN-2) filed by the taxpayers under Section 140 of the AGST Act, 2017. Audit scrutiny involved effectiveness of the departmental verification process, outcome of independent audit examination of selected transitional credit claims for compliance assurance and follow up action taken on the deviations detected. Section 140 of the AGST Act, 2017 governs the transition of CENVAT credit from the legacy Central Excise and Service Tax and ITC from legacy VAT provisions. The section, read with Rule 117 of the AGST Rules, 2017 and Chapter on Transitional Provisions of AGST Rules, 2017 and relevant Notifications/Circulars issued by the Central Board of Indirect Taxes and Customs and Government of Assam, constitute the criteria for audit.

2.5.5 Audit methodology and sample

The audit was conducted between March 2021 and November 2021. An Entry Conference was held on 23 March 2021 with the Additional Commissioner of State Taxes (ACoT), Assam wherein the scope, methodology and objectives of the SSCA were discussed. The audit involved the examination of the records pertaining to Transitional Credits maintained in the field formations⁶², transitional returns verification process adopted by the Department and follow up action taken on the deviations detected. It also involved an independent audit examination of selected transitional credit claims for compliance assurance.

A risk based audit sample of 302 cases involving transitional credit of ₹ 94.38 crore pertaining to the State of Assam, was selected for detailed scrutiny. The methodology adopted for selection of sample cases is detailed in **Appendix-XVII**. Unit wise details of the cases selected are shown in **Appendix-XVIII**.

⁶² Offices of the Assistant Commissioner of Taxes/ Superintendent of taxes under the administrative control of the Commissioner of State GST, Assam.

2.5.6 Audit findings

The audit findings are categorised into two broad areas as systemic and compliance issues based on the objectives of audit. The systemic issues address the adequacy and effectiveness of the envisaged verification mechanism while the compliance issues address the deviations in individual cases from the provisions of the Acts/ Rules. The extent of deviations noticed during the verification of sample case given in **Table-2.13**.

Table-2.13: Cases of deviations

(₹ in lakh)

Nature of Audit Observation	Audit Sample		Number of deficiencies noticed		Deficiencies as per cent of sample	
	No.	Amount	No.	Amount	No.	Amount
Excess credit carry forward	276	6212.21	47	548.37	17.02	8.83
Irregular carried forward of Input tax credit due to pending statutory Form (C, F & H)			36	542.05	13.04	8.73
Credit carried forward without submitting TDS certificate, challans etc.			15	360.05	5.43	5.80
Transitional credit claimed without filing legacy return			08	273.62	2.90	4.40
Irregular carry forward of ITC without purchase details			05	49.14	1.81	0.79
Transitional credit claimed incorrectly			03	331	1.08	5.42
Excess credit in ECL remain undetected	302	9438.00	02	23.65	0.66	0.25
Credit on duty paid stock	78	1129.02	01	1.28	1.51	0.13
Credit on VAT paid stock	11	75.45	01	0.53	9.09	0.70

2.5.7 Non production of records

The table wise representation of the sample cases and status of record production to Audit are given in **Table 2.14**:

Table 2.14:-Table wise representation of sample cases and records produced to audit

(₹ in crore)

Table-wise Transitional Credits claimed in the TRAN-1 Return	Audit sample		Records provided by the Department		Records not provided by the Department	
	No. of cases	Transitional Credit involved	No of cases	Amount involved	No of cases	Amount involved
5(a)	24	12.23	10	4.62	14	7.61
5(c)	276	62.12	272	61.36	4 ⁶³	0.76
6(a)	9	0.85	3	0.03	6	0.82
6(b)	3	0.29	0	0	3	0.29
7a(A)	78	11.29	27	1.92	51	9.37
7a(B)	54	5.24	13	0.43	41	4.81
7(b)	11	1.60	6	0.11	5	1.49
7(c)	11	0.75	2	0.09	9	0.66
11	1	0.01	1	0.01	0	0
Total	467	94.38	334	68.57	133	25.81

⁶³ M/s. H B Traders (GSTN 18ACLP1665B1ZT), M/s Dhanraj Golcha & Co. (GSTN 18ACAPG7284Q1ZZ), M/s Toshaiba Water Solution Pvt. Ltd. (GSTN 18AAACU0043Q1Z5) (TIN 18120104257 , GRN 18300104255)

Audit could not verify the correctness of transitional credit claimed by the taxpayers where related records such as legacy returns (VAT and ER1⁶⁴), invoices/ duty paid documents⁶⁵, various statutory forms⁶⁶ under the CST Act, 1956, Tax deducted at source (TDS) certificate⁶⁷, etc. were not made available to audit. Illustrative cases where records were not available and Audit could not verify correctness of claims are discussed below:

- (i) As per Section 140(1) of the CGST Act, 2017, a registered person shall be entitled to take, in his ECL, amount of CENVAT credit, if any, carried forward in the return relating to the period ending with the day immediately preceding the appointed day furnished by him under existing law.
 - 24 taxpayers had carried forward CENVAT credit (in table 5(a) of TRAN-1 return) of ₹ 12.23 crore. The six State GST unit offices⁶⁸ could not arrange to produce returns (ER1) for the last six months immediately preceding the appointed day in respect of 14 taxpayers (out of 24 taxpayers), who had carried forward CENVAT credit of ₹ 7.61 crore. The details are in **Appendix-XIX**.
- (ii) As per Section 140(2) of the CGST/AGST Act, 2017, a registered person shall be entitled to take credit of un-availed CENVAT /VAT Credit in respect of capital goods not carried forward in a return furnished under an existing law for the period ending with the day immediately preceding the appointed day. Taxpayers were required to claim un-availed CENVAT credit of capital goods in Table 6(a) and un-availed VAT credit in Table 6(b) of the TRAN-1 returns.
 - Six taxpayers relating to two unit offices⁶⁹ had claimed transitional credits amounting to ₹ 82.42 lakh in table 6(a) of TRAN-1 return. The Department could not arrange to produce invoices of CENVAT credit already taken and un-availed credit on capital goods which was eligible for transitional credit. The details are shown in the **Appendix-XX**.
 - Three taxpayers relating to three unit offices⁷⁰ had claimed transitional credits amounting to ₹29.36 lakh in Table 6(b) of TRAN-1 return. The Department could not arrange to produce invoices of VAT credit taken and un-availed credit on capital goods which was eligible for transitional credit. The details are shown in **Appendix-XXI**.
- (iii) Under the provisions of Section 140(3) of the CGST/AGST Act, 2017, a registered person, who was not registered under the existing law or was engaged in the manufacture of exempted goods or provision of exempted services or provided works contract service⁷¹ and shall be entitled to take credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished

⁶⁴ Available with the jurisdictional authority of the Central Government.

⁶⁵ Available with the taxpayers

⁶⁶ Available with the unit offices

⁶⁷ Available with the unit offices.

⁶⁸ ACT, Guwahati, Unit-A, B, C, D, Tinsukia and ST, Goalpara

⁶⁹ ACT, Guwahati, Unit-C & D.

⁷⁰ ACT, Guwahati, Unit-B, C & D.

⁷¹ was availing of the benefit of notification No. 26/2012-Service Tax, dated the 20 June, 2012

or finished goods held in stock on the appointed day. Further, AGST Act, 2017 provides that a registered person, who was not liable to be registered under the existing law, is also entitled to claim Transitional credit on goods held in stock or has suffered tax at the first point of their sale under the existing law on the appointed day. Such registered person is in possession of invoices or other prescribed documents evidencing payment of tax under the existing law in respect of such claims. The taxpayer availing CENVAT credit in Table 7.a.(A) of TRAN-1 return and VAT credit in 7(c) must be in possession of invoice or other prescribed documents evidencing payment of duty under the existing law and such documents were issued not earlier than twelve months immediately preceding the appointed day.

Further, a registered person, when not in possession of documents evidencing payment of duty, is also eligible for taking credit is afforded only after filing TRAN-2 returns evidencing of supply of such goods which was captured in table 7.a.(B) of TRAN-1 return.

- 51 taxpayers relating to 11 unit offices⁷² claimed transitional credit of ₹ 9.37 crore on duty paid stock having invoices/ duty paid documents in table 7.a.(A) of TRAN-1. The Department could not arrange to produce invoices/duty paid documents in support of their claim. The details are given in **Appendix-XXII**.
 - 41 taxpayers relating to four unit offices⁷³ claimed transitional credit of ₹ 4.81 crore in table 7.a.(B). The Department could not arrange to produce outward invoices evidencing disposal of those goods within six months from the appointed day on which transitional credit was availed by the taxpayers. The details are in **Appendix-XXIII**.
 - Nine taxpayers relating to five unit offices⁷⁴ had claimed transitional credits of ₹ 65.99 lakh in table 7(c) of TRAN-1 return. The Department could not arrange to produce VAT paid invoices in support of transitional credit claimed by the taxpayers. The details are shown in **Appendix-XXIV**.
- (iv) Section 140(5) of CGST/ SGST Act prescribes that a taxpayer shall be entitled to take credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under existing law. The credit of eligible duties under this provision was to be claimed under table 7(b) of TRAN-1.
- Five taxpayers, had claimed CGST and SGST credit of ₹ 1.47 crore and ₹ 2.64 lakh respectively on goods in transit in table 7(b) of TRAN-1 return and the amount was credited in ECL. The Department could not arrange to produce duty and tax paid invoices as well as accounting credit ledger. The details are given in **Appendix-XXV**.

⁷² ACT, Guwahati, Unit-A, B, C, D; ACT, Bongaigaon; ST, Goalpara; ACT, Dibrugarh; ST, Mangaldai; ACT, Nagaon; ACT, Silchar and ST, Karimganj.

⁷³ ACT, Guwahati, Unit-A, B, C & D.

⁷⁴ ACT, Guwahati, Unit-A, B, C, D, ACT, Dibrugarh.

Systemic issues

Audit objective 1: Whether the mechanism envisaged by the Department for selection and verification of Transitional credit claims was adequate and effective.

2.5.8 Verification mechanism envisaged by the Department

Rule 121 of the AGST Rules, 2017 provides that the amount credited under sub-rule (3) of rule 117 may be verified and proceedings under section 73 or, as the case may be, section 74 shall be initiated in respect of any credit wrongly availed, whether wholly or partly. State Commissionerate additionally circulated an instruction through e-mail (December 2017) to all field Officers to conduct the necessary verification of transitional credits that were effected by migrated/ new taxpayers along with a list of taxpayers (Circle-wise).

The status of transitional credit claimed by the taxpayers under the jurisdiction of the State authority and claims verified thereof are shown in **Table 2.15**:

Table 2.15:-Statement of transitional credit claims and verification

(₹ in crore)				
Total registered dealers	No of dealers who claimed transitional credit	Amount of transitional credit claimed	No of transitional credit cases verified	Amount of transitional credit claimed verified
1,13,474	1,921	762.02	0	0

As per information furnished by the ACoT, Assam and concerned ACT/ ST of unit offices, it was noticed that out of total 1,13,474 registered taxpayers under jurisdiction of State GST authority, 1,921 taxpayers had claimed transitional credit of ₹ 762.02 crore by filing TRAN-1 and TRAN-2 returns. In reply to audit queries regarding verification status of transitional credits as directed by the Commissionerate, all the AsCT/ SsT stated that transitional credits claimed by the taxpayers were not verified at the State unit level as no specific target or timeline was set by the State Commissionerate for verification.

Thus, Audit could not assess the extent/ quality of verification done by the department and the audit independently attempted to assess the correctness of transitional credits claimed by the taxpayers in 302 selected cases involving transitional credit of ₹ 94.38 crore.

Compliance issues

Audit objective 2: Whether the transitional credits carried over by the assesses into GST regime were valid and admissible.

The compliance issues pertain to the validity and admissibility of the transitional credits carried over by the taxpayers into GST regime.

Our review broadly disclosed various deficiencies in the transitional credits claims of taxpayers across various categories under Section 140 and Section 50(3) of the AGST Act, 2017. These compliance deviations are detailed in the succeeding paragraphs.

2.5.9 Irregularities in carry forward of closing balance in the last returns

As per Section 140(1) of AGST Act, 2017, the registered person is allowed to carry forward balance of ITC in the return relating to period ending with the day immediately preceding the appointed day subject to submission of all statutory forms under the existing law, TDS certificate and all the returns required under existing law for the period of last six month.

2.5.9.1 Inadmissible carry forward of tax credit

We noticed that out of 276 taxpayers who had claimed transitional credit in Table 5(c) of TRAN-1 return, 114 taxpayers (41 *per cent*) had claimed inadmissible transitional credit of ₹ 21.10 crore, and on which interest of ₹ 14.02 crore is also leviable as shown in **Table 2.16**:

Table 2.16:-Category wise inadmissible transitional credit claimed

(₹ in crore)

Sl. No.	Nature of inadmissible transitional credit in table 5(c) of TRAN-1	Number of Taxpayers involved	Number of unit offices involved	Inadmissible amount claimed	Interest involved	Details in Appendices/ paragraphs
1	Excess credit carry forward of ITC	47	16	5.48	3.53	Appendix-XXVI
2	Claimed ITC irregularly without submission of Statutory forms under the CST Act, 1956 (Forms C, F and H)	36	7	5.42	3.58	Appendix-XXVII
3	Claimed ITC which were not admissible due to non-furnishing of Tax Deducted at Source (TDS) certificate, payment challans etc.	15	9	3.60	2.49	Appendix-XXVIII
4	Claimed without filing legacy returns	8	6	2.74	1.82	Appendix-XXIX
5	Claimed without submission of purchase details	5	2	0.49	0.34	Appendix-XXX
6	Transitional credit claimed incorrectly	3	3	3.37	2.26	Paragraph-2.5.9.1 (vi)
Total		114		21.10	14.02	

Findings of each of these categories are illustrated below:

I. Excess credit carried forward

Audit noticed that 47 taxpayers under the jurisdiction of 16 State GST unit offices⁷⁵ had carried forward balance ITC of VAT regime amounting to ₹ 9.70 crore against actual balance of ITC of ₹ 4.22 crore as per last returns under the existing law. This resulted in excess claim of ITC of ₹ 5.48 crore while carrying forward balance ITC of

⁷⁵ AsCT, Guwahati Unit-(A, B, C, D), Dibrugarh, Tinsukia, Bongaigaon, Dhubri, Golaghat, Silchar, Barpeta Road and SsT, Goalpara, Barpeta, Naharkatia, Biswanath Chariali and Digboi.

VAT (in Table 5(c) of TRAN-1 return). The taxpayers are liable to reverse the excess ITC of ₹ 5.48 crore credited in ECL along with interest of ₹ 3.53 crore for excess claim.

On this being pointed out by Audit (between April to November 2021), the ACT/ ST of three State GST unit offices⁷⁶ have realised ₹ 1.55 lakh including interest of ₹ 0.17 lakh from 03 taxpayers⁷⁷. Realisation/ reversal of excess claim from other taxpayers is awaited.

II. Credit carried forward pending statutory Forms (C, F and H):

The CST (Registration and Turnover) Amendment Rules, 2005 (effective from October 2005) provide that the declarations in form 'C/D/E-I/E-II/F/H' shall be furnished to the prescribed authority within three months after the end of the period to which the declaration form or the certificate relates.

Audit noticed that 36 taxpayers under seven unit offices⁷⁸ claimed transitional credit amounting to ₹ 5.42 crore in table 5(c) by filing TRAN-1 Form. On scrutiny of returns for the period April 2015 to June 2017 under the CST Act, 1956, it was noticed that statutory forms valued ₹ 268.28 crore were not available in the departmental records. Audit requested the department to arrange to furnish statutory forms relating to these 36 taxpayers for scrutiny; however, the department failed to produce the same to audit. Thus, in absence of statutory forms, Audit could not assess the correctness of transitional claim of ₹ 5.42 crore.

This was pointed out in audit (between April and November 2021). The replies from concerned AsCT/ SsT are awaited.

III. Credit carried forward pending TDS Certificate:

Sub-rule 1(d) of Rule 28 of Assam Value Added Tax Rules, 2005 provides that the person who deducts or deposit any TDS under sub-rule (1) shall, within seven days from the date of deposit of the amount deducted from any payment made to a dealer, issue to the dealer concerned, a certificate of tax deducted in Form-29 in duplicate in respect of such deduction and deposit together with attested photocopy of the Challan. The dealer shall furnish one copy of the certificate and the Challan copy for adjustment of such deposit against his dues to the prescribed authority.

Audit noticed that 15 taxpayers relating to nine unit offices⁷⁹ availed transitional credit of ₹ 3.88 crore by filing information in Table 5(c) of TRAN-1. Scrutiny of VAT returns of these taxpayers revealed that taxpayers had adjusted the TDS of ₹ 5.73 crore against the tax paid. The Department could produce TDS certificates of only ₹ 0.28 crore out of ₹ 5.73 crore. The balance TDS certification of ₹ 5.45 crore could not be produced

⁷⁶ ACT, Dibrugarh and Barpeta Road and ST, Naharkatia

⁷⁷ M/s Agarwal Pharmaceuticals, GSTIN-18ABZPA0117A1Z5 (Under the jurisdiction of the ACT, Dibrugarh) , M/s Chenireema Trader, GSTIN-18AGOPG3989L1ZJ (under the jurisdiction of the ST, Naharkatia) and M/s Sohail Agro Service, GSTIN-18ASCPK4842Q1Z6 (under the jurisdiction of ACT, Barpeta Road).

⁷⁸ ACT, Guwahati Unit-A, B, C, D, ACT, Tinsukia, ST, Naharkatia, ACT, Nagaon.

⁷⁹ ACT, Guwahati Unit-A, C, D, ST, Kokrajhar, ACT, Barpeta Road, ACT, Dibrugarh, ACT, Tinsukia, ACT, Jorhat, and ST, Dhekiajuli

even though called for during audit. Thus, in the absence of TDS certificates, Audit could not assess the correctness of transitional claim of ₹ 3.60 crore.

This was pointed out in audit (between April and November 2021). The replies from concerned AsCT/ SsT are awaited.

IV. Transitional Credit claimed without filing legacy returns

Audit noticed that eight taxpayers who did not file legacy returns for the last six months, had claimed transitional credits of ₹ 2.74 crore in table 5(c) of TRAN-1 return which is in contravention of the provisions of GST Acts. Thus, the taxpayers are liable to reverse credit of ₹ 2.74 crore in addition to payment of interest of ₹ 1.82 crore for availing inadmissible transitional credit.

This was pointed out in audit (between April and November 2021). The replies from concerned AsCT/ SsT are awaited.

V. Inadmissible carry forward of ITC without documentary evidence:

Vide Assam Government Notification No.FTX.55/2005/Pt-II/96, dated 29 March 2008 amendment to Form-13 (Tax Returns prescribed under Section 17(1) and 17 (2) of Assam Value Added Tax Rules, 2005) was carried out. As per the revised Form the taxpayers were required to furnish details of list of purchases against tax invoices from registered dealers within the state (local purchases) under Part G.

Audit noticed that five taxpayers had availed transitional credit of ₹ 0.89 crore in 5(c) of TRAN-1 return. Scrutiny of VAT returns for the last six months under the existing law revealed that the tax payers had availed ITC of ₹ 0.49 crore without providing details of local purchases⁸⁰. Thus, inadmissible ITC amounting to ₹ 0.49 crore was availed by the taxpayers resulting in excess carry forward of transitional credit in ECL. The amount of inadmissible transitional credit claimed is shown in **Table 2.17**:

Table 2.17:-Details of Transitional Credit Claimed without details of ITC availed

(₹ in lakh)

Sl. No.	Auditee Units	Name of the Taxpayers	GSTIN	Irregular ITC	Interest
1	ACT, Unit-D, Guwahati	M/s DRS Enterprise	18ACBPJ5697F1ZD	1.22	0.79
2		M/s Manas Enterprise	18AJQPP3553J1ZL	6.26	4.41
3	ACT, Nagaon	M/s J.J. Distributor	18AEUPB4436P1ZU	15.76	11.11
4		M/s Juharmal Jaskarn	18AFNPB3687G1Z7	25.12	16.95
5		M/s Assam Machinery Stores	18AAFHA8014H1ZI	0.78	0.52
Total				49.14	33.78

The taxpayers are liable to reverse the excess claim of transitional credit of ₹ 0.49 crore along with interest of ₹ 0.34 crore.

On this being pointed out by Audit (between April to November 2021), the ACT, Nagaon stated (October 2021) that an amount of ₹ 1.48 lakh including interest was realised. The replies from other AsCT are awaited.

⁸⁰ in Part 'G' of legacy returns

VI Transitional credit claimed incorrectly

We noticed three cases of irregular carry forward of transitional credit, as follows:

- M/s NHPC, Subansiri Lower Project⁸¹ coming under the jurisdiction of ST, Dhemaji had claimed transitional credit amounting to ₹ 2.56 crore in table 5(c) of TRAN-1 return. Scrutiny of legacy return (VAT annual return) for the period 2015-16 revealed that taxpayer had brought forward ITC from a previous 2014-15 tax period amounting to ₹ 2.74 crore. However, as per the Assessing Officer (scrutiny u/s 33 of AVAT Act, 2005) there was no balance ITC at the end of tax period 2014-15. The credit availed during the 2014-15 by the taxpayers was subsequently transferred to 2015-16, 2016-17 and 2017-18 (up to June 2017). Thus, the non-detection of incorrect carry forward of ITC of ₹ 2.74 crore by the department resulted in excess claim of transitional credit of ₹ 2.56 crore. The taxpayer is liable to reverse incorrect credit of ₹ 2.56 crore in ECL besides payment of interest of ₹ 1.77 crore.

This was pointed out in audit (between April and November 2021). The replies from concerned AsCT/SsT are awaited.

- M/s Drug House⁸² under the jurisdiction of the ACT, Dibrugarh claimed transitional credit of ₹ 11.96 lakh in table 5(c) of TRAN-1 on unadjusted ITC. As per assessment order (November 2020) for the business period 2016-17, the taxpayer's unadjusted/ excess ITC was nil. Scrutiny of his monthly return for the period from April 2017 to June 2017 revealed that the taxpayer had brought forward ITC of ₹ 31.41 lakh from the previous period. Thus, the taxpayer had brought forward excess ITC of ₹ 31.41 lakh which resulted in inadmissible claim of Transitional Credit of ₹ 11.96 lakh. The taxpayer is required to reverse the inadmissible transitional credit claim of ₹ 11.96 lakh in addition to interest of ₹ 7.89 lakh for availing inadmissible transitional credit.

This was pointed out in audit (between April and November 2021). The replies from concerned AsCT/SsT are awaited.

- M/s Tata Project limited⁸³, Missa, Nagoan under the jurisdiction of the ACT, Nagaon claimed transitional credit ₹ 97.49 lakh in table 5(c) of TRAN-1 return. As per the taxpayer's Annual return for the period 2016-17 under the existing law, the unadjusted ITC was ₹ 34.62 lakh. Scrutiny of monthly return for the period April 2017 to June 2017 revealed that the taxpayer had brought forward ITC of ₹ 97.49 lakh from the previous period in his monthly return for the period April 2017. Thus, the taxpayer had brought forward excess ITC of ₹ 62.82 lakh which resulted in claim of inadmissible transitional credit of ₹ 62.86 lakh. The taxpayer is liable to reverse inadmissible transitional claim of ₹ 62.86 lakh in addition to

⁸¹ GSTIN- 18AAACN0149C1ZY

⁸² GSTIN- 18AABFD6509N1Z6

⁸³ GSTIN- 18AAACT4119L1Z7

interest of ₹ 40.54 lakh for excess claim of transitional credit. Further, the taxpayer had adjusted ₹ 6.03 lakh TDS in April 2017 which was not supported by TDS certificate from the tax deductor.

This was pointed out in audit (between April and November 2021). The replies from concerned AsCT/ SsT are awaited.

2.5.9.2 Excess credit in ECL remained undetected

As per Rule 117 of the CGST Rules, 2017, every registered person is eligible to take credit of input tax in ECL by submitting a declaration in Form GST TRAN-1.

Cross verification of TRAN-1 application filed by the taxpayers and amount credited in ECL revealed that the two taxpayers, viz., M/s Swastik Solutions and M/s Fuel Source (India) Pvt. Ltd. claimed ₹ 4.27 lakh in TRAN-1; however, in ECL ₹ 27.92 lakh was credited. This resulted in excess credit of ₹ 23.65 lakh in the ECL. Audit also noticed that in another three cases where a total amount of ₹ 53.34 lakh was credited in ECL in excess of the amount claimed in TRAN-1, which was later reversed by the taxpayers themselves. Thus, non-verification of transitional credit claimed by the taxpayers resulted in excess allowance of transitional credit. Details of excess claims are shown in **Table 2.18:**

Table 2.18:-Details of excess claims

(₹ in lakh)

Sl. No.	Name of Auditee Units	Name of taxpayer and GSTIN	CGST/SGST component	Date of filing of TRAN-1	AS per TRAN-1 claim amount	As per ECL credit amount	Excess credit	Date of reversal of excess claim
1	ACT, Unit-C	M/s Swastik Solutions 18ADUPL2894G1ZV	CGST	25-08-2017	0.00	9.96	9.96	Not reversed
2	ST, Goalpara	M/s Fuel Source (India) Pvt. Ltd. 18AAACF2978B2ZQ	CGST	04-09-2017	4.27	17.96	13.69	Not reversed
Total					4.27	27.92	23.65	

This was pointed out in audit (between April and November 2021). The replies from concerned AsCT/ SsT are awaited.

2.5.9.3 Credit on duty/ VAT paid stock

Under the provisions of Section 140(3) of the CGST/AGST Act, 2017, the taxpayer availing CENVAT credit in Table 7.a.(A) of TRAN-1 return and VAT credit in 7(c) must be in possession of invoice or other prescribed documents evidencing payment of duty under the existing law and such documents were issued not earlier than twelve months immediately preceding the appointed day.

- M/s Win Power Infra Pvt. Ltd.⁸⁴, under the jurisdiction of the ACT, Jorhat and M/s Trade & Technology Pvt. Ltd.⁸⁵, under the jurisdiction of the ACT, Dibrugarh had claimed credit of ₹ 1.51 lakh and ₹ 0.69 lakh on stock held on the appointed day

⁸⁴ GSTIN- 18AAACW4060D1ZL

⁸⁵ GSTIN- 18AAACT7167L1ZT

and documents relating to duty/VAT paid was available. Scrutiny of taxpayer records revealed that taxpayer had submitted duty paid documents/ invoices of ₹ 1.51 lakh and VAT paid invoices amounting to ₹ 0.53 lakh respectively which were issued earlier than 12 months immediately preceding the appointed day. Thus, the taxpayer claim was not eligible for transitional credit. M/s Win Power Infra Pvt. Ltd. is liable to reverse ineligible credit of ₹ 1.51 lakh in addition to payment of interest of ₹ 1.07 lakh for ineligible claim and M/s Trade & Technology Pvt. Ltd. had claimed ineligible credit of ₹ 0.53 lakh, which is liable to reverse along with interest of ₹ 0.36 lakh.

This was pointed out in audit (between April and November 2021). The replies from concerned AsCT/SsT are awaited.

2.5.10 Conclusion

Transitional credit is a one-time flow of input tax credit from the legacy regime into the GST regime and can be availed both by the taxpayers migrating from the previous regime as well as new registrants under GST. A significant portion of transitional credit represented by claims in Tables 5(c) of TRAN-1 i.e. 66 per cent, flowed through the Legacy Returns and the remaining 34 per cent represented the claims in other tables of TRAN-1. The Department has not verified the transitional credits claimed by taxpayers even after the lapse of four years since their claim. Audit noticed several cases where taxpayers had claimed excess, inadmissible credit, and without supporting invoices/documents etc., which however, remained undetected and is a loss to the Government. Audit could not verify correctness of transitional credit availed by the taxpayers, where the unit offices had failed to produce basic records for audit scrutiny.

2.5.11 Recommendation

- *In view of the high percentage of inadmissible Transitional Credit claims noticed in audit, 100 per cent verification of the sanctioned cases is recommended.*

