

Chapter-3
Processing of Refund Claims Under
GST

Chapter 3: Processing of Refund Claims Under GST

State Taxes and Excise Department

3.1 Introduction

The provisions pertaining to refund contained in the GST laws aim to streamline and standardise the refund procedures under GST regime. It was decided that the claim and sanctioning procedure would be completely online. As the electronic refund module was not available, a temporary mechanism was devised and implemented. Circular No.12-28/2017-18-EXN-GST-1810-27 dated 17 Jan 2018 and No.12-28/2017-18-EXN-GST-3280-98 dated 03 Feb 2018 were issued prescribing the detailed procedures. In this electronic-cum-manual procedure, the applicants were required to file the refund applications in Form GST RFD-01A on the common portal, take a printout of the same and submit it physically to the jurisdictional tax office along with all supporting documents. Further, processing of those refund applications, *i.e.*, issuance of acknowledgement, issuance of deficiency memo, passing of provisional/final refund orders, payment advice etc. were being done manually. However, various post submission stages of processing of the refund applications continued to be manual.

Accordingly, the Circulars issued earlier laying down the guidelines for submission and processing of Pre-automation refund claims have either been superseded or modified. In order to ensure uniformity in implementation of the provisions of law across field formations, several earlier Circulars viz., No.12-28/2017-18-EXN-GST-1810-27 dated 17 Jan 2018, No.12-28/2017-18-EXN-GST-3280-98 dated 03 Feb 2018, No.12-25/2018-19-EXN-GST-(575)-20774-20792 dated 02 Aug 2019, No.12-25/2018-19-EXN-GST-(575)-6471-88 dated 13 March 2019, No.12-25/2018-19-EXN-GST-(575)-6680-97 dated 13 March 2019, No.12-25/2018-19-EXN-GST-(575)-20834-20852 dated 02 August 2019, No.12-25/2018-19-EXN-GST-(575)-20854-20872 dated 02 Aug 2019 and No.12-25/2018-19-EXN-GST-(575)-20956-20976 dated 02 Aug 2019 have been superseded. However, the provisions of the said Circulars shall continue to apply for all refund applications filed on the common portal before 26 September, 2019 and the said applications shall continue to be processed manually as were done prior to deployment of new system.

3.2 Audit Objectives

Audit of refund cases under 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 officials in disposing the refund applications.

3.3 Scope of Audit

The Department processed 1,160 refund cases¹ in pre automation period in the selected five divisions of the State from July 2017 to September 2019 and 183 refund claims² were processed in post-automation period in the selected eight divisions from September 2019 to July 2020.

Files of refund claims processed in pre-automation and post-automation period on sample basis have been extracted for detailed examination by the audit party.

3.4 Sample Selection

A sample of 114 cases (pre automation) was selected for detailed examination initially. Further, fifty-three additional cases were also examined during audit, as similar irregularities were noticed in these cases. Thus, a total of 167 cases³ were examined in five divisions.

For post-automation refund claims under GST, 112 cases⁴ were selected for detailed examination in eight divisions.

3.5 Audit Criteria

The following sections/rules/notifications provide the guidelines/procedure for claiming the refunds:

- (i) Sections 54 to 58 and section 77 of Central Goods and Services Tax (CGST), 2017 and Himachal Pradesh Goods and Services Tax (HP GST) Act, 2017.
- (ii) Rules 89 to 97A of Central Goods and Services Tax Rules, 2017 and Himachal Pradesh Goods and Services Tax Rules, 2017.
- (iii) Sections 15, 16 and 19 of Integrated Goods and Services Tax Act, 2017.
- (iv) Notifications of the CBIC and HP State Government from time to time under GST refund.

3.6 Results of Audit

Test-check of the selected sample cases across eight divisions of Himachal Pradesh State Commissionerate during 2020-21 revealed various irregularities under different categories as shown in **Appendix-3.1**.

¹ Baddi:788 cases, Sirmour:209 cases, Shimla:77 cases, Solan:24 cases and Una:62 cases.

² Baddi:103 cases, Bilaspur: one case, Kangra: nine cases, Kullu: one case, Sirmour:48 cases, Shimla: three cases, Solan: five cases and Una:13 cases.

³ Baddi:94 cases, Sirmour:25 cases, Shimla:20 cases, Solan:14 cases and Una:14 cases.
Inverted Duty Structure: 120 cases, Zero Rated Supply: 20 cases and others: 27 cases.

⁴ Baddi:62 cases, Bilaspur: one case, Kangra: six cases, Kullu: one case, Sirmour:29 cases, Shimla: two cases, Solan: three cases and Una: eight cases.
Inverted Duty Structure: 78 cases, Zero Rated Supply: 11 cases and others: 23 cases.

3.7 Audit Observations

On examination of refund claims under GST following deficiencies were noticed:

3.7.1 Acknowledgment not issued within time

As per Rule 90 of HPGST Rules 2017, on the basis of scrutiny of the refund application filed by the applicant, if the refund application is found to be complete in all aspects, acknowledgement in Form GST RFD-02 will be issued by the Refund Processing Officer, within 15 days from the date of filing of the refund application.

Pre automation: During audit of the five divisions of HP State Commissionerate, 167 refund cases were examined, and it was noticed that there was delay in issue of acknowledgement in 41 cases⁵ (24.55 per cent) from five to 364 days with the average and median value of delay being 95 days and 79 days respectively in these cases as detailed in **Appendix-3.2(i)**. Of these, 25 cases, 11 cases and five cases were delayed by upto three months, three to six months and more than six months, respectively.

Post automation: During audit of the eight divisions of HP State Commissionerate, 112 refund cases were examined, and it was noticed that there was delay in issue of acknowledgement in 31 cases⁶ (27.68 per cent) from two to 77 days with the average and median value of delay being 21 days and 15 days respectively in these cases as detailed in **Appendix-3.2(ii)**. All these 31 cases were delayed by up to 3 months.

Thus, the Department failed to adhere to the timelines for issuing acknowledgement as prescribed in the rules *ibid*.

3.7.2 Refund orders not sanctioned in time

Rule 92 of the HPGST Rules, 2017 stipulates that where, upon examination of the application, the proper officer is satisfied that a refund is due and payable to the applicant, he shall make an order in Form GST RFD-06, sanctioning the amount of refund to which the applicant is entitled. Further Section 54(7) of HPGST Act, 2017 provides that the proper officer shall issue the order of refund within 60 days from the date of receipt of application complete in all respects.

Pre automation: During audit of the five divisions of HP State Commissionerate, 167 refund cases were examined, and it was noticed that there was delay in sanction of refund orders in 32 cases⁷ (19.17 per cent) from six to 355 days with the average and median value of delay being 120 days and 87 days respectively in these cases as detailed in **Appendix-3.3(i)**. Of these, 17 cases, seven cases and eight cases were delayed by upto three months, three to six months and more than six months, respectively.

Post automation: During audit of the eight divisions of HP State Commissionerate, 112 refund cases were examined, and it was noticed that there was delay in sanction of

⁵ Baddi:16 cases, Sirmour: seven cases, Shimla: six cases, Solan: seven cases and Una: five cases.

⁶ Baddi:16 cases, Kangra: three cases, Sirmour:10 cases, Solan: one case and Una: one case.

⁷ Baddi:11 cases, Sirmour: five cases, Shimla: six cases, Solan: eight cases and Una: two cases.

refund orders in 17 cases⁸ (15.18 *per cent*) from six to 140 days with the average and median value of delay being 42 days and 31 days respectively in these cases as detailed in **Appendix-3.3(ii)**. Of these, 15 cases and two cases were delayed by up to three months and three to six months, respectively.

Thus, the Department failed to adhere to the timelines for sanction of refund orders as prescribed in the rules *ibid*.

3.7.3 Provisional refund on account of zero-rated supply not sanctioned within time

As per section 54(6) of HPGST Act 2017, notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety percent of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant. Further, Rule 91 of the HPGST Rules 2017 provides that provisional refund on account of zero rate supply shall be granted subject to the condition that the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds ₹ 2.5 crore. Rule 91(2) of the HPGST Rules 2017 provides that the proper officer will scrutinize the application and the evidence submitted. On being *prima facie* satisfied, he shall make a provisional refund order in Form GST RFD-04 sanctioning the amount of refund due to the said applicant on provisional basis within a period of seven days from the date of acknowledgement.

Pre automation: During audit of the five divisions of HP State Commissionerate, 20 refund cases of Zero Rated Supply were examined, and it was noticed that there was delay in sanction of Provisional refund orders in one case⁹ (4.76 *per cent*) of 09 days as detailed in **Appendix-3.4**. Thus, the Department failed to adhere to the timelines for sanction of Provisional refund orders as prescribed in the rules *ibid*.

3.7.4 Delay/non-conduct of post audit of refund claims

The Excise and Taxation Department, HP Circular No.12-28/2017-18-EXN-GST-1810-27 dated 17 January 2018 elaborately laid down the procedure for processing of refunds of zero rated supplies of pre automation period. The circular *inter alia*, stipulated that, the pre-audit of manually processed refund applications is not required

⁸ Baddi: 10 cases, Bilaspur: one case, Kangra: one case, Kullu: one case, Sirmour: two case, and Solan: two case.

⁹ Baddi: Indofarm Equipment Ltd.

till separate detailed guidelines are issued by Board, irrespective of amount involved. However, it was clarified that the Post-audit of refund order shall be continued as per the extant guidelines.

Pre automation: During audit of the five divisions of HP State Commissionerate, 167 refund cases were examined, and it was noticed that no Post-audit was conducted in 167 cases¹⁰ (100 per cent) **Appendix-3.5(i)**.

Post automation: During audit of the eight divisions of HP State Commissionerate, 112 refund cases were examined, and it was noticed that no Post-audit was conducted in 112 cases¹¹ (100 per cent) **Appendix-3.5(ii)**.

Thus, the Department failed to adhere to the Rules of Post-audit of refunds as prescribed in the rules *ibid*.

3.7.5 Excess refund of ITC of inputs used in zero-rated supplies

Section 54(3)(i) of the HPGST Act, 2017 provides for refund of unutilized input tax credit (ITC) for zero-rated supplies made without payment of tax. Similar provisions are *inter alia* stipulated under Section 16 of the Integrated Goods and Services Tax (IGST) Act in respect of integrated tax which also stipulates that 'zero rated supply' includes 'export of goods or services or both'. Further, explanation (1) below section 54 of HPGST Act *inter alia* states that 'refund' includes refund of tax paid on inputs or input services used in making such zero-rated supplies.

Sub-rule 4 of Rule 89 of HPGST Rules, 2017 provides following formula for grant of refund in case of such zero-rated supply of goods without payment of tax under bond or letter of undertaking:

$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$

where, "Net ITC" means input tax credit availed on inputs and input services during the relevant period and refund amount means the maximum refund amount that is admissible.

Section 73 of the HPGST Act, 2017 stipulates that erroneous refund amount has to be recovered from the taxpayer along with applicable interest under Section 50.

Pre automation: During audit of the five divisions of HP State Commissionerate, 20 refund cases of Zero-rated supplies were examined, and it was noticed that in one case¹², office had taken adjusted total turnover on lower side *i.e.*, ₹ 22.20 crore instead of ₹ 28.95 crore and sanctioned the refund of ITC of inputs used in zero-rated supplies

¹⁰ Baddi: 94 cases, Sirmour: 25 cases, Shimla: 20 cases, Solan: 14 cases and Una: 14 cases.

¹¹ Baddi: 62 cases, Bilaspur: one case, Kangra: six cases, Kullu: one case, Sirmour: 29 cases, Shimla: two cases, Solan: three cases and Una: eight cases.

¹² Baddi: M/s. Indo Farm Equipment Ltd.

(made without payment of tax) of ₹ 84.76 lakh which was to be of ₹ 65.00 lakh. This had resulted in excess payment of refund of HPGST of ₹ 19.75 lakh as detailed in **Appendix-3.6(i)**, which was required to be recovered along with applicable interest in terms of section 73 read with section 50 of the HPGST Act,2017.

Post automation: During audit of the eight divisions of HP State Commissionerate, 11 refund cases of Zero-rated supplies were examined and in one case¹³, refund of ₹ 21.46 lakh on account of zero rated supplies for the period of April, 2018 to June, 2018 was granted on 18 May, 2020. However, Audit noticed that the zero rated turnover and adjusted turnover as claimed by the dealer in refund application (RFD-01) were ₹ 8.36 crore and ₹ 9.95 crore respectively which were not in consonance with the returns filed in GSTR-3B wherein the figures shown by the dealers were ₹ 6.34 crore and ₹ 10.85 crore respectively. Audit worked out the maximum refund allowed on the basis of figures of GSTR-3B as per formula prescribed and observed that refund of ₹ 5.61 lakh was allowed in excess (**Appendix-3.6(ii)**).

3.7.6 Excess grant of refund due to non-consideration of minimum balance in electronic credit ledger at the end of tax period

Section 54 (3) (i) of the HPGST Act 2017, stipulates that refund of ITC in respect of zero-rated supplies can be claimed by registered persons at the end of tax period. Rule 89 (3) of the HPGST Rules, 2017 provides that for refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed. Rule 89(4) of the HPGST Rules, 2017, prescribes the formula in case of zero-rated supply of goods and services as mentioned in para 7.5.

Further, the Excise and Taxation Department of HP vide Circular No. 12-25/2018-19-EXN-GST-(575)-6680-97 dated 13 March 2019 clarified that in case of refund of unutilized input tax credit of zero-rated supplies, the refundable amount is to be calculated as the least of the following amount: -

- a. The maximum refund amount as per the formula laid down in Rule 89(4) of the HPGST Rules, 2017;
- b. The balance in the electronic credit ledger of the claimant at the end of the tax period for which the refund claim is being filed after the return for the said period has been filed; and
- c. The balance in the electronic credit ledger of the claimant at the time of filing the refund application.

Pre automation: During audit of the five divisions of HP State Commissionerate, 20 refund cases of zero-rated supplies were examined, and it was noticed in one DCSTE, that in four cases¹⁴ (20 per cent) the Department allowed excess refund with reference to balance in electronic credit ledger at the time of filing of application.

¹³ Baddi: M/s. Regal kitchen Food Ltd.

¹⁴ Baddi: four cases.

However, audit examination revealed that the balance in the electronic credit ledger at the end of tax period after filing of the return was at ₹1.45 crore. This being the least, the claimants were entitled to refund of ₹ 1.45 crore whereas the Department had sanctioned the refund amount of ₹ 2.24 crore. The error led to excess allowance of refund of ₹ 78.39 lakh as detailed in **Appendix-3.7**.

3.7.7 Irregular allowance of refund of inverted duty structure

As per section 54 (3) (ii) of the HPGST Act 2017, a registered person may claim refund of any unutilized Input Tax Credit (ITC) at the end of any tax period where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (*i.e.*, Inverted Duty Structure). Further, Rule 89(5) of the HPGST Rules 2017 prescribes the formula for maximum refund of unutilized ITC on account of inverted duty structure as under:

$$\text{Maximum Refund Amount} = [(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC} / \text{Adjusted Total Turnover}] - \text{tax payable on such inverted rated supply of goods and services}$$

where, “Net ITC” means input tax credit availed on inputs during the relevant period and does not include credit availed on input services.

Pre automation: During audit of the five divisions of HP State Commissionerate, 120 refund cases of Inverted duty structure were examined, and it was noticed that in two cases¹⁵, Proper Officer had taken adjusted total turnover of ₹ 2.45 crore instead of ₹ 2.73 crore during sanction of refund on account of inverted duty structure. Due to this, refund of ₹ 19.73 lakh was sanctioned instead of ₹14.53 lakh. This had resulted in excess allowance of refund to the tune of ₹ 5.20 lakh¹⁶ as detailed in **Appendix-3.8(i)**.

Post automation: During audit of the eight divisions of HP State Commissionerate, 78 refund cases of Inverted duty structure were examined, and it was observed that in 09 cases¹⁷, the proper officer sanctioned and allowed refunds of ₹ 5.27 crore. Audit, however, noticed that while sanctioning the refund claims, the proper officer did not cross verify the figures declared by the dealers with the supporting documents viz., GSTR-3B, GSTR-1, RFD-01, Statement 1A, Annexure-B, and GSTR-2A. Against the adjusted turnover of ₹ 107.03 crore worked out from the supporting documents (Statement 1A), turnover of ₹ 105.27 crore (as per form RFD-01) was considered and against the inverted turnover of ₹ 104.66 crore, turnover of ₹ 102.63 crore was considered. Tax payable on inverted goods amounting to ₹ 11.73 crore (as per form RFD-01) was considered against the tax payable of ₹ 12.04 crore (as per Statement 1A). Mismatch in the figures of adjusted turnover and inverted supplies of goods provided by the assessee in supporting documents RFD-01 and Statement 1A resulted in excess refund of ITC. Audit worked out the net refunds claimed and allowable as per formula

¹⁵ Sirmour: one case and Solan: one case.

¹⁶ Sirmour: one cases: ₹ 5.10 lakh and Solan: one case: ₹ 0.10 lakh.

¹⁷ Baddi: two cases and Sirmour: seven cases.

referred ibid and observed that against the refund of ₹ 4.62 crore which was permissible, refund of ₹ 5.27 crore was sanctioned. This resulted in excess sanctioning of refund of ₹ 65.13 lakh¹⁸ **Appendix-3.8(ii)**.

3.7.8 Non obtaining required documents in GST refund cases

Rule 89 (2) of HPGST prescribes certain documents to be furnished as per Annexure 1 in Form GST RFD-01 with the refund claims. Further, as per Excise and Taxation Department, HP Circular No.12-25/2018-19-EXN-GST-(575)-6680-97 of March 2019, while submitting the refund claims electronically, the claimant shall also submit the details of the invoices on the basis of which input tax credit had been availed during the relevant period for which the refund is being claimed, in the format enclosed as “Annexure-A”. As per the said circular, refund claim shall also be accompanied by a print-out of FORM GSTR-2A of the claimant for the relevant period for which the refund is claimed.

Pre automation: During audit of the five divisions of HP State Commissionerate, 167 refund cases were examined, and it was noticed that 30 refund cases¹⁹ (17.96 per cent) were sanctioned (29 cases of inverted duty structure and one case of zero rated supply) without required documents as detailed in **Appendix-3.9(i)**. In the absence of these documents, eligibility of ITC for GST refund could not be examined/calculated in audit.

Post automation: During audit of the eight divisions of HP State Commissionerate, 112 refund cases were examined and in 24 refund cases²⁰ (21.43 per cent) all the supporting documents which were required to be uploaded as per the circular ibid were not found uploaded by the dealers. The proper officer sanctioned refunds of ₹ 31.82 crore in these 24 refund cases²¹ without all supporting documents²² as detailed in **Appendix-3.9(ii)**. This was in contravention of the guidelines of the circular ibid. The supporting documents form a vital part for processing refund applications to ascertain the refund claimed and admissible to the dealers.

3.7.9 Improper maintenance of refund registers

As per provisions of Excise and Taxation Department, HP circular No. F.No. 12-28/2017-18-EXN-GST-1810-27 dated 17 January 2018, refund registers in Table Nos. 1, 2 & 3 were prescribed to be maintained registering therein certain details viz., period of refund, date of receipt of application, date of issuing acknowledgement, date of issue of provisional/final refund etc.

¹⁸ Baddi: two cases: ₹6.16 lakh and Sirmour: seven cases: ₹58.97 lakh.

¹⁹ Baddi: 13 cases, Sirmour: nine cases, Shimla: six cases, Solan: one case, Una: one case.

²⁰ Baddi: 24 cases.

²¹ Inverted Duty Structure: 20 cases and Zero Rated Supply: four cases.

²² Inverted Duty Structure: Declaration u/s 54(3), undertaking as per rule 16(2), statement 1, 1A, GSTR 2A, Annexure B and self certified copies of invoices. Zero-Rated Supply: Declaration u/s 54(3), undertaking as per rule 16(2), statement 3, 3A, GSTR 2A, Annexure B and shipping bills.

Pre automation: During audit of the five divisions of HP State Commissionerate, 167 refund cases were examined, and it was noticed that the refund registers were not being maintained in table No.1 to 3 as per the prescribed format during the years 2017-18 to 2019-2020. Due to non-maintenance of the registers in prescribed formats, timelines of certain processes of refund claims cannot be commented upon in audit. Improper maintenance of refund registers resulted in non-observance of the provisions of the circular *ibid*.

3.7.10 Abnormal delay in communicating refund orders to counterpart tax authority

As per Excise and Taxation Department, HP circular No.12-28/2017-18-EXN-GST-3280-98 dated 03 February 2018, refund order issued either by central tax authority or state tax/UT tax authority shall be communicated to the counterpart tax authority concerned within seven working days for the purpose of payment of relevant sanctioned amount of tax or cess, as the case may be. It was also reiterated therein to ensure adherence to timeline specified under Section 54(7) and Rule 91(2) of HPGST Act and Rules respectively for sanction of refund orders.

Pre automation: During audit of the five divisions of HP State Commissionerate, 167 refund cases were examined, and it was noticed that there was delay in communicating to counterpart Central tax authority in four cases²³ (2.40 *per cent*) from 09 to 49 days with the average and median value of delay being 32 days and 36 days respectively. All these four cases were delayed by up to 3 months (**Appendix-3.10**).

Thus, the Department failed to adhere to the timelines for issuing acknowledgement as prescribed in the rules *ibid*.

3.7.11 Non-production of records

Pre automation: During audit of the five divisions of HP State Commissionerate, 167 refund cases were examined, and it was noticed that despite follow up in these divisions four refund cases²⁴ were not made available to audit (**Appendix-3.11**). In the absence of these records, Audit could not verify the Department's performance in these cases.

3.7.12 Delay in issuing Payment Order

As per point no 34 of circular no. 12-15/2018-19-EXN-GST-(575)-32085-32103 dated 10 December, 2019 issued by Excise and Taxation Department, HP and Section 56 of the HPGST, Act 2017 if any tax orders to be refunded to the applicant is not refunded within 60 days from the date of receipt of application, interest at the rate of six *per cent* will be payable as interest. It has been specifically clarified that any tax shall be considered to have been refunded only when the amount has been credited to the bank

²³ Shimla: three cases and Una: one case.

²⁴ Shimla: two cases, Solan: one case and Una: one case.

account of the applicant. Accordingly, all tax authorities are advised to issue the final sanction order in form GST RFD-06 and the payment order in form FSTR FD-05 within 45 days after the date of generation of ARN so that the disbursement is completed within sixty days.

Post automation: During audit of the eight divisions of HP State Commissionerate, 112 refund cases were examined, and it was noticed that there was delay in issue of payment order after the prescribed period of crediting refund to taxpayer account *i.e.*, within 60 days in three cases²⁵ (2.68 *per cent*) from nine to 69 days with the average and median value of delay being 46 days and 60 days respectively in these cases as detailed in **Appendix-3.12**. All these cases were delayed by up to 3 months.

Thus, the Department failed to adhere to the timelines for issuing payment order as prescribed in the rules *ibid*.

3.7.13 Refund amount included ITC availed on capital goods and services in case of Inverted Duty Structure

(A) Refund amount included ITC availed on capital goods

As per Section 54 (3) of the HPGST Act 2017, refund of unutilized input tax credit (ITC) can be claimed by a registered person at the end of any tax period. Rule 89(5) of the HPGST Rules, 2017, prescribes the formula as per which the maximum refund in the case of inverted supply of goods or services shall be granted.

$$\text{Maximum Refund Amount} = [(\text{Turnover of inverted supply of goods and services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}] - \text{Tax payable on such inverted rated supply of goods and services}$$

Where, "Net ITC" means input tax credit availed on inputs during the relevant period. Thus, ITC availed on capital goods shall not be considered. Section 73 of the HPGST Act, 2017 stipulates that erroneous refund amount has to be recovered from the taxpayer along with applicable interest under Section 50.

Post automation: During audit of the eight divisions of HP State Commissionerate, 78 cases of inverted duty structure were examined, and it was observed that in one case²⁶ of refund claim for the tax-period February 2020, refund of ₹ 31.75 lakh on unutilized input tax credit of ₹ 86.07 lakh was sanctioned. While computing the "Net ITC" for arriving at the refund amount, the taxpayer included the taxable value of capital goods of ₹ 4.62 lakh and ITC of ₹ 1.29 lakh availed on capital goods. This resulted in excess sanction of refund of ₹ 1.29 lakh (**Appendix-3.13(i)**) which was recoverable with interest in terms of section 73 read with section 50 of the HPGST Act, 2017.

²⁵ Baddi: one case, Kangra: one case and Sirmour: one case.

²⁶ Inverted Duty Structure: M/s RSA Technitex Ltd.

(B) Refund amount included ITC availed on input services

During audit of the eight divisions of HP State Commissionerate, 78 refund cases of inverted duty structure were examined and it was observed that in *two cases*²⁷, the dealers claimed refunds of ₹ 2.98 crore, which was allowed by the proper officer. Audit however noticed that while sanctioning the refund claims in these cases, the ITC on input services was also allowed to be availed which was contrary to the rules referred *ibid*. This resulted in excess allowance of refund of ₹ 43.65 lakh (**Appendix-3.13(ii)**).

3.7.14 Irregular refund payment of ₹ 2.28 crore

As per sub-Rule 4A of Rule 86 of the CGST Rules, 2017 read with Para 4.4 of Circular No 135/05/2020-GST of March, 2020, a tax payer is entitled to refund of tax wrongly paid or paid in excess (other than zero rated supplies), in the same mode by which the tax liability was discharged, *i.e.*, if the tax was paid by partly debiting the credit ledger and partly debiting the cash ledger, the refund shall be sanctioned in the same proportion. The cash part has to be sanctioned and credited to the bank account of the tax payer by issuance of RFD-05 and the credit part should be re-credited to the electronic credit ledger of the tax payer through PMT-03.

Post automation: During audit of the eight divisions of HP State Commissionerate, 112 refund cases were examined, and it was noticed that in one case²⁸ of refund under Sirmour division the dealer while filing his return (GST-3B) wrongly entered ₹ 1,15,35,896/- in CGST as well as in HPGST on account of outward taxable supply other than zero rated, nil rate for the period 2/2019 instead of ₹ 1,15,358.96. This led to excess payment of tax of ₹ 2,28,41,074/- (*i.e.*, 1,14,20,537+1,14,20,537) from the Electronic Credit Ledger. The dealer applied refund for the excess debit of his ECL in March 2020. The proper officer sanctioned refund of ₹ 2.28 crore which was credited in the bank account of the dealer. This was not permissible as the refund sanctioned was required to be credited in the ECL instead of payment made into bank account as per the provision of the circular mentioned above.

3.7.15 Non-crediting back of Electronic credit ledger (ECL) on account of improper refund sanctioned

Rule 92 of the HPGST Rules, 2017 stipulated that upon submission of refund application, the officer shall carry out the examination process. He shall examine if the refund claim amount is due and payable to the applicant then he 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. He should also mention therein the amount, if any, refunded to him on a provisional basis in case of zero-rated supply.

²⁷ Baddi: two cases.

²⁸ M/s Protech Telelinks Ltd.

Amount adjusted from refund against any outstanding demand under the Act or under any existing law and the balance amount refundable. However, in cases where the amount of refund is completely adjusted against any outstanding demand, adjustment shall be issued in Part A of form GST RFD-07.

The refund claim can be withheld as per the provisions and an order in Part B of Form GST RFD-07 issued to applicant informing the reasons for withholding the amount.

Where the proper officer is satisfied, for the reasons to be recorded in writing that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in Form GST RFD-08 to the applicant requiring him to furnish a reply in Form GST RFD-09 within a period of 15 days of the receipt of such note. The proper officer after considering the reply make an order in Form GST RFD-06.

- Sanctioning the amount of refund in whole or part
- Rejecting the said refund claim

Post automation: During audit of the eight divisions of HP State Commissionerate, 112 refund cases were examined, and it was noticed that in one case²⁹ refund of ₹ 38.63 lakh on account of ITC accumulated due to inverted tax structure for the period July 2019 to September 2019 was sanctioned as claimed by the dealer in his application of refund in form RFD-01. This amount was debited from ECL. However, the proper officer issued payment advice of ₹ 4.64 lakh only. No reasons were found recorded for disallowing the remaining amount of refund of ₹ 33.99 lakh. Audit observed that on the basis of taxable turnover, Net ITC, Adjusted turnover the maximum refund that can be allowed worked out to ₹ 4.64 lakh *i.e.*, as per payment advice. It was noticed that dealer's account was debited for ₹ 38.63 lakh on 19-02-2020 whereas the payment advice was issued for ₹ 4.64 lakh. As per provisions under GST the dealer's account was required to be credited by the Proper Officer for the differential amount by making reverse entry of the amount not allowed to the dealer. There was nothing on record to indicate that the amount had been reversed in the dealer's account.

3.8 Conclusion

There was significant delay in issue of acknowledgements as well as in sanction of refunds. In several cases, there were deviations from the provisions of Acts and Rules which resulted in irregular refunds. The Department failed to adhere to the provisions for Post-audit of refunds. The Department also failed to ensure the collection of all documentary evidence before sanctioning refunds, and refund registers were not maintained in prescribed formats.

The Audit findings were referred to the State Government (September 2021) and reply was awaited (August 2022).

²⁹ M/s Azot Life Sciences Ltd.

3.9 Recommendations

- *The Department may consider taking corrective action to minimize the delays in issue of acknowledgement and sanction of refunds and ensure efficiency in sanction of refunds.*
- *The Department may devise systems and procedures to ensure the post audit of refund cases, as provided for.*
- *The Department may ensure that all documentary evidence is obtained before sanctioning refunds.*

