

## CHAPTER-II: STATE GOODS AND SERVICES TAX

### 2.1 Compliance Audit on ‘Transitional Credits under Goods and Services Tax’

#### 2.1.1 Introduction

The Goods and Service Tax (GST) replaced multiple taxes levied and collected by the Centre and States. GST, a destination-based tax on supply of goods or services or both, is levied at multi-stages wherein the taxes will move along with supply. The tax is levied simultaneously by the Centre and States on a common tax base and tax will accrue to the tax authority having jurisdiction over the place of supply. Central GST (CGST) and State GST (SGST) /Union Territory GST (UTGST) is 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 avoids cascading effect of taxes and ensures uninterrupted flow of credit from the seller to buyer. To ensure a seamless flow of input tax from the existing laws<sup>1</sup> into the GST regime, ‘Transitional arrangements for input tax’ were 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 the existing laws. Further, Transitional credit provisions are important for both the Government and business. For business, the transitional credit provisions ensure transition of accumulated credits from the legacy returns and also input tax in respect of raw materials, work in progress, finished goods held in stock as on the appointed day as well as credit in respect of capital goods into the GST regime. The provisions enable Taxpayer to transfer such input credits only when they are used in the ordinary course of business or furtherance of business.

#### 2.1.2 Transitional arrangements for input tax

Section 140 of the CGST Act 2017 (and SGST Acts/UTGST Acts) enables the taxpayers to carry forward the ITC earned under the existing laws to the GST regime. This section, read with Rule 117 of UPGST Rules 2017, prescribes elaborate procedures in this regard. Under transitional arrangements for ITC, the ITC of various taxes paid under the existing laws such as State Value Added Tax (VAT) and Entry Tax are eligible to be carried forward into GST under the relevant sub-sections of Section 140 of the Act. The claims are to be preferred in the appropriate tables mentioned below, in two FORMS GST TRAN-1 and GST TRAN-2.

**Table 2.1: Forms and Tables prescribed for claiming Transitional credit**

Form	Table No.	Transitional credit component
TRAN-1	5(c)	Closing balance of credit from the last legacy returns
TRAN-1	6(b)	Un-availed credit on capital goods
TRAN-1	7(b)	Credit on Input/Input Service in Transit
TRAN-1	7(c)	Credit on duty paid stock with invoices

<sup>1</sup> Central Excise, Service Tax and State Value Added Tax.

Form	Table No.	Transitional credit component
TRAN-1	7(d)	Credit on duty paid stock without invoices
TRAN-1	10	Credit of good held in stock as agent on behalf of the principal
TRAN-1	11	Credit in respect of tax paid before the appointed day (01 July 2017) and supply made after the appointed day
TRAN-2	5	Credit afforded on stocks claimed without invoices

All registered taxpayers, except those opting for payment of tax under composition scheme (under Section 10 of the Act), are eligible to claim transitional credit by filing TRAN-1 return within 90 days from the appointed day. The time limit for filing TRAN-1 return was extended initially till 27<sup>th</sup> December 2017. However, considering that many taxpayers could not file the return within the date due to technical difficulties, sub-rule 1A was inserted under Rule 117 of UPGST Rules, 2017<sup>2</sup> to accommodate such taxpayers. The due date for filing TRAN-1 was further extended to 31<sup>st</sup> March 2020<sup>3</sup> for those taxpayers who could not file TRAN-1 due to technical difficulties and those cases recommended by the GST Council.

### **2.1.3 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 verification of transitional credit claims was adequate and effective (systemic issue); and
- ii. whether the transitional credits carried over by the taxpayers into GST regime were valid and admissible (Compliance issue).

### **2.1.4 Audit scope**

The audit scope comprised review of the SGST component of transitional credit claims filed by the taxpayers under Section 140 and 142 of the UPGST Act, 2017 from the Appointed date<sup>4</sup> to the end of March 2020. Audit verification involved the scrutiny of process and outcomes of Departmental verifications along with detailed independent verification of selected claims. Verification of individual transitional credit claims entailed the examination of VAT credit claimed by the Taxpayer in the last six-monthly returns filed under existing laws, immediately preceding the appointed date, along with the documentary evidence in support of such claims. Further, in respect of input tax claimed pertaining to materials held in stock, verification involved examination of necessary accounting details, documents or records evidencing purchase of such goods.

---

<sup>2</sup> Vide Notification 48/2018 CT dated 10<sup>th</sup> September 2018.

<sup>3</sup> Vide CBIC order No.01.2020-GST dated 07<sup>th</sup> February 2020.

<sup>4</sup> The date on which the provisions of this Act come into force, i.e. 1<sup>st</sup> July 2017.

### 2.1.5 Audit methodology and audit criteria

The methodology for verification of transitional credit claims of selected taxpayers involves data analysis and verification of records available with the jurisdictional Commercial Tax Zones as well as the Sectors. It also involved accessing relevant information/records of the taxpayers through the Department.

An entry conference was held with Additional Commissioner (Law) Commercial Tax on 26 August 2021 to apprise the Department of the Audit methodology including Audit Objectives and Criteria. Field Audit was conducted between July 2021 and December 2021. Draft Report was issued on 21 April 2022 to State Government and State Tax Department. The reply of the Department has been received and an Exit conference was held with Additional Commissioner Commercial Tax on 05 July 2022. The reply of the Department has been incorporated in draft.

As per data obtained from GSTN, a total of 53,085 Transitional credit claims of SGST were made during the period from the appointed date to end of March 2020 involving an aggregate amount of ₹ 1,289.84 crore. A sample of 1,079 Taxpayers claimed Transitional Credit ₹ 646.13 crore spread across 124 Sectors of 12 Zones and JC (CC) CT Oil Sector Lucknow was extracted for detailed audit scrutiny.

The criteria against which the audit objectives and sub-objectives have been verified, comprises of the provisions of Section 140 and 142 of the UPGST Act, 2017 read with Rules 117 and 118 of the UPGST Rules, 2017, Notifications/Circulars issued by CBIC and State Government Department.

### 2.1.6 Audit sample

A sample of 1,058 transitional credit cases were scrutinised by audit which were spread across 12 Zones and JC (CC) CT Oil Sector Lucknow covering 124 Sectors of Commercial Tax Department. Details of selected cases are as follows:

**Table-2.2**

Sl. No.	Zone	Total No. of sample	Selected Sectors	No. of cases audited
1	Agra	124	20	124
2	Aligarh	1	1	1
3	G B Nagar	270	19	263
4	Ghaziabad I	161	14	154
5	Ghaziabad II	128	9	128
6	Kanpur I	104	15	104
7	Kanpur II	120	18	120
8	JC (CC) CT Oil Sector Lucknow	2	1	2
9	Lucknow I	82	14	77
10	Lucknow II	82	10	82
11	Meerut	1	1	1
12	Varanasi I	2	2	2

Sl. No.	Zone	Total No. of sample	Selected Sectors	No. of cases audited
13	Varanasi II	2	2	0
<b>Total</b>		<b>1,079<sup>5</sup></b>	<b>126<sup>6</sup></b>	<b>1,058</b>

Audit test-checked (between July 2021 and December 2021), the TRAN-1, last legacy returns, annual return and assessment orders of 1,058 taxpayers (124 CTOs) and noticed that 86 taxpayers (40 CTOs) availed ITC of ₹ 35.46 crore in Table 5 (c) of TRAN-1. The Assessing Authorities (AAs) while finalising the assessment passed ex-parte assessment orders and allowed NIL ITC in these cases. Since these cases were re-opened for final assessment under Section 32 of UPVAT Act, 2008, hence in the absence of admissible ITC to these taxpayers, claim of ITC was not ascertained. This will be examined in subsequent audit, after the final assessment orders are passed (Appendix I).

### **Audit findings**

Audit report presents the systemic as well as compliance issues noticed during the audit. Systemic issues address the adequacy and effectiveness of the envisaged verification mechanism relating to the admissibility of transitional credit while the compliance issues address the deviations in individual cases from the codal provisions relevant to the admissibility of the transitional credit to the taxpayers. The audit findings are discussed in detail in the succeeding paragraphs.

#### **2.1.7 Systemic issues**

The systemic issues comprise the verification mechanism envisaged by the Department in terms of extent of coverage against the targets, policy/procedural gaps in the verification mechanism, challenges with dual control and efficiency of the recovery process. Apart from the statutory requirements prescribed under both Legacy as well as GST laws, the Department had specified transitional credit verification as one of the key focus areas for the year 2018-19.

Rule 121 of UPGST Rules, 2017 specifies that the amount of transitional credit may be verified, and proceedings may be initiated for recovery of excess

<sup>5</sup> (i) Three taxpayers of Sector 2 CT Noida, two taxpayers of Sector 11 CT Noida and one Taxpayer of Sector 3 CT Hapur could not be audited due to taxpayers falling under Central jurisdiction.

(ii) Two taxpayers involving transitional credit of ₹ 1.09 crore of Sector 11 CT Noida could not be audited due to non-production of the records to audit.

(iii) One taxpayer of Sector 12 CT Ghaziabad pertains to Gorakhpur, one taxpayer of Sector 11 CT Lucknow pertains to Jhansi, two taxpayers of JC (CC) I CT Lucknow pertain to Raebareli, one taxpayer of JC (CC) I CT Lucknow pertains to Amethi, one taxpayer of Sector 12 CT Lucknow pertains to Raebareli could not be audited as the cases were appearing in sectors other than the selected sectors. Further, five taxpayers pertaining to Modi Nagar, one taxpayer of Varanasi Zone-II, JC (CC) II Varanasi pertains to Sonebhadra and one taxpayer pertains to Sector 3 CT Bhadohi could not be audited due to time constraints and negligible number of cases pertaining to that sector.

<sup>6</sup> Two Sectors JC (CC) CT II Varanasi (Sonebhadra) and Sector 3 Bhadohi under Varanasi Zone II, could not be audited due to time constraints and negligible number of cases pertaining to that sector.



claim along with interest, which shall be initiated in respect of any credit wrongly availed whether wholly or partly.

Audit examination indicated inadequacies in the verification mechanism envisaged and adopted by the Department. The verification process was yet to be completed even after a lapse of more than four years since new tax regime had been implemented.

### **2.1.7.1 Inadequacy in verification mechanism adopted by Department**

To ensure the seamless flow of input tax from the existing laws to GST regime, a transitional arrangement 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 paid under existing laws. Carrying the credit of existing laws through Transitional credit arrangements is a one-time process; hence, there ought to be adequate and effective monitoring mechanism at each and every step.

(i) In 124 Sector offices audit examined the verification of TRAN-1 cases filed by the taxpayers. It was found that in 35<sup>7</sup> sectors transitional credit cases had been verified, in 53<sup>8</sup> sectors verification was under process. In 22<sup>9</sup> sectors it could not be confirmed whether verification had been done or not; in three sectors<sup>10</sup> the Department replied that no such system was in the portal and in 11 sectors<sup>11</sup> transitional credit cases had not been verified. Thus, even after the lapse of more than four years since implementation of GST in July 2017, transitional credit claims have not been verified and finalised. Thus, the possibility of tax evasion can not be ruled out due to considerable lapse of time.

Audit reported the matter to the Department (April 2022). During Exit Conference (July 2022), the Department stated that the arrangement was new and due to COVID also, the work of verification of TRAN could not be completed.

(ii) During scrutiny of Transitional credit claims it was found that a taxpayer M/s T J Power Electrical Private Limited G B Nagar (09AAFCT1878D1Z6), out of 30 taxpayers of Sector 1 CT G B Nagar, filed his TRAN-1 on 30 August 2017 and claimed ITC of ₹ 29.23 lakh. However, audit noticed that an amount of ₹ 36.25 lakh was credited in his Electronic Credit Ledger (ECL) on the same date instead of ₹ 29.23 lakh. Due to this deficiency in GST Portal possibility of excess availment of ITC in other cases could not be ruled out.

<sup>7</sup> Sector 1,2,3,4,5,6,7,8,9,10,11,12,13,15,16,17,18,19 and 20 CT Agra, Sector 2, 9 and 15 CT Ghaziabad, Sector 4, 6, 9 and 29 CT Kanpur, JC (CC) CT Oil Sector Lucknow, Sector 6 CT Lucknow, Sector 5 CT Mathura and Sector 8 CT Noida, Sector 3 CT Hapur, Sector 6 CT Meerut, Sector CT Sikandrabad, Sector 7 CT Varanasi, JC (CC) CT Varanasi.

<sup>8</sup> JC (CC) CT Agra, JC (CC) CT (Range B) G B Nagar, Sector 1 and 2 CT G B Nagar. JC (CC) II CT Ghaziabad, Sector 1, 4, 5,10, 17 and 18 CT Ghaziabad, JC (CC) I and II CT Kanpur, Sector 1, 2, 3, 5, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 30 CT Kanpur, Sector CT Kanpur Dehat, JC (CC) I and II CT Lucknow, Sector 1, 5, 7, 13, 14, 15, 17, 18, 21 and 22 CT Lucknow and Sector 12 CT Noida.

<sup>9</sup> Sector 3 G.B. Nagar, Sector 3,7,8,11, 12, 13, 14, 16,19 CT Ghaziabad, Sector 2,3,9,10,12, 19, 20 CT Lucknow, Sector 3, 4, 5, 6, 9 CT Noida.

<sup>10</sup> Sector 4, 11 CT Lucknow, JC (CC) I CT Ghaziabad.

<sup>11</sup> Sector 6 CT Ghaziabad, Sector 8 and 16 CT Lucknow, JC (CC) CT Range A Noida, Sector 1, 2, 7, 10, 11, 13, 14 CT Noida.

However, the taxpayer filed revised TRAN-1 on 05 December 2017 and an amount of ₹ 7.02 lakh was debited in ECL.

Audit reported the matter to the Department (April 2022). In reply and in Exit Conference (July 2022), the Department accepted the audit observation and stated that this was due to new system. There were technical problems on GSTN portal. However, the taxpayer has taken self-cognizance and filed revision of transitional credit in TRAN-1 by debiting in his electronic credit ledger the amount of ₹ 7.02 lakh.

### **Compliance issues**

The compliance issues pertain to the validity and admissibility of the transitional credits carried over by individual assesses into GST regime. During audit scrutiny of selected cases, findings related to availment of excess ITC in specified tables of TRAN-1 were noticed which are briefly discussed in succeeding paragraphs.

Audit observed compliance deviations in 165 claims (in 68 Sectors) out of 1,058<sup>12</sup> cases (in 124 Sectors), audited constituting an error rate of 15.60 *per cent*. These compliance deviations are detailed in the ensuing paragraphs.

#### **2.1.8 Availment of Excess credit through Table 5(c) of TRAN-1**

Section 140(1) of UPGST Act, 2017 stipulates that a registered person, other than a person opting to pay tax under Section 10, shall be entitled to take, in his Electronic Credit Ledger (ECL), credit of amount VAT and Entry Tax, if any carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law within such time and in such manner as may be prescribed. Further, Rule 117 (1) of UPGST Rules, 2017 stipulates that every registered person entitled to take credit of input tax under Section 140 shall, within ninety days of the appointed day, submit a declaration electronically in FORM GST TRAN-1 duly signed, on the Common Portal specifying therein, separately, the amount of ITC to which he is entitled under the provisions of the said section:

Provided that the Commissioner may, on the recommendations of the GST council, extend the period of ninety days by a further period not exceeding ninety days:

Provided that in the case of a claim under sub-section (1) of Section 140, the application shall specify separately-

- (i) the value of claims under Section 3, sub-section (3) of Section 5, Sections 6 and 6A and sub-section (8) of Section 8 of the Central Sales Tax Act, 1956 made by the applicant; and
- (ii) the serial number and value of declarations in Forms C or F and certificates in Forms E or H or Form I specified in Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 submitted by the applicant in support of the claims referred to in sub-clause (i).

---

<sup>12</sup> Out of 1,058 taxpayers (124 Sectors) - 915 taxpayers (116 Sectors) pertain to Table 5c, 226 taxpayers (65 Sectors) pertain to Table 6b, 148 taxpayers (60 Sectors) pertain to Table 7b, 91 taxpayers (55 Sectors) pertain to Table 7c, 106 taxpayers (64 Sectors) pertain to Table 7d, 20 taxpayers (17 Sectors) pertain to Table 10A, 18 taxpayers (12 Sectors) pertain to Table 10B and 31 taxpayers (15 Sectors) pertain to Table 11.

---

### 2.1.8.1 Excess availment of Input Tax Credit through TRAN-1 carried over from assessment orders

Audit test-checked (between July 2021 and December 2021), the TRAN-1, last legacy returns, annual return and assessment order of 915<sup>13</sup> taxpayers of 116 CTOs (who claimed transitional credit under Table 5 (c)) out of 1,058 taxpayers (124 CTOs) and noticed that 60 taxpayers of 37 CTOs<sup>14</sup> availed ITC of ₹ 35.99 crore in Table 5(c) of TRAN-1. The AAs, while finalising the assessments allowed ITC of ₹ 16.49 crore only to these taxpayers. This resulted in excess claim of ITC of ₹ 19.50 crore as Transitional Credit which was recoverable from the defaulting taxpayers, though no demand was raised (Appendix-II).

Audit reported the matter to the Department (April 2022). In reply and in Exit Conference (July 2022), the Department accepted the audit observation in eight cases amounting to ₹ 15.07 lakh and in all eight cases recovery of ₹ 15.07 lakh was reported by them. In 14 cases<sup>15</sup> amounting to ₹ 4.09 crore the Department replied that in GST regime the taxpayers are transferred to Central jurisdiction and all the action will be done at their end. The information has been sent to concerned Central Tax Authorities. The reply of Department is not acceptable as in this regard CBEC under D.O.F. 267/8/2018-CX.8 dated 14<sup>th</sup> March, 2018 issued the Guidance Note on CGST Transitional Credit. As per para-12 of the Guidance Note “12. Jurisdiction: CGST officer of the Central Government shall have the jurisdiction for verification of Transitional Credit of CGST irrespective of whether the taxpayer is allotted to the Central Government or State Government for the purposes of GST. This is because, TRAN credit verification process can only be done by the tax authority which had legal jurisdictions under the erstwhile law and also has the requisite past record of the taxpayer.” Since these taxpayer were registered in Commercial Tax Department in VAT regime and had the requisite past record. Hence verification was to be done as per above direction. In remaining 38 cases amounting to ₹ 15.26 crore the Department replied that action is under process.

### 2.1.8.2 Excess Input Tax Credit carried over from Last Legacy Returns

- (i) Audit test-checked (between July 2021 and December 2021), the TRAN-1, last legacy returns, annual return and assessment orders of 915 taxpayers of 116 CTOs (who claimed transitional credit under Table 5 (c)) out of 1,058 taxpayers (124 CTOs) and noticed that 44

<sup>13</sup> Total no. of Transitional Credit claims checked under Table 5c out of 1,058 cases.

<sup>14</sup> Sector 1, 5, 13 and 15 CT Agra, Sector 1 CT G B Nagar, Sector 4, 12, 13, 16 and 17 CT Ghaziabad, JC (CC) II, Sector 3, 6, 7, 10, 12, 14, 15, 21, 27 and 30 CT Kanpur, Sector 4, 9, 13, 14, 20 and 22 CT Lucknow and Sector 1, 2, 4, 8, 9, 10, 11, 12, 13 and 14 CT Noida.

<sup>15</sup> Sector 1 CT Agra (09AAACG6742N2Z5), Sector 5 CT Agra (09AACCP8075H1Z2), Sector 1 CT GB Nagar (09AAACI8344L1Z6), Sector 4 CT Ghaziabad (09AAFCS9163C1Z7), Sector 16 CT Ghaziabad (09AADCN6561H1Z8), Sector 30 CT Kanpur (09AAKFB8041Q1ZT), Sector 13 CT Lucknow (09AANPA0571D1Z2), Sector 20 CT Lucknow (09AAACL2561J1ZG, 09AAFFT3039B1ZF, 09AAHFJ5785G1ZW), Sector 4 CT Noida (09AACFJ5445Q1ZR), Sector 10 CT Noida (09AAACC0034F1ZA), Sector 14 CT Noida (09AAGCP5711L1Z4, 09AABCK8424C1ZP).

taxpayers of 33 CTOs<sup>16</sup> carried forward ITC of ₹ 10.15 crore in their last returns. However, the taxpayers availed ITC of ₹ 20.24 crore in their Table 5(c) of TRAN-1 instead of eligible ITC of ₹ 10.15 crore as per last legacy return. These Transitional Credit claims were made between August 2017 and December 2017 but even after the lapse of four years the Department was not able to check the correctness of the Transitional Credit claims resulted in excess availment of ITC of ₹ 10.09 crore which was recoverable from the defaulting taxpayers (**Appendix- III**).

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department accepted the audit observation in nine cases amounting to ₹ 1.38 crore and in all nine cases recovery of ₹ 1.32 crore was reported by them. In seven cases<sup>17</sup> amounting to ₹ 2.54 crore, the Department's reply is not acceptable as mentioned in para 2.1.8.1. In remaining 28 cases amounting to ₹ 6.17 crore, the Department replied that action is under process.

- (ii) Audit test-checked (September 2021), the records of 915 taxpayers of 116 CTOs (who claimed transitional credit under Table 5 (c)) out of 1,058 taxpayers (124 CTOs) and noticed that a taxpayer M/s Omega International (09AEMPA0823R1Z7) of Sector 20 CT Kanpur had availed credit of ₹ 24.37 lakh in Table 5(c) of TRAN-1 as per ITC carried forward shown in his last legacy return. Audit further noticed that in the annual return, taxpayer had shown carried forward ITC as NIL. As per assessment order, the taxpayer was eligible for ITC of ₹ 23.19 lakh, out of which the amount of ₹ 20.89 lakh was refunded to taxpayer and balance ₹ 2.30 lakh was adjusted against tax payable by taxpayer in VAT period. Hence the taxpayer had no ITC in VAT period for carrying forward. Accordingly, availment of ₹ 24.37 lakh through TRAN-1 was irregular and to be recovered. Thus, the AA, did not properly examine the facts which resulted in excess claim of ITC of ₹ 24.37 lakh.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department stated that action is under process.

### **2.1.8.3 Availment of Irregular Excess Input Tax Credit on pending declaration Forms**

Audit test-checked (between July 2021 and December 2021), the TRAN-1, last legacy returns, annual return and assessment order of 915 taxpayers of 116 CTOs (who claimed transitional credit under Table 5 (c)) out of 1,058 taxpayers (124 CTOs) and noticed that six taxpayers of six CTOs<sup>18</sup> availed ITC of ₹ 1.18 crore in TRAN-1 through Table 5(c). Audit noticed that taxpayers had not submitted declaration Forms 'C' and 'F' for the turnover covering ₹ 38.00 crore before the AAs at the time of final assessment, bearing

---

<sup>16</sup> Sector 1, 5, 11, 13, 16 and 20 CT Agra, Sector 1, 2 and 3 CT G B Nagar, Sector 1, 4, 5, 10 and 17 CT Ghaziabad, Sector 2, 5, 7, 11, 13, 16, 17 and 20 CT Kanpur, Sector 8, 12, 14, 15 and 16 CT Lucknow and Sector 1, 2, 9, 12, 13 and 14 CT Noida.

<sup>17</sup> Sector 5 CT Agra (09AAHFM0091Q1ZR), Sector 1 CT Ghaziabad (09AAACW0019N1Z8), Sector 4 CT Ghaziabad (09AAYFA1337J1Z1, 09AABCT3284F2Z9), Sector 14 CT Noida (09AAICS2757B1ZC, 09AAFCS0587C1ZD, 09AALPJ3073F1ZO).

<sup>18</sup> Sector 3 and 5 CT Ghaziabad, Sector 12, 15 and 17 CT Kanpur and Sector 10 CT Noida.

a tax effect of ₹ 3.94 crore. This tax was to be deducted from ITC available with taxpayers. The taxpayers wrongly carried forward ITC of ₹ 64.28 lakh out of ₹ 1.18 crore in Table 5(c) of TRAN-1 for which the declaration Forms 'C' and 'F' was pending. This resulted in excess claim of ITC of ₹ 64.28 lakh (limited to the extent of claim in TRAN-1) which was recoverable (**Appendix-IV**).

Audit reported the matter to the Department (April 2022). In two cases<sup>19</sup> amounting to ₹ 48.68 lakh, the Department's reply and statement in Exit Conference (July 2022) is not acceptable as mentioned in para 2.1.8.1. In two cases, the Department did not accept the audit observation. The analysis of the Department's reply in these two cases is listed in **Table-2.3**.

Table-2.3

Sl. No.	Audited Unit/ Observation in brief	Department's reply in brief	Rebuttal
1	<b>Sector 12 CT Kanpur:</b> Irregular Excess ITC of ₹ 7,67,644 was availed by the taxpayer against the pending declaration Forms C of ₹ 4,91,73,009.	The Department stated that final assessment order under Section 28 (2) (i) read with Section 32 has been passed on 30.03.2022 in which four nos. of pending Form C for ₹ 4.88 crore are produced. Hence, tax at the rate of 2 per cent is levied.	The reply is not acceptable, as in the annual return and ex-parte assessment order ITC of ₹ 8,33,596 was balance but despite the pending declaration Form C the taxpayer availed ITC of ₹ 7,67,644 in TRAN-1. Thus, the taxpayer irregularly availed ITC of ₹ 7,67,644 at the time of claiming ITC in TRAN-1
2	<b>Sector 15 CT Kanpur:</b> Irregular Excess ITC of ₹ 2,87,095 was availed by the taxpayer against the pending declaration Forms C of ₹ 95,69,842.	The Department stated that observation is based on ex-parte assessment order. Final assessment order under Section 28 (2) (i) read with Section 32 has been passed on 23.04.2022 in which ITC of ₹ 11.83 lakh has been carried forward.	The reply is not acceptable, as although the assessment was ex-parte but it was stated in assessment order that Forms of ₹ 95,69,842 were pending and ITC of ₹ 11,83,178 was carried forward in which ITC of ₹ 2,87,095 was irregular. Thus, the taxpayer irregularly availed ITC of ₹ 2,87,095 at the time claiming ITC in TRAN-1.

In remaining two cases amounting to ₹ 5.05 lakh the Department replied (July 2022) that action is under process.

<sup>19</sup> Sector 5 CT Ghaziabad (09ACEPG2119G1ZZ) and Sector 10 CT Noida (09AABCN7151P1ZX).

#### **2.1.8.4 Availment of Excess Input Tax Credit in the Table 5(c) of TRAN-1 due to Excess ITC brought forward from year 2016-17 to 2017-18**

- (i) Audit test-checked (between July 2021 and December 2021), the TRAN-1, last legacy returns, annual return and assessment order of 915 taxpayers of 116 CTOs (who claimed transitional credit under Table 5 (c)) out of 1,058 taxpayers (124 CTOs) and noticed that three taxpayers of three CTOs<sup>20</sup> filed TRAN-1 and carried forward ITC of ₹ 66.93 lakh in Table 5(c) of TRAN-1. Scrutiny of legacy returns and assessment order of year 2016-17 and 2017-18 revealed that ITC of ₹ 38.56 lakh was available in the year 2016-17 to these taxpayers, however, the taxpayers wrongly brought forwarded ITC of ₹ 51.32 lakh in year 2017-18. Thus, taxpayers carried forward ITC of ₹ 12.76 lakh in 2017-18 in excess, from which taxpayers wrongly claimed ITC of ₹ 9.60 lakh in TRAN-1 which was recoverable (**Appendix-V**).

In one case<sup>21</sup> amounting to ₹ 1.79 lakh, the Department's reply (July 2022), is not acceptable as mentioned in para 2.1.8.1. In remaining two cases amounting to ₹ 7.80 lakh the Department replied that action is under process.

- (ii) Audit test-checked (August 2021), the records of 915 taxpayers of 116 CTOs (who claimed transitional credit under Table 5 (c)) out of 1,058 taxpayers (124 CTOs) and noticed that a taxpayer M/s Bharat Prints (09AALPW0556A1ZN) of Sector 1 CT G B Nagar carried forward ITC of ₹ 12.23 lakh in Table 5(c) of TRAN-1. Audit further noticed that as per legacy return and assessment order for the year 2016-17 and 2017-18, ITC of ₹ 10.71 lakh was earned by taxpayer in year 2016-17 on purchase of colour, dyes and chemicals which was reversed by the AA, as there was no taxability admitted by the taxpayer on use of colour, dye and chemical in printing of clothes. However, ITC of ₹ 10.71 lakh was carried forward by taxpayer in its return of June 2017 from year the 2016-17. Also in the year 2017-18 taxpayer claimed ITC of ₹ 1.52 lakh on the purchases. As taxpayer did not admit taxability on use of colour, dyes and chemicals in printing of clothes, no ITC should have been allowed to the taxpayer. Hence, ITC claim of ₹ 12.23 lakh in TRAN-1 by the taxpayer was not in order and was required to be reversed.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department stated that action is under process.

#### **2.1.8.5 Irregular Claim of TDS as Input Tax Credit allowed in TRAN-1 of Table 5(c)**

As per Section 140 of UPGST Act, 2017 in the TRAN-1 ITC claim is allowed in cases of ITC available in last legacy returns with Taxpayer, unavailed credit of capital goods, ITC of goods in transit taken in account within 30 days of appointed day and ITC of stock of exempted goods, tax free goods and goods which have suffered first time tax on sale but sale of which are not subject to tax in existing law but are now taxable in GST law.

---

<sup>20</sup> Sector CT Kanpur Dehat, Sector 12 and 13 CT Lucknow.

<sup>21</sup> Sector CT Kanpur Dehat (09AGJPA9427E1ZF).

Audit test-checked (November 2021), the TRAN-1, last legacy returns, annual return and assessment order of 915 taxpayers of 116 CTOs (who claimed transitional credit under Table 5 (c)) out of 1,058 taxpayers (124 CTOs) and noticed that a taxpayer M/s OSS Construction Pvt Ltd Noida (09AACCO0915H1ZM) of Sector 13 CT Noida had availed credit of ₹ 23.78 lakh in Table 5(c) of TRAN-1 which was also allowed by AA in his assessment order. However, audit observed that the amount of ₹ 23.78 lakh pertaining to Tax Deducted at Source was claimed by taxpayer in TRAN-1 which was not in accordance with the above mentioned provisions of the GST Act. Thus, AA while passing the assessment order, did not properly examine the facts which resulted in excess claim in TRAN-1 of ₹ 23.78 lakh which was recoverable from the taxpayer.

Audit reported the matter to the Department (April 2022). In reply and in Exit Conference (July 2022), the Department stated that action is under process.

#### **2.1.8.6 Non-recovery of ITC wrongly claimed in TRAN-1**

Audit test-checked (November 2021) the TRAN-1, last legacy returns, annual return and assessment order of 915 taxpayers of 116 CTOs (who claimed transitional credit under Table 5 (c)) out of 1,058 taxpayers (124 CTOs) and noticed that a taxpayer M/s Shalimar KSMB Projects Lucknow (09ACFFS5832H1ZV) of Sector 14 CT Lucknow engaged in the construction of flats, claimed ITC of ₹ 1.45 crore in Table 5(c) of TRAN-1 as per his last legacy return. The AA while finalising assessment for the year 2016-17 allowed ITC of ₹ 1.04 crore to the extent of the supplies of 48.53 *per cent* made in execution of the construction of flats for which contracts had been executed with the prospective buyers, out of total ITC of ₹ 2.12 crore earned on purchase of construction materials. Remaining ITC of ₹ 1.08 crore was forfeited and no ITC was carried forward for the next year. Similarly in year 2017-18 ITC of ₹ 33.95 lakh (to the extent of supplies of 48.95 *per cent*) out of the total ITC of ₹ 69.36 lakh was allowed by the AA and remaining ITC of ₹ 35.41 lakh was forfeited. Hence no ITC was carried forward for the next tax period.

Thus claim of ITC of ₹ 1.45 crore in TRAN-1 was irregular and was required to be recovered from the contractor. The AA, failed to recover the excess claim of ITC of ₹ 1.45 crore.

Audit reported the matter to the Department (April 2022). In reply and in Exit Conference (July 2022), the Department stated that action is under process.

#### **2.1.9 Availment of Excess credit through Table 6(b)**

Section 140(2) of UPGST Act, 2017 stipulates that a registered person, other than a person opting to pay tax under Section 10, shall be entitled to take, in his ECL, credit of the unavailed ITC in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day within such time and in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as ITC under the existing law and is also admissible as ITC under this Act.

*Explanation.* -For the purposes of this sub-section, the expression “unavailed ITC means the amount that remains after subtracting the amount of ITC already availed in respect of capital goods by the Taxpayer under the existing law from the aggregate amount of ITC to which the said person was entitled in respect of the said capital goods under the existing law.”

Rule 117(1) of UPGST Rule, 2017 stipulates that every registered person entitled to take credit of input tax under Section 140 shall, within ninety days of the appointed day, submit a declaration electronically in FORM GST TRAN-1 duly signed, on Common Portal specifying therein, separately, the amount of ITC to which he is entitled under the provisions of the said section:

Further, Rule 117(2) of UPGST Rule, 2017 stipulates that every declaration under sub-rule (1) shall-

- (a) In the case of a claim under sub-section (2) of Section 140, specify separately the following particulars in respect of every item of capital goods as on the appointed day-
  - (i) the amount of tax or duty availed or utilised by way of input tax credit under each of the existing laws till the appointed day; and
  - (ii) the amount of tax or duty yet to be availed or utilised by way of input tax credit under each of the existing laws till the appointed day.

#### **2.1.9.1 Availment of Excess Input Tax Credit in the Table 6(b) of TRAN-1 due to difference between TRAN-1 and Assessment Order**

Audit test-checked (between July 2021 and December 2021), the TRAN-1, last legacy returns, annual return and assessment order of 226<sup>22</sup> taxpayers of 65 CTOs (who claimed transitional credit under Table 6 (b)) out of 1,058 taxpayers (124 CTOs) and noticed that eight taxpayers of eight CTOs<sup>23</sup> filed TRAN-1 and claimed ITC of ₹ 97.48 lakh of capital goods in Table 6(b) of TRAN-1 in respect of VAT period. However, audit noticed that they were eligible for total unavailed ITC of capital goods of ₹ 55.08 lakh only as determined in assessment order. The taxpayer wrongly claimed ITC of capital goods of ₹ 97.48 lakh instead of total eligible unavailed ITC of ₹ 55.08 lakh. This resulted into excess claim of ITC of ₹ 42.40 lakh of capital goods over and above unavailed in VAT period as Transitional Credit and same was recoverable (**Appendix-VI**).

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department accepted the audit observation in one case amounting to ₹ 13.02 lakh and recovery of the (₹ 13.02 lakh) same was reported. In one case<sup>24</sup> amounting to ₹ 0.12 lakh, the Department reply is not acceptable as mentioned in para 2.1.8.1. In one case the Department did not accept the audit observation. The analysis of the Department's reply in this case is listed in **Table-2.4**.

---

<sup>22</sup> Total no. of Transitional Credit claims checked under Table 6(b) out of 1,058 cases.

<sup>23</sup> Sector 15 CT Agra, Sector 9 and 17 CT Ghaziabad, Sector 14 CT Kanpur, Sector 22 CT Lucknow and Sector 2, 4 and 13 CT Noida.

<sup>24</sup> Sector 4 CT Noida (09AACFJ5445Q1ZR).



Table-2.4

Sl. No.	Audited Unit/ Observation in brief	Department's reply in brief	Rebuttal
1	<b>Sector 9 CT Ghaziabad:</b> Excess ITC of capital goods of ₹ 3,84,886 was availed by the taxpayer in the Table 6(b) of TRAN-1.	The Department stated that in annual return and assessment order of year 2017-18, by mistake ITC of ₹ 9,99,343 could not be shown. Now this mistake has been amended under Section 31 of UPVAT Act.	The reply is not acceptable, as this amendment of ITC of ₹ 9,99,343 does not affect the ITC claim of capital goods ITC. This pertains to ITC claimed in Table 5(C) of TRAN-1. Thus, ITC of capital goods of ₹ 3,84,886 was recoverable from taxpayer.

In the remaining five cases amounting to ₹ 25.41 lakh, the Department replied (July 2022) that action is under process.

#### 2.1.9.2 Availment of Excess Input Tax Credit of capital goods in table 6(b) of TRAN-1 due to difference between TRAN-1 and Annual Return

Audit test-checked (between September 2021 and December 2021), the TRAN-1, last legacy returns, annual return and assessment order of 226 taxpayers of 65 CTOs (who claimed transitional credit under Table 6 (b)) out of 1,058 taxpayers (124 CTOs) and noticed that three taxpayers of three CTOs<sup>25</sup> filed TRAN-1 and claimed ITC of ₹ 2.35 crore of capital goods in Table 6(b) of TRAN-1 in respect of VAT period. However, in the annual return they had carried forward unavailed ITC of capital goods of ₹ 32.87 lakh. Thus, the taxpayers wrongly claimed ITC of capital goods of ₹ 2.02 crore which was recoverable in light of UPGST Act, 2017 (**Appendix-VII**).

Audit reported the matter to the Department (April 2022). In reply and in Exit Conference (July 2022), the Department stated that action is under process.

#### 2.1.9.3 Availment of non-verified Input Tax Credit of capital goods due to details not furnished in TRAN-1 by Taxpayer

Audit test-checked (between July 2021 and December 2021), the TRAN-1, last legacy returns, annual return and assessment order of 226 taxpayers of 65 CTOs (who claimed transitional credit under Table 6 (b)) out of 1,058 taxpayers (124 CTOs) and noticed that 12 taxpayers of seven CTOs<sup>26</sup> filed TRAN-1 and claimed unavailed ITC of capital goods of VAT period of ₹ 5.09 crore in Table 6(b) of TRAN-1. However, it was noticed that invoices detail relating to purchase of capital goods was not available in TRAN-1. Further since the Department did not produce any annual returns, assessment orders, the audit was not in position to verify the correctness of the amount claimed and availed by these taxpayers (**Appendix-VIII**).

<sup>25</sup> JC (CC) II CT Ghaziabad and JC (CC) II and Sector 27 CT Kanpur.

<sup>26</sup> JC (CC) I, II, Sector 4, 7 CT Ghaziabad, Sector 11 CT Lucknow and Sector 10 and 14 CT Noida.

Audit reported the matter to the Department (April 2022). In 10 cases<sup>27</sup> amounting to ₹ 4.85 crore the Department's reply and statement in Exit Conference (July 2022) is not acceptable as mentioned in para 2.1.8.1. In the remaining two cases amounting to ₹ 24.54 lakh the Department replied that action is under process.

#### **2.1.10 Availment of Excess credit through Table 7(b)**

Section 140(5) of UPGST Act, 2017 stipulates that a registered person shall be entitled to take, in his ECL, credit of VAT and entry taxes, if any, in respect of inputs received on or after the appointed day but the tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day.

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days.

Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

Section 2(f) of UPVAT Act stipulates that capital goods used in execution of works contract had not included in definition of capital goods under Section 13 of UPVAT Act for the purpose of claim of ITC. As per Section 6(2) of UPVAT Act, no ITC was allowed to dealers opting to pay tax under compounding scheme. Section 140(2) of UPGST Act 2017 provides that the registered person shall not be allowed to take credit unless the said credit was admissible as ITC under the existing law and is also admissible as ITC under this Act.

##### **2.1.10.1 Availment of Irregular Input Tax Credit in the Table 7(b) of TRAN-1**

- (i) Audit test-checked (between July 2021 and December 2021), the TRAN-1, last legacy returns, annual return and assessment order 148<sup>28</sup> taxpayers of 60 CTOs (who claimed transitional credit under Table 7 (b)) out of 1,058 taxpayers (124 CTOs) and noticed that nine taxpayers of nine CTOs<sup>29</sup> filed TRAN-1 and availed credit of ₹ 2.81 crore in Table 7(b) of TRAN-1. However, details of invoices, description of goods, quantity, value, tax and date of entry in books of accounts as required as per provisions of the Act were not filled in the Table 7(b) of TRAN-1. Thus, in the absence of above details, ITC of ₹ 2.81 crore was not admissible to taxpayers and required to be recovered. The AAs, failed to

---

<sup>27</sup> JC (CC I) CT Ghaziabad (09AAACS0229G1ZN, 09AAACR1435K1ZD), JC (CC II) CT Ghaziabad (09AAACA9942Q1ZY, 09AAACB1247M1ZN, 09AAACS0189B1ZM), Sector 7 CT Ghaziabad (09AAACS1110J1ZQ), Sector 10 CT Noida (09AABCL5987H1Z0, 09AACCO2600H1ZS) and Sector 14 CT Noida (09AACCG4124A1Z7, 09AAACP9581G1ZY).

<sup>28</sup> Total no. of Transitional Credit claims checked under Table 7(b) out of 1,058 cases.

<sup>29</sup> Sector 1, 3 CT G B Nagar, JC (CC) II, Sector 5 CT Ghaziabad, JC (CC) II, Sector 29 and 30 CT Kanpur, Sector 8 CT Lucknow and Sector 13 CT Noida.

examine the facts during passing assessment orders, which resulted in excess claim of ITC ₹ 2.81 crore through TRAN-1 (**Appendix-IX**).

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department accepted audit observation in one case amounting to ₹ 0.88 lakh. In three cases<sup>30</sup> amounting to ₹ 2.53 crore, the Department's reply and statement in Exit Conference is not acceptable as mentioned in para 2.1.8.1. In one case the Department did not accept the audit observation. The analysis of the Department's reply in this case is listed in **Table-2.5**.

Table-2.5

Sl. No.	Audited Unit/ Observation in brief	Department's reply in brief	Rebuttal
1	<b>Sector 8 CT Lucknow:</b> Irregular ITC of ₹ 1,10,503 was availed by the taxpayer in the Table 7(b) of TRAN-1.	The Department stated that after examining annual return, Balance Sheet, P&L account with purchase and sale detail and assessment order, a notice was issued to taxpayer. The taxpayer replied that amount of ₹ 2.38 lakh is related to commission and incentive head in P&L account and no component of tax is involved in it. This amount is also not part of sale.	The Department did not address the issue of claiming ITC in Table 7(b) in its reply.

In the remaining four cases amounting to ₹ 26.00 lakh the Department replied (July 2022) that action is under process.

- (ii) Audit test-checked (November 2021), the TRAN-1, last legacy returns, annual return and assessment order of 148 taxpayers of 60 CTOs (who claimed transitional credit under Table 7 (b)) out of 1,058 taxpayers (124 CTOs) and noticed that a taxpayer M/s HDPL infrastructure Ltd. Lucknow (09AABCH1939H1ZK) out of 12 taxpayers of Sector 21 CT Lucknow claimed ITC of ₹ 26.79 lakh in the Table 7(b) of TRAN-1 on the goods held in stock. Audit noticed that taxpayer was engaged in works contract. However, he had claimed ITC of ₹ 1.94 lakh on invoices of capital goods. Thus, ITC of ₹ 1.94 lakh claimed by the taxpayer was not in accordance with provisions of the Act and was required to be disallowed. The AA did not properly examine the facts which resulted in irregular claim of ITC of ₹ 1.94 lakh through TRAN-1 which was recoverable.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department stated that action is under process.

### 2.1.11 Irregular Allowance of Input Tax Credit in the Table 7(c) of TRAN-1 on Capital Goods

Section 140(2) of UPGST Act, 2017 stipulates that a registered person, other than a person opting to pay tax under Section 10, shall be entitled to taken in his ECL, credit of the un-availed ITC in respect of capital goods, not carried forward in the return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed. Provided that the registered person shall not be allowed

<sup>30</sup> Sector 1 CT G B Nagar (09AAACI8344L1Z6), JC (CC) II CT Ghaziabad (09AAACA9942Q1ZY) and Sector 5 CT Ghaziabad (09AABCF8078M1ZZ).

to take credit unless the said credit was admissible as ITC under the existing law and is also admissible as ITC under this Act.

Rule 21 (1) (n) of UP VAT Rules, 2008 stipulates that no credit of any amount of input tax shall be allowed in respect of goods which are capital goods and such capital goods have been purchased by a dealer for use or consumption in the manufacture of any exempt goods.

Audit test-checked (December 2021), the TRAN-1, last legacy returns, annual returns and assessment order of 91<sup>31</sup> taxpayers of 55 CTOs (who claimed transitional credit under Table 7 (c)) out of 1,058 taxpayers (124 CTOs) and noticed that a taxpayer M/s Indian Oil Corporation Ltd. (09AAACI1681 G1ZN) out of two taxpayers in the office of the JC (CC) CT Oil Sector, Lucknow engaged in manufacturing and selling of tax free goods (LPG) during VAT period, claimed ITC of ₹ 4.73 crore in Table 7(c) of TRAN-1 on cylinder and LPG DPR (Pressure Regulator) (capital goods) used in manufacturing and distribution of domestic LPG. As taxpayer was engaged in manufacturing and selling of tax free goods no credit of input tax was admissible to him on capital goods as per above provisions of the Rules. The AA, while finalising the assessment of the taxpayer failed to examine claim of ITC of ₹ 4.73 core in Table 7(c) of TRAN-1 which was not in accordance with the aforementioned provisions of the Act and required to be disallowed.

Audit reported the matter to the Department (April 2022). In reply and in Exit Conference (July 2022), the Department accepted the audit observation amounting to ₹ 4.73 crore out of which recovery of ₹ 4.73 crore was reported.

#### **2.1.12 Non-verification of Claim of Input Tax Credit in the Table 11 of TRAN-1**

Section 142(11)(c) of UPGST Act, 2017 stipulates that where tax was paid on any supply both under the UP VAT Act, 2008 and under Chapter V of the Finance Act, 1994 (32 of 1994), tax shall be leviable under this Act and the taxpayer shall be entitled to take credit of VAT or Service Tax (ST) paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed. Further, under Rule 118 of UP GST Rules, 2017 a taxpayer has to furnish the proportion of supply on which VAT or ST has been paid before the appointed day but the supply is made after the appointed day, and the ITC admissible thereon.

Audit test-checked (September 2021), the TRAN-1, last legacy returns, annual return and assessment order of 31<sup>32</sup> taxpayers of 15 CTOs (who claimed transitional credit under Table 11) out of 1,058 taxpayers (124 CTOs) and noticed that 11 taxpayers out of 25 taxpayers of Sector 16 CT, Ghaziabad filed TRAN-1 and claimed ITC of ₹ 51.97 crore in Table 11 of TRAN-1. Further, these taxpayers had furnished the details of invoices of purchase of goods, tax paid and VAT paid taken as SGST credit as required in Table 11 of TRAN-1, however, the details and bifurcation of supplies made before the appointed date and after the appointed date were not available as prescribed in the Act and Rules. In the absence of these required details, ITC claim of ₹ 51.97 crore of these taxpayers was not ascertained (**Appendix-X**).

---

<sup>31</sup> Total no. of Transitional Credit claims checked under Table 7(c) out of 1,058 cases.

<sup>32</sup> Total no. of Transitional Credit claims checked under Table 11 out of 1,058 cases.

---

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department accepted the audit observation amounting to ₹ 61.55 lakh in one case out of which recovery of ₹ 61.55 lakh was reported. In six cases<sup>33</sup> amounting to ₹ 47.63 crore, the Department's reply and statement in Exit Conference is not acceptable as mentioned in para 2.1.8.1. In remaining four cases amounting to ₹ 3.73 crore the Department replied that action is under process.

### **2.1.13 Interest not recovered on availment of Excess Input Tax Credit in TRAN-1**

Section 73 (1) of UPGST Act, 2017 stipulates that where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where ITC has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful mis-statement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised ITC, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon at the rate of 18 *per cent* per annum.

Audit test-checked (between July 2021 and December 2021), the TRAN-1, last legacy returns, annual return and assessment order of 1,058 taxpayers of 124 CTOs and noticed that three taxpayers of three CTOs<sup>34</sup> filed TRAN-1 and claimed ITC of ₹ 11.78 lakh through TRAN-1. However, ITC of ₹ 67.85 lakh was credited in their ECL. Hence, the dealers wrongly availed ITC of ₹ 67.85 lakh instead of admissible ITC of ₹ 40.66 lakh. This resulted in excess claim of ITC of ₹ 27.19 lakh which was recoverable along with interest payable thereon. However, it was noticed that the taxpayers deposited excess ITC of ₹ 27.19 lakh without paying interest of ₹ 11.78 lakh. The interest amount was neither deposited by taxpayers nor demanded by the Department (Appendix-XI).

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department accepted the audit observation amounting to ₹ 0.49 lakh in one case out of which recovery of ₹ 0.49 lakh was reported. In remaining two cases amounting to ₹ 11.28 lakh the Department replied in Exit Conference that action is under process.

### **2.1.14 Conclusion and Recommendation**

Audit examination indicated inadequacies in the verification mechanism envisaged and adopted by the Department. The verification process was yet to be completed even after a lapse of more than four years since new tax regime had been implemented. 86 taxpayers (40 CTOs) availed ITC of ₹ 35.46 crore in Table 5 (c) of TRAN-1 and ex-parte assessment orders were passed with NIL ITC in these cases, resulting claim of ITC was not ascertained in these 86

<sup>33</sup> Sector 16 CT Ghaziabad (09AACCI9503M107, 09AAACM6572A1ZN, 09AADCG9947J1ZY, 09AADCN2095A1ZP, 09AAACX0984F1Z6 and 09AADCG9948H1Z2).

<sup>34</sup> Sector 1 CT G B Nagar, Sector 2 CT Ghaziabad and Sector 2 CT Kanpur.

cases. Audit observed compliance deviations in 165 claims (in 68 Sectors) out of 1,058<sup>35</sup> cases (in 124 Sectors), audited with money value ₹ 99.56 crore.

**Recommendation:**

**The Government may consider fixing a timeline for verification of transitional credit claims and direct the concerned officers for examination of the claims of transitional credit along with the relevant supporting documents within the stipulated timeline. Cases of excess availment of transitional credit pointed out by Audit may also be re-assessed.**

## **2.2 Compliance Audit on ‘Processing of refund claims under Goods and Services Tax’**

### **2.2.1 Tax administration**

The Additional Chief Secretary (Commercial Tax and Entertainment Tax), Uttar Pradesh administers the UPGST Act and rules framed thereunder. The Commissioner, Commercial Tax (CCT), Uttar Pradesh is the head of the Commercial Tax Department (CTD). He/she is assisted by 100 Additional Commissioners, 157 Joint Commissioners (JCs), 494 Deputy Commissioners (DCs), 964 Assistant Commissioners (ACs) and 1,275 Commercial Tax Officers (CTOs). Since 1 July, 2017, the Department is administering the Goods and Services Tax (GST) in the State under existing Laws.

Goods and Services Tax (GST)<sup>36</sup> is levied on intra-State supply of goods or services (except alcohol for human consumption and upon five specified petroleum products<sup>37</sup>) separately but concurrently by the Union (CGST) and the States (SGST)/Union Territories (UTGST). Further, under the provisions of the new taxation regime, Integrated GST (IGST) is being levied on inter-State supply of goods or services (including imports).

### **2.2.2 Introduction**

GST refund refers to any amount that is due to the taxpayer from the tax administration; The provisions pertaining to refund contained in the GST laws aim to streamline and standardise the refund procedures under the GST regime. The relevant provisions embodied in Section 54 of UPGST Act, 2017 and in Rules 89(1) and 89 (2) of UPGST Rules, 2017 give an overview of the various situations that may necessitate a refund claim. Due to unavailability of electronic refund module on the common portal, a temporary mechanism was devised and implemented. **Circular No. 17/17/2017-GST dated 15.11.2017 and Circular no. 24/24/2017-GST dated 21.12.2017** was 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 print out of the same and submit it physically to the jurisdictional tax office along with all supporting documents.

---

<sup>35</sup> Out of 1,058 taxpayers (124 Sectors) - 915 taxpayers (116 Sectors) pertain to Table 5c, 226 taxpayers (65 Sectors) pertain to Table 6b, 148 taxpayers (60 Sectors) pertain to Table 7b, 91 taxpayers (55 Sectors) pertain to Table 7c, 106 taxpayers (64 Sectors) pertain to Table 7d, 20 taxpayers (17 Sectors) pertain to Table 10A, 18 taxpayers (12 Sectors) pertain to Table 10B and 31 taxpayers (15 Sectors) pertain to Table 11.

<sup>36</sup> Central GST: CGST and State/Union Territory GST: SGST/UTGST.

<sup>37</sup> Petroleum Products: crude, high speed diesel, petrol, aviation turbine fuel and natural gas.

Master Circular No.125/44/2019-GST dated 18 November 2019 narrates a set of guidelines for electronic submission and processing of refund claims. However, the provisions of the earlier circulars were continued to apply for all refund applications filed on the common portal before 26 September 2019 and the application shall continue to be processed manually as was done prior to deployment of new system.

### **2.2.3 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 taxpayer.
- (iii) Whether effective internal control mechanism exists to check the performance of the departmental officials in disposing the refund applications.

### **2.2.4 Audit criteria**

The following comprised the audit criteria:

- (i) Uttar Pradesh Goods and Service Tax Act, 2017
- (ii) Uttar Pradesh Goods and Service Tax Rules, 2017
- (iii) Integrated Goods and Service Tax Act, 2017
- (iv) Notification/Circulars issued from time to time by the Government/ Department

### **2.2.5 Scope of Audit and Audit Methodology**

The audit methodology involves verification of correctness of refund claims of registered persons sanctioned by the Department. It also involves scrutiny of records available with the Department in respect of refund cases. During field audit, the refund cases processed between July 2017 to July 2020 in the selected cases in offices of CTD were examined. An entry conference was held with Commissioner Commercial Tax on 25 March 2021. Field Audit was conducted between February 2021 to November 2021. The draft was issued to the Government and the Department on 28 April 2022. The Department's reply was received on 6 July 2022.

### **2.2.6 Sample Selection**

GSTN has provided PAN-India Refund Data from July 2017 till July 2020. Considering that the refund data available varies drastically on either side of 26 September 2019, refund risk parameters for these two stages are also different. Since no other relevant risk parameters are available for period prior to 26 September 2019, the refund applications under each category were sorted in descending order of refund amount claimed by taxpayers. Thereafter, sorted refund applications were divided into 4 quartiles and sample drawn. For selecting refund applications, filed after 26 September 2019, a composite risk score was devised using risk parameters such as refund amount claimed (60 *per cent* weightage), delay in sanctioning refund (15 *per cent*), Refund sanctioned/refund claimed ratio (10 *per cent*) and deficiency memo

issued (15 per cent). Based on the above arrived risk score, refund applications were selected for period after 26 September 2019.

A sample of 1,442 (751 pre automation and 691 post automation) refund cases were selected for scrutiny by audit which were spread across 152 sectors of the Commercial Tax Department. Out of which 12<sup>38</sup> refund cases could not be examined due to non-production of records. Therefore, the audit could verify 1,430 cases out of sample of 1,442 cases. Details of selected cases are as follows:

**Table 2.6**

Sl. No.	Refund category	Number	Amount (₹ in crore)	No. of Sectors/ CTOs
1.	Refund of unutilised Input Tax Credit (ITC) on account of exports without payment of tax	823	504.74	80
2.	Refund of tax paid on export of goods and services with payment of tax	5	5.67	4
3.	Refund of unutilised ITC on account of supplies made to SEZ unit/SEZ developer without payment of tax	17	27.14	3
4.	Refund of tax paid on supplies made to SEZ unit/SEZ developer with payment of tax	4	3.81	2
5.	Refund of unutilised ITC on account of accumulation due to inverted tax structure	375	940.91	87
6.	Refund to supplier of tax paid on deemed export supplies	5	1.04	2
7.	Refund to recipient of tax paid on deemed export supplies	2	0.99	1
8.	Refund of excess balance in electronic cash ledger	145	31.71	77
9.	Refund of excess payment of tax	11	1.67	10
10.	Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and vice versa	1	0.58	1
11.	Refund on account of assessment/provisional assessment/appeal/any other order	18	1.43	6
12.	Refund on account of any other ground or reason	36	6.28	30
<b>Total</b>		<b>1,442</b>	<b>1,525.97</b>	

### **Audit findings**

During detailed scrutiny of 1,430 refund claims, Audit observed following delays in sanction of refund claims, excess/ irregular grant of refunds and other miscellaneous lapses while processing refund claims.

**Table 2.7**

Sl. No.	Nature of audit observations	Total				Percentage of deficiency to Audit sample (no. wise)
		Audit sample		Deficiency		
		No.	Amount (in ₹ crore)	No.	Tax effect (in ₹ crore)	
1	Acknowledgement not issued within time	1,430	1,523.50	76	NA	5.31
2	Refund orders not sanctioned in time	1,430	1,523.50	122	0.14	8.53
3	Excess/Irregular grant of refund	1,430	1,523.50	31	5.51	2.17
4	Miscellaneous lapses in processing of refund claims	1,430	1,523.50	15	NA	1.05

<sup>38</sup> Eight refund cases of DC Sector-15 Ghaziabad and four cases of DC Sector-16 Ghaziabad were not produced to audit by department which was stated to have been destroyed in fire.



The audit findings are discussed in the succeeding paragraphs.

### 2.2.7 Acknowledgement not issued within time

Section 54 (7) of the UPGST Act, 2017 read with Rule 90 (1) and (2) of UPGST Rules, 2017 stipulates that where the application relates to a claim for refund from the Electronic Credit Ledger (ECL), an acknowledgement in Form GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period i.e., 60 days specified for processing of refund application. For the application related to refund other than ECL, the application shall be forward to the proper officer within a period of 15 days of filing of the said application, scrutinize the application for its completeness. An acknowledgment in Form GST RFD-02 shall be made available to the applicant within 15 days through the common portal.

Audit test checked 739 pre-automation and 691 post-automation sampled cases of 152 CTOs (between February to November 2021) and it was noticed in 30 pre-automation and 46 post-automation refund cases of 36 CTOs<sup>39</sup> that there were delay of more than six months in one case, three months to six months in three cases and less than three months in 72 cases, in issue of acknowledgement in the processing of the refunds of ₹ 65.85 crore. This has resulted in non-observance of the provisions of Rule 90 of the SGST Rules 2017. The details are given in **Appendix-XII**.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department accepted audit observations and stated various reasons for the acknowledgements not issued within time such as system deficiencies, countrywide lockdown during COVID pandemic and in cases related to the pre-automation period dealers not submitted refund applications in hard copy along with the supporting documents due to unacquaintance to new GST system and insisted that no loss of revenue has been occurred.

The Department's reply is self-evident regarding reasons furnished for the delay in acknowledgements not being issued within time.

### 2.2.8 Refund orders not sanctioned in time

Section 54(7) of the UPGST Act, 2017 read with Rule 92 of the UPGST 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 and then 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. The proper officer should also mention therein the amount, if any, refunded to him on a provisional basis in case of zero-rated supply. As per Section 56 of the UPGST Act, 2017 if any

<sup>39</sup> Sector-04 Agra, Sector-10 Agra, Sector-11 Agra, Sector-12 Agra, Sector-13 Agra, Sector-16 Agra, Sector-01 Aligarh, Sector-11 Aligarh, JC-CC-I Ghaziabad, JC CC-CC-II Ghaziabad, Sector-04 Ghaziabad, Sector-06 Ghaziabad, Sector-13 Ghaziabad, Sector-15 Ghaziabad, Sector-17 Ghaziabad, Sector-02 G.B. Nagar, JC-CC-I Kanpur, Sector-01 Kanpur, Sector-05 Kanpur, Sector-06 Kanpur, Sector-11 Kanpur, Sector-13 Kanpur, Sector-21 Kanpur, Sector-22 Kanpur, Sector-24 Kanpur, Sector-26 Kanpur, Sector-27 Kanpur, Sector-28 Kanpur, Sector-04 Lucknow, Sector-07 Lucknow, Sector-01 Moradabad, Sector-04 Moradabad, Sector-05 Moradabad, Sector-06 Moradabad, Sector-09 Moradabad, Sector-10 Noida.

refund payable to the applicant is not refunded within 60 days from the date of receipt of application, interest at the rate of 6/9 *per cent* will be paid.

Audit test checked 739 pre-automation and 691 post-automation sampled cases of 152 CTOs (between February to November 2021) and it was noticed in 110 pre-automation and 12 post-automation refund cases of 25 CTOs<sup>40</sup> that there were delay of more than six months in 19 cases, three to six months in 35 cases and less than three months in 68 cases in sanction of refunds. Consequently, the Department has not paid interest of ₹ 13.99 lakh u/s 56 (7) of UPGST Act, 2017 to the claimants for the delay sanctioned of refund of ₹ 8.77 crore. The details are given in **Appendix-XIII**.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department accepted audit observations and stated various reasons for the refund orders not sanctioned in time such as system deficiencies, countrywide lockdown during COVID pandemic and in cases related to the pre-automation period dealers not submitted refund applications in hard copy along with the supporting documents due to unacquaintance to new GST system and insisted that no loss of revenue has been occurred.

The Department's reply is self-evident regarding reasons furnished for the refund orders not being sanctioned in time.

#### **2.2.9 Provisional refund not sanctioned within time**

Section 54 (6) of the UPGST Act, 2017 read with Rule 91 of UPGST Rules, 2017 provides that the provisional refund on account of zero rate supply of goods and services 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. Thereafter the proper officer will scrutinize the application and the evidences submitted by the applicant. 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 not exceeding seven days from the date of the acknowledgement.

Audit test checked (between February to November 2021) 856 cases of 85 CTOs related to zero rated supply out of 1,430 sample cases of 152 CTOs and it was noticed in 10 pre-automation and one post-automation refund cases of seven CTOs<sup>41</sup> that there were delay in sanction of provisional refunds ranging from two to 52 days. This has resulted in non-observance of the aforementioned provisions. The details are given in **Appendix-XIV**.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department accepted the audit observations in five cases. The Department did not accept the audit observations in remaining six cases. The analysis of the replies in cases the Department did not accept the audit observations are listed in **Table-2.8**.

---

<sup>40</sup> JC-CC Agra, Sector-09, 10, 15, Agra, JC-CC-Gorakhpur, JC (CC-II) Kanpur, Sector 06, 09, 13, 15, 16, 20, 21, 26 & 28 Kanpur, Sector-09 Lucknow, Sector 01, 05, 06, 07, 09,10 Moradabad, Sector 03 & 04 Noida, Sector-01 Prayagraj.

<sup>41</sup> Sector-01,09,12,15 Agra, JC (CC)-II Kanpur, Sector-06 Moradabad and Sector-12 Noida.

Table-2.8

Sl. No.	Audited unit/ Observation in brief	Department's reply in brief	Rebuttal
1	<b>Sector-1 Agra:</b> There was delay of 37 days in sanction of provisional refund.	The Department stated that a fresh application was filed on 09.08.2019 after issuing of deficiency memo 12.07.2019 and provisional refund was timely sanction on 13.08.2019.	The reply is not acceptable as there was no relevance of issuing deficiency memo on 12.07.2019 after issuing acknowledgement to the applicant on 01.07.2019
2	a. <b>JC (CC)-II Kanpur:</b> There was delay of 13 days in sanction of provisional refund.	The Department stated that RFD-04 was issued on 05.07.2019 by making the amount of Rs 15.66 lakh inadmissible.	The Department in its reply did not provide any reason for delay in sanction of RFD-04.
	b. There was delay of 33 days in sanction of provisional refund.	The Department stated that RFD-04 was issued on 22.10.2019 by making the amount of Rs 11.99 lakh inadmissible.	
	c. There was delay of 17 days in sanction of provisional refund.	The Department stated that RFD-04 was issued on 05.07.2019 by making the amount of Rs 1.86 lakh inadmissible.	
3	a. <b>Sector-12 Noida:</b> There was delay of 51 days in sanction of provisional refund.	The Department stated that the supporting documents with refund application were in quantum and not readable.	The Department accepted the delay due to the quantum of the documents and non-readability of the documents.
	b. There was delay of 48 days in sanction of provisional refund.		

### 2.2.10 Irregular grant of provisional refund

As per Section 54(6) of UPGST Act, 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 total amount of refund claimed may be sanctioned on a provisional basis and thereafter the proper officer shall issue an order under sub Section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant. Thus, sanction of provisional refund is sanctioned on account of zero rated supply of goods and / or services and not in other categories.

Audit test checked (between February to November 2021) 586 cases of 134 CTOs which related to other than zero rated supply of goods and services 1,430 sample cases of 152 CTOs and it was noticed in 3 refund cases of two CTOs<sup>42</sup> the registered persons had claimed refund of ₹ 1.05 crore in the refund categories i.e., excess payment of tax, inverted tax structure and any other categories. The Department, sanctioned the provisional refund of ₹ 94.59 lakh to the registered persons, whereas provisional refund is sanctioned only on account of zero rated supply of goods and/or services. The Department while finalising the refund did not properly examine the return of supply of goods and services resulted in irregular refund of ₹ 94.59 lakh. The details are given in **Appendix-XV**.

<sup>42</sup> Sector-03 Noida and Sector-05 Kanpur.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department accepted the audit observations in two cases. In one case, the Department did not accept the audit observation. The analysis of the Department's reply in this case is listed in **Table 2.9**.

**Table 2.9**

Sl. No.	Audited unit/ Observation in brief	Department's reply in brief	Rebuttal
1	<b>Sector-5, CT, Kanpur:</b> Provisional refund was sanctioned in excess payment of tax category while U/s 54(6) it is allowed only in zero rated category.	The Department stated that there is no restriction to issue the provisional refund under other category along with zero rated supply of goods and services or both u/s 54(6) of UPGST Act.	The reply is not acceptable, as per section 54 (6) of UPGST Act, provisional refund is allowed only in zero rated cases.

### **2.2.11 Refund amount included ITC availed on services and capital goods**

As per Section 54 (3) of the UPGST Act, 2017 refund of unutilized ITC can be claimed by a registered person at the end of any tax period. Rule 89(4) of the UPGST Rules, 2017 prescribes formula<sup>43</sup> for granting refund in case of zero-rated supply of goods or services. In case of zero rated supply of goods and services the "Net ITC" means ITC availed on inputs and input services during the relevant period and in case of inverted tax structure, ITC earned on inputs only. Section 73 of the CGST/SGST Act, 2017 stipulates that erroneous refund amount has to be recovered from the taxpayer along with applicable interest under Section 50.

Audit test checked (between February to November 2021) 1,231 cases of 136 CTOs which related to zero rated supply of goods and services and inverted duty structure out of 1,430 sample cases of 152 CTOs and it was noticed in three pre-automations and six post-automation cases of seven CTOs<sup>44</sup> the registered person had claimed refund of ₹ 4.17 crore which was sanctioned by the Department. The registered persons had included ITC of ₹ 18.48 lakh availed on services and capital goods in Net ITC while calculating refund claims. Omission on the part of the Department to examine the returns resulted in excess sanction of refund of ₹ 17.28 lakh which was recoverable with interest of ₹ 4.07 lakh. The details are given in **Appendix-XVI**.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department accepted the audit observations in nine cases amounting to ₹ 17.29 lakh along with interest of ₹ 4.07 lakh, out of which in three cases recovery of ₹ 2.31 lakh along with interest of ₹ 0.33 lakh and penalty of ₹ 0.20 lakh was reported by the Department. In six cases the Department stated that the action of recovery is under process.

<sup>43</sup> In case of zero-rated supply of goods and services the Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover and in case of inverted rated supply of goods and services the Refund Amount = (Turnover of supply of inverted rated supply of goods + Turnover of inverted rated supply of services) x Net ITC / Adjusted Total Turnover – Tax payable on such inverted rated supply of goods and services.

<sup>44</sup> Sector-06 & 08 Ghaziabad, Sector-03 G.B. Nagar, JC-CC-B, G.B. Nagar, Sector-09, 10 & Sector-14 Noida.

### 2.2.12 Excess allowance of refund on inverted tax structure

As per Section 54 (3) of the UPGST Act, 2017 a registered person may claim refund of any unutilised 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 UPGST Rules, 2017 prescribes the formula<sup>45</sup> for maximum refund of unutilised ITC on account of inverted duty structure. As per the Rule, for the purpose of calculation of refund Net ITC includes the ITC availed on purchases of inputs during the relevant period but does not include credit availed on input services and capital goods.

Audit test checked (between February to November 2021) 375 cases of 80 CTOs related to inverted duty structure out of 1,430 sample cases of 152 CTOs and it was noticed that in one pre-automation case of the JC-CC Range-B, CT, Noida, the registered person had claimed refund of ₹ 1.23 crore on account of inverted rated supply of goods and services category which was sanctioned by the AA. The registered person had claimed Net ITC of ₹ 1.76 crore after deducting ITC of ₹ 12.16 lakh related to services from gross ITC of ₹ 1.88 crore during the relevant period. As per audit calculation ITC related to services was of ₹ 17.96 lakh. Thus, ITC of ₹ 5.80 lakh related to services was additionally deductible from gross ITC. The Department, while finalising the refund, did not properly examine this fact resulting in excess refund of ₹ 5.26 lakh which was recoverable with interest of ₹ 1.08 lakh. The details are given in **Appendix-XVII**.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department accepted the audit observation and recovery of tax of ₹ 5.67 lakh along with interest of ₹ 2.07 lakh was reported.

### 2.2.13 Refund sanctioned by tax authority after relevant period of two years

As per sub-Section (1) and (3) of Section 54 of UPGST Act, 2017, any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date<sup>46</sup> in such form and manner as may be prescribed. As per Rule 61 of UPGST Rules, 2017 return for each month, or part thereof may be submitted on or before the twentieth day of the month succeeding such month.

Audit test checked (between February to November 2021) 1297 cases of 135 CTOs related to other than refund of excess balance in electronic cash ledger out of 1,430 sample cases of 152 CTOs and it was noticed that in one post-automation refund case of the inverted tax structure of DC Sector-04 CT Agra, the registered person had claimed for refund of ₹ 11.11 lakh on 22 January 2020 pertaining to the period from July 2017 to September 2017. As per Rules, return filing date for the month of September 2017 was 20 October 2017. The maximum time limit for the claim of refund of above mentioned

<sup>45</sup> Refund Amount = (Turnover of supply of inverted rated supply of goods + Turnover of inverted rated supply of services) x Net ITC / Adjusted Total Turnover – Tax payable on such inverted rated supply of goods and services.

<sup>46</sup> The relevant date means in the case of refund of unutilised input tax credit, the due date for furnishing of return under section 39 for the period in which such claim for refund arises.

period was up to 20 September 2019 whereas refund was claimed on 22 January 2020, beyond the maximum period of two years. The Department, while finalising the refund did not consider the aspect of relevant date and irregularly sanctioned the refund. The details are given in **Appendix-XVIII**.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department accepted the audit observation and levied the tax of ₹ 11.11 lakh along with penalty of ₹ 1.11 lakh and applicable interest.

#### **2.2.14 Excess/Irregular allowance of refund due to non-consideration of documentary evidences**

Section 54 (4) of the UPGST Act, 2017 stipulates that the application for refund shall be accompanied by the documentary evidences to establish that a refund is due to the applicant. Rule 89 (2) (h) of UPGST Rules, 2017 envisaged that refund application on account of inverted tax structure shall be accompanied by (i) statement containing the number and date of invoices received during a tax period (ii) statement containing the number and date of the invoices issued during a tax period. Further Rule 89 (5) of the UPGST Rules 2017 prescribes the formula for maximum refund of unutilized ITC on account of inverted duty structure. As per the Rule, Net ITC includes the ITC availed only on inputs during the relevant period and does not include credit availed on input services.

Audit test checked 739 pre-automation and 691 post-automation sampled cases of 152 CTOs (between February to November 2021) and it was noticed that in two pre-automation and one post-automation cases of three CTOs<sup>47</sup> the registered persons had claimed refund of ₹ 83.83 lakh, which was sanctioned by the Department. The Department considered the Net ITC of ₹ 3.91 crore as claimed by the registered person instead of Net ITC of ₹ 2.60 crore as depicted in documentary evidences (statement-1A and annexure 'B'). The Department, while finalising the cases did not examine the facts resulted in excess/irregular refund of ₹ 72.80 lakh. The details are given in **Appendix-XIX**.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department partially accepted the Audit observation and recovered the tax amount along with interest. In another case amounting to ₹ 36.37 lakh action is under process. In one case, the Department did not accept the audit observation. The analysis of the Department's reply in this case is listed in **Table 2.10**.

**Table-2.10**

Sl. No.	Audited unit/ Observation in brief	Department's reply in brief	Rebuttal
1	<b>JC (CC)-I Ghaziabad:</b> The AA considered net ITC of ₹ 190.36 lakh instead of ₹ 124.12 lakh as depicted in statement 1A while computing the refund resulted in irregular refund of ₹ 35.68 lakh.	The balance of ECL (Electronic Credit Ledger) was ₹ 192.44 lakh, at the end of June 2019. Statement 1A shows ITC on purchase.	The Department's reply is not acceptable. Since in Statement-1A submitted by the registered person with refund application, the Net ITC was ₹ 124.12 lakh which was allowable for refund calculation.

<sup>47</sup> Sector-05 Agra, JC-CC-I, Ghaziabad and Sector-06 Ghaziabad.

### 2.2.15 Excess allowance of refund of IGST payment

Section 16 (3) of IGST Act, 2017 stipulates that a registered person may supply goods or services or both, subject to such condition, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of Section 54 of the CGST Act or the Rules made thereunder.

Audit test checked (between February to November 2021) 9 cases of 8 CTOs related to zero rated supply of goods and services (with payment of tax) out of 1,430 sample cases of 152 CTOs and it was noticed that in one refund case of JC (CC)-I, CT, Lucknow, the registered person had claimed for the refund of ₹ 1.35 crore of IGST paid on export of goods for the month of September 2018. As per return 3B of September 2018 the registered person had exported zero-rated goods of ₹ 1.62 crore and paid IGST of ₹ 67.33 lakh. As per provisions of the Act registered person was eligible for the refund of ₹ 67.33 lakh only to the extent of the IGST paid on export of zero-rated goods. The Department, failed to examine the returns properly resulting in excess refund of ₹ 67.22 lakh which was recoverable with interest of ₹ 35.40 lakh. The details are given in **Appendix-XX**.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department stated that the refund was related to the period of 2018-19 and November and December 2017.

The reply of the Department is not acceptable as the claimed period (September 2018) was clearly mentioned in the refund application RFD-01 which was allowable for refund. The period of November and December 2017 was not admissible which was not mentioned in the refund application.

### 2.2.16 Excess allowance of refund due to non-consideration of Net ITC

Section 54 (4) of the UPGST Act, 2017 stipulates that the application for refund shall be accompanied by the documentary evidences as may be prescribed. Rule 89 (2) (b) of UPGST Rules, 2017 envisaged that refund application on account of export of goods shall be accompanied by (i) statement containing the number and date of shipping bill/bill of export (ii) statement containing the number and date of relevant export invoices. Further, Rule 89 (4) of UPGST Rules, 2017 prescribes the formula<sup>48</sup> for calculation of refund of ITC in case of exports under BOND/LUT.

Audit test checked (between February to November 2021) 1,231 cases of 136 CTOs related to zero rated supply goods and services and inverted duty structure out of 1,430 sample cases of 152 CTOs and it was noticed that in one pre-automation case of DC Sector 14 Noida, the registered persons had claimed refund of ₹ 51.51 lakh which was sanctioned by the Department. The registered persons had shown Net ITC of ₹ 51.51 lakh RFD 01A<sup>49</sup> instead of ₹ 36.21 lakh as per detail submitted in support of ITC for February 2019. While as per prescribed formula for maximum refund of unutilised ITC on

<sup>48</sup> Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC/Adjusted Total Turnover.

<sup>49</sup> Refund application.

account of zero-rated supply of goods and services the maximum amount of refund admissible was ₹ 36.21 lakh. The Department did not properly examine the details submitted in support of ITC resulted in excess refund of ₹ 15.29 lakh which was recoverable with interest of ₹ 6.54 lakh. The details are given in **Appendix-XXI**.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department did not accept the audit observation and stated that Section 54 (3) the registered person can claim refund of unutilised ITC at the end of any tax period. The reply is not acceptable as the registered person was allowed for refund of the relevant period as claimed in the refund application RFD-01 (February 2019). The refund for November 2018 was not admissible as it was not related to relevant period.

#### **2.2.17 Excess allowance of refund due to non-consideration of export value of shipping bill**

Section 54 (4) of the UPGST Act, 2017 stipulates that the application for refund shall be accompanied by the documentary evidences as may be prescribed. Rule 89 (2) (b) of UPGST Rules, 2017 envisaged that refund on account of export of goods required a statement containing the number and date of Shipping Bill/Bill of Export and a statement containing the number and date of relevant export invoices. Sub-rule 4 of Rule 89 provides formula<sup>50</sup> for grant of refund in cases of zero-rated supply of goods without payment of tax under bond or LUT. Section 73 of the CGST Act, 2017 stipulates that erroneous refund amount has to be recovered from the taxpayer along with applicable interest under Section 50.

Audit test checked (between February to November 2021) 828 cases of 87 CTOs related to zero rated supply out of 1,430 sample cases of 152 CTOs and it was noticed that in one post-automation refund case of DC Sector-14, CT, Noida, the registered person had claimed refund of ₹ 45.88 lakh and stated export of ₹ 7.22 crore in RFD-01 instead of export turnover on shipping bill amount of ₹ 6.10 crore against which refund of ₹ 45.60 lakh was as sanctioned by the Department. Whereas, considering the actual export amount of the shipping bill, the amount of refund admissible was ₹ 43.42 lakh. The Department, while finalising the refund claim, did not consider the shipping bill amount for export which resulted in excess refund of ₹ 2.18 lakh, was recoverable with interest of ₹ 65,879. The details are given in **Appendix-XXII**.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department stated that some export bills of Rs 1.20 crore were left to upload which were later uploaded in GSTR-1. The reply of the Department is not acceptable as the registered person was allowed for refund whose supporting statement of shipping bills were produced at the time of refund application.

---

<sup>50</sup> Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero rated supply of services) x Net ITC/Adjusted Total Turnover.



### 2.2.18 Excess allowance of refund on incorrect adjusted total turnover

Section 54 (3) subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised ITC at the end of any tax period. As per rule 89 (4) (E) of UPGST Rule, 2017 “Adjusted Total turnover” means the turnover in a State or a Union territory, as defined under clause (112) of Section 2, excluding the value of exempt supplies other than zero-rated supplies, during the relevant period<sup>51</sup>. Section 73 of the UPGST Act, 2017 stipulates that erroneous refund amount has to be recovered from the registered person along with applicable interest under Section 50.

Audit test checked (between February to November 2021) 1,215 cases of 123 CTOs related to zero rated supply of goods and services and inverted duty structure category, out of 1,430 sample cases of 152 CTOs and it was noticed that in one pre-automation refund case of DC Sector-13, CT Noida the registered person claimed for the refund of ₹ 25.31 lakh for the month of August and September 2017 which was sanctioned by the Department. The taxable person while calculating the maximum refund amount to be claimed, had showed adjusted total turnover ₹ 2.49 crore, turnover of zero rated supply of goods and services ₹ 2.49 crore and Net ITC ₹ 25.31 lakh in RFD-01<sup>52</sup>. While in the GSTR-1 of September 2017, taxable supply was ₹ 30.84 lakh and export supply was ₹ 2.49 crore. In the month of August 2017, no supply was made. Thus, applying the corrected adjusted total turnover of ₹ 2.80 crore in the formula<sup>53</sup>, total refund amount admissible is ₹ 22.52 lakh only. The Department, while finalising the refund claim, did not check the total turnover in the formula which resulted in excess refund of ₹ 2.79 lakh which was recoverable with interest of ₹ 1.39 lakh. The details are given in **Appendix-XXIII**.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department accepted the audit observation and stated that action of recovery was under process.

### 2.2.19 Excess allowance of refund including irrelevant period of shipping bills

Section 54(4) of the UPGST Act, 2017 stipulates that the application for refund shall be accompanied by the documentary evidences as may be prescribed. As per Rule 89(2)(b) of UPGST Rule, 2017 the refund application on account of export of goods and services will be accompanied with a statement containing the number and date of shipping bill/bill of export and number and date of relevant export invoices. Further, as per Rule 89 (4) (C) of

<sup>51</sup> “Relevant period” means the period for which the claim has been filed. Further, as per Section 2 clause (112) “turnover in State” or “turnover in Union territory” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes Central tax, State tax, Union territory tax integrated tax and cess.

<sup>52</sup> Application for refund.

<sup>53</sup> Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC/Adjusted Total Turnover.

UPGST Rule 2017, the turnover of zero rated supply of goods is to be considered against the supplies made during the relevant period for which refund is claimed.

Audit test checked (between February to November 2021) 823 cases of 82 CTOs related to zero rate supply of goods and services out of 1,430 sample cases of 152 CTOs and it was noticed that during the audit of four CTOs<sup>54</sup>, in three pre-automation and two post-automation cases on account of zero rate supply of goods and services the registered persons had claimed refund of ₹ 4.82 crore which was sanctioned by the Department. The registered persons had shown zero-rated supply of goods of ₹ 87.07 crore and adjusted total turnover ₹ 133.78 crore. While calculating turnover of zero-rated supply of goods the taxable persons had included the exports turnover of ₹ 21.71 crore which did not pertain to the relevant period as detailed in shipping bills. Turnover of exports made during the relevant period as per shipping bill comes to ₹ 65.36 crore only and the refund calculated in audit of ₹ 4.09 crore only. The Department, sanctioned the refund without considering the correct amount of zero rated supply of goods, resulting in excess refund of ₹ 72.12 lakh<sup>55</sup> which was recoverable with interest of ₹ 29.08 lakh till date of audit. The details are given in **Appendix-XXIV**.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department accepted the audit observations in four cases amounting to ₹ 37.53 lakh along with interest of ₹ 18.61 lakh and stated that action of recovery was under process. In one case, the Department did not accept the audit observation. The analysis of the Department's reply in this case is listed in **Table 2.11**.

**Table-2.11**

Sl. No.	Audited unit/ Observation in brief	Department's reply in brief	Rebuttal
1	<b>JC-CC G.B. Nagar:</b> The AA allowed the refund without considering the correct amount of zero rated supply of goods, resulting in excess refund of ₹ 34.58 lakh which was recoverable with interest.	Shipping bills amounting to ₹ 6.43 crore were received before filing of GSTR-1 of October 2019, therefore it was not declared in GSTR-1 and 3B of October 2019 and it was taken in the calculation of the refund for the month of October 2019.	The reply of the Department is not acceptable as the refund claimed was to be allowed only for the relevant period (November -2019). The refund claim of October 2019 was not admissible as not related to relevant period.

### **2.2.20 Excess allowance of refund of blocked credits**

Section 17 (5) of UPGST Act, 2017 stipulates that where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business. Notwithstanding anything contained in sub-section (1) of Section 16 and sub-section (1) of Section 18, ITC shall not be available in respect of blocked credits<sup>56</sup>.

<sup>54</sup> JCCC Range-A Noida, Sector-01 Noida, Sector-08 Noida and Sector-09 Noida.

<sup>55</sup> (₹ 4.82 crore - ₹ 4.09 crore).

<sup>56</sup> Servicing of motor vehicles, food and beverages.

Audit test checked (between February to November 2021) 1,231 cases of 136 CTOs related to zero rate supply of goods and services and inverted duty structure out of 1,430 sample cases of 152 CTOs and it was noticed that in one pre-automation and one post-automation refund cases of two CTOs<sup>57</sup>, the registered persons had claimed refund of ₹ 47.78 lakh against which ₹ 47.49 lakh was sanctioned by the Department. The registered persons had earned ITC of ₹ 60.13 lakh during the relevant period, in which ₹ 2.24 lakh was related to services of motor vehicles and on services for which refund was not permissible. Hence Net ITC of ₹ 57.89 lakh was admissible to the registered person. Applying the correct Net ITC in formula<sup>58</sup> maximum amount of refund comes to ₹ 45.68 lakh. While processing the refund this aspect was not taken into consideration by the AAs resulting in excess refund of ₹ 1.81 lakh which is recoverable with interest of ₹ 68,321. The details are given in **Appendix-XXV**.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department accepted the audit observations in both cases amounting to ₹ 1.81 lakh along with interest of ₹ 68,321 and recovery of ₹ 1.81 lakh along with interest of ₹ 68,321 lakh was reported.

### **2.2.21 Excess allowance of refund due to wrong claimed amount of services**

As per Rule 89(4) of UPGST Rules, 2017 the zero rated supply of services described as “Zero rated supply of services is the aggregate of the payments received during the relevant period for zero rated supply of services and zero rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero rated supply of services for which the supply of services had not been completed”.

Audit test checked (between February to November 2021) 1,219 cases of 123 CTOs related to zero rated supply of goods and services and inverted duty structure out of 1,430 sample cases of 152 CTOs and it was noticed that in two refund cases on account of zero rated supply of services of two CTOs<sup>59</sup>, the registered persons had claimed refund of unutilised ITC of ₹ 2.93 crore which was sanctioned by the Department. The registered persons had shown turnover of zero rated supply of services to ₹ 21.79 crore instead of ₹ 15.06 crore. The Department, wrongly calculated refund amount of ₹ 2.93 crore instead of ₹ 2.34 crore considering the zero rated supply of services of ₹ 21.79 crore as per prescribed formula<sup>60</sup>, which resulted in excess refund of ₹ 58.57 lakh, the same is recoverable with interest of ₹ 26.56 lakh. The details are given in **Appendix-XXVI**.

<sup>57</sup> Sector-02 Noida and Sector-13 Noida.

<sup>58</sup> Turnover of inverted rated supply of goods and services x Net ITC/Adjusted total turnover – Tax payable on such inverted rated supply of goods and services in case of INVITC and Turnover of zero rated supply of goods and services x Net input tax credit/Adjusted total turnover in case of export of goods/services.

<sup>59</sup> Sector-08 Noida and Sector-09 Noida.

<sup>60</sup> Turnover of zero rated supply of goods and services x Net input tax credit/Adjusted total turnover.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department accepted both the audit observations and stated that action of recovery was under process.

#### **2.2.22 Irregular allowance of refund due to ITC sanctioned twice on the same invoice**

Section 54 (1) of the UPGST Act 2017 stipulates that any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. Further Section 54 (3) provides that a registered person may claim refund of any unutilised ITC at the end of any tax period for zero rated supplies made without payment of tax.

Audit test checked (between February to November 2021) 1,231 cases of 136 CTOs related to zero rated supply of goods and services and inverted duty structure out of 1,430 sample cases of 152 CTOs and it was noticed that in one pre-automation case on account of zero rate supply of goods of the DC Sector-1, CT G.B. Nagar, a registered person claimed refund of ₹ 2.56 crore for the month of June 2018 on account of supplies made to SEZ unit/SEZ developer (without payment of tax) which was sanctioned by the Department.

While verifying the annexure attached in support of ITC claim, it was found that the registered person had claimed ITC of ₹ 12.62 lakh stating that “being GST not accounted in invoices now accounted” (detail of invoices were not mentioned) whereas the registered person had already included invoices pertaining to the previous months in the same annexure. This resulted in the excess claim of ITC of ₹ 12.62 lakh on same invoices. Further, due to the clerical mistake excess ITC of ₹ 9.45 lakh was claimed on inward supplies of ₹ 11.52 lakh in June 2018. Thus, a total excess ITC of ₹ 22.07 lakh was irregularly claimed by the registered person. After deducting this inadmissible ITC of ₹ 22.07 lakh from the total earned ITC of ₹ 3.51 crore, total admissible ITC is ₹ 3.29 crore for the month of June 2018. Adjusting tax of ₹ 92.18 lakh payable on outward supplies for the month of June 2018 from admissible ITC, maximum unutilised ITC for refund comes to ₹ 2.37 crore. However, the Department refunded ₹ 2.56 crore to the registered person. This resulted in excess refund of unutilised ITC of ₹ 19.13 lakh which was recoverable with interest of ₹ 5.84 lakh. The details are given in **Appendix-XXVII**.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department accepted the audit observation and stated that action of recovery was under process.

#### **2.2.23 Deficiencies noticed in GSTN portal**

The Common GST portal notified by the Government on 22 June 2017 to provide PAN India online platform to facilitate all works related to GST. The portal facilitated for the taxpayers and other stakeholders. This portal has mainly two ends i.e., front and back end. Front end of this portal meant for taxpayers and back end for tax authorities.

During the audit of GST refunds, audit observed that in one case<sup>61</sup> server was not providing correct information related to ARN search as portal was providing information related to two different registered persons on the same ARN. Audit also observed that in another case<sup>62</sup> refund sanctioned in RFD-06 on 17 February 2020 while acknowledgement issued in RFD-02 on 29 February 2020. In one case<sup>63</sup> of double payment of GST refund was also noticed where GST refund was made twice, although it was deposited by the registered person *suo moto*. In one post automation case<sup>64</sup> refund was applied by the registered person after two years of the relevant period which was sanctioned by the Department resulting in non-observance of the provisions of the Section 54 of the CGST/SGST Act 2017. This shows the portal has no checks regarding expiry of two years from the relevant date. This indicates towards technical deficiencies in the GSTN portal. The details are given in **Appendix-XXVIII**.

Audit reported the matter to the Department (April 2022). In reply (July 2022), the Department accepted the audit objection in one case amounting to ₹ 81,630.00 and stated that action of recovery was under process. The Department did not provide reply in one case and did not accept the audit observations in other two cases, the analysis of the Department's replies in these cases are listed in **Table-2.12**.

Table 2.12

Sl. No.	Audited unit/ Observation in brief	Department's reply in brief	Rebuttal
1	<b>Sector- 19 Lucknow:</b> The server was providing two different information on the same ARN.	The server shows one case for one ARN.	The reply of the Department is not acceptable as the portal showing information related to two different registered persons on the same ARN.
2	<b>Sector 7, Agra:</b> RFD-02 was issued on 29.02.2020 after sanction of RFD-06 on 17.02.2020	The portal is showing date of RFD-06 17.03.2020 and date of acknowledgement 29.02.2020.	The reply of the Department is not acceptable as RFD-02 was issued on 29.02.2020 after sanction of RFD-06 on 17.02.2020.

#### 2.2.24 Conclusion and Recommendation

Non-observance of provisions, Act and Rules, improper examination of returns, ITC claims, shipping bills, purchase and sale statement, and sales turnover resulted in delay in issue of acknowledgement, delay in sanction of refund, excess refund and irregular refund to the taxable persons.

#### Recommendation:

**The Government may consider to issue direction to proper officers for examination of the refund application along with relevant supporting documents before sanctioning the refund claims within the stipulated time period.**

<sup>61</sup> Sector-19 Lucknow.

<sup>62</sup> Sector-7 Agra.

<sup>63</sup> Sector-13 Noida.

<sup>64</sup> Sector-4 Agra.

