



सत्यमेव जयते

**Report of the
Comptroller and Auditor General of India
for the year ended March 2021**



लोकहितार्थ सत्यनिष्ठा
Dedicated to Truth in Public Interest

**Union Government
Department of Revenue
(Indirect Taxes – Goods and Services Tax)
Report No. 5 of 2022**

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Comptroller and Auditor General of India**

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Preface

This Report for the year ended March 2021 has been prepared for submission to the President of India under Article 151 of the Constitution of India.

The Report contains significant results of compliance audit of Central Board of Indirect Taxes and Customs (CBIC) under the Department of Revenue. The report deals mainly with the issues involving levy and collection of Goods and Services Tax. A few audit findings with respect to Central Excise collections and legacy Service Tax have been included to present a full picture of indirect taxes.

The instances mentioned in this Report are those, which came to notice in the course of test audit during the period 2020-21, as well as those which came to notice in earlier years but could not be reported in the previous Audit Reports.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

Executive Summary

Goods and Services Tax (GST) is a tax on supply of goods or services or both except taxes on the supply of alcoholic liquor for human consumption. GST came into effect from 1 July 2017. Central Excise duty (except five Petroleum and tobacco products), Service Tax, Additional Customs Duty, Special Additional Duty of Customs (SAD) and most of the indirect taxes of States have been subsumed into GST. This report deals mainly with the issues involving levy and collection of Goods and Services Tax. A few audit findings with respect to Central Excise collections and legacy Service Tax have been included to present a full picture of indirect taxes.

This report is divided into six chapters. Chapter I provides a brief description of the nature of indirect taxes, organisational structure of Central Board of Indirect Taxes and Customs (CBIC), trends in Indirect Taxes revenue, comparative growth of various components of Indirect Taxes and comparison of GST Budget Estimates vs Actual Receipts. Chapter II describes the CAG's audit mandate for audit of revenue receipts, audit universe, audit sample, and result of audit efforts. Chapter III brings out the status of implementation of the simplified GST return mechanism; and the Department's performance with respect to the compliance verification functions such as scrutiny of returns, internal audit and anti-evasion activities; and recovery of arrears. Chapter IV discusses the audit observations relating to significant data inconsistencies noticed during GST data analysis by Audit. Chapter V discusses the systemic and compliance issues, observed during the course of the Subject Specific Compliance Audit (SSCA) of processing of refund claims under GST. Chapter VI contains significant findings of the Subject Specific Compliance Audit (SSCA) of Transitional Credits under GST which were noticed during the examination of records pertaining to transitional credits under the jurisdiction of CBIC. With respect to the SSCA on processing of refund claims under GST, the Ministry accepted audit observations with money value of ₹ 92.08 crore and reported recovery of ₹ 52.93 crore, as of February 2022. With respect to the SSCA on Transitional Credits, the Ministry accepted audit observations with money value of ₹ 309.82 crore and reported recovery of ₹ 50.39 crore, as of March 2022.

This highlights of the Report are as follows:

Chapter I: Indirect Taxes Administration and Revenue Trend

Indirect Taxes collections increased by ₹ 1, 20,555 crore (12.56 per cent) during FY21 over FY20. The annual growth of Indirect Taxes (Y-o-Y), which constantly decreased from 21.33 percent in FY 17 to 1.76 per cent in FY20, saw an upward

trend in FY 21. Further, during FY 21 there was a rise in Indirect taxes to GDP ratio when it increased to 5.45 *per cent* in FY 21 from 4.70 *per cent* in FY 20. The growth in indirect taxes was due to increase in the receipts from Central Excise Duty and Customs duty, which increased, respectively, by ₹ 1,50,215 crore and ₹ 25,467 crore over the previous year (FY20).

Central GST taxes¹ revenue, however, decreased by 8.34 *per cent* from ₹ 6,01,784 crore in FY 20 to ₹ 5,51,541 crore in FY21. Central GST taxes as a percentage of GDP also decreased to 2.79 *per cent* in FY 21 from 2.95 *per cent* in FY 20 and 3.02 *per cent* in FY19.

(Paragraph 1.3.1. Paragraph 1.3.1.1 & Paragraph 1.3.2)

Chapter III: Effectiveness of Compliance Verification Mechanism under GST

In the last Audit Report² on Indirect taxes, Audit had reviewed the progress made in respect of implementation of simplified return mechanism under GST and system-verified flow of Input Tax Credit (ITC). Audit observed that owing to continuing extensions in the roll out of simplified return system, and delay in decision making, the originally envisaged system verified flow of ITC was yet to be implemented despite more than three years of roll out of GST. In the absence of a stable and simplified return system, one of the main objectives of roll out of GST i.e. simplified tax compliance system was yet to be achieved. Accordingly, Audit had recommended that a definite time frame for roll out of simplified return forms may be fixed and implemented as frequent deferments were resulting in delay in stabilisation of the return filing system and continued uncertainty in the GST eco-system.

During 2020-21, Audit further reviewed the status of implementation of simplified return mechanism and noted significant progress with respect to linking of GSTR-1³, GSTR-2B⁴ and GSTR-3B⁵; and restricting input tax credit (ITC) of the recipient taxpayers to the supplies declared by suppliers. However, Audit is of the view that further steps need to be taken to achieve a non-intrusive e-tax system with system-verified flow of ITC such as mandatory filing of GSTR-1 before filing of GSTR-3B and enhanced use of preventive checks in the GST Common portal.

(Paragraph 3.1)

¹ GST revenue included Central Goods and Services Tax, Integrated Goods and Services Tax, UT Goods and Services Tax and GST Compensation Cess.

² Audit Report No. 1 of 2021 (Indirect Taxes- Goods and Services Tax, Central Excise and Service Tax)

³ GSTR-1 is an outward supplies statement as provided in Section 37 of the CGST Act, 2017 and Rule 59 of the CGST Rules, 2017.

⁴ GSTR-2B is an auto-drafted statement containing the details of input tax credit which shall be made available to the registered person in GSTR-3B.

⁵ GSTR-3B is a self-assessed summary monthly return which captures summary of outward supplies and inward supplies liable to reverse charge.

In the last Audit Report on Goods and Services Tax, Audit had observed that CBIC was yet to put in place an effective system of scrutiny of returns based on detailed instructions/standard operating procedure for the tax officers. Therefore, an important compliance function of the department, as mandated by law, was yet to be effectively rolled out even after three years of GST implementation. Ministry replied (February 2022) that a risk-based standardised system of return scrutiny based on detailed instructions/standard operating procedure was under active consideration.

Audit recommends that an effective risk based standardised system of returns' scrutiny (with detailed instructions/standard operating procedure) should be implemented at the earliest so that the Department has sufficient time to take action against non-compliant taxpayers before time-barring of cases as per law. Such a scrutiny should involve risk-based selection of returns, and the results of the scrutiny (similar to scrutiny assessments in respect of income tax) should also be captured in real-time through the CBIC-GST System to ensure transparency and minimize arbitrariness.

(Paragraph 3.2)

CBIC constituted (July 2017) the Directorate General of Analytics and Risk Management (DGARM) with the aim to study, interpret and analyse indirect tax data and share the outputs with various stakeholders.

DGARM identifies high risk taxpayers through use of extensive data analytics on the GST returns data received from GSTN and DG Systems, and Income Tax return (ITR) data received from CBDT. The list of high risk taxpayers is shared with the CBIC field formations through various analytical reports on the Directorate of Data Management (DDM) portal for action.

Audit examined the monitoring and feedback mechanism of DGARM reports and observed that use of manual/semi-automated mechanism for monitoring action by the Department in respect of high risk taxpayers, identified in DGARM reports, is sub-optimal and fails to properly leverage the full power of IT and thus, there is a need to ensure that the entire set of activities should be end-to-end automated as part of the CBIC-GST platform.

(Paragraph 3.3)

Chapter IV: Reliability of GST data maintained by Goods and Services Tax Network

Audit was provided access to the GST returns data in February 2021, in GSTN's premises, pertaining to the period from FY 2017-18 to FY 2019-20, as filed by

taxpayers up to August 2021. An analysis was performed with a view to deriving an assurance on the quality of data captured.

(Paragraph 4.1)

During analysis of pan-India data provided by GSTN, Audit noticed significant data inconsistencies between the taxable value and declared tax liability. Inconsistencies were also noticed between the CGST and SGST components of GST, and between ITC figures captured in GSTR-3B and GSTR-9 returns. Due to significant inconsistencies in the GST data, Audit could not establish the reliability of data, for the purpose of finding audit insights and trends in GST revenue, and assessing high risk areas such as tax liability and ITC mismatch at the pan-India level.

(Paragraph 4.6)

Audit recommends that the Ministry should consider introducing appropriate validation controls (controls which prevent unreasonable data entries or alert the taxpayer to unreasonable data or both) supplemented by post-facto data analytics in respect of important data elements, where in data (such as tax amounts; taxable values; tax components, like CGST and SGST; validation of ITC and tax amounts, between the annual and monthly returns) is entered by the taxpayer. An effective review and follow up system needs to be developed at GSTN to review and address cases of data inconsistencies. In case of significant deviations, tax officers may be alerted to the inaccuracies and directed to take necessary action.

(Paragraph 4.7)

Chapter V: Processing of Refund Claims under GST

Timely refund processing facilitates the taxpayers by providing much needed liquidity and cash inflows. Audit examined GST refund cases processed and paid by the Central tax authorities pertaining to the period from July 2017 to July 2020. During the course of examination of records, Audit observed certain systemic and compliance issues in relation to grant of refund by the Department, which need to be addressed.

(Paragraph 5.3)

Systemic Issues

Audit observed that there exists a mechanism to match ITC availed by a taxpayer with the GSTR-1 returns filed by the suppliers and to identify fraudulent cases through data analytics after the amount has been paid. However, adequate systems were not in place to prevent and mitigate refund

related frauds by using real time/near real time data analytics so as to alert the tax officials before sanction of refunds.

(Paragraph 5.6.1)

Audit analysed the data of Public Financial Management System (PFMS) relating to GST refunds pertaining to the period from July 2017 to September 2019 (Pre-automation) received from 34 Commissionerates and followed it up with substantive audit of the payment process. Audit noticed 410 instances of double payments owing to lack of reconciliation and monitoring by the Department amounting to ₹ 13.73 crore.

(Paragraph 5.6.3)

Even after four years of implementation of GST, a proper system of review and post-audit of refunds had not been effectively institutionalized so that the Department may rectify mistakes in time.

(Paragraph 5.6.4)

Compliance Issues

Audit examined compliance to the provisions of the CGST Act, associated rules, procedures, etc. with respect to a risk-based sample of 12,283 refund cases processed by the Central tax authorities. Audit noticed 522 cases where excess/inadmissible refund of ₹ 185.28 crore was sanctioned due to various reasons such as incorrect computation of Adjusted Total Turnover, consideration of ineligible accumulated ITC, claims which were time-barred etc.

Audit noticed significant number of refund cases where the Department did not adhere to the prescribed timelines for processing of refunds leading to instances of significant delay in issue of acknowledgement, deficiency memo and sanction of refund orders. Further, in the majority of cases, the department did not pay interest to the taxpayers in case of delayed refunds.

(Paragraph 5.7)

For the audit observations highlighted in the Subject Specific Compliance Audit report on GST refunds, the corresponding impact on the State Goods and Services Tax is given in **Appendix-IV**.

(Paragraph 5.9)

Audit has included 12 recommendations to strengthen the refund processing system. Ministry has accepted nine recommendations and stated that the matter would be taken up with GSTN/DG(System) in respect of eight recommendations. In respect of one recommendation, Ministry stated that the matter would be taken up with the field formations and advisory was being

issued. Further, the department has recovered ₹ 52.93 crore at the instance of audit.

(Paragraph 5.10)

Chapter VI: Transitional Credits under GST

Transitional credit being a one-time flow of input tax credit from the legacy regime into the GST regime, can be availed both by the taxpayers migrating from the previous regime as well as new registrants under GST. A total of 10.13 lakh taxpayers had claimed the benefit of transitional credit of ₹ 1,72,584.96 crore under the GST Acts, out of which 3.46 lakh taxpayers constituting 34 *per cent* of the taxpayers were under the jurisdiction of CBIC. The transitional credit claims of these taxpayers accounted for ₹1,34,029.23 crore constituting 78 *per cent* of the total transitional credit claimed under the GST Acts.

(Paragraph 6.3)

The Department identified 50,000 (Antarang⁶ data set) high value transitional credit cases for verification by CBIC field formations. Audit selected pan-India sample of 8,514 cases for detailed audit based on data analysis of these 50,000 cases. The sample size of 8,514 cases represented a transitional credit of ₹82,754.77 crore and constituted about 62 *per cent* of the total transitional credit on the Central side.

(Paragraph 6.5)

In spite of requisitions and follow up, the CBIC departmental formations did not produce records of 954 claims. As a result, 11 *per cent* of sample size representing ₹6,849.68 crore of transitional credit claimed could not be audited. Further, in another 2,209 cases representing ₹19,660.72 crore of credit claimed, records were partially produced as relevant underlying records determining the eligibility of credit were not produced, which constituted a substantial scope limitation. Out of these records, the Ministry stated that some of the records and verification related records have since been produced to Audit. These would be audited and reported separately. Further, record keeping by the departmental field formations varied widely and maintenance of records for verified cases were inadequate in most of the jurisdictions.

Audit observed irregularities in 1,132 cases out of 6,999 cases verified by the Department.

(Paragraph 6.8)

⁶ Antarang is the intra-net platform for officers of the CBIC.

Systemic Issues

Audit observed that though the Department had identified the top 50,000 cases for verification as a priority for 2018-19, the exercise was not yet completed, and the Department was yet to verify 8,849 cases⁷. The rate of recovery of detected irregularities was low. Cross jurisdictional issues and lack of co-ordination in Central Tax jurisdictions in some zones impeded verification and initiation of recovery actions.

In view of these findings, Audit recommends

- ensuring production of records for cases for which envisaged detailed audit checks could not be completed. These will be reviewed subsequently by Audit.
- addressing the issue of inadequate maintenance of verification records in the jurisdictional formations as they are not amenable to review in the present form.

Ministry provided an updated status of verification and stated (February 2022) that another 4,770 cases had since been verified and 4,079 cases were pending verification, and that irregular ITC detection had gone up to ₹ 10,965.91 crore out of which ₹ 3,596.10 crore had been recovered. Ministry also stated that the Board was actively monitoring the expeditious verification of transitional credit claims.

(Paragraph 6.9.1)

Compliance Issues

Audit review disclosed significant irregularities in the transitional credit claims of taxpayers across various categories regulated by the sub sections of Section 140, Section 142(11) as well as Section 50(1) of the CGST Act 2017 pertaining to payment of interest.

Audit observed 1,686 compliance deviations in 1,438 cases, out of 7,560 cases examined in detail, amounting to ₹ 977.54 crore, constituting a deviation rate of 22 *per cent*. Irregularities noticed were relatively higher in four categories viz; ineligible credit of duty paid goods in stock without documents, irregular claim on unavailed credit on capital goods, ineligible credit on inputs or input services in transit, and irregular claim on closing balances. Considering that the Department had verified 79 *per cent* of these claims, the deviation rate suggested that the verification process carried out by the Department suffered from inadequacies. Out of 1,438 cases, where Audit noticed irregularities, 1,132

⁷ As of November 2021

cases had been verified by the Department, and the Department did not point out irregularities amounting to ₹735.69 crore.

In view of the above compliance findings, Audit recommends

- ensuring verification of the high risk claims reflected in Table 7aB of Tran 1 (credit on duty paid stock without invoices) and the cases where the transitional credit claim under Table 5a (closing credit balance of legacy returns) was in excess of the closing balance of legacy return.
- initiating remedial measures for the compliance deviations pointed out during this audit before the claims become time barred.

(Paragraph 6.9.2)

Chapter I: Indirect Taxes Administration and Revenue Trend

This chapter gives an overview of the indirect taxes administration and the revenue trends in indirect tax collection.

1.1 Nature of Indirect Taxes

This Audit Report deals mainly with the issues involving levy and collection of Goods and Services Tax. A few audit findings with respect to Central Excise collections and legacy Service Tax have been included to present a full picture of audit of indirect taxes. Audit findings on levy and collection of Customs duty are presented in a separate report. The indirect taxes covered in this report are discussed below:

- a) **Goods and Services Tax:** Goods and Services Tax (GST) is a tax on supply of goods or services or both except taxes on the supply of alcoholic liquor for human consumption. GST came into effect from 1 July 2017⁸. Central Excise duty (except five Petroleum products), Service Tax, Countervailing duty (CVD), Special Additional duty (SAD) components of customs and most of the indirect taxes of States have been subsumed into GST. Central Excise duty is continued on five Petroleum products as these products are out of GST at present, and will be brought under GST later. Tobacco products are subject to both Central Excise and GST. GST is a consumption based tax i.e. tax is payable in the State where goods or services or both are finally consumed. In addition to GST, a cess named GST Compensation Cess is levied on some goods i.e. Tobacco products, Coal, Aerated water, Motor cars etc.

There are three components of GST as follows:

- **Central Goods and Services Tax (CGST):** payable to the Central Government on supply of goods and services within the State/Union Territory.
- **State/Union Territory Goods and Services Tax (SGST/UTGST):** payable to the State/Union Territory Government on supply of goods and services within the State/Union Territory.
- **Integrated Goods and Services Tax (IGST):** In case of inter-state supply of goods and services, IGST is levied by Government of India. Equivalent IGST is also levied on imports into India. IGST shall be apportioned between the Union and the States in the manner as

⁸ With effect from 8 July 2017 in Jammu and Kashmir

may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

- b) **Central Excise duty:** Central Excise duty is levied on manufacture or production of goods that have not been brought under the GST regime. Parliament has powers to levy excise duties on tobacco and five petroleum products (Entry 84 of List 1 of the Seventh Schedule of the Constitution).
- c) **Service Tax (legacy):** Service Tax was levied on services provided within the taxable territory. Section 66B of the Finance Act, 1994 envisaged that there shall be a tax levied at the rate of 14 *per cent* on the value of all services, other than those specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.⁹ ‘Service’ had been defined in section 65B (44) of the Finance Act, 1994 to mean any activity for consideration (other than the items excluded therein) carried out by a person for another and to include a declared service.¹⁰

1.2 Organizational Structure

The Department of Revenue (DoR) of Ministry of Finance (MoF) functions under the overall direction and control of the Secretary (Revenue) and coordinates matters relating to all the Direct and Indirect Union Taxes through two statutory Boards namely, the Central Board of Indirect Taxes and Customs (CBIC¹¹), and the Central Board of Direct Taxes (CBDT) constituted under the Central Board of Revenue Act, 1963. Matters relating to the levy and collection of GST are looked after by the CBIC.

Indirect Tax laws are administered by the CBIC through its field offices. In view of implementation of GST, CBIC restructured its field offices into 21 Zones of GST headed by the Principal Chief Commissioner/Chief Commissioner vide circular dated 16 June 2017. Under these 21 Zones of GST, there are 107 GST Taxpayer Services Commissionerates that deal with GST and Central Excise, headed by the Principal Commissioner/Commissioner. Divisions and Ranges are the subsequent formations, headed by Deputy/Assistant Commissioner and Superintendents, respectively. Apart from these Commissionerates, there are 49 GST Appeal Commissionerates, 48 GST Audit Commissionerates and 22 Directorates dealing with specific functions such as DG (Systems) for

⁹ Section 66B was inserted by the Finance Act, 2012 with effect from 1 July 2012; section 66D lists the items the negative list comprises of.

¹⁰ Section 66E of the Finance Act, 1994 lists the declared services.

¹¹ Formerly Central Board of Excise and Customs (CBEC).

management of Information Technology projects and DG, National Academy of Customs, Indirect Taxes & Narcotics (NACIN)¹² for training needs.

1.3 Revenue Trend

1.3.1 Indirect Taxes revenue trend

Tax revenue of the Union Government consists of revenue receipts from Direct and Indirect Taxes. In the pre GST regime, Indirect Taxes comprised of Central Excise, Service Tax and Customs duties. After the implementation of GST, Service Tax and duties of Central Excise, other than Petroleum products, have been subsumed¹³ in GST. Central Excise continues to be levied on petroleum products, and tobacco has been subjected to both GST as well as Central Excise. The overall resources of the Government of India and details of tax revenue of the Union Government from 2016-17 to 2020-21 have been given in Table No.1.1 below:

Table 1.1: Resources of the Government of India

	(₹ in crore)				
Tax component	2020-21	2019-20	2018-19	2017-18	2016-17
A. Total Revenue Receipts**	24,59,510	25,98,705	25,67,917	23,64,148	22,23,988
i. Direct Tax Receipts	9,47,174	10,50,685	11,37,718	10,02,738	8,49,801
ii. Indirect Tax Receipts including other taxes	10,79,929	9,59,374	9,42,747	9,16,445	8,66,167
iii. Non-Tax Receipts	4,30,654	5,88,273	4,86,388	4,41,383	5,06,721
iv. Grants-in-aid & contributions	1,752	373	1,063	3,582	1,299
B. Miscellaneous Capital Receipts	37,897	50,349	94,979	1,00,049	47,743
C. Recovery of Loans and Advances	29,923	18,647	30,257	70,639	40,971
D. Public Debt Receipts	81,62,910	73,01,386	67,58,482	65,54,002	61,34,137
Receipts of Government of India (A+B+C+D)	1,06,90,240	99,69,087	94,51,635	90,88,838	84,46,839

Source: Union Finance Accounts of respective years.

** Total Revenue receipts include share of net proceeds of direct taxes and indirect taxes directly assigned to States.

The indirect taxes collections increased by ₹ 1, 20,555 crore (12.56 per cent) during FY21 over FY20. The annual growth of Indirect Taxes (Y-o-Y), which constantly decreased from 21.33 percent in FY 17 to 1.76 per cent in FY20, saw an upward trend in FY 21. The growth in indirect taxes was due to increase in

¹² Formerly National Academy of Customs Excise & Narcotics (NACEN)

¹³ Both Central Excise and Goods and Services Tax are levied on Tobacco products.

the receipts from Central Excise Duty and Customs duty, which increased, respectively, by ₹ 1,50,215 crore and ₹ 25,467 crore over the previous year (FY20). The receipts from the Central GST taxes¹⁴, however, decreased by ₹ 50,243 crore (8.34 per cent) in FY21 over the previous year.

The share of Indirect taxes in total revenue receipts had constantly declined from 38.95 per cent in FY17 to 36.92 per cent in FY20. The share of indirect taxes in total receipts, however, increased to 43.90 per cent in FY21 from 36.92 per cent in FY20.

1.3.1.1 Growth of Indirect Taxes - Trends and Composition

Table 1.2 below depicts the relative growth of Indirect Taxes during FY17 to FY21, with respect to GDP and Gross Tax Revenue.

Table 1.2: Growth of Indirect Taxes

Year	Indirect Taxes*	GDP (At Current prices)	Indirect Taxes as per cent of GDP	(₹ in crore)	
				Gross Tax revenue	Indirect Taxes as per cent of Gross Tax revenue
FY17	8,61,812	1,51,83,709	5.68	17,15,968	50.24
FY18	9,13,486	1,67,73,145	5.45	19,19,184	47.59
FY19	9,40,099	1,89,71,237	4.96	20,80,465	45.18
FY20	9,56,574	2,03,51,013	4.70	20,10,058	47.58
FY21	10,77,597	1,97,45,670	5.45	20,27,104	53.15

Source: Tax revenue - Union Finance Accounts, GDP – Press note of CSO¹⁵.

*Indirect Taxes include revenue from CX, ST, GST, Customs and other taxes on commodity and services.

Indirect Taxes as a percentage of GDP had continued to decline from 5.68 per cent in FY 17 to 4.70 per cent in FY20. However, during FY 21 there was a rise in the Indirect taxes to GDP ratio when it increased to 5.45 per cent. The increase in the Indirect taxes as a percentage of GDP may be attributed mainly to the significant increase in the Central Excise Revenue in FY 21, which increased to ₹ 3,89,667 crore in FY 21 from ₹ 2,39,452 crore in FY 20, an increase of 62 per cent.

Indirect Taxes as a percentage of gross tax revenue showed a declining trend from FY17 to FY19. However, from FY 20 onwards, the percentage of Indirect Taxes to Gross Tax revenue showed an upward trend from 45.18 per cent in FY 19 to 53.15 per cent in FY 21.

¹⁴ GST revenue included Central Goods and Service Tax, Integrated Goods and Service Tax, UT Goods and Service Tax and GST Compensation Cess.

¹⁵ Press note on GDP released on 31 May 2021 by Central Statistical Office (CSO), Ministry of Statistics and Programme Implementation.

When pointed out (December 2021), the Ministry stated (February 2022) that higher growth in Indirect Taxes during 2015-16 to 2016-17 was inter-alia contributed by change in tax policy/structure such as increase in service tax rate and introduction of new levy/cess like Infrastructure Cess¹⁶, Swachh Bharat Cess¹⁷, Clean Environment Cess¹⁸ and Krishi Kalyan Cess¹⁹. For short fall in Indirect Taxes between 2017-18 and 2019-20, Ministry cited policy related factors such as reduction in duty rates on Free Trade Agreements (FTA) imports, impact of Export Promotional Schemes, reduction in Basic Excise Duty on Petrol and Diesel (during 2017-18 and 2018-19) and impact of transitional credits under GST regime. Ministry also stated that Index of Industrial Production (IIP) for 2019-20 registered negative growth and import volumes started declining towards the end of financial year due to onset of Covid-19 across the globe.

As for 2020-21, Ministry stated that since March 2020 GST collections had been severely hit by low economic growth due to Covid-19. However, GST collections had gained momentum in the second half of FY 2020-21 after V-shaped recovery. Further, Excise Duty was raised on Petrol and Diesel in March and May 2020, which contributed to healthy growth in Central Excise revenue. With respect to Customs, Ministry stated that Government had made concerted efforts to rationalise customs exemptions and a large number of exemptions had been removed. Further, policy changes like introduction of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR)²⁰, extensive application of Risk Management System (RMS)²¹, etc., had helped in garnering additional revenue.

1.3.2 Comparative growth of various components of Indirect Taxes

During 2020-21, the Indirect Taxes revenue grew by 12.65 *per cent* from ₹ 9, 56,574 crore in FY 20 to ₹ 10, 77,597 crore in FY 21.

Table 1.3 and Chart 1.1 below depict the relative growth of various components of Indirect Taxes during FY 19 to FY 21:

¹⁶ Infrastructure cess came into effect from 1 March 2016.

¹⁷ With effect from 15 November 2015 and abolished on 1 July 2017.

¹⁸ Earlier Clean Energy Cess and introduced with effect from 1 July 2010.

¹⁹ Krishi Kalyan Cess came into effect on 1 June 2016 and abolished on 1 July 2017

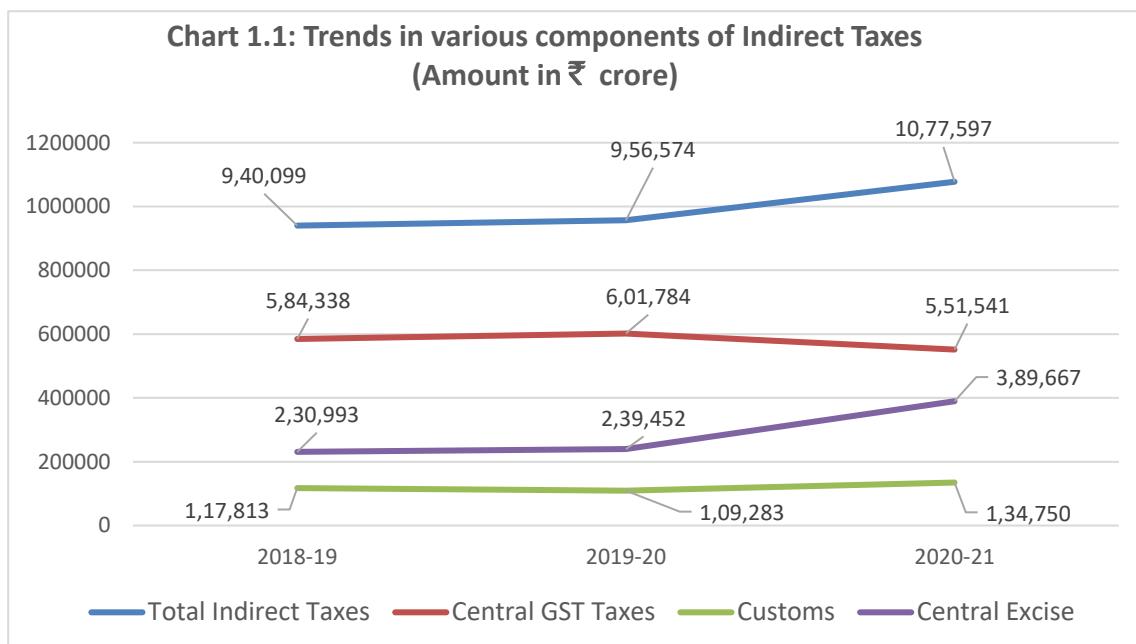
²⁰ Chapter VAA and section 28DA were inserted in the Customs Act, 1962, vide clause 110 of Finance Act, 2020.

²¹ Risk Management System is an IT driven system with the primary objective to strike an optimal balance between facilitation and enforcement and to promote a culture of self-compliance in customs clearances.

Table 1.3: Comparative growth of various components of Indirect Taxes

(₹ in crore)			
Tax component	2018-19	2019-20	2020-21
Central GST Taxes²²	5,84,338 ²³	6,01,784 ²⁴	5,51,541 ²⁵
Customs	1,17,813	1,09,283	1,34,750
Central Excise	2,30,993	2,39,452	3,89,667
Service Tax	6,904	6,029	1,615
Other taxes and duties	51	26	24
Indirect Taxes	9,40,099	9,56,574	10,77,597

Source: Union Finance Accounts of the respective years.



As evident from the table above, Central GST taxes²⁶ revenue fell by 8.34 per cent (₹ 50,243 crore) during FY 21 over FY 20, whereas the other two major components of Indirect taxes viz. Customs and Central Excise grew by 23.30 per cent and 62.73 per cent, respectively, during the same period. As a result, during FY21, the share of Central GST taxes fell to 51 per cent of the total indirect tax collections. The share of Central GST taxes in indirect taxes during the previous two years, FY 19 and FY 20, was constant at 62 per cent. The decrease in the Central GST taxes during FY21 may be largely attributed to

²² GST revenue included Central Goods and Service Tax, Integrated Goods and Service Tax, UT Goods and Service Tax and GST Compensation Cess.

²³ ₹ 13,944 crore was retained by the Centre from IGST account in contravention of the IGST Act, which requires apportionment of IGST between Centre and States.

²⁴ ₹ 9,125 crore was retained by the Centre from IGST account in contravention of the IGST Act, which requires apportionment of IGST between Centre and States.

²⁵ ₹ 7,251 crore was retained by the Centre from IGST account in contravention of the IGST Act, which requires apportionment of IGST between Centre and States.

²⁶ GST revenue included Central Goods and Services Tax, Integrated Goods and Services Tax, UT Goods and Services Tax and GST Compensation Cess.

the negative impact of Covid-19 pandemic on Indian economy, which affected manufacturing, trade and service activities.

Audit further noticed that the Central GST taxes revenue as a percentage of GDP continued to decline during the last three years to 2.79 *per cent* in FY 21 from 2.95 *per cent* in FY 20 and 3.02 *per cent* in FY19. Buoyancy in Central GST taxes revenue, therefore, is an area of concern and needs to be addressed by the GST Council.

It may be pertinent to mention that out of all the major components of the Indirect taxes, the Central Excise Duty, which, after implementation of GST, is leviable only on five petroleum products and tobacco products²⁷, increased significantly by ₹ 1,50,215 crore (62.73 *per cent*) during 2020-21 from ₹ 2,39,452 crore in FY 20 to ₹ 3,89,667 crore in FY 21. Increase in Central Excise revenue was due to increase in the Central Excise duty on Petrol and Diesel in March and May 2020. Central Excise Revenue as a percentage of Indirect Taxes, therefore, grew to 36 *per cent* in FY 21 from 25 *per cent* in FY20.

When pointed out (December 2021), the Ministry stated (February 2022) that as per GST laws and procedure, the GST rates on goods and services are determined by the GST Council. Initially, the GST rates were fixed based on pre-GST tax incidence and revenue neutrality of the rates. Since the inception of GST, a number of rate rationalisations have been done on the recommendations of the GST Council, which has led to a shortfall in GST revenue. Rates have been reduced significantly, where relief of about ₹ 92,000 crore per year till July 2019 had been given. As regards FY21, Ministry attributed the shortfall in GST collections to nation-wide and regional lockdowns to contain the spread of Covid-19.

1.3.3 GST revenue of Government of India: Budget Estimates vs Actual Receipts

Table 1.4 below presents a comparison of the Budget Estimates and the corresponding actuals for GST receipts.

²⁷ After implementation of GST from 1 July 2017, Tobacco products are subject to both GST and Central Excise Duty.

Table 1.4: Budget, Revised estimates and Actual receipts (GST)

(₹ in crore)

Year	Budget Estimates (BE)				Revised Estimates (RE)				Actual Receipts			
	CGST	IGST	Cess	Total	CGST	IGST	Cess	Total	CGST	IGST	Cess	Total
2017-18	No BE, only RE				2,21,400	1,61,900	61,331	4,44,631	2,03,261	1,76,688 ²⁸	62,612	4,42,561
2018-19	6,03,900	50,000	90,000	7,43,900	5,03,900	50,000	90,000	6,43,900	4,57,534	28,945 ²⁹	95081	5,81,560
2019-20	5,26,000	28,000	1,09,343	6,63,343	5,14,000	--	98,327	6,12,327	4,94,070	9,125	95,553	5,98,748
2020-21	5,80,000	---	1,10,500	6,90,500	4,31,000	---	84,100	5,15,100	4,56,334	7,251	85,192	5,48,777

Source: Union Finance Accounts and receipt budget documents of respective years.

As could be seen from the table above, the Central GST revenue³⁰ was short of the Budget Estimates for the years 2018-19, 2019-20 and 2020-21. The shortfall vis-à-vis budget estimates was 22 per cent, 10 per cent and 21 per cent for the years 2018-19, 2019-20 and 2020-21, respectively. The actuals for 2018-19 and 2019-20 were also short of the Revised Estimates. During 2020-21, however, the actuals exceeded the Revised Estimates and were 106.54 per cent of the Revised Estimates.

When pointed out (December 2021), the Ministry attributed (February 2022) shortfall in GST revenue to impact on account of transitional credits (2017-18), negative growth in Index of Industrial Production (IIP) (2019-20), and low economic growth owing to nation-wide and regional lockdowns to contain the spread of Covid-19 (2020-21).

1.4 Conclusion

Indirect Taxes collections increased by ₹ 1, 20,555 crore (12.56 per cent) during FY21 over FY20. The annual growth of Indirect Taxes (Y-o-Y), which constantly decreased from 21.33 percent in FY 17 to 1.76 per cent in FY20, saw an upward trend in FY 21. Further, during FY 21 there was a rise in the Indirect taxes to GDP ratio when it increased to 5.45 per cent in FY 21 from 4.70 per cent in FY 20. The growth in indirect taxes was due to increase in the receipts from Central Excise Duty and Customs duty, which increased, respectively, by ₹ 1,50,215 crore and ₹ 25,467 crore over the previous year (FY20).

Central GST taxes revenue, however, decreased by 8.34 per cent from ₹ 6,01,784 crore in FY 20 to ₹ 5,51,541 crore in FY21. Central GST taxes as a percentage of GDP also decreased to 2.79 per cent in FY 21 from 2.95 per cent in FY 20 and 3.02 per cent in FY19.

²⁸ ₹ 67,998 crore was assigned to the States and balance ₹ 1,08,690 crore retained by the Centre

²⁹ ₹ 15,001 crore was assigned to the States and balance ₹ 13,944 crore retained by the Centre

³⁰ CGST, IGST and GST Compensation Cess

Chapter II: Audit Mandate, Audit Universe and Response to Audit

2.1 Audit Mandate

Article 149 of the Constitution of India provides that the Comptroller and Auditor General of India (CAG) shall exercise such powers and perform such duties in relation to the accounts of the Union and of the states and of any other authority or body as may be prescribed by or under any law made by the Parliament. Parliament passed the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act (CAG's DPC Act) in 1971. Section 16 of the CAG's DPC Act authorizes CAG to audit all receipts of the Government of India and of Government of each State and of each Union territory having a legislative assembly and to satisfy himself that the rules and procedures are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed. Regulations on Audit & Accounts (Amendments), 2020 lay down the principles for Receipt Audit.

2.1.1 Examination of systems and procedures and their efficacy

Audit of receipts includes an examination of the systems and procedures and their efficacy mainly in respect of:

- a. identification of potential tax assessees, ensuring compliance with laws as well as detection and prevention of tax evasion;
- b. exercise of discretionary powers in an appropriate manner including levy of penalties and initiation of prosecution;
- c. appropriate action to safeguard the interest of the Government on the orders passed by appellate authorities;
- d. any measures introduced to strengthen or improve revenue administration;
- e. amounts that may have fallen into arrears, maintenance of records of arrears and action taken for recovery of the amounts in arrears;
- f. pursuit of claims with due diligence and to ensure that these are not abandoned or reduced except with adequate justification and proper authority.

2.1.2 Audit of Indirect Taxes

Indirect Tax System is a self-assessment system in which the tax payers prepare their own tax returns and submit it to the Department. This system is guided by the fiscal laws including the Goods and Service Tax Act, 2017, Integrated Goods and Service Tax Act, 2017, Goods and Service Tax (Compensation to States) Act, 2017 and legacy tax acts viz. Central Excise Act, 1944 and Finance

Act, 1994. Indirect Tax administration assesses and scrutinizes the returns by way of preliminary scrutiny, detailed scrutiny, internal audit etc. and ensures the correctness of the tax so deposited by the tax payer.

To examine the efficacy of the systems and procedures of the Indirect Tax administration, Audit examines the records related to the returns submitted by the assesseees along with the records of the various field formations and functional wings of the Board.

2.2 Audit Universe

The audit universe includes the Department of Revenue, CBIC, its subordinate organisations and field formations. The organisational structure of CBIC and the number of departmental units are discussed in Para 1.2 of this Report. Roles and duties of the CBIC and its field formations are discussed in the subsequent paragraphs.

2.2.1 CBIC

The Central Board of Indirect Taxes and Customs, in the Ministry of Finance, is the apex body for administering the levy and collection of indirect taxes of the Union of India. It deals with the tasks of formulation of policy concerning levy and collection of indirect taxes, prevention of smuggling and administration of matters relating to indirect taxes and narcotics to the extent under CBIC's purview. CBIC is headed by a Chairman and consists of six members.

2.2.2 Zones

Zones are the highest auditable field entities headed by Principal Chief Commissioner/Chief Commissioner. Principal Chief Commissioner/Chief Commissioner of Zone exercises supervision and control over the technical and administrative work of all the Commissionerates in the Zone. They monitor the revenue collection by each Commissionerate in the Zone and the proper implementation of Acts/Rules and Board's instructions/guidelines issued from time to time.

2.2.3 Commissionerates

Commissionerates are divided into three categories viz. Executive Commissionerates, Commissionerates (Audit) and Commissionerates (Appeal).

The primary function of a Central Goods and Service Tax Commissionerate (Executive Commissionerate) is to implement the provisions of the Central Goods and Service Tax Act, 2017, the Central Excise Act, 1944, rules framed

under these Acts and other allied Acts of the Parliament under which duty of GST/Central Excise is levied and collected. Administratively, each Commissionerate is a 3-tier set-up with its Headquarters at the helm, four to six Divisions at the second level and on an average four to seven Ranges under each Division at the third and final level.

In each zone, there may be one or more Audit Commissionerates headed by a Commissioner (Audit). The main function of the Audit Commissionerate is to conduct internal audit of the taxpayers falling under its jurisdiction, convening of monitoring committee meetings, helping executive Commissionerates in pursuing the cases against the assessee etc.

Commissioner (Appeal) acts as an appellate authority and passes orders on appeals in relation to adjudication orders passed by an authority subordinate to the rank of a Commissioner.

2.2.4 Divisions

Each executive Commissionerate has four to six Divisions headed by a Deputy/Assistant Commissioner. The Divisional heads are responsible for proper compliance of laws and procedures within their jurisdiction. They are also responsible for provisional assessments, sanctioning of refund claims and perform quasi-judicial functions viz. adjudication of cases falling within their competence.

2.2.5 Ranges

Each Division consists of on an average four to seven Ranges. The Range, headed by a Superintendent, is the first office of contact between the trade and industry, and the Department. Scrutiny of the assessment is done by the Range on the basis of prescribed returns filed by the assessee. Apart from the assessment work, the Range officials also check the correctness of statutory declarations filed by the taxpayers.

2.3 Audit Sample, Audit Efforts and Audit Products

During 2020-21, Audit, in view of the access to pan-India data and back-end systems of the CBIC, transitioned from generic risk assessment at unit level (Ranges/Divisions) to a more comprehensive subject matter risk assessment with respect to GST. Accordingly, nine field audit offices headed by Directors General (DsG)/Principal Directors (PDs) of Audit carried out subject specific audit of two major areas under GST viz. processing of GST Refunds and Transitional Credits under GST.

As part of audit of GST refunds, Audit selected 12,283 refund cases for detailed audit, from 3, 40,894 GST refund applications received by the Department between August 2018 and July 2020. Audit observed various systemic issues and compliance deviations with revenue impact of ₹ 185.28 crore. Audit findings on processing of GST refunds are included in Chapter V of this Report.

With respect to audit of transitional credits under GST, Audit examined 7,560 (15 per cent) transitional credit cases, out of 50,000 cases³¹, identified by the CBIC for verification. Audit observed 1,686 compliance deviations in 1,438 cases with monetary impact of ₹ 977.54 crore. Audit observations pertaining to transitional credits are discussed in Chapter VI of this Report.

Audit also examined the GST returns data, in GSTN's premises, from FY 2017-18 to FY 2019-20, as filed by taxpayers up to August 2021. Audit noticed significant inconsistencies in the GST data maintained by GSTN, which are discussed in Chapter IV of this report.

Audit findings with respect to revenue trends and compliance verification mechanism under GST are included in Chapter I and Chapter III of this Report.

In addition to this, Audit had also issued 14 draft paragraphs with money value of ₹ 14.52 crore pertaining to GST audit and 03 draft paragraphs with money value of ₹ 73.84 crore pertaining to legacy tax audit (Service Tax). These audit findings were noticed during the period prior to 2020-21. The details of these 17 audit paragraphs are given in **Appendix-I**.

2.4 Follow-up of previous CAG's Audit Reports

In the last four Audit Reports (excluding current year's report), we had included 1,091 audit paragraphs pertaining to Central Excise, Service Tax and Goods and Services Tax involving money value of ₹ 3,091.87 crore. The details of follow-up on audit observations are included in Table 2.1.

Table 2.1: Follow-up of Audit Reports

Year		FY16	FY17	FY18	FY19 & FY20	Total	
Paragraphs Included		No.	255	300	239	297	1,091
		Amt.	435.56	1018.79	401.26	1236.26	3,091.87
Paragraphs accepted	As on 15.02.2022	No.	237	269	216	205	927
		Amt.	384.78	548.56	200.39	1,101.12	2234.85
Recoveries effected	As on 15.02.2022	No.	178	160	116	107	561
		Amt.	110.97	372.15	58.37	43.24	584.73

(Amount in ₹ crore)

³¹ Antarang data set

The Ministry had accepted audit observations in 927 audit paragraphs involving money value of ₹ 2,234.85 crore, and had recovered ₹ 584.73 crore in 561 audit paragraphs.

2.5 Response by Ministry to audit observations included in this report

We gave six weeks to the Ministry to offer their comments on the audit observations issued to them before inclusion in the Audit Report. We have included two subject specific compliance audit (SSCA) reports with money value of ₹ 1,162.82 crore in this Audit Report. An Exit Conference on these SSCAs was held with the Department on 7 February 2022. Ministry, with respect to SSCA on processing of GST Refunds, accepted audit observations with money value of ₹ 92.08 crore and reported recovery of ₹ 52.93 crore by the Department at the instance of audit. With respect to SSCA on transitional credits, Ministry accepted audit observations with money value of ₹ 309.82 crore and reported recovery of ₹ 50.39 crore by the Department at the instance of audit. We have also included 17 draft paragraphs (with money value of ₹ 88.36 crore), that were noticed prior to 2020-21. Ministry replied to 12 draft paragraphs and accepted audit observations in nine cases with money value of ₹ 8.60 crore. Ministry's reply is awaited with respect to five draft paragraphs.

In addition to the above, we issued 11 draft paragraphs related to Compliance verification mechanism under GST, Revenue Trends under GST, and data inconsistencies in GST data maintained by GSTN. Ministry replied to eight draft paragraphs and accepted audit observations/recommendations in seven draft paragraphs. Ministry's reply is awaited in respect of three draft paragraphs.

Chapter III: Effectiveness of Compliance Verification Mechanism under GST

As per Section 59 of the Central Goods and Services Tax Act, 2017, every registered person shall self-assess the tax payable on supplies made during the tax period and file the return for each tax period. GST, therefore, continues to promote self-assessment just like Central Excise, VAT and Service Tax.

The introduction of self-assessment underscored the need for an effective tax compliance verification mechanism. Such a mechanism typically has three important components—returns' scrutiny, internal audit and anti-evasion functions. This chapter brings out the status of implementation of the simplified GST return mechanism and department's performance with respect to the aforesaid compliance verification mechanism and recovery of arrears.

3.1 Status of implementation of simplified return mechanism

In the last two Audit Reports³² on Goods and Services Tax, Audit had reviewed the progress made in respect of implementation of the simplified return mechanism and system-verified flow of Input Tax Credit (ITC). Audit observed that owing to continuing extensions in the roll out of simplified return system over the last years, and delay in decision making, the originally envisaged system verified flow of ITC was yet to be implemented despite the lapse of more than three years since the roll out of GST. In the absence of a stable and simplified return system, one of the main objectives of roll out of GST i.e. simplified tax compliance system was yet to be achieved. Accordingly, Audit recommended that a definite time frame for roll out of simplified return forms may be fixed and implemented as frequent deferments were resulting in delay in stabilisation of the return filing system and continued uncertainty in the GST eco-system.

During 2020-21, Audit further reviewed the status of implementation of simplified return mechanism and noted the significant progress made in the return system with respect to linking of GSTR-1³³, GSTR-2B³⁴ and GSTR-3B³⁵;

³² Audit Report No.11 of 2019 (Goods and Services Tax) and Audit Report No. 1 of 2021 (Indirect Taxes- Goods and Services Tax, Central Excise and Service Tax)

³³ GSTR-1 is an outward supplies statement as provided in Section 37 of the CGST Act, 2017 and Rule 59 of the CGST Rules, 2017.

³⁴ GSTR-2B is an auto-drafted statement containing the details of input tax credit which shall be made available to the registered person in GSTR-3B.

³⁵ GSTR-3B is a self-assessed summary return which captures summary of outward supplies and inward supplies liable to reverse charge

and restricting ITC of the recipient taxpayers to the supplies declared by suppliers in GSTR-1/Invoice Furnishing Facility³⁶ (IFF)³⁷ .

The return mechanism in GST as envisaged originally in the GST and the implementation status of the same is discussed in the following paragraphs.

The original return mechanism in GST envisaged electronic filing of returns, uploading of invoice level information, auto-population of information relating to ITC from returns of supplier to that of the recipient, invoice level information matching and auto-generation of monthly returns.

The system verified flow of ITC was envisaged to be achieved through the returns GSTR 1, 2 & 3.

- a. It was originally envisaged that suppliers would file invoice-wise details of outward supplies made by them during the month through GSTR-1. The details of outward supplies so furnished by the supplier in GSTR-1 were to be made available electronically to the registered recipients through Form GSTR-2A.
- b. Similarly, details of supplies relating to composition taxpayers, Input Service Distributors and Non-Resident taxpayers as well as Tax Deducted at Source (TDS) by Government departments / agencies and E-commerce operators also were to be automatically made available electronically to the recipients.
- c. Thereafter, based on details available in Form GSTR-2A, the taxpayer was supposed to furnish form GSTR-2 after including details of other inward supplies.
- d. The details of inward supplies added, corrected or deleted by the recipient in his Form GSTR-2 were to be automatically made available to the supplier electronically in form GSTR-1A through the common portal. The supplier may either accept or reject the modifications made by the recipient, and Form GSTR-1 furnished earlier by the supplier should stand amended to the extent of modifications accepted by him.
- e. As compared to GSTR-1, 1A & 2A which are invoice level granular returns, GSTR-3 is a monthly return with the details of sales and purchases during the month along with the amount of GST liability. Most elements of GSTR-3 were supposed to be auto-generated from GSTR-1 and GSTR-2 while the taxpayer had to include the details of discharge of liability of tax, interest, penalty, refund claimed from electronic cash ledger and debit entries in electronic cash/credit ledger while filing GSTR-3.

³⁶ IFF is the Invoice Furnishing Facility, which allows small taxpayers (who file quarterly returns) to upload their invoice every month.

³⁷ With effect from 1 January 2022. Vide CBIC Notification No.40/2021-Central Tax, Dated 29.12.2021.

However, owing to the unprepared GST ecosystem and complexity of return forms, the originally envisaged key returns were postponed and a new simpler temporary return, GSTR-3B, was introduced, initially for two months. GSTR-3B was designed as a self-assessed summary return which captured a summary of outward supplies and inward supplies liable to reverse charge. As a result, ITC would now be settled based on these self-assessed summary returns filed by taxpayers. The originally envisaged system verified flow of ITC at the invoice level was kept in abeyance, thus rendering the system more prone to ITC frauds.

New Return mechanism

The GST Council in its 27th meeting (May 2018) approved the broad principles for the design of the new simplified return filing system. In May 2019, a prototype of the offline tool was shared on the GST portal to give the look and feel of the new return forms to the taxpayers and from July 2019, the taxpayers were able to upload invoices on trial basis for familiarisation.

The GST Council in its 28th meeting (July 2018) decided that the new return mechanism would be implemented with effect from 1 January 2019. Later, in its 31st meeting, the GST Council (December 2018) extended the rollout date and decided to implement the new return forms in a phased manner so that from January 2020 onwards, all taxpayers would be filing returns as per the new return mechanism, and Form GSTR-3B, introduced as a temporary return, would be completely phased out. The GST Council again extended the date of roll out of the new return system in its 37th meeting (September 2018) and decided that the new return system shall be introduced from 1st April, 2020 onwards. In the 39th GST council meeting (March 2020), the implementation of the new return system was further deferred up to September 2020.

Subsequently, the GST Council, in its 42nd meeting (October 2020), has decided not to roll out the proposed new return system in one go. The Council has decided to incrementally incorporate the features of the new return system in the present familiar GSTR-1/GSTR-3B scheme. It was envisaged that the new approach would allow the taxpayer to view ITC available in his electronic credit ledger from all sources i.e. domestic supplies, imports and payments on reverse charge etc. prior to the due date for payment of tax, and enable the system to auto-populate return (GSTR-3B) through the data filed by the taxpayer and all his suppliers.

The salient features of the proposed return filing system are as follows:

1. Filing of FORM-GSTR-1 to be mandatory before filing of return in FORM GSTR-3B;
2. Filing of GSTR-1 to be sequential;

3. No two-way communication between the supplier and the recipient while filing return;
4. Provision of furnishing of details of inward supplies to be removed, instead FORM-GSTR-2B (invoice level data auto-populated from GSTR-1, GSTR-5³⁸ and GSTR-6³⁹) shall be made available to recipients;
5. Restrictions in ITC to extend where details of the Input Tax Credit of such supplies have not been communicated to the registered persons.

Accordingly, Returns Enhancement and Advance Project (REAP) was undertaken by the Government under which:

- Auto-drafted Input Tax Credit statement in GSTR-2B, based on GSTR-1, GSTR-5 and GSTR-6, had been made available to the taxpayer with effect from August 2020 containing all data regarding ITC available based on B2B supplies received from other registered persons, imports of goods, Input Service Distributer (ISD) and Reverse Charge Mechanism (RCM) supplies.
- Auto-population of ITC and liabilities in GSTR-3B return from GSTR-2B and GSTR-1 had been started with effect from December 2020.
- E-invoice had been made mandatory for taxpayers with turnover more than ₹ 500 crore with effect from 1st October 2020 for B2B transactions and for export invoices.⁴⁰ Data from e-invoice is being auto populated in GSTR-1 of the taxpayer, which in turn is being used to auto-populate GSTR-3B returns.
- Quarterly return with monthly payment (QRMP) scheme for taxpayers having aggregate turnover up to ₹ 5.00 crore was introduced with effect from 1 January 2021, providing for option for filing of returns on quarterly basis, instead of monthly basis.

Audit examined the current status of return filing system and is of the opinion that additional steps need to be taken to fully address the issue of non-intrusive e-tax system and system-verified flow of ITC based on the principles of invoice matching. The originally envisaged⁴¹ return system provided for electronically generated monthly return (Part A of GSTR-3) of the taxpayers based on tax liability declared by them and system-verified ITC available to them. The current system, although providing for auto-population of tax liability and eligible ITC in the monthly return, allows for changes in the auto-populated amounts without any limit, leaving room for either mistakes or

³⁸ Details of invoices furnished by non-resident taxpayers.

³⁹ Details of invoices furnished by an Input Service Distributor.

⁴⁰ The threshold for mandatory issuance of e-invoice had been reduced to Rs. 50 crore from 1st April 2021.

⁴¹ Section 39 (1) of CGST Act, 2017. And Rule 60 of the CGST Rules, 2017.

deliberate misstatements by the taxpayers. Further, the filing of GSTR-1 is yet to be made mandatory before filing of GSTR-3B by the taxpayer. As a result, the objective of auto-population of tax liability and available ITC in the monthly return cannot be achieved where GSTR-1 has not been filed. For example, unless GSTR-1 is filed by a taxpayer, his tax liability will not be available for auto-population in his monthly return (GSTR-3B). Similarly, unless GSTR-1 is filed by a supplier, eligible ITC will not be available for auto-population in GSTR-2B and monthly return of the recipient taxpayer.

Thus, the originally envisaged non-intrusive e-tax system, based on preventive checks, is yet to be fully implemented. This shortcoming is being compensated through the Department's more traditional intrusive functions requiring tax-officer-taxpayer interface. Notification 94/2020 dated 22 December 2020 is an example in this regard where a new sub-rule 2A has been inserted in Rule 21A of the Central Goods and Services Tax (CGST) Rules vide which if any significant differences or anomalies are observed between GSTR-3B and GSTR-1/2B, tax officers can suspend the GST registration of the taxpayer without affording a reasonable opportunity of being heard.

When pointed out by Audit (January 2022), the Ministry stated (February 2022) that efforts were being made to achieve a less-intrusive e-tax system. Ministry informed that a number of amendments have been proposed in the CGST Act, 2017 vide Finance Bill 2022 to align with the present return filing system. Section 39 of the CGST Act, 2017 has been proposed to be amended in the Finance Bill, 2022 to provide for mandatory requirement of filing of GSTR-1 before GSTR-3B return for a tax period. Further, amendment to section 37 of CGST Act, 2017 has been proposed in the Finance Bill 2022 to make filing of GSTR-1 sequential i.e. a taxpayer will not be able to file GSTR-1 unless the earlier period GSTR-1 returns have been filed.

Ministry also stated that, in view of genuine differences between the ITC as per books of the taxpayer and ITC auto-populated in GSTR-3B, the values in auto-populated GSTR-3B have been kept editable. The GST Portal highlights such fields of GSTR-3B and a warning message appears, where a taxpayer avails more ITC than the auto-populated value, to keep a check on mistakes/misstatement by the taxpayers.

Audit has noted the constraints highlighted by the Ministry in making auto-populated tax liability and ITC amounts non-editable in the monthly return (GSTR-3B). Audit, however, is of the view that the Ministry may rely more on preventive checks that are enforced through IT systems, by taking steps to limit editing of auto-populated tax liability/ITC amounts, as originally envisaged, rather than relying on post-facto intervention by the tax offices in safeguarding Government revenue.

3.2 Scrutiny of Returns under GST

Section 61 of the Central Goods and Services Tax Act, 2017 stipulates that the proper officer may scrutinize the return and related particulars furnished by the taxpayers to verify the correctness of the returns and information. Under Rule 99 of the Central Goods and Services Tax Rules, 2017, discrepancies noticed if any, shall be communicated to the taxpayer for seeking his explanation. If the explanation offered is found acceptable by the proper officer, the proceeding shall be dropped, the taxpayer shall be informed and no further action in the matter shall be taken. If, however, the taxpayer

- does not furnish a satisfactory explanation within 30 days of being informed (extendable by the proper officer), or
- does not take any corrective action in his return in which discrepancy is accepted,

the proper officer may initiate appropriate actions including adjudication proceedings for determining the tax liability under section 73 or section 74.

In the Audit Report No. 1 of 2021 on Goods and Services Tax, Audit had observed that CBIC was yet to put in place an effective system of scrutiny of returns based on detailed instructions/standard operating procedure/manual for the tax officers. Therefore, an important compliance function of the department, as mandated by law, was yet to be effectively rolled out even after three years of GST implementation.

Ministry informed⁴² (August 2021) that the report of the Committee, constituted to suggest guidelines for scrutiny of GST returns, was under examination. However, the department had been using data analytics and information technology system-based tools to identify deviant behaviour. Inconsistencies between various returns of the taxpayers are being analysed and red flag reports are being generated by GSTN as well as the Directorate General of Analysis and Risk Management (DGARM) in respect of defaulting taxpayers. These reports are being shared with the tax officers for verification.

Ministry further informed that efforts were being made to put in place a risk-based standardised system of return scrutiny within the next six months.

It may be pertinent to mention that section 73 of CGST Act, 2017 provides that where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the

⁴² In reply to Hon'ble Public Accounts Committee queries on Audit Report No.1 of 2021

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 input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder. The proper officer shall issue the order within three years⁴³ from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to, or within three years from the date of erroneous refund.

The due dates for filing of annual returns for FY 18, FY 19 and FY 20 were 5/7 February 2020, 31 December 2020 and 31 March 2021, respectively. Almost two years have passed (January 2022) since filing of annual returns for FY 18 and more than one year since filing of annual return for FY 19. As a result, the time available for issuance of notice and recovery of revenue in cases of non/short payment of tax has already shrunk to that extent.

In view of the above, Audit agrees with the Ministry's response and recommends that an effective risk based standardised system of returns' scrutiny (with detailed instructions/standard operating procedure) should be implemented at the earliest and certainly within the period of six months indicated by the Ministry so that the Department has sufficient time to take action against non-compliant taxpayers before time-barring of cases as per law. Such a scrutiny should involve risk-based selection of returns for scrutiny, and the results of the scrutiny (similar to scrutiny assessment in respect of income tax) should also be captured in real-time through the CBIC-GST System to ensure transparency and minimize arbitrariness.

When Audit pointed this out (December 2021), Ministry, while accepting the audit recommendation, stated (February 2022) that scrutiny of returns based on detailed instructions/standard operating procedure is under active consideration and the proposed scrutiny process is envisaged to have risk-based selection of returns and is proposed to include a robust monitoring system to ensure transparency and fairness.

⁴³ Five years in cases of any wilful-misstatement or suppression of facts to evade tax under Section 74 of the CGST Act, 2017.

3.3 Monitoring mechanism with respect to Directorate General of Analytics and Risk Management (DGARM) Reports

CBIC constituted⁴⁴ (July 2017) the Directorate General of Analytics and Risk Management (DGARM) with the aim to study, interpret and analyse indirect tax data and share the outputs with various stakeholders. The DGARM is an attached office of the Central Board of Indirect Taxes and Customs and reports to Chairman, CBIC through Member (Investigation). The Directorate General became functional in June 2018 and analyses data relating to Customs, Central Excise and Goods and Services Tax.

Working of DGARM

DGARM identifies high risk taxpayers through use of extensive data analytics on the GST returns data received from GSTN and DG Systems, and Income Tax return (ITR) data received from CBDT. The list of high risk taxpayers is shared with the CBIC field formations through various analytical reports on the Directorate of Data Management (DDM) portal for action.

On completion of action, CBIC field formations upload feedback on the respective DGARM reports incorporating details regarding detection and recoveries from the identified high risk taxpayers.

Data analysis methodology/parameters in respect of the reports uploaded on the DDM portal were requested (September 2021) by Audit. The Department did not provide the same and intimated (September, 2021) that the instructions were confidentially shared with the field formations in PDF format. As a result, Audit could not examine the risk parameters and methodology used by DGARM.

When pointed out by Audit (January 2022), Ministry replied (February 2022) that these reports are in effect intelligence reports for targeted enforcement by the field formations against identified taxpayers and therefore, are confidential in nature and cannot be shared.

The Ministry's reply is not acceptable. Non-production of data analysis methodology/parameters impedes CAG's Constitutional and statutory responsibility under section 16 of the CAG's DPC Act, 1971 to examine whether rules and procedures are designed to secure effective check on the assessment and collection of revenue. In particular in respect of cases where the feedback is reported on the DDM portal and action is completed, detailed granular data must be shared with Audit, and cannot be withheld on grounds of confidentiality.

⁴⁴ Vide Office Memorandum F. No. A-11013/19/2017-Ad.-IV dated 11.07.2017

Standard Operating procedure for “Risky Tax Payers” and others

The Board had issued (April 2019) a Standard Operating procedure (SOP) regarding the modalities of taking action by its field formations in respect of GSTINs identified by DGARM. The SOP also provides the manner in which the Jurisdictional Range, after receiving the GSTINs from the Jurisdictional Assistant/Deputy Commissioner, would approach the taxpayer, as follows:

1. The Range would send an e-mail to the taxpayer explaining the reasons as to why he was being communicated and, where applicable, clearly indicate the nature of discrepancy in payment of tax or filing of returns etc.
2. If no or an unsatisfactory response is received from the taxpayer, the Range would issue a letter by speed post to the taxpayer. If a satisfactory response was still not forthcoming within the next 15 days, or if the letter is returned by the Postal Department for any reason, the Range Officer shall bring the matter to the notice of Assistant/Deputy Commissioner. After weighing the facts, the Range Officer or preventive Branch may visit the principal place of business of the taxpayer after due authorisation.

Audit noticed that the Standard Operating Procedure (SOP) dated 30 April 2019 makes only an incidental reference to the provisions of the CGST Act as follows:

“The provisions of Chapter XII of CGST Act, 2017 regarding scrutiny of returns (Section 61), assessment of non-filers of returns (Section-62), assessment of unregistered persons (Section 63) and summary assessment in certain special cases (Section 64), should be adhered while examining these taxpayers”.

In the vast majority of cases (i.e. other than assessment of non-filers, assessment of unregistered persons, and summary assessment in special cases), the provisions of the SOP appear to refer (although not explicitly stated) to the detailed procedures to be followed under Section 61 – Scrutiny of Returns.

In Audit’s opinion, this SOP should explicitly flow from, and state clearly and transparently, the specific provisions of the CGST Act that are being implemented through the SOP.

Further, the use of a manual/ semi-automated mechanism for taxes and monitoring action in respect of Risky Taxpayers identified by DGARM instead of an IT workflow based functionality is sub-optimal as it significantly reduces the level of transparency and visibility for jurisdictional actions and fails to properly leverage the full power of information technology. The current

system of just uploading feedback post-facto onto the CBIC-DDM Module and not conducting all actions in real-time through the IT system is not adequate.

When pointed out by Audit (January 2022), the Ministry stated (February 2022) that the SOP dated 30 February 2019 was updated by the SOP dated 12 July 2021. Ministry further stated that the SOP provides a broad template on how to process the lists of risky taxpayers shared by DGARM. The SOP is not meant to act as a statutory underpinning, but is merely a broad guideline on dealing with the taxpayers identified by the DGARM for verification. Ministry's reply is not acceptable in view of the fact that the SOP makes only an incidental reference to the provisions of the CGST Act and, in the absence of clarity regarding the statutory provisions under which the Department is required to take action (in particular, scrutiny under section 61 of the CGST Act, 2017), may lead to different interpretations by various field formations. Further, the updated SOP of July 2021 also lacks clarity and makes only an incidental reference to the provisions of the Act, as in the SOP dated 30 February 2019.

Audit strongly recommends that the entire set of activities should be end-to-end automated as part of the CBIC-GST platform. The automated generation of emails to the identified taxpayers should take place through such a module. Responses from taxpayers should similarly be part of (or seamlessly inter-forced) with this module; issue of emails, auto-generated speed post letters, or automated SMSs, could take place through this system; the results of formal visits (after appropriate online authorisation) to the principal place of business of the taxpayer; and thereafter the ultimate feedback/ conclusion as a result of the risky taxpayers' identification should be done in real-time through this module. Such an end-to-end automated module would facilitate transparency and effective real-time monitoring.

The Ministry should also fix timelines for completion of verification by the field formations, and automatic tracking against such timelines. No such detailed timelines have been defined. This issue was also highlighted in the Board's letter of February 2019⁴⁵ wherein it was noted that there were Commissionerates in the five zones who had not uploaded a single feedback.

When pointed out by Audit (January 2022), Ministry stated (February 2022) that the web application of DGARM is fully automated where reports containing the details of risky entities are shared with field formations and after completing the action, the field formations upload GSTIN-wise feedback on DGARM portal immediately upon achieving key milestones indicated in sub-head/heads of feedback. Thus, the application helps in real time monitoring of action taken on risky taxpayers identified under various reports. Ministry, with

⁴⁵ D.O.F. No. DGACR/tech/Analytic/206/2018 dated 22 February 2019

respect to fixing timelines for completion of verification by the field formations, stated that though no timeline is provided in the SOP dated 30.04.2019, the feedback is examined from time to time and reminders issued to the field for timely compliance.

The reply is not acceptable as the existing semi-automated mechanism remains sub-optimal and fails to properly leverage the full potential of IT. Many actions, like correspondence with the identified taxpayers do not take place through the DGARM portal. Thus, there is a need for end-to-end automation of the entire set of activities related to verification (or scrutiny, when this is notified) for increased efficiency and transparency.

Monitoring and feedback mechanism – Audit observations

Audit noticed that a feedback view module has been created in the DDM portal to monitor the feedback on GSTINs/PANs shared under various analytical reports with the field formations. It provides the current status of report-wise/GSTIN-wise detection and recovery. It also enables the officers at various levels to monitor the quality of the analytical reports, time taken to act and pendency at the field level.

The Department was requested to provide the details of the 177 reports uploaded on the DDM portal. In reply, DGARM provided only the summary of 177 reports under 40 theme-wise Report IDs. As per the details provided, DGARM uploaded 4, 82,587 GSTINs and feedback from field formations was received in respect of 3, 71,898 GSTINs (77 *per cent*). Further, the Department detected non/short payment of tax dues of ₹ 2, 16,313 crore, based on these 177 reports, and recovered ₹ 1, 96, 355 crore from the taxpayers.

Since the details of 177 reports were not provided, Audit could not examine the efficacy of feedback mechanism in terms of time taken by the CBIC field formations and pendency of action, if any. However, on examination of the summary of 40 theme-wise reports, Audit observed the following:

(i) In respect of 13 Report IDs⁴⁶, the feedback was pending in more than 50 *per cent* cases as on September 2021, ranging from 52 *per cent* to as high as 95 *per cent*. Under these 13 report IDs, DGARM had forwarded 47,301 GSTINs during

⁴⁶ Titles of 13 Reports are: Analysis of importers not declaring GSTIN in Bill Entry, Analysis of tax payment by top 500 taxpayers-PANs (in terms of Cash payment), Analysis of taxpayers profiled on the basis of data exchange between CBDT-CBIC-GSTN, Multiple registrations linked with PAN, Analysis of taxpayer with inordinately skewed tax behaviour, Analysis of GSTINs who have filed GSTR-1 but not filed GSTR-3B or nil filed and also not shown in GSTR 2A, Verification of first stage (L1) or second stage (L2) suppliers of identified risky exporters, Regarding the lists of the taxpayers who have passed on wrongful ITC/ineligible ITC, Analysis of Exporters who have claimed refunds after exporting Goods/services under LUT/Bond and export of services with payment of duty, Monitoring of pending verification of risky exporters, Comparison of ITC claimed in reverse charge mechanism with the declared inward supply, Verification of new registration applicable by CGST authorities, Analysis of GSTIN's who have been supplying taxable as well as exempted supplies but have not reversed any ITC

February 2019 to August 2021. Out of these, the Department had submitted feedback in respect of only 12,242 cases with detection of ₹ 12,676 crore and recovery of ₹ 8,736 crore. Feedback in respect of 35,059 GSTINs was pending. In the absence of details, Audit could not ascertain the extent of delays.

(ii) In respect of two report IDs pertaining to 'monitoring of pending verification of risky exporters⁴⁷' and 'ITC frauds⁴⁸', the feedback was pending in 95 per cent cases each. In these two reports, DGARM shared the list of 7062 GSTINs since January 2021, and 2,856 GSTINs since September 2021. The field formations had submitted feedback in respect of only 334 GSTINs pertaining to monitoring of pending verification of risky exporters' as of September, 2021. In the absence of details, Audit could not ascertain the extent of pendency.

When pointed out by Audit (January 2022), Ministry stated (February 2022) that, in respect of 'ITC frauds' reports, DGARM had asked (September 2021) all the Zones to get the compliance expedited from the respective Commissionerates.

Recommendations

- 1. In the absence of an effective risk-based system of scrutiny of returns with statutory backing based on detailed instructions/standard operating procedure, the Department is relying on DGARM inputs to discharge its compliance verification functions. Thus, in order to give assurance on Department's performance, Audit needs access to data analysis methodology/parameters in respect of the DGARM reports along with the detailed reports, in particular in respect of cases where feedback is already provided. Audit recommends that such access to the records and information pertaining to DGARM reports may be provided without delay so that CAG's constitutional and statutory duties could be discharged.**
- 2. Though the DGARM reports and the action taken by the field formations on these reports are being uploaded on the DDM portal, detailed action taken by the field formations on these reports like correspondence with the taxpayer to explain the nature of discrepancy noted and to take taxpayers' response on the same is still being done manually/offline. Audit recommends that the entire set of activities should be end-to-end automated as part of the CBIC-GST**

⁴⁷ Monitoring of pending verification of risky exporters

⁴⁸ Analysis of GSTIN's who have been supplying taxable as well as exempted supplies but have not reversed any ITC

platform to facilitate transparency and effective real-time monitoring.

3. **Audit recommends fixing of timelines in which the Department offices should complete action on the DGARM reports, against which progress can be monitored.**

3.4 Internal Audit under GST

3.4.1 Internal audit of GST Units

Internal Audit⁴⁹ helps to assess the level of compliance by taxpayers in the light of the provisions of the Goods and Services Tax Act and rules made thereunder. The Board had issued detailed procedure of Internal Audit in the form of Goods and Services Tax Audit Manual (GSTAM) in July 2019. The internal audit provisions of the Department envisaged selection of taxpayers based on risk assessment, using GST data, done by the Director General of Analytics and Risk Management (DGARM). The financial year for the purpose of internal audit is from July to June in respect of Central Excise and Service Tax, and from April to March in respect of GST.

Section 2 (13) of the CGST Act, 2017, defines “Audit” as the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder”.

The details of internal audit undertaken by the Department during 2019-20 and 2020-21 for GST are as under: -

Table 3.1: Total detection made vis-à-vis units audited by Internal Audit (GST)

Year	Category	Amount in ₹ crore				
		Total units planned	Total units audited	Short levy detected	Total Recovery	Recovery as % of total Detection
2019-20	Large Units	17,172	244	65.51	9.42	14
	Medium Units	18,050	296	15.31	8.06	53
	Small Units	19,920	318	14.72	1.81	12
	Total	55,142	858	95.54	19.29	20
2020-21	Large Units	17,929	2816	1623.95	291.94	18
	Medium Units	18,257	4405	510.44	138.05	27
	Small Units	19,728	4781	346.84	83.57	24
	Total	55,914	12,002	2,481.23	513.55	21

Source: Monthly Progress Report of the Department.

⁴⁹ Section 65 of CGST Act, 2017

As is evident from the above table, the number of units audited during FY 20 and FY 21, respectively, were 1.56 *per cent* and 21.47 *per cent* of the total units planned. Although there has been a substantial increase in the percentage of units audited in FY21, there is still a huge gap between the numbers of units planned and audited.

The total recovery effected was 20 *per cent* and 21 *per cent* of the amount detected in Internal Audit during FY20 and FY21, respectively.

When pointed out (January 2022), Ministry stated (March 2022) that due to the extension of due date of filing of annual returns, less number of taxpayers were available for audit during 2019-20 and 2020-21. Ministry further stated that there was shortage of officers in the Audit Commissionerates, especially in the grade of inspectors whose working strength was less than 50 *per cent* of the sanctioned strength in most of the Audit Commissionerates. Non-cooperation by the taxpayers in providing documents and Covid-19 pandemic were also cited by the Ministry as the reasons for low coverage of units in internal audit.

As regards low recovery in internal audit, Ministry stated that many taxpayers, especially large units, legally contested the internal audit findings through appeal/litigation resulting in low recovery. Ministry further stated that due to Covid-19 pandemic, many business units faced liquidity crunch, resulting in lack or shortage of funds for tax compliance during internal audit.

In the era of self-assessed tax regime, internal audit is one of the main tools for ensuring compliance by the taxpayers. Further, departmental action against non-compliant taxpayers is a time bound activity under section 73 of CGST Act, 2017. Audit, therefore, recommends that suitable administrative measures should be taken to address the shortage of staff in Audit Commissionerates. Till the time man-power shortage is addressed, the Department may take into account the available staff strength for planning the number of units for internal audit with focus on high risk taxpayers.

3.4.2 Internal audit of Central Excise and Service Tax Units

The details of internal audit undertaken by the Department during 2018-19, 2019-20 and 2020-21 for the Central Excise and Service Tax units is as under:

Table 3.2: Total detection made vis-à-vis units audited by Internal Audit (CX &ST)

Year	Category	Amount in ₹ crore					
		Total units planned	Total units audited	Short levy detected	Total Recovery	Recovery as % of total Detection	% of units audited
2018-19	Large Units	9,204	6,159	5,149	1,419	28	67
	Medium Units	16,991	12,191	2,120	721	34	72
	Small Units	40,756	26,441	1,517	638	42	65
	Total	66,951	44,791	8,786	2,778	32	67
2019-20	Large Units	6,361	3,432	8,429	519	6	54
	Medium Units	12,075	6,678	1,698	365	21	55
	Small Units	35,383	21,649	1,210	412	34	61
	Total	53,819	31,759	11,337	1,296	11.43	59
2020-21	Large Units	4,075	1,421	5,532	185	3	35
	Medium Units	7,758	2,106	1,017	118	12	27
	Small Units	27,630	8,860	468	124	27	32
	Total	39,463	12,387	7,017	427	6	32

Source: Monthly Progress Report of the Department.

It is observed that the coverage of internal audit of units declined from 67 per cent in FY19 to only 32 per cent of the planned units in FY21.

Further, there was a continuous decline in the recovery effected at the instance of internal audit as percentage of the amount detected during last three years. The total recovery decreased from 31.63 per cent in FY19 to only 6.10 per cent of the amount detected in FY21. Recovery as percentage of total detection in large units decreased from 28 per cent in FY19 to only three per cent in FY21.

When pointed out (January 2022), Ministry attributed (March 2022) low coverage of internal audit during 2020-21 to shortage of staff and paucity of time caused by the Covid-19 pandemic.

As regards low recovery in internal audit, Ministry stated that due to Covid-19 pandemic, the taxpayers found it difficult to deposit money required to discharge their tax liability detected during internal audit. The difference in opinion related to issues raised in internal audit paras and taxpayers legally contesting such paras also contributed to low percentage of recovery.

3.5 Anti-Evasion functioning of DGGI

Directorate General of Goods and Service Tax Intelligence-DGGI (formerly Directorate General of Central Excise Intelligence (DGCEI)) as well as the Goods and Service Tax Commissionerates have well-defined roles in the task of detection of cases of evasion of Goods and Services Tax, Central Excise duty

and Service Tax. While the Commissionerates, with their extensive database of units in their jurisdiction and presence in the field, are the first line of defence against duty evasion, DGGI specialises in collecting specific intelligence about evasion of substantial revenue. The intelligence so collected is shared with the Commissionerates. Investigations are also undertaken by DGGI in cases having all India ramifications.

Table 3.3 below depicts the performance of DGGI and GST Commissionerates in terms of number and amount of cases detected and voluntary payments made by the taxpayers during last five years.

Table 3.3 Anti-evasion performance of DGGI and GST Commissionerates during 2016-17 to 2020-21

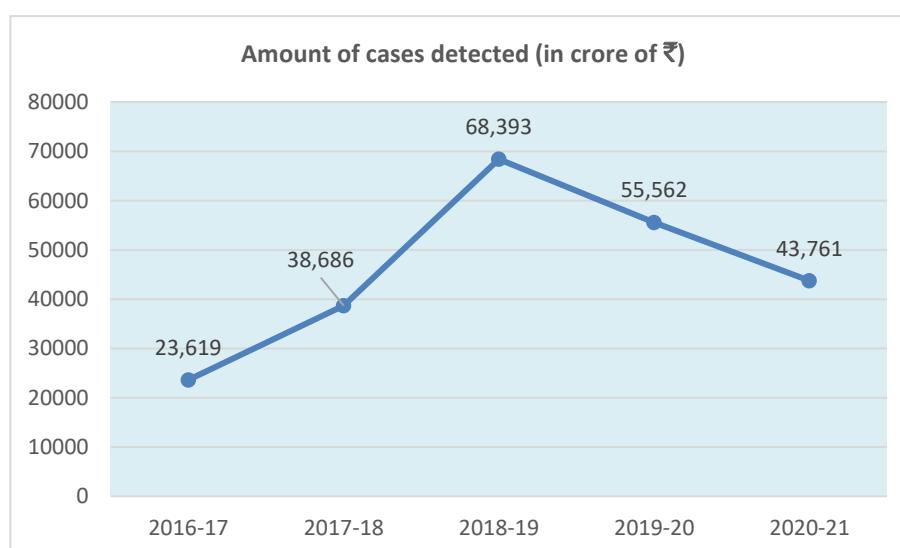
(₹ in crore)

Year	Central Excise			Service Tax			Goods and Services Tax			Total		
	No.	Amt.	VP*	No.	Amt.	VP*	No.	Amt.	VP*	No.	Amt.	VP*
2016-17	2,122	5,773	382	8,085	17,846	2,067	--	--	--	10,207	23,619	2,449
2017-18	894	6,414	203	5,299	24,201	2,549	233	8,071	7,437	6,426	38,686	10,189
2018-19	993	4,218	380	5,507	32,902	2,771	3,784	31,273	8,646	10,284	68,393	11,797
2019-20	610	8,594	231	3,839	20,451	1,156	4,865	26,517	12,803	9,314	55,562	14,190
2020-21	122	2,860	231	1,173	8,993	1,193	3,822	31,908	12,963	5,117	43,761	14,387
Total	4,741	27,859	1,427	23,903	1,04,393	9,736	12,704	97,769	41,849	41,348	2,30,021	53,012

*Voluntary Payment

Chart No. 3.1 Amount of cases detected through anti-evasion activities

(₹ in crore)



As is evident from Table 3.3, for GST, there is an increase in the amount of detection to the extent of 20 per cent from ₹ 26,517 crore to ₹ 31,908 crore, during FY21, in comparison to the year FY 20. Overall, there is a decline in the

amount of detection to the extent of 36 per cent from ₹ 68,393 crore during FY 19 to ₹ 43,761 crore in FY 21.

The voluntary payments of ₹ 11,797 crore in 2018-19, ₹ 14,190 crore in 2019-20 and ₹ 14,387 crore were 17 percent, 26 per cent and 33 per cent of total detection in the respective year, which showed an upward trend during the last three years.

3.5.1 Nature of anti-evasion cases during FY21

The nature of anti-evasion cases detected by DGGI involving Central Excise, Service Tax and GST during 2020-21 is highlighted in **Table 3.4**:

Table3.4: Nature of anti-evasion cases detected by DGGI

Sr. No.	Central Excise		Service Tax		Goods and Services Tax	
	Nature	%	Nature	%	Nature	%
1	Clandestine Removal	42	Non-Payment of Service Tax for providing taxable Service	74	Wrong availment/non-reversal of Input Tax Credit	50
2	Misuse of Cenvat Scheme	19	Non-Payment of Service Tax under reverse charge mechanism	9	Non-payment of Tax on supply of taxable goods and Service	24
3	Misclassification	10	Short Payment of service tax by undervaluing taxable service	6	Tax collected but not paid to Govt exchequer	4
4	Undervaluation	7	Service tax collected but not paid to Govt exchequer	5	Short Payment of Tax by undervaluing Taxable goods and Service	3
5	Wrong Availment of Exemption Notification	6	Misuse of Cenvat Credit Scheme	2	Non-payment of Tax under Reverse charge mechanism	3
6	Others	16	Others	4	Others	16

As could be seen from Table 3.4, clandestine removal, misuse of Cenvat Scheme and misclassification formed the major portion of evasion activities detected in Central Excise. As for Service Tax, non-payment of service tax for providing taxable services, non-payment of service tax under reverse charge mechanism and short payment of service tax by undervaluation of taxable services formed the major portion of evasion activities detected.

Wrong availment/non-reversal of Input Tax Credit, non-payment of tax on supply of taxable goods and services, and tax collected but not paid to

Government exchequer were the major forms of detected evasion activity under GST during FY 21.

3.5.2 Fresh cases taken up for investigation and disposals thereof

GST law empowers the proper officer to inspect, search, seizure and investigate to check the cases pertaining to evasion of duty and taxes. Number of investigation cases pertaining to Goods and Services Tax and their disposal during 2017-18 to 2020-21 are detailed in **Table 3. 5**.

Table 3. 5 – Investigation of cases (Fresh cases) and disposals thereof

(₹ in crore)

FY	Description	Opening Balance as per MPR	Fresh cases taken up for Investigation	Total No. of cases	Cases disposed off	Closing Balance as per calculation	Closing Balance as per MPR
2017-18	No. of cases	1 ⁵⁰	217	218	23 (10.55%)	195	193
	Duty Involved (₹ in crore)	0.02	909	909	9.21 (1.01%)	900	900
2018-19	No. of cases	193	2,980	3,173	491 (15.47%)	2,682	2,560
	Duty Involved (₹ in crore)	900	29,183	30,082	520 (1.73%)	29,562	29,109
2019-20	No. of cases	1,618	2,381	3,999	309 (7.73%)	3,690	3,690
	Duty Involved (₹ in crore)	19,732	21,365	41,097	1,208 (2.94%)	39,889	39,889
2020-21	No. of cases	3,690	3,857	7,547	990 (13.12%)	6,557	6,557
	Duty Involved (₹ in crore)	39,889	32,947	72,836	5,859 (8.04%)	66,977	66,977

(Source: MPRs i.e., CEI-CE-5, CEI-ST-4 and CEI-GST-7 of the Department)

As evident from the table above, the amount involved in the cases disposed during the last four years remained very low (1.01 per cent to 2.94 per cent) except for FY 21 when it was 8.04 per cent. During 2020-21, 13 per cent of the pending cases were disposed-off as compared to only 8 per cent in 2019-20, which involved an amount of ₹ 1,208 crore in 2019-20 and ₹ 5,859 crore in 2020-21.

Further, Audit observed mismatch in the Opening and Closing Balance in the number of cases (122) and duty involved (₹ 453 crore) to the extent of five per cent and two per cent, respectively, during FY 19. Audit also observed mismatch of 942 cases (2,560-1,618) in the closing balance of cases as per MPR

⁵⁰ Opening balance of 1 as per MPR at the time of roll out of GST.

FY19 and opening balance of MPR FY20 and duty mismatch ₹ 9,377 (29,109-19,732) in the closing balance of FY19 and opening balance of FY20.

Audit requested (January 2022) the Ministry/Board to indicate the reasons for this mis-match. Reply of the Ministry/Board was awaited (February 2022).

3.5.3 Age-wise pendency of cases pending for investigation

Age-wise pendency of cases pending for investigation as on March, 2021 is detailed in **Table 3. 6**.

Table 3. 6-Closing balance of investigation pending as on March, 2021

Stream	Total	(₹ in crore)				
		Less than 6 months	More than 6 months but less than 12 months	More than 1 year but less than 2 years	More than 2 years	
Central Excise	Number of cases	67	15	2	16	34
	Duty involved (₹ in crore)	359	19	0.20	34	305
Service Tax	Number of cases	496	133	60	130	173
	Tax involved (₹ in crore)	2,283	259	265	420	1,339
Goods and Services Tax	Number of cases	6,557	2,800	821	1,882	1,054
	Tax involved (₹ in crore)	66,977	22,514	8,000	17,549	18,913

(Source: MPRs of the Department (CEI-CE-5, CEI-ST-4, CEI-GST-7))

As evident from table above, overall 6,557 cases relating to GST with tax implication of ₹ 66,977 crore were pending for investigation as of March 2021 out of which 1,054 cases (16.07 per cent) with tax implications of ₹ 18,913 (28.24 per cent) crore were pending for more than 2 years.

Similarly, as regards Central Excise and Service Tax, 67 and 496 cases with tax implication of ₹ 359 crore and ₹ 2,283 crore were pending for investigation as of March 2021. 34 and 173 cases with tax implications of ₹ 305 crore and ₹ 1,339 crore were pending for investigation for more than 2 years.

Audit requested (January 2022) the Ministry to indicate the reasons for the above mentioned trends in the pendency of cases. Reply of the Ministry was awaited (February 2022).

3.6 Recovery of Arrears

Any amount recoverable from the taxpayer due to confirmation of demands by virtue of Orders-in-Original (OIOs), Order-in-Appeal (OIA), Tribunal orders, and Courts' Orders or grant of stay applications with condition of pre-deposits, becomes arrear.

The process of recovery of arrears starts with confirmation of demand against the defaulter taxpayer and includes a number of appellate forums wherein the taxpayer as well as the Department can go for appeal.

The main statutory provisions dealing with recovery of arrears in GST are included in Section 79 of the Central Goods and Services Tax, 2017. As for Central Excise and Service Tax, provisions are included in Section 11 of the Central Excise Act, 1944 (which empowers Central Excise officers to take action for recovery of arrears), Section 142 of the Customs Act, 1962 (which have been made applicable in Central Excise cases, vide Notification No.68/63-Central Excise dated 4 May 1963), and Section 87 of the Finance Act, 1994 (which empowers the Department to take action for recovery of arrears of Service Tax).

3.6.1 Classification of arrears

Arrears are classified into two main categories viz. recoverable and irrecoverable arrears. All stayed arrears are categorised as irrecoverable. The recoverable arrears are further classified as restrained (Board for Industrial and Financial Reconstruction (BIFR)/ Debt Recovery Tribunal/Official Liquidator cases, pending applications for stay/ stay extension etc.), unrestrained (Cases where action under section 11 of Central Excise Act, 1944/section 87 of Finance Act, 1994/section 142 of Customs Act, 1962 has been initiated, Certificates sent to District Collector/other Customs-CE formations etc.), and fit for write-off (viz., units closed/defaulters not traceable/assets of company not available etc.). As per the Monthly Performance Reports (MPRs), arrears are maintained under 17⁵¹ broad categories.

3.6.2 Responsibilities for Recovery and Monitoring of Arrears

The Board monitors the overall functions and performance of the field formations in recovery of arrears and fixes targets for the same. It also issues periodical instructions to the field formations to tone up the recovery process.

Chief Commissioners bear the overall responsibility of monitoring and supervising the recovery process under their respective zones. Commissionerates are required to review and monitor the functions of Divisional and Range officers in this regard. Besides, they should exercise the

⁵¹ CESTAT, High Court, Units closed/Defaulters, Arrears where appeal period not over, Official Liquidator cases, Commissioner Appeal, Appeal period over (But no appeal filed), Units taken over by Financial Institutions, Supreme Court, Section 87 of the Finance Act. 1994, BIFR Cases, Specify, if Any, Section 142 (c) (I)- Certificate Action with District Authorities, Arrears pending for write-off, Section 142 (c) (ii) of the Customs Act, 1962.

functions for vacation of stay orders, filing for early hearing of CESTAT/Court matters, taking action for attachment of property of defaulters and follow up of cases pending in BIFR/DRT/OL etc. and watch progress and performance of Recovery Cells through monthly progress reports and take follow up action.

Divisional Officers (Assistant/Deputy Commissioner) are entrusted with supervising Range officers and to ensure that they are performing their duties in accordance with the prescribed rules/regulations/instructions. Ranges are the lowest level field formations entrusted with the task of maintaining the records relating to arrears and appeals, initiating recovery process and submitting reports to higher authorities.

In addition, the Recovery Cell operates under the supervision and control of the jurisdictional Commissioner. The major functions of the Recovery Cell are to serve notice upon defaulters, attachment and sale of defaulters' property by public auction. It is also required to send a monthly progress report to the Commissionerate regarding arrears.

3.6.3. Pendency of arrears

The overall pendency of arrears during FY19, FY20 and FY21, as per the MPRs of the department, is detailed in **Table 3. 7:**

Table 3.7: Overall Pendency of arrears of CX and ST

(Amount in crores of rupees)

Tax	March 2019		March 2020		March 2021	
	Number	Amount	Number	Amount	Number	Amount
Central Excise	51,957	86,551	44,548	83,351	38,071	80,301
Service tax	80,511	1,44,528	72,483	1,44,512	65,001	1,46,332
Total	1,32,468	2,31,079	1,17,031	2,27,863	1,03,072	2,26,633

Source: Monthly Progress Reports (MPRs) of the respective years provided by the Ministry.

As evident from the table above, the amount of arrears of Central Excise decreased (four per cent) from ₹ 83,351 crore in FY20 to ₹ 80,301 crore during FY21. However, the amount of arrears of Service Tax marginally increased (one per cent) from ₹ 1, 44,512 crore in FY20 to ₹ 1, 46,332 crore during FY21.

Audit requested (January 2022) the Ministry to indicate the reasons for lack of significant improvement in the recovery of arrears of Central Excise and Service Tax during the last two years. Reply of the Ministry was awaited (February 2022).

3.6.4 Pendency of arrears under different categories

Table 3. 8 below shows the pendency of arrears of Service Tax during FY19, FY20 and FY21 under various categories:

Table 3. 8: Pendency of arrears of Service Tax under various categories

(Amount in ₹ crore)

S. No.	Stream	March 2019		March 2020		March 2021		Percentage increase	
		No.	Amount	No.	Amount	No.	Amount	FY20	FY21
1	CESTAT	22,392	94,129.5	18,624	1,00,790.3	14,174	97,838.5	7	-3
2	High Court	3,103	12,292.6	2,534	12,987.61	2,099	15,377.3	6	18
3	Units closed/Defaulters	18,220	3,489.93	19,749	6,093.04	20,498	9,902.08	75	63
4	Arrears where appeal period not over	7,723	19,341.5	4,961	7,586.07	6,958	7,669.52	-61	1
5	Official Liquidator cases	249	3,077.06	302	4,363.36	384	4,735.25	42	9
6	Commissioner Appeal	12,193	4,231.58	10,446	4,152.19	7,355	3,030.48	-2	-27
7	Appeal period over (But no appeal filed)	10,847	2,129.56	11,549	3,752.82	9,746	2,695.44	76	-28
8	Units taken over by Financial Institutions	187	2,321.35	181	1,825.65	178	1,899.47	-21	4
9	Supreme Court	179	2,024.28	174	1,609.52	168	1,672.92	-20	4
10	Section 87 of the Finance Act. 1994	3,041	577.21	2272	600.87	1892	622.65	4	4
11	BIFR Cases	158	542.44	132	392.46	116	546.44	-28	39
12	Others ⁵²	2,219	370.63	1,559	357.83	1,433	342.01	-3	-4
	Total	80,511	1,44,527.6	72,483	1,44,511.7	65,001	1,46,332.1	-0.01	1.25

* Source: Monthly Progress Reports (MPRs) of the respective years provided by the Ministry.

As can be seen from the table above, the majority (93 per cent) of the arrears pertained to cases relating to CESTAT, High Courts, Units closed/Defaulters, Arrears where appeal period was not over and Official Liquidator cases etc. During FY 21, arrears under the category “Commissioner Appeal” and ‘Appeal period over’ declined by 27 and 28 per cent. However, arrears under the category “Units closed/Defaulters”, “BIFR Cases” and “High Court” increased by 63, 39 and 18 per cent, respectively.

Audit requested (January 2022) the Ministry to ascertain the reasons for significant increase in the arrears pertaining to “Units closed/Defaulters” and other trends highlighted in the table above. Reply of the Ministry was awaited (February 2022).

⁵² Arrears pending for write-off, JS (RA), Section 142 (c) (I) - Certificate Action with District Authorities, Section 142 (c) (ii) - of the Customs Act, 1962 as made applicable to Central excise, Section 142 (c) (ii)- of the Customs Act, 1962 as made applicable to Central excise, Settlement Commission (Cases decided in settlement commission after expiry of 30 days) and Specify, if Any.

Table 3. 9 below shows the pendency of arrears of Central Excise during FY19, FY20 and FY21 under the 17 categories

Table 3.9: Pendency of arrears of Central Excise under various categories

(Amount in ₹ crore)

S.No.	Stream	March 2019		March 2020		March 2021		Percentage increase	
		No.	Amount	No.	Amount	No.	Amount	FY20	FY21
1	CESTAT	18,866	58,841	15,215	54,728	12,175	49,160	-7	-10
2	Units closed/Defaulters	9,796	7,826	9,564	10,209	9,949	10,540	30	3
3	High Court	1,785	5,509	1,503	5,964	1,378	6,558	8	10
4	Arrears where appeal period not over	3,161	3,017	1,643	1,458	1,171	3,148	-52	116
5	Official Liquidator cases	2,627	1,773	2,722	2,595	2,855	2,567	46	-1
6	Units taken over by Financial Institutions	2,091	1,878	2,043	2,360	1,919	2,225	26	-6
7	Supreme Court	385	2,084	303	1,362	280	2,059	-35	51
8	Commissioner Appeal	7,375	2,570	5,919	2,017	4,191	1,534	-22	-24
9	BIFR Cases	1,220	1,052	1,160	1,185	939	1,412	13	19
10	Appeal period over(But no appeal filed)	1,605	1,254	1,799	548	1,069	490	-56	-11
11	Section 142 (c) (ii)- of the Customs Act, 1962 as made applicable to Central excise	489	181	366	352	250	246	95	-30
12	Others ⁵³	2,557	567.22	2,311	574.21	1,895	362.00	1	-37
	Total	51,957	86,552	44,548	83,352	38,071	80,301	-4	-4

Source: Monthly Progress Reports (MPRs) of the respective years provided by the Ministry.

As can be seen from the table above, the majority (90 per cent) of the arrears pertained to cases relating to CESTAT, Units closed/Defaulters, High Court, Arrears where appeal period was not over and Official Liquidator cases etc. During FY 21, arrears under the category “CESTAT” and “Commissioner Appeal” declined by 10 and 24 per cent. However, arrears under the category “Arrears where appeal period not over”, “Supreme Court” and “BIFR Cases” increased by 116, 51 and 19 per cent, respectively.

⁵³ Arrears pending for write-off, Section 11 of the Central Excise Act, 1944, Section 142 (c) (i)- Certificate Action with District Authorities, JS(RA), Settlement Commission (Cases decided in settlement commission after expiry of 30 days) and Specify, if Any.

Audit requested (January 2022) the Ministry to ascertain the reasons for significant increase in the arrears pertaining to “Arrears where appeal period not over” and the other trends highlighted in the table above. Reply of the Ministry was awaited (February 2022).

3.6.5 Achievement of the targets by the Field Formations

The Board sets the target for recovery of arrears for each year by its field formations. The target is fixed as a percentage of pending arrears at the end of the previous year i.e., closing balance of March of the previous financial year.

For this purpose, DGPM-TAR⁵⁴ calculates the consolidated target based on the pendency of arrear under ‘recoverable category’ of the previous fiscal. DGPM-TAR after approval from the Board allocates the consolidated targets among CC⁵⁵ zones.

The details of target and achievement by CBIC field formations, with respect to recovery of Service Tax and Central Excise arrears, are provided below in **Table 3.10** :

Table 3.10: Targets and achievements with respect to recovery of arrears

(Amount in ₹ crore)

Year	Stream	Recoverable arrear as of March (Amount in ₹ crore)	Target of central excise and service tax fixed	Recovery / Achievement	Achievement (Percent)	Shortfall in achievement (Percent)
2019-20	CX	9,709	6,096*	4,943*	81	19
	ST	6,558				
	Total	16,267				
2020-21	CX	11,555	7,437*	5,057*	68	32
	ST	10,793				
	Total	22,348				

* Source: Monthly Progress Reports (MPRs) of the respective years provided by the Ministry. Combined figures of Central Excise and Service tax have been provided. Separate figures were not provided.

As evident from the table above, there was a shortfall in achievement in targets fixed by the Board for its field formations for recovery of arrears. During FY20, the shortfall in achieving the targets was 18.92 per cent, which increased to 32.01 per cent in FY21.

Further, eight and 14 zones, out of total 21 zones, in respect of Central Excise & Service Tax for the years 2019-20 and 2020-21, respectively, did not achieve

⁵⁴ Directorate General of Performance Management – Tax Arrears Recovery

⁵⁵ Chief Commissioner

the target for recovery of arrears. Shortfall in achievement of target in these zones ranged from 1.94 per cent to 92.96 per cent and 1.82 per cent to 85.58 per cent for the years 2019-20 and 2020-21, respectively.

Further, it was noticed that targets achieved by five and six zones, out of 21 zones of Central excise and Service Tax Zones, respectively, were less than 50 per cent in FY20 and FY 21 (**Appendix-II**).

Information/ data regarding GST arrears was not provided to Audit by DGPM, which stated that field formations were facing problems in uploading the information on the portal. DGPM further stated that Directorate of Data Management had been requested for early resolution of the technical glitches. Audit pointed this out in January 2022. Reply of the Ministry was awaited (February 2022).

3.6.6 Arrears from unit closed/defaulters not traceable

Table 3.11 below shows the trends in arrears realised from “units closed/defaulters not traceable”.

Table 3.11: Trends in arrears realised from “units closed/defaulters not traceable

(Amount in ₹ crore)

	Pending Arrear as on 31.03.2019	Arrear realised in FY 2019-20	Arrears transferred to other formations/ category	Recovery in percentage of pending arrear as on 31.03.2019	Pending Arrear as on 31.03.2020	Arrear realised in FY 2020-21	Arrears transferred to other formations/ category	Recovery in percentage of pending arrear as on 31.03.2020
	FY20				FY21			
Central Excise	7,826	62	1,347	0.8	10,209	37	609	0.4
Service Tax	3,490	44	307	1.2	6,093	79	522	1.3
Total	11,316	106	1,654	0.9	16,302	116	1,131	0.7

Source: Monthly Progress Reports (MPRs) of the respective years provided by the Ministry.

As can be seen from the table above, the Department could recover only one per cent of pending arrears from the units closed/not traceable during both FY20 and FY21. During FY20, the department could recover only ₹ 106 crore (₹ 62 crore central Excise and ₹ 44 crore Service Tax) out of the pending ₹ 11,316 crore (₹ 7,826 crore in Central Excise and ₹ 3,490 crore in Service Tax) on 31 March 2019.

Similarly, in FY 21, the Department could recover only ₹ 116 crore (one percent) (₹ 37 crore central Excise and ₹ 79 crore Service Tax) out of the pending ₹ 16,302 crore (₹ 10,209 crore in Central Excise and ₹ 6,093 crore in Service Tax) on 31 March 2020.

Audit requested (January 2022) the Ministry to ascertain the reasons for low percentage of recovery of arrears in units closed/defaulters not traceable. Reply of the Ministry was awaited (February 2022).

3.6.7 Age-wise analysis of arrears pending for recovery

Age wise break-up of the arrear cases pending for recovery at the end of FY20 and FY21 is given below in **Table 3.12**.

Table 3.12: Age wise break up of arrears of Central Excise and Service Tax

(Amount in ₹ crore)

Stream	Closing Balance as on 31st March			1 year or below		Over 1 year but less than 2 years		Over 2 years but less than 5 years		Over 5 years but less than 10 years		over 10 years	
	Year	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.
Central excise	2020	44,548	83,351	12,189	25,053	4,733	11,436	8,106	26,502	8,361	13,955	11,159	6,404
	2021	38,071	80,301	8,202	23,760	3,738	9,457	7,185	20,466	7,725	19,593	11,221	7,023
Service tax	2020	72,483	1,44,512	27,947	52,078	9,671	28,058	14,771	41,087	14,259	22,344	5,835	945
	2021	65,001	1,46,332	23,158	47,239	9,180	28,749	13,934	42,665	13,000	26,238	5,729	1,442

Source: Monthly Progress Reports (MPRs) of the respective years provided by the Ministry.

With respect to Central Excise, as on 31 March 2021, out of the total pending Central Excise arrears of ₹ 80,301 crore, ₹ 26,616 crore (35 per cent) were pending for more than five years.

Similarly, with respect to Service Tax, as on 31 March 2021, out of the total pending Service Tax arrears of ₹ 1,46,332 crore, ₹ 27,680 crore (19 per cent) were pending for more than five years.

Audit further examined the pendency of arrears pending for more five years. The findings are discussed in the following paragraphs.

3.6.7.1 Age-wise analysis of arrear cases pending for long period

Table 3.13 below shows the category-wise pendency of Service Tax arrears pending for more than five years, during the last three years, i.e. FY19, FY20 and FY21.

Table 3.13: Pendency of Service Tax arrears pending for more than five years
(Amount in ₹ crore)

Stream	More than 5 years					
	March 2019		March 2020		March 2021	
	No.	Amount	No.	Amount	No.	Amount
CESTAT	5,529	21,169	4,569	19,798	4,166	21,033
Units closed/Defaulters	11,331	469	10,648	616	10,094	3,266
Official Liquidator cases	51	90	58	961	62	1,093
High Court	738	994	773	729	788	818
Supreme Court	57	288	55	482	75	566
Commissioner Appeal	1,256	192	1,126	178	1,067	196
Units taken over by Financial Institutions	70	666	65	146	62	189
Section 142 (c) (I)- Certificate Action with District Authorities	86	57.4	96	97.27	87	100
Appeal period over(But no appeal filed)	2,153	101	1,588	129	1,477	280
Section 87 of the Finance Act. 1994	1,017	99	679	74	481	69.26
Arrears pending for write-off	588	5.58	196	6.3	221	17
Other⁵⁶	511	143.41	240	80.72	149	53.28
Total	23,387	24,274.39	20,093	23,297.29	18,729	27,680.54

Source: Monthly Progress Reports (MPRs) of the respective years provided by the Ministry.

*Arrears more than 10 crore are shown category-wise.

As can be seen from the table above, ₹ 21,033 crore and ₹ 3,266 crore arrears are pending for more than 5 years under the category of “CESTAT” and “Units closed/Defaulters”, constituting 76 per cent and 12 per cent under the category, respectively, as of March 2021.

Table 3.14 below shows the category-wise pendency of Central Excise arrears pending for more than five years, during the last three years, i.e. FY19, FY20 and FY21.

⁵⁶ BIFR Cases, Arrears where appeal period not over, Section 142 (c) (ii)- of the Customs Act, 1962 as made applicable to Central excise and Specify, if Any.

Table 3.14: Central Excise arrears pending for more than five years*(Amount in ₹ crore)*

Stream	More than 5 years					
	March, 2019		March, 2020		March, 2021	
	No.	Amount	No.	Amount	No.	Amount
CESTAT	6,154	11,243	5,066	10,388	4,553	16,257
Units closed/Defaulters	6,473	3,817	6,461	5,265	6,916	6,009
High Court	1,065	1,206	879	1,055	746	914
Official Liquidator cases	2,250	1,175	2,279	1,166	2,235	1,328
Units taken over by Financial Institutions	1,587	1,132	1,580	1,277	1,516	911
Commissioner Appeal	1,150	171	953	146	904	144
BIFR Cases	922	432	857	429	710	312
Supreme Court	146	288	124	415	128	432
Section 142 (c) (I)- Certificate Action with District Authorities	208	33	190	26	167	47
Section 142 (c) (ii)- of the Customs Act, 1962 as made applicable to Central excise	308	71	230	61	176	97
Appeal period over(But no appeal filed)	202	25	210	31	141	31
Arrears pending for write-off	476	57	501	65	517	60
Others⁵⁷	302	45.98	190	32.13	237	75.35
Total	21,243	19,695.98	19,520	20,356.13	18,946	26,617.35

Source: Monthly Progress Reports (MPRs) of the respective years provided by the Ministry.

*Arrears more than 10 crore are shown category-wise.

As can be seen from the table above, ₹ 16,257 crore and ₹ 6,009 crore arrears are pending for more than 5 years under the category of “CESTAT” and “Units closed/Defaulters”, constituting 61 per cent and 23 per cent in the category, respectively, as of March 2021.

Audit pointed this out in January 2022. Reply of the Ministry was awaited (February 2022).

3.7 Conclusion

Audit observed that even after more than four years of implementation of GST, the originally envisaged non-intrusive e-tax system, based on preventive checks is yet to be fully implemented. The Department needs to take adequate steps to achieve a non-intrusive e-tax system and system-verified flow of ITC. Audit further noted that an effective system of scrutiny of returns with

⁵⁷ Arrears where appeal period not over, Section 11 of the Central Excise Act, 1944, JS (RA) and Specify, if any.

statutory backing based on detailed instructions/standard operating procedure/manual is yet to be implemented. Audit also examined the monitoring and feedback mechanism of DGARM reports and observed that use of manual/semi-automated mechanism put in place by the Department in respect of high risk taxpayers, identified in DGARM reports, is sub-optimal and fails to properly leverage the full potential of IT and thus, there is a need that the entire set of activities should be end-to-end automated as part of the CBIC-GST platform.

In addition, Audit examined the Department's performance with respect to the compliance verification system, viz. internal audit and anti-evasion functions and performance of the Department in recovery of arrears during the relevant period. Audit observed significant gaps between the number of units planned and actually audited in GST, Central Excise and Service Tax Units. Further, the amount involved in the disposed-off investigation cases remained very low during last four years. Further, Audit observed lack of significant improvement in the recovery of arrears of Central Excise and Service tax during the last two years.

3.8 Summary of Recommendations

1. In the absence of an effective risk-based system of scrutiny of returns with statutory backing based on detailed instructions/standard operating procedure, the Department is relying on DGARM inputs to discharge its compliance verification functions. Thus, in order to give assurance on Department's performance, Audit needs access to data analysis methodology/parameters in respect of the DGARM reports along with the detailed reports, in particular in respect of cases where feedback is already provided. Audit recommends that such access to the records and information pertaining to DGARM reports may be provided without delay so that CAG's constitutional and statutory duties could be discharged.
2. Though the DGARM reports and the action taken by the field formations on these reports are being uploaded on the DDM portal, detailed action taken by the field formations on these reports like correspondence with the taxpayer to explain the nature of discrepancy noted and to take taxpayers' response on the same is still being done manually/offline. Audit recommends that the entire set of activities should be end-to-end automated as part of the CBIC-GST platform to facilitate transparency and effective real-time monitoring.

3. Audit recommends fixing of timelines in which the Department offices should complete action on the DGARM reports, against which progress can be monitored.
4. In the era of self-assessed tax regime, internal audit is one of the main tools for ensuring compliance by the taxpayers. Further, departmental action against non-compliant taxpayers is a time bound activity under section 73 of CGST Act, 2017. Audit, therefore, recommends that suitable administrative measures should be taken to address the shortage of staff in Audit Commissionerates. Till the time man-power shortage is addressed, the Department may take into account the available staff strength for planning the number of units for internal audit with focus on high risk taxpayers.

Chapter IV: Reliability of GST data maintained by Goods and Services Tax Network

Information Technology is at the core of the implementation of Goods and Services Tax. It provides the platform for tax compliance required under the law, constitutes the interface with taxpayers and aids the tax administration in the assessment and collection of revenue. Processes such as registration, filing of returns through various forms, and tax officers' communications with taxpayers are predominantly online. Hence, the procedures for capturing reliable data, the procedure of sharing it with relevant stakeholders and maintaining the integrity of such data form the basis of the GST regime.

Two phases of IT Audit of Goods and Services Tax Network (GSTN) have been completed. The audit findings of the first phase, on registration, payments and IGST settlement modules, were published in Audit Report No. 11 of 2019. The audit findings of the second phase were published in Audit Report No. 1 of 2021 and covered the modules of refunds, returns and e-way bills. Through these reports, various validation deficiencies and data inconsistencies were already highlighted.

4.1 Scope of audit and methodology followed

Audit was provided access to the GST returns data in February 2021, in GSTN's premises, pertaining to the period from FY 2017-18 to FY 2019-20, as filed by taxpayers up to August 2021. An analysis was performed by Audit with a view to deriving an assurance on the quality of data captured.

The analysis was done on the following return data provided to Audit:

- GSTR-1 (all outward supplies, including invoice level details of supplies to other registered taxpayers, filed by suppliers)
- GSTR-3B (monthly return, wherein suppliers declare summary of supplies and tax liability, as well as the ITC to be claimed on inward supplies and pay taxes)
- GSTR-9 (an annual return, containing the summary of the whole year's transactions; payment of tax, due to difference in the liabilities between the monthly returns and the annual return, if any, can also be made through this return, on the basis of self-declaration)

During analysis, it was noticed that the GST data has significant inconsistencies, possibly due to lack of validation checks in the GST common portal, at the time of data entry by the taxpayer, in various GST related returns and forms or through inadequate data analytics post-data entry. This was earlier highlighted

by Audit, during the IT audit of GSTN (Phase-II), published in Para 3.8 of CAG’s Audit Report 1 of 2021. It may be pertinent to mention that, in the same report, it had also been pointed out that Audit could not give assurance on the quality of GST data, as GSTN had neither provided the data, nor had it run the data analysis queries given by Audit on the said data. The data analysis could be performed now by Audit after GSTN gave access in February 2021.

4.2 Inconsistencies between taxable values and tax liability declared – resulting in capture of unreliable data

All GST return forms have fields to enter taxable values and tax dues. In GSTR-1, the rate of tax can also be entered. However, Audit observed lack of validations in the GST Common Portal to accept only reasonable values. Some significant issues, from the data analysis, are highlighted in the following paragraphs

4.2.1 During analysis of GSTR-1 data, Audit noticed that, in more than 4.63 lakh records of 3,424 GSTINs, the tax amount (sum of IGST, CGST and SGST) entered was more than 28 percent of the taxable value (which is the maximum rate of GST), as detailed in **Table 4.1**.

Table-4.1: Data inconsistencies in GSTR-1 with regard to the applicable GST rates

							(₹ in crore)
Financial Year	No. of Records	No. of GSTINs	Taxable value	IGST	CGST	SGST	Effective Rate
2017-18	10,752	987	135.59	249.81	539.95	184.62	719%
2018-19	1,36,259	1,280	276.36	333.84	6,980.77	1,311.58	3,121%
2019-20	3,16,771	1,157	204.61	126.98	332.86	304.01	373%
	4,63,782	3,424					

4.2.2 Similarly, during analysis of GSTR-3B data, Audit noticed that, in 92,541 records of 60,908 GSTINs, the taxable values were inconsistent with the tax amounts (IGST+CGST+SGST) entered. In these cases, the aggregate annual tax amount (as per GSTR-3B) was more than 28 per cent of the corresponding taxable value, as detailed in **Table 4.2**.

Table-4.2: Data inconsistencies in GSTR-3B with regard to the applicable GST rates

							(₹ in crore)
Financial Year	No. of Records	No. of GSTINs	Taxable value	IGST	CGST	SGST	Effective Rate
2018-19	30,028	19,104	9,270.50	2,406.75	1,738.48	1,738.54	63%
2019-20	23,913	15,968	4,932.01	848.12	1,113.99	1,113.99	62%
2017-18	38,600	25,836	16,675.54	3,561.88	2,377.13	2,311.20	49%
	92,541	60,908					

4.2.3 During analysis of GSTR-9 data, Audit noticed that, in 1,900 records of 1,900 GSTINs, the taxable values in the ‘total outward supplies’ were wildly

inconsistent with the tax amounts (IGST+CGST+SGST) entered therein, as detailed in **Table 4.3**.

Table-4.3: Data inconsistencies in GSTR-9 with regard to applicable GST rates

(₹ in crore)

Financial Year	No. of Records	No. of GSTINs	Taxable value	IGST	CGST	SGST	Calculated Effective Rate
2017-18	900	900	3,324.21	7,48,804.98	1,150.69	1,409.66	22,603%
2018-19	566	566	4,253.38	852.99	3,87,412.96	1,330.77	9,160%
2019-20	434	434	2,848.50	788.12	570.48	937.19	81%
	1,900	1,900					

Audit further observed lack of post-facto data analytics to identify cases of data inconsistencies and lack of a system to review and address such cases.

When Audit pointed this out (January 2022), GSTN stated (February 2022) that many validations were not implemented since it was a new system with a lot of technical challenges and was in the phase of getting stabilised and matured. Building more validations would have complicated the system, which would have negatively affected efficiency, resulting in poor return-filing of taxpayers and consequent revenue collection of the government.

GSTN further stated that exact co-relation between the taxable values and the tax amount is not checked in the system on account of difference in rounding-off method and issue of credit/debit notes.

The reply of the GSTN is not acceptable as Audit has suggested a combination of systems controls and post-facto data analytics to address the issue of data inconsistencies. Further, GSTN's system has gone past the phase of getting stabilised, if this is a justification for not implementing validations. Also, GSTN's reply is silent on the need for post-facto data analytics for identifying, reviewing and addressing the GST data inconsistencies. It may be pertinent to mention that compliance functions of the Department such as internal audit and anti-evasion activities now rely on GST data analysis to identify high risk taxpayers for appropriate action. Data inconsistencies and lack of reliable data, if not addressed in time, may lead to sub-optimal compliance functions and possible wastage of tax administration resources.

Reply of the Ministry was awaited (February 2022).

4.3 Inconsistencies in the CGST and SGST components of GST

The rates of CGST and SGST, levied on goods or services, are equal. Therefore, the amount of tax, declared under both CGST and SGST, by a taxpayer in the return, has to be equal. However, in the course of data analysis, it was noticed that there were significant differences between the declarations of these two

categories of taxes. Records where the difference between CGST and SGST amount was more than one thousand rupees, are discussed below.

4.3.1 During analysis of GSTR-1 data, Audit noticed that, in 8, 28,813 records of 55,130 GSTINs, there was a difference of more than one thousand rupees between the CGST and SGST amount, as detailed in **Table 4.4**.

Table-4.4: Data inconsistencies in GSTR-1 with regard to CGST/SGST

(₹ in crore)

Financial Year	No. of Records	No. of GSTINs	Taxable Value	CGST	SGST	Difference in CGST and SGST
2017-18	5,47,664	16,375	36,728.13	2,995.47	2,578.74	416.73
2018-19	2,13,517	20,186	36,315.58	9,853.96	4,254.95	5,599.01
2019-20	67,632	18,569	20,917.91	1,874.12	1,747.20	126.92
	8,28,813	55,130		14,723.55	8,580.89	6,142.66

4.3.2 During analysis of GSTR-3B data, Audit noticed that, in 26,942 records of 20,305 GSTINs, there was a difference between the CGST and the SGST of more than one thousand rupees. The total CGST amount was ₹ 24,896.51 crores, against the corresponding SGST amount of ₹ 25,120.12 crores, as detailed in **Table 4.5**.

Table-4.5: Data inconsistencies in GSTR-3B with regard to CGST/SGST

(₹ in crore)

Year	No. of Records	No. of GSTINs	Taxable Value	CGST	SGST	Difference in CGST and SGST
2017-18	22,256	17,694	2,05,533.58	13,019.86	13,069.58	49.72
2018-19	3,357	1,692	1,42,279.04	9,216.59	9,329.86	113.27
2019-20	1,329	919	41,576.73	2,660.04	2,720.64	60.60
	26,942	20,305		24,896.49	25,120.08	223.59

4.3.3 During analysis of GSTR-9 data, Audit noticed that, in 11,366 records, pertaining to the total taxable outward supply, in respect of 11,366 GSTINs, there was a difference of more than one thousand rupees, between the tax declared against the SGST and the CGST, as detailed in **Table 4.6**.

Table-4.6: Data inconsistencies in GSTR-9 with regard to CGST/SGST

(₹ in crore)

Financial Year	No. of Records	No. of GSTINs	Taxable Value	CGST	SGST	Difference in CGST and SGST
2017-18	5,368	5,368	4,95,806.26	24,233.25	25,033.01	799.76
2018-19	3,552	3,552	4,57,100.34	4,11,544.27	25,372.84	3,86,171.43
2019-20	2,446	2,446	1,94,893.07	10,981.13	11,576.22	595.09
	11,366	11,366		4,46,758.65	61,982.07	3,84,777.58

The above data inconsistencies indicate the existence of unreliable data and differential tax collections for the Union and States, in contravention of the GST Acts. Due to the lack of appropriate hard and soft controls, or lack of adequate post facto analysis at important data points, the data captured was unreliable in several cases. These inconsistencies are liable to increase the complexity and the resources needed for compliance functions that are required to be discharged by the tax administration.

When Audit pointed this out (January 2022), GSTN stated (February 2022) that the check for entering same CGST and SGST amount was not incorporated, as during the initial phase of GST, taxpayers had to issue Notes (Credit or Debit) pertaining to the earlier tax-regime, wherein, either a CGST component or only a SGST component was required. Further, it stated that in GSTR-3B, a check had been built to ensure that CGST component must be equal to SGST component. This check was built on GST portal in 2018 and was later added into Application programming interface (API)⁵⁸ in 2020. It admitted that no such check is kept in GSTR-1 and GSTR-9. GSTN further stated that such validations can be built in GSTR-1 and GSTR-9 subject to the directions from the Government/GST Council.

Audit is of the view that matching of CGST and SGST components is a basic validation control and falls under the purview of GSTN. Since a validation check has been built in GSTR-3B, similar checks may also be incorporated in GSTR-1 and GSTR-9.

Ministry's reply was awaited (February 2022).

4.4 Inconsistencies in Input Tax Credit (ITC) figures

Taxpayers claim ITC summarily, on a monthly basis, under different heads, such as from the imports of goods/ services, received from ISD distributors⁵⁹, on reverse charge⁶⁰ basis and other supplies, in GSTR-3B, and the same have to be declared again, in GSTR-9, on an annual basis. Similarly, the ITC being reversed and the ineligible ITC, are also shown in both the monthly, as well as the annual returns. In addition, GSTR-9 has a provision for declaring the ITC received during a financial year but claimed or reversed in the next financial year. The ITC declared in GSTR-3B has a direct impact on tax payments, as it is

⁵⁸ For third party applications. These third-party applications can connect with the GST system via secure GST system APIs.

⁵⁹ Input Service Distributor (ISD) means an office of the supplier of goods or services, or both, which receives tax invoices towards receipt of input services and issues a prescribed document for the purposes of distributing the credit of central Tax (CGST), State Tax (SGST)/ Union Territory Tax (UTGST) or Integrated Tax (IGST), paid on the said services, to a supplier of taxable goods or services, or both having same PAN as that of the ISD.

⁶⁰ Reverse charge is a mechanism where the recipient of the goods or services is liable to pay Goods and Services Tax (GST), instead of the supplier.

credited to the ITC ledger and can be utilized for settlement of outstanding liabilities. However, the ITC declared in GSTR-9 has no impact on the ledger, since neither is the excess ITC credited, nor is the short ITC automatically reversed from the ledger, unlike the unsettled tax liability (which can be settled in GSTR-9).

Hence, the ITC shown in GSTR-3B has a direct implication on tax payments. However, since GSTR-9 has scope for providing the details of utilization and reversal in the next financial year, it can be useful for reconciliation with the available ITC, for the purpose of assessment.

A comparison, of the values of GSTR-3B and the corresponding values of GSTR-9, showed that the records of 39, 59,790 GSTINs (constituting 76 per cent of the total 52, 19,332 GSTINs who had filed GSTR-9), included one or more records where the corresponding ITCs between GSTR-9 and the annual totals of GSTR-3B did not match (differences of less than ₹ 100 were ignored). A head-wise comparison, of cases where there are differences, is discussed in the following paragraphs.

4.4.1 Inconsistency in the auto-populated and non-editable field 6A of GSTR-9

Audit noticed inconsistencies in 26,478 records, amounting to ₹ 5,071 crore, in the field 6A of GSTR-9 (Total amount of input tax credit availed through GSTR-3B), which was supposed to be auto-populated and non-editable. The details are in **Table 4.7**.

Table-4.7: Difference in ITC values between 4A of GSTR-3B and 6A of GSTR-9

					(₹ in crore)
Mismatch in Table	Records	GSTINs	Total of GSTR-9 Values	Total of GSTR-3B Values	Absolute Difference
Total ITC availed through GSTR-3B (6A of R9 vs 4A of R3B)	26,478	23,371	23,97,235	24,02,197	5,071

When Audit pointed this out (January 2022), GSTN admitted (February 2022) that there should not have been any difference in the above mentioned fields. GSTN stated that they would examine the issue in detail.

Reply of the Ministry was awaited (February 2022).

4.4.2 Inconsistency in auto-populated, though editable, fields of GSTR-9

Other ITC fields of table 6 of GSTR-9 are auto-populated. However, the taxpayer is allowed to edit the values. It may be noted that any change of value

in GSTR-9 has no direct impact on the ITC ledger, which is used for payment of tax. Hence, in case of any substantial difference, an alert should have been raised to the tax administration, for appropriate follow-up action. Inconsistencies noticed by Audit are detailed in **Table 4.8**.

Table-4.8: Difference in ITC values between the ITC figures of GSTR-3B and GSTR-9

Mismatch in Table	Records	GSTINs	Total of GSTR-9 Values	Total of GSTR-3B Values	(₹ in crore)
					Absolute Difference
Other ITC claimed (6B of R9 vs 4A(5) of R3B)	27,23,298	19,43,074	41,18,940	44,07,810	13,49,684
RCM ITC claimed (6C+D of R9 vs 4A(3) of R3B)	6,19,162	4,96,358	62,291	1,31,826	96,486
ITC claimed on account of Import of Goods (6E of R9 vs 4A(1) of R3B)	2,01,857	1,46,713	4,14,064	4,03,333	81,665
ITC claimed on account of ISD (6G of R9 vs 4A(4) of R3B)	1,06,597	97,319	17,455	29,115	16,176
ITC claimed on account of Import of Services (6F of R9 vs 4A(2) of R3B)	49,387	38,008	43,667	36,766	23,859
ITC reversal (7I of R9 vs 4B of R3B)	7,99,145	6,29,733	2,33,233	7,23,489	7,78,995
Ineligible ITC (8F of R9 vs 4D of R3B)	7,92,049	5,85,214	1,57,568	91,424	1,90,477
Total	52,91,495	39,36,419			25,37,342

Audit pointed this out (January 2022). In reply (February 2022), GSTN stated that in the editable fields, alert for variation of more than 20 per cent was given to the taxpayer while filing GSTR-9. However, the taxpayer was not stopped from reporting any value in the editable fields, even having variation of more than 20 per cent. It further stated that a suitable MIS of difference between pre-filled Annual Return and the user-entered values would be made available in consultation with GST Policy Wing so that an appropriate threshold of the difference might be decided for generating MIS.

Reply of the Ministry was awaited (February 2022).

4.4.3 Incorrect computation in GSTR-9

Audit further noticed the existence of computational errors in the system. In GSTR-9, field 6J is the difference of actual claims, as made in GSTR-3B (auto-populated as 6A) and the claims being shown in GSTR-9 (from 6B⁶¹ to 6H, which

⁶¹ 6B to 6H are different types of ITC shown in GSTR-9, as claimed.

are totalled as 6I). The system auto-computes 6J as the difference of 6I⁶² and 6A. Thus, 6J should be equal to (6I-6A).

Audit noticed that, in 1,387 records, there was a difference of more than one hundred rupees between both these sets of figures [i.e. 6J-(6I-6A)], as detailed in **Table 4.9**.

Table-4.9: Computational errors in GSTR-9

Records	GSTINs	6A of GSTR-9 (₹ in crore)	6I of GSTR-9 (total of 6B to 6H) (₹ in crore)	6J (6I-6A) (₹ in crore)	Absolute difference ⁶³ [6J-(6I-6A)] (mismatch) (₹)
1,387	1,011	15,30,989	13,81,973	-1,49,013	2,09,78,317

The above indicated that there were inconsistencies within the GSTR-9 form, which reduced the reliability of data and increased the complexity of the compliance functions to be discharged by the tax administration.

When Audit pointed this out (January 2022), GSTN stated (February 2022) that the issue would be examined in detail.

4.5 Non-allocation of taxpayers, to either the Centre or the States

The GST Council, in its ninth meeting, devised a formula for the division of taxpayers between the Centre and the States and issued Circular 1/2017 dated 20 September 2017 to this effect. The taxpayers are to be administered by either the Centre, or by the States. The GST master table captures records of the allocation of taxpayers. Data analysis revealed that 49,077 taxpayers were allocated to neither the Centre, nor to any of the States. Out of these, 14,322 were Normal taxpayers and 2,419 taxpayers had filed their GSTR-3B returns.

Table-4.10: Data showing approving authority null in the GST master

Registration Type (code)	Approving Authority	Registration in FY 2017-18	Registration in FY 2018-19	Registration in FY 2019-20	Registration in FY 2020-21
Casual Taxpayers (CA)	NULL	10,724	9,631	8,228	4,973
Composition (CO)	NULL	1,013	0	0	0
Input Service Distributor (ID)	NULL	186	0	0	0
Normal Taxpayer (NT)	NULL	14,322	0	0	0

In view of the above, there is a possibility that those taxpayers who have not been allocated to any authority, are not being monitored by any tax administration.

⁶² 6(I) is sum of 6B to 6H, which are different types of ITC now being declared as claimed, in GSTR-9

⁶³ Absolute difference is the sum of individual mismatch in 1,387 records.

Reply of the Ministry was awaited (February 2022).

4.6 Conclusion

During analysis of pan-India data provided by GSTN, Audit noticed significant data inconsistencies between the taxable value and declared tax liability. Inconsistencies were also noticed between the CGST and SGST components of GST, and between ITC figures captured in GSTR-3B and GSTR-9 returns. Due to significant inconsistencies in the GST data, Audit could not establish the reliability of data, for the purpose of finding audit insights and trends in GST revenue, and assessing high risk areas such as tax liability and ITC mismatch at the pan-India level.

Audit requested (January 2022) the Ministry to provide the reasons for such data inconsistencies and to ascertain whether a system/ mechanism has been put in place at GSTN or any other level to address such data inconsistencies, and actions that are being taken in cases of inconsistent data. Reply of the Ministry was awaited (February 2022).

4.7 Recommendation

Ministry should consider introducing appropriate validation controls (controls which prevent unreasonable data entries or alert the taxpayer to unreasonable data or both) supplemented by post-facto data analytics in respect of important data elements (including those covered in this audit analysis), where in data (such as tax amounts; taxable values; tax components, like CGST and SGST; validation of ITC and tax amounts, between the annual and monthly returns) is entered by the taxpayer. An effective review and follow up system needs to be developed at GSTN to review and address cases of data inconsistencies. In case of significant deviations, tax officers may be alerted to the inaccuracies and directed to take necessary action. Further, cases of all taxpayers, who have not been allocated to either the Centre or State jurisdictions, may be reviewed and they may be allocated to appropriate tax administrations, as per the guidelines of the GST Council.

Chapter V: Processing of Refund claims under GST

5.1 Introduction

Effective management of tax refunds is a key activity in the administration of taxation systems. Hassle free, simple and timely refund process facilitates the taxpayers by providing much needed liquidity and cash flow. Tax administrators need to balance taxpayer' expectations of good levels of service with the responsibility for preventing and dealing with fraudulent and erroneous refund claims. The Supreme Court⁶⁴ has held that good government involves not only diligent collection of taxes but also ready refunds of excess levies. The rules and notifications should be drafted in a simple and clear language and the interpretation should be fair and consistent and not always the one that is adverse to the taxpayers.

Refund means the amount that is returned to the taxpayer which was either paid in excess or which was not payable under the statute. Refund includes not only tax but also interest, penalty, fee, or any other amount paid.

For ensuring single interface for the taxpayers, they are assigned to the jurisdiction of either the State or Central Authority⁶⁵ as per the cross-empowerment provisions of Section 6 of the Central Goods and Services Tax Act, 2017 (CGST Act). The taxpayers are required to submit the documents for refund claim to the assigned jurisdictional authority.

5.1.1 Processing of refunds

5.1.1.1 Pre-automation

GST law envisaged an automated environment for refund claims through a refund module in the Goods and Services Tax portal. However, the taxpayers were required to file the refund applications online in Form RFD-01A, take a printout of the application and submit it physically to the jurisdictional tax office, with all supporting documents, as the refund module was not available up to 25 September 2019.

The processing of the refund applications up to payment was carried out manually. From 1 January 2019, the refund applications and supporting documents had to be submitted online. The refund applications, however, were processed manually by the Department. The disbursement process was offline wherein the Central tax authority would disburse the Integrated Goods

⁶⁴ Aluminum Corporation Ltd. vs. Union of India {(1978) 2 ELT 452 (SC)} in context of refund arising due to conditional exemption granted to aluminum ingots under Central Excise Rules, 1944

⁶⁵ GST Council circular dated 20 September 2017

and Services Tax (IGST), Central Goods and Services Tax (CGST) and cess component, and forward the sanction order to the State tax authority for disbursement of the State Goods and Services Tax component (SGST) component of the sanctioned refund. Similarly, the State/Union Territory (UT) authority would disburse the SGST/UTGST component and forward the sanction order to the Central tax authority for disbursement of IGST, CGST and Cess component of the sanctioned refund.

5.1.1.2 Post-automation

From 26 September 2019, the entire refund process upto payment has been automated. The taxpayers are required to file the application in Form RFD-01 online and upload all relevant documents. The date of uploading the application in RFD-01 is considered as the date of submission of application.

5.1.1.3 Dual empowerment for submission, processing and payment

The administrative jurisdiction of taxpayers has been allocated to the Central or State tax authorities, based on the criteria determined by the GST Council in its 21st meeting held on 9 September 2017. A state level committee comprising of Chief Commissioner/Commissioner Commercial Taxes of the respective State and jurisdictional Central Tax Chief Commissioners/Commissioners allocated the existing taxpayers to the State or Central tax authorities⁶⁶. The newly registered persons are required to file the refund claim to the Central tax authority or State tax authority as assigned vide aforesaid Circular. The State/Union Territory (UT) authorities are empowered to sanction refund of CGST, IGST and Cess components and the Central authorities are empowered to sanction refund of SGST/UTGST claimed by the taxpayers under their respective jurisdiction⁶⁷.

5.1.1.4 Payment of refunds

In the pre-automation period, the payment of the SGST/CGST tax components was made by the respective State or Central tax authorities, based on the refund orders received from the administrative authorities sanctioning the refund. The refund order issued either by the Central tax authority or the State /UT tax authority was to be communicated to the concerned counter-part tax authority within seven working days for making the payment. The payment of the sanctioned refund amount in relation to CGST / IGST /cess had to be made

⁶⁶ GST Council Circular dated 20 September 2017

⁶⁷ **Notification dated** 13 October 2017

by the Central tax authority while payment of the sanctioned refund amount in relation to SGST / UTGST was made by the State /UT tax authority.

In the post-automation period, the payment of all the components viz. CGST, IGST, SGST and cess is being made⁶⁸ through the Public Financial Management System (PFMS) via e-PAO irrespective of the jurisdictional Authority (Central or State), which processed the refund application.

The various stages of processing of refund claims are detailed in **Appendix-III**.

5.1.2 Types of GST refund

Refunds are granted under various categories such as refund of tax paid on zero-rated supplies⁶⁹, refund of accumulated input tax credit (ITC) due to inverted duty structure, refund of excess balance in electronic cash ledger etc. Category wise details of refund applications received and payments made with respect to taxpayers under CBIC jurisdiction, during the period from 26 September 2019 to 31 July 2020 (post-automation), are detailed in **Table 5.1**:

Table 5.1: Category wise details of applications received and payments made from 26 September 2019 to 31 July 2020 (as on 3 November 2021)

Sl. No.	Category of refund	Applications received		Acknowledgment issued		Sanction order issued		Payment issued through PFMS	
		No of cases	Amount claimed (in ₹ crore)	No of cases	Amount claimed (in ₹ crore)	No of cases	Amount sanctioned	No of cases	Amount paid (in ₹ crore)
1	Export of goods and services without payment of Tax	58,838	26,603	27,447	16,488	26,031	14,727	25,509	14,672
2	ITC accumulated due to Inverted Duty Structure ⁷⁰	71,147	7,505	29,559	5,213	28,357	4,627	27,174	4,507
3	Excess balance in electronic cash ledger	22,893	2,599	22,567	2,509	21,629	2,253	18,963	2,245
4	Export of services with payment of Tax	4,270	3,167	1,100	1,441	1,021	1,137	944	1,118

⁶⁸ CBIC circular dated 18 November 2019

⁶⁹ Section 16(1) of the IGST Act, 2017 defines 'zero rated supply' to mean supplies of goods or services or both, namely: a) export of goods or services or both; or b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit

⁷⁰ **'Inverted Duty Structure'** refers to a situation where the rate of tax on inputs purchased is more than the rate of tax on outward supplies. Inverted Duty Structure arises when tax paid on Inward Supplies is higher than tax payable on outward supplies.

Sl. No.	Category of refund	Applications received		Acknowledgment issued		Sanction order issued		Payment issued through PFMS	
		No of cases	Amount claimed (in ₹ crore)	No of cases	Amount claimed (in ₹ crore)	No of cases	Amount sanctioned	No of cases	Amount paid (in ₹ crore)
5	Supplies made to SEZ unit/developer without payment of tax	3,794	1,666	1,214	901	1,164	769	1,144	847
6	Supplies made to SEZ unit/developer with payment of tax	3,591	370	773	305	737	294	674	293
7	Supplier of deemed export ⁷¹	1,510	329	544	272	519	252	491	252
8	Refund due to assessment, provisional assessment and appeal	989	223	399	129	367	96	314	96
9	Excess payment of tax	3,969	1,574	1,936	1,151	1,775	112	776	90
10	Recipient of deemed export	441	65	111	47	107	45	102	45
11	Tax paid on intra-state supply which is subsequently held to be inter-state and vice versa	105	11	47	5	45	4	33	4
12	Any other	13,715	5,773	5,191	3,547	4,754	369	2,771	357
	Total	1,85,262	49,885	90,888	32,008	86,506	24,685	78,895	24,526

Source: Compiled based on data furnished by GSTN.

5.2 Audit objectives

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

- (i) the adequacy of Acts, Rules, notifications, circulars etc. issued in relation to grant of refund;

⁷¹ 'Deemed Exports' refers to supplies of goods manufactured in India (and not services) which are notified as deemed exports under Section 147 of the CGST/SGST Act, 2017. The supplies do not leave India. Deemed exports are not zero-rated supplies by default, unlike regular exports. Hence all supplies notified as supply for deemed export will be subject to levy of taxes. However, the refund of tax paid on the supply regarded as Deemed export is admissible to either the supplier or the recipient. The application for refund has to be filed by the supplier or recipient of deemed export supplies.

- (ii) the compliance of extant provisions by the tax authorities and the efficacy of the systems in place to ensure compliance by taxpayers;
- (iii) whether effective internal control mechanism existed to ensure effectiveness of the Departmental officials in processing and payment of refund cases.

5.3 Audit scope, sample and methodology

The Audit covered GST refund cases processed and paid by the Central tax authorities pertaining to the period from July 2017 to July 2020. Audit also test checked the disbursement of CGST and IGST refunds by the Central Board of Indirect Taxes and Customs (CBIC) field formations (Central jurisdiction) on the sanction orders issued by the State authorities in the pre-automation period.

Goods and Services Tax Network (GSTN) had provided pan-India data of refund applications pertaining to the period August 2018⁷² to July 2020. Since limited data was available for the cases processed prior to 26 September 2019 (pre-automation), the refund applications were sorted category-wise and sample was drawn based on stratified sampling.

For refund applications filed on or after 26 September 2019 (post-automation), a composite risk score was devised using multiple risk parameters such as refund amount claimed, delay in sanctioning of refund, refund sanctioned to claimed ratio and deficiency memo issued. Based on the risk score, refund applications were selected for detailed audit. Total universe of post-automation was also analysed and deviations noticed *vis-a-vis* the total universe have been incorporated wherever possible.

The sample cases selected and audited are given in **Table 5.2:**

Table 5.2: Sample cases selected and audited

Description	Selected		Audited	
	No of Cases	Claim amount (in ₹ crore)	No of Cases	Claim Amount (in ₹ crore)
Pre-Automation period	5,797	6,695	5,451	6,320
Post-Automation period	6,486	7,673	6,482	7,669
Total	12,283	14,368	11,933	13,989

Source: Compiled based on data furnished by GSTN.

⁷² GSTN provided data from August 2018 when the Refund module was integrated with the back-end systems of the tax Departments.

The Department⁷³ did not furnish 346 refund files (six *per cent*) with claim amount of ₹ 374.77 crore to Audit. In the post-automation period, four cases could not be audited as the additional details and information⁷⁴ were not furnished.

Reasons for non-submission of case files were stated to be misplacement of files, submission of files for post-audit and anti-evasion wings of the Department etc.

The draft SSCA report was issued to the Ministry of Finance for its comments on 27 December 2021. Audit findings and recommendations were discussed with the Ministry during the exit conference held on 7 February 2022. Further, the reply of the Ministry to the SSCA report was received on 25 February 2022.

5.4 Non-production of records

Documentation of the receipt of application and processing of the refund claim till its final payment constitutes a crucial component of internal control. This helps in establishing an audit trail to watch adherence to the prescribed provisions of the Act and rules.

The Board in its circular⁷⁵ required the CBIC field formations to maintain three registers⁷⁶ for monitoring the receipt, processing of refund claims and issue of provisional refund and final sanction order. The Board had instructed⁷⁷ to extend cooperation during audit by providing complete and comprehensive information and complete records.

Audit noticed that out of 99 Commissionerates, 15 Commissionerates⁷⁸ had not maintained or included all the prescribed columns in the registers. Due to non-maintenance of records, Audit could not verify adherence to the codal provisions and the timelines prescribed. Registers of refund sanction orders received and forwarded to the counterpart State authorities were not furnished to Audit by four Commissionerates⁷⁹. Registers of cases sent for post-audit and details regarding when such cases were audited, were not made

⁷³ 37 Commissionerates

⁷⁴ Bengaluru North, Bengaluru West and Belgaum Commissionerates

⁷⁵ CBIC Circular dated 15 November 2017

⁷⁶ Register in format Table 1 for recording the receipt of refund application up to the issue of Acknowledgement, Table 2 for recording issue of Provisional refund and Table 3 for issue of final sanction order

⁷⁷ DO letter F.No.232/Misc DAPs/2018-CX-7, 26 April 2018

⁷⁸ Raigad, Thane, Bhiwandi, Delhi North, Delhi East, Delhi South, Jabalpur, Guntur, Vishakhapatnam, Patna I, Patna II, Ludhiana, Shimla, Gurugram and Panchkula

⁷⁹ Vishakhapatnam, Raigad, Thane and Bhiwandi Commissionerate

available during audit of five Commissionerates⁸⁰. The list of arrears of demand were also not made available to Audit by five Commissionerates⁸¹.

The online access to the information in GSTR-2A was not provided to Audit and hence, the correctness or otherwise of the ITC was not ascertainable while checking the refunds. The data of cases in which fake ITC was availed and its encashment through use of refund was not shared with Audit and hence, the system defects and lapses that led to such frauds could not be identified.

Ambala division of the Panchkula Commissionerate accepted the observation and stated (May 2021) that registers were now being maintained properly with the signature of the competent authority.

When Audit pointed this out (December 2021), the Ministry, in respect of Patna-I Commissionerate, stated (February 2022) that the refund register was maintained and updated (Pre-automation) and the same would be produced at the time of next audit. Replies in respect of the remaining Commissionerates were awaited (February 2022).

5.5 Audit criteria

Audit criteria for this Subject Specific Compliance Audit (SSCA) were drawn from the following:

- Central Goods and Services Tax Act, 2017
- Central Goods and Services Tax Rules, 2017
- Integrated Goods and Services Tax Act, 2017
- Government notifications/circulars/instructions issued by the CBIC from time to time.

Audit Findings

5.6 Systemic issues

5.6.1 Deficiencies in automated refund module

It is internationally recognised that there should be a balance between client service levels and the prevention and mitigation of fraudulent activities. Tax refunds pose challenges to achieve good standards of service in processing of legitimate refund claims and in ensuring detection of incorrect and fraudulent claims prior to payment and post-payment. Fraudulent refunds, including by fictitious or invalid entities, have significant consequences if undetected and

⁸⁰ Guntur, North division of Vishakhapatnam, Bhiwandi, Raigad and Thane Commissionerates

⁸¹ Raigad, Thane, Bhiwandi, Guntur and Vishakhapatnam Commissionerate

untreated. The relative ease of electronic filing and refund may pose additional risks.

Office of the Directorate General of Analytics and Risk Management (DGARM) had released (July 2020) a list containing 9,757 taxpayers who had monetized the fake ITC taken by them. It also included a list of 3,208 taxpayers who were issuing fake invoices. In the financial years 2018-19 and 2019-20, the aggregate quantum of ITC frauds⁸² was ₹ 23,193.66 crore, whereas in the financial year 2020-21⁸³, about 8000 cases were detected involving fake ITC of over ₹ 35,000 crore. One of the fraudulent cases was unearthed in Nagpur against three firms involved in passing fraudulent ITC of ₹ 214 crore and claiming refund of this fraudulent ITC.

Audit observed that there exists a mechanism to match ITC availed by a taxpayer with the GSTR-1 returns filed by the suppliers and to identify fraudulent cases through data analytics after the amount has been paid. However, in Audit's opinion, adequate systems were not in place to prevent and mitigate such frauds by using real time/near real time data analytics so as to alert the tax officials before sanction of refunds. CBIC in its circular⁸⁴ stated that several cases of monetisation of fraudulently obtained credit or ineligible credit through refund of IGST on exports of goods were detected in the past months. On verification, several such exporters were found to be non-existent in a large number of cases. In all these cases, it was found that ITC was taken by the exporters on the basis of fake invoices and IGST on exports was paid using such fake ITC.

This showed that in some cases, new GST registrants, without credible antecedents, were getting the refunds with limited scrutiny or verification of the place of registration. Audit further noticed lack of adequate matching of net ITC shown in the refund application with the ITC amount available as per GSTR-2A, and grant of refund without ascertaining the status of return filing.

Audit analysed the pan-India data furnished by GSTN and observed the following:

- In respect of 2,656 cases (out of 31,173 cases⁸⁵) pertaining to the period from September 2019 to July 2020 where the refund amount sanctioned was ₹ 6,121.87 crore, the net ITC shown in the refund application filed

⁸² Data.gov.in

⁸³ Press Information Bureau of India, CGST Zones and Directorate General of GST Intelligence booked about 8000 cases involving fake ITC of over ₹ 35000 crore in FY 2020-21 July 2021. <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1735095>

⁸⁴ Circular dated 23 January 2020

⁸⁵ GSTR 2A was available in 31,173 refund cases falling under the category of Inverted duty structure, Export without payment of duty and Exports by SEZ without payment of duty in GSTN

online was more than the amount shown in GSTR 2A⁸⁶ by ₹ 11,851.48 crore.

- Refund of ₹ 6,113.63 crore was sanctioned to 56,513 taxpayers who did not file GSTR 1⁸⁷ or GSTR 3B⁸⁸ or both before filing the refund applications, which is mandated under Section 54 (10) of the CGST Act.
- 29,839 out of 51,064 taxpayers who were sanctioned refund of ₹ 8,037.19 crore did not furnish the details of refund claims filed and refund received in Part VI of the Annual Return (GSTR 9).

It can be seen from the above that although the Department could have leveraged and correlated their own database to identify non-compliance, there was a lack of an effective mechanism to red flag such cases and alert the proper officer to carry out detailed scrutiny to ensure that the taxpayer has complied with the provisions of the Act and rules, before refunds were sanctioned and paid.

Audit also noticed in certain cases that although suspicious refund claims were not supported by adequate/relevant documents to establish the veracity of the claims, the concerned officials did not scrutinise these cases with due care while sanctioning refunds.

When Audit pointed this out (December 2021), the Ministry stated (February 2022) that during the initial phases of implementation of GST, the focus of the Department was on facilitation rather than enforcement. However, from 2019 onwards, DGARM has been generating various red flag reports which are forwarded to field formations for taking necessary action. Further, regarding the audit observation that ITC had been availed more than GSTR-2A, Ministry stated that refund could exceed the ITC available in GSTR-2A *inter-alia* on credit distributed by ISD, imports, RCM supplies, and missing invoices (refund on which was available till 31 March 2020 on the basis of furnishing of copy of missing invoices to the proper officer along with refund claim). Regarding the audit observation that the details of refund claimed and received had not been furnished in the annual return, Ministry stated that filling up of details of refund claimed and received in Table 15A to 15D of FORM GSTR-9 for the FY

⁸⁶ GSTR 2A is automatically generated for each taxpayer in the GST portal. When a seller files his GSTR-1, the information is captured in GSTR 2A of the purchaser, which incorporates information of goods and/or services which have been purchased in a given month from the seller's GSTR 1. The taxpayer needs to refer to GSTR-2A for input tax credit details.

⁸⁷ The Goods and Services Tax Return 1(GSTR 1) is a return that each registered tax payer needs to file every month/quarter. It must contain the details of all sales and supply of goods and services made by the tax payer during the tax period.

⁸⁸ GSTR-3B is a self-declared summary GST return filed every month. The particulars such as inward and outward supplies of goods or services, input tax credit availed, tax payable, tax paid, etc. are required to be declared in such return.

2017-18, 2018-19 and 2019-20 was made optional vide CGST (Seventh Amendment) Rules, 2019.

Ministry's reply is not acceptable in view of the fact that the seventh amendment to the CGST Rules was notified on 29 August 2021 whereas the due date for furnishing Annual Return for the period 2017-18 was 5/7 February 2020. As regards the comparison of the amount of ITC refunded vis-à-vis the amount available as per GSTR-2A, Audit has not commented on the validity of individual refund claims. Audit is of the view that there should be a mechanism to automatically red-flag such claims, where credit available in GSTR-2A is less than the refund claimed, so that the Department could examine such claims in detail before sanction of refunds. As regards sanction of refunds without checking the return filing status, Ministry did not offer any comments.

Illustrative cases are discussed in the succeeding paragraphs.

5.6.1.1 Sanction of refunds without proper scrutiny

CBIC vide Office Memorandum issued on 12 May 2019 cautioned the field formations on the risk of encashment of ITC availed on fake invoices by obtaining IGST refund or refund of unutilized accumulated ITC.

(A) While examining the refund cases under the Mumbai West Commissionerate, Audit came across 18 refund applications under the category of zero-rated supplies, submitted during the period December 2019 to November 2020, by nine taxpayers who were granted registration between the period June 2019 to June 2020. These cases appeared to be suspicious due to the following shortcomings:

- The nine taxpayers who were sanctioned the refund of ₹ 12.01 crore were sole proprietary concerns whose e-KYC and Aadhar were not authenticated. Refund pre-application form, introduced in February 2020⁸⁹ that captures Income Tax details, export data and Aadhar number etc., of the taxpayers, was not filled-in and submitted by any of the taxpayers. The Divisional officer sanctioned the refunds without delegating the verification of claims to the subordinate officers.
- The registrations granted to eight taxpayers were cancelled by the proper officer on application made by the taxpayer⁹⁰ (July 2020 to December

⁸⁹ Newsletter of Director General of Systems and Data Management of February 2020

⁹⁰ Section 29 (1) provides for cancellation by the taxpayer if the business is discontinued, transferred fully for any reason including death of proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or there is any change in the constitution of the business; or the taxable person is no longer liable to be registered under Section 22 or Section 24 or intends to opt out of the registration voluntarily.

2020) after getting the refund of ₹ 11.60 crore and in the remaining one case, the registration was cancelled *suo moto* by the Department. The Department neither verified the receipt of export proceeds as required under Rule 96B before accepting⁹¹ the cancellation nor directed the taxpayer to file the annual returns in Form GSTR 9 despite the turnover in eight cases exceeding ₹ 2 crore, as required under Section 44.

- The refunds claimed were based on ITC on purchases made through 15 suppliers who gave fake invoices. Department had cancelled the registration of 10 of these suppliers and the other five had stopped filing the returns. The suppliers filed returns only for three to four months and stopped filing the returns after the taxpayers received the refund.
- The certificate⁹² of the CA did not contain the Unique Document Identification Number (UDIN) of the Institute of Chartered Accountants of India (ICAI) mandated by the Institute. The CA had been penalised by Customs Excise and Service Tax Appellate Tribunal (CESTAT) in November 2014 for issuing Export Certificate to a client without verifying the supporting documents or their correctness.
- In six cases, the foreign buyer was common, irrespective of the destination of the consignment. The Customs House Agents (CHA) and transporters were common in those six cases. This suggested that transporters, CHAs and CAs acted in collusion to prefer these claims.

Final refunds in all cases were granted, skipping the provisional refund. The refunds were granted in 14 cases in an unusually short time of seven days or less.

- In five cases, the refund had been sanctioned within half an hour of acknowledgement, and in two out of these five cases, the sanction orders were issued late at midnight.
- Refund in two cases was granted on the same day of receipt of application. Sanction orders were issued even on holidays. The refund application in two other cases were acknowledged and final sanction order issued within half an hour at midnight.

Taxpayers with such a large export turnover of ₹ 166.64 crore and refund claim of ₹ 12.01 crore are unlikely to close their business abruptly, unless their sole motive was to take refund and disappear. The antecedents of the taxpayers,

⁹¹ Notification dated 23 March 2020

⁹² A certificate in Annexure-2 of Form GST RFD-01 issued by a Chartered Accountant or a Cost Accountant under Rule 89(2)(m) of CGST Rules, 2017 is required where refund claimed exceeds ₹ 2 lakh for the purpose of certifying that incidence of such tax and interest had not been passed on to any other person.

input providers and the CA who issued the certificate were dubious. Thus, refunds of ₹ 12.01 crore were sanctioned without proper verification.

On this being pointed out in audit (May to July 2021), Mumbai West Commissionerate stated (August 2021) that the sanctioning officer is an officer with a limited reach and if the suppliers, of the taxpayer claiming refunds, fall outside the jurisdiction of the sanctioning authority, it becomes impossible to view the antecedents of such suppliers. A massive drive was conducted from August, 2020 wherein hundreds of registrations were cancelled which were either inactive, non-filers or on application of the taxpayer on priority basis.

The Commissionerate further added that the refund application looked less suspicious when we look at the timelines of these refunds. The refund applications were filed in a staggered manner and spread over a period of around one year which makes it harder to correlate the facts of one case to other. The taxpayers were able to mask themselves well and these details were not possible for the Departmental officer to correlate with each other. Due diligence was exercised in sanctioning all refund claims and within the framework of provisions of law.

The reply is not acceptable, as refunds were sanctioned in unusually short period of time despite several red flags. Although delegation is not explicitly provided in the rules, it was seen from the application history of refund cases checked in audit that all Divisional officers normally delegated the work of verification of refund claims to their subordinates to ensure detailed verification of the refund claims. However, this procedure was not followed in any of these suspicious refunds. The Department accepted the cancellation of registration without verifying the receipt of foreign exchange and annual returns. The taxpayers also did not file the final return in Form GSTR 10 that was required to be filed with three months of cancellation of registration as per Rule 45. Further, the reply of Commissionerates underscores the audit view that an effective mechanism to red flag high risk cases needs to be implemented to alert the proper officer before sanction of refunds.

An illustrative case is discussed below:

(a) A taxpayer applied (11 February 2020) for refund of ₹ 57.60 lakh under the category of 'Export of goods without payment of tax' for the tax period December 2019 and deficiency memo was issued on 12 February 2020. The taxpayer resubmitted the application on 14 February 2020. The acknowledgement was issued on the same day and final sanction was granted within five working days on 21 February 2020 without delegating the verification work to the Inspector or Superintendent. The ITC refunded was based on purchase invoices issued by two firms, both of whom had registered

on 21 November 2019. Department *suo moto* cancelled their registration (November 2019 and December 2020), indicating that they were fake/bogus suppliers.

(b) Another application for refund of ₹ 96.03 lakh was filed on 14 August 2020 by the same taxpayer for the tax period July 2020. The application was acknowledged on 16 August 2020 (Sunday). The refund was sanctioned within a short time of half an hour from acknowledgement. The accumulated ITC, which was refunded, was based on the purchases made from five suppliers. Two of the suppliers had surrendered their registrations in August 2020, registration of the other two were suspended (cancelled in August 2020), while in one case, registration was *suo moto* cancelled by the Department (June 2020). All these deficiencies indicated that proper verification was not carried out before the sanction and payment of refund.

When Audit pointed this out (December 2021), the Ministry contested the audit observation and stated (February 2022) that refunds had been sanctioned on the basis of the documents in term of Circular dated 26 October 2018.

Ministry further stated that Board had issued several directions that the refunds need to be sanctioned on high priority as it was a time bound matter. Although the time limit to sanction the refund claim is of 60 days, but so as to facilitate trade, in the tough COVID times and to provide much needed liquidity to the trade, field formations were asked to clear the refund claim expeditiously. Further, to carry out the mandate of the Ministry to clear all the refund on priority, remote access to AIO was provided to the officers during the COVID-19 lockdown period. Officers worked even from home and struggled to clear the refund claims on Sunday and other holidays even in night. During the said period, because of outbreak of Covid-19, offices were working with the skeleton strength.

Ministry's reply is not acceptable. While refunds need to be sanctioned on high priority according to strict timelines, a balance has to be struck between speedy processing of refund and verification of high risk refund claims. In the illustrated cases, refunds were sanctioned in an unusually short time even though there were several red flags like new taxpayers, small number of vendors, non-submission of the refund pre-application form, different address given in purchase invoice than the principal place of business, no input tax credit of essential services for exports like transportation, customs house agents etc. in GSTR-2A, export invoices showing and address that does not come under the jurisdiction of the division sanctioning the refunds etc. Therefore, due diligence for verification of correctness of the refund applications was not done in the above mentioned cases.

Recommendation 1: A comprehensive profiling of the taxpayers needs to be implemented by integrating data from both internal and external systems such as Income Tax, Directorate General of Foreign Trade, and Ministry of Corporate Affairs⁹³. A system of real time/near real time red-flagging of high-risk taxpayers/refunds may be implemented in the refund related modules to avoid refunds of fake ITC.

Ministry, regarding the Audit recommendation, stated (February 2022), that the Department had taken various measures, on the basis of recommendation of GST Council, to reduce such fraudulent refunds. The refund of unutilised ITC had been restricted to the ITC available in GSTR-2A of the relevant period from 31 March 2020. Aadhaar authentication had been made mandatory for filing of GST refund claims for all taxpayers with effect from 1 January 2022. CGST Rules, 2017 had been amended with effect from 24 September 2021 to provide for refund to be disbursed in the same bank account, which is in the name and PAN of the applicant and on which registration has been obtained and in case of proprietorship firm, the bank account has also been linked with the Aadhaar. Ministry further stated that flagging of high-risk taxpayers was already being done by DGARM through red flag reports based upon various risk parameters. As regards audit recommendation regarding real-time flagging of high risk taxpayers/ refund claims in the refund module, the Ministry stated that the matter would be taken up with GSTN and DG (Systems).

(c) In Lucknow Commissionerate, Audit observed that although the Department realised that a refund claim was prima facie based on suspicious ITC claim, it did not carry out detailed investigation to protect the interest of revenue.

The case is illustrated below:

A taxpayer under the Lucknow Commissionerate claimed (20 February 2020) refund of the accumulated ITC of ₹ 1.84 crore on export of goods/services without payment of tax for the period July to August 2019. Provisional refund of ₹ 1.66 crore was paid on 5 March 2020. The proper officer issued Show Cause Notice (SCN) on 7 April 2020 for the ITC shown in GSTR 2A on which the suppliers of the taxpayers had not paid the GST amount, indicating that they were not genuine. The taxpayer did not respond to the SCN, and the adjudicating authority passed the order rejecting ITC of ₹ 18.41 lakh and recovery of ITC of the remaining refund amount of ₹ 18.41 lakh (10 per cent of sanctioned amount).

⁹³ Report of the High power Committee, October 2014 (Driving information system for holistic tax initiatives)

Audit examined the refund claim along with the details of invoices, included in Annexure A, on which the refund of ITC of ₹ 1.83 crore was claimed by the taxpayer. Audit noticed that the taxpayer had taken ITC of ₹ 1.83 crore pertaining to 572 invoices having purchase value of ₹ 36.52 crore. The GSTR 3B of the suppliers of the taxpayer, however, showed supplies of only ₹ 1.38 crore. Surat Commissionerate, on enquiry, intimated Audit (August 2021) that two suppliers were not found at the principal place of business, and the registration of the third supplier had been cancelled in January 2019. The proper officer failed to disallow this amount, recovery for which needs to be implemented by the Department. .

When Audit pointed this out (July 2021/December 2021), the Ministry stated (February 2022) that the recovery proceeding in the matter shall be initiated once the Show Cause Notice issued gets adjudicated. Ministry's reply is, however, silent on the reasons as to why the Department failed to disallow the excess refund amount claimed. Even a cursory verification and cross-check with the GST Portal by the sanctioning authority would have resulted in the detection of the fake claim of the taxpayer as the registration of three major suppliers had been cancelled even before submission of claims by the taxpayer.

5.6.1.2 Sanction of Refunds on the basis of incomplete documents leading to fraudulent claims

Application of Refund in Form RFD 01A should include statement (Form Annexure A) of supplier invoices on which ITC is availed for, the relevant tax period for which refund is claimed in the format prescribed in Circular⁹⁴. Refunds are to be made by the Department after ensuring that the taxpayer has uploaded Annexure A along with refund on GST portal.

Under the Faridabad Commissionerate, six tobacco suppliers filed (December 2018 to June 2019) refund claims of ₹ 27.38 crore and the Department sanctioned (March 2019 to July 2019) refunds/provisional refunds amounting to ₹ 26.43 crore:

⁹⁴ Circular dated 4 September 2018

Table 5.3: Details of refunds claimed on incomplete documents

Sl. No.	Category	Date of sanction	Amount sanctioned (in ₹ crore)
1	EXPWOP ⁹⁵	18-03-2019	4.96
2	EXPWOP	27-06-2019	6.11
3	INVITC ⁹⁶	15-07-2019	4.16
4	EXPWOP	08-08-2019	2.58
5	SEZWOP ⁹⁷	29-11-2019	4.33
6	EXPWOP	18-07-2019	4.29
Total			26.43

Audit examination revealed that the claimants were new registrants and had applied for refunds within a few days after taking GST registration without uploading the mandatory Annexure A, which requires details of inputs invoices and ITC availed thereon. Refunds were sanctioned by the Department without ensuring submission of this Annexure. Thus, due diligence was not exercised by the Department before sanctioning refunds.

After disbursement of refunds, it came to the notice of the Department through physical verification of Director General of GST Intelligence (DGGI) that these claimants had applied for refunds on fake documents. The refund claims were processed without diligent scrutiny which led to payment of refund/provisional refund to fraudulent claimants.

When Audit pointed this out (December 2021), the Ministry stated (February 2022) that in the case of one taxpayer, notice for recovery of refund amount had been issued to the taxpayer. The remaining five cases were under investigation by DGGI.

One such case is illustrated below:

A taxpayer, an alleged habitual offender, was issued SCN for operating a fake firm and passing fake ITC of ₹ 26.53 crore⁹⁸. Department cancelled its registration on 1 June 2018. The taxpayer, in his statements dated 7 June 2018 and 6 July 2018 before *Directorate of Revenue Intelligence (DRI)*, admitted to be the owner of a fake and non-existing firm in the name of his mother as dummy proprietor. He had also admitted that he defrauded the Department by forming different firms and opening different bank accounts with two different PAN numbers. He also received drawback by forging Certificate of origin for which the SCN was issued in March 2019. Despite such antecedents of the taxpayer, the registration granted to his sole proprietary concern

⁹⁵ Export without payment of tax

⁹⁶ Inverted Duty Structure

⁹⁷ Special Economic Zone without payment of tax

⁹⁸ PIB press note dated 10 February 2021.

(on 4 March 2018) was not revoked in July 2018 and provisional refund of ₹ 20.07 crore was released during May 2019. The final refund of ₹ 1.55 crore was paid during the period April 2019 to June 2019 even after it became evident that the person was involved in claiming drawback on forged documents. This indicated lack of proper coordination between various wings of CBIC. Lack of intelligence sharing had led to individuals exploiting the system and getting refunds on fake ITC.

When pointed out (December 2021), the Ministry stated (February 2022) that the issue was being examined.

5.6.1.3 Refunds granted to taxpayer who went untraceable after fraud

In order to curb fly-by-night operators who take advantage of easy registration system (three working days and no field inspection) and to stop impersonation and check bogus billing through 'laptop shops'⁹⁹, Notification¹⁰⁰ dated 23 March 2020 was issued which provided for Aadhar authentication in which (a) an individual; (b) authorised signatory of all types; (c) Managing and Authorised partners of a partnership firm; and (d) Karta of an Hindu undivided family shall undergo authentication, of Aadhaar number, as specified in Rule 8 of the CGST Rules, 2017, in order to be eligible for registration. Section 25 (6) was amended with effect from 1 January 2020 to provide that every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number.

Prior to this notification, registrations were granted without verification of the Aadhar or e-KYC documents which led to registration of unscrupulous elements. Subsequently, by the time Department detected (through data analytics or anti-evasion activities) fraudulent claims by such elements, they would become untraceable. Thus, recovery of fraudulent refund was not possible in most of these cases. One such illustrative case of fraudulent claim is detailed below:

A proprietary concern was registered on 1 October 2019 under the Delhi West Commissionerate. The proprietor mentioned his legal name as "Monu". The Aadhar card and e-KYC of this proprietary concern was not verified by the Department. Three refund claims amounting to ₹ 89.28 lakh were filed in March and April 2020, and the refund was obtained under the category of Inverted Duty Structure for supply of footwear. The taxpayer had purchased goods from seven suppliers, all of whom had registered themselves in January 2020.

⁹⁹ NACIN presentation dated 22 August 2020.

¹⁰⁰ Notifications dated 23 March 2020

Audit scrutiny revealed that only one supplier was active. The registrations of five suppliers had been cancelled *suo moto* and one supplier's registration had been suspended by the Department (between January 2020 and December 2020). The taxpayers stopped filing returns from July 2020. Thus, it is apparent that the refund claims were based on fake ITC invoices.

On this being pointed out in audit (February 2021 and April 2021/December 2021), the Ministry stated (February 2022) that the matter was under investigation by Anti Evasion Branch. Further, letters to all three banks of the taxpayer had been sent for providing bank account statements and KYC details.

5.6.1.4 Non-recovery of refund amounts in the absence of mechanism to monitor the realisation of export proceeds

The Joint Committee on Business Process¹⁰¹ for refund application in its Report of August 2015 recommended that, as per the Reserve Bank of India (RBI) guidelines, the exporter has a time of one year from the date of export, within which the export proceeds are required to be remitted into India. Bank Realisation Certificate (BRC) will not be available till the time export proceeds are realized. It was recommended that submission of BRC may not be insisted upon at the time of filing of refund application and post facto verification can be carried out by the tax authorities. The refund in such cases should be subject to submission of BRC details within a period of maximum one year or such period as extended by RBI from the date of export. If such details are not submitted at the portal at which the refund application was made, the portal should generate an alert/report for the concerned tax authorities to take up appropriate action.

In case of any short receipt of export receipts, necessary action for recovery of proportionate refunded amount may be taken. BRC, however, may be verified at the time of exports itself if the payment has already been received in advance. It was also recommended that e-BRC module may be integrated in the Refund process under GST.

Rule 96B of the CGST Rules inserted vide Notification dated 23 March 2020 inter alia provides that where a claimant has received the refund of unutilised input tax credit on account of export of goods but the sale proceeds in respect of such export goods have not been realised in India within the period allowed under the Foreign Exchange Management Act, 1999 (i.e. 180 days), the claimant shall deposit the refunded amount to the extent of non-realisation of sale proceeds, along with applicable interest, failing which the amount

¹⁰¹ An empowered committee was constituted under the co-convenorship of Additional Secretary (Revenue) to give recommendations on refund process in GST regime.

refunded shall be recovered in accordance with the provisions of Section 73 or 74 of the Act alongwith interest.

The GSTN¹⁰² signed (October 2016) a Memorandum of Understanding (MOU) with Director General of Foreign Trade (DGFT) for sharing foreign realisation (e-BRC) and Import-Export Code. e-BRC is issued by a bank as confirmation that the exporter has received payment from the buyer against the export of goods or services. The DGFT implements the e-BRC platform, which allows banks to electronically upload information pertaining to foreign exchange realisation related to exports on the DGFT server. This information is transmitted through a digital certificate – the e-BRC.

Audit examination revealed that no verification system was implemented to ascertain the receipt of proceeds from exports after grant of refund. Although GSTN had access to the e-BRC, it was not integrated with the GST system as recommended by the Joint Committee on Business Process. The details of receipt of foreign exchange were also not obtained from the taxpayers for *ex-post facto* verification. Linking of e-BRC is an important tool for identifying fake exporters, exporters who get refunds but not realising export proceeds and cases where the export proceeds are lower than the amount shown in the tax invoice.

Export Outstanding Statement (XOS) of RBI as of December 2020 was cross-verified in two Commissionerates and it was observed that in three cases¹⁰³, the export proceeds of ₹ 2.24 crore against five shipping bills were pending realization. Despite this, neither had the claimants deposited refund amount related to such exports nor was any action initiated by the Department to recover such amount from the claimant. This resulted in non-recovery of refunded amount of ₹ 44.79 lakh.

On this being pointed out in audit (February 2021/December 2021), Ministry (February 2022) accepted the observation and intimated recovery of ₹ 0.57 lakh in two cases. Ministry further stated that there was no system from where officers could identify that the sale proceeds in respect of exported goods have not been realised. Ministry's reply in respect of one case is awaited (February 2022).

Recommendation 2: The e-BRC module may be integrated with GSTN and cases where export proceeds have not been received within the prescribed

¹⁰² PIB press note dated 28-October-2016 10:22 IST that GSTN signed MoU with DGFT for sharing of foreign exchange realisation data

¹⁰³ Jaipur Commissionerate

time may be examined for overpayment of refund. This will also help prevent possible frauds by identifying taxpayers who sought refunds on fake exports.

Recommendation 3: A robust red flag system may be introduced by linking various systems such as ICEGATE, e-BRC and XOS statement etc. to alert proper officers in respect of non-compliant taxpayers for blocking their refunds and initiating recovery of ineligible refunds already sanctioned.

Ministry, with respect to audit recommendations, stated (February 2022) that the matter would be taken up with GSTN and DG (Systems).

5.6.2 Incorrect order of sanction due to non-compliance with Board's instructions for priority to IGST over CGST/SGST

CBIC Circular dated 4 September 2018 provides for debit of the refund amount of accumulated ITC by the claimant from its electronic ledger in the following order –

- (a) Integrated Tax, to the extent of balance available;
- (b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger.

Audit examination revealed that in 188 cases pertaining to 14 Commissionerates¹⁰⁴, the claimants had filed refund claims of ₹ 230.39 crore without debiting the Electronic Credit Ledger (ECL) in the aforesaid prescribed manner despite having sufficient balance in the respective heads.

Thus, non-observance of Board's circular resulted in incorrect order of sanction of refund and belated allocation of funds under IGST head to CGST/SGST head.

When Audit pointed this out (January and February 2021), Department termed (January, 2021 & March, 2021) it a procedural lapse stating that refund was sanctioned as per law and there was no revenue effect. Further, it was stated that the aforesaid circular itself stated that its non-compliance should not be viewed seriously. The Ministry informed (February 2022) that its view would be submitted shortly.

Audit noticed that even after a passage of more than three years and making refund process fully automated, the Department had not ensured that the

¹⁰⁴ Coimbatore, Kochi, Kozhikode, Thiruvanthapuram, Salem, Ranga Reddy, Tiruchirapalli, Chennai Outer, Pune I, Goa, Bhiwandi, Kolhapur, Mumbai East, Guntur

system validated and accepted the debits in ECL in the prescribed order as intended by the Board.

Recommendation 4: The Department may consider introducing requisite validations in the refund module to ensure that the eligible amounts are debited in the prescribed order.

Ministry, with respect to audit recommendation, stated (February 2022) that the matter of introducing validation regarding order of debit from electronic credit ledger for filing refund in refund module would be taken up with GSTN.

5.6.3 Double payment of GST refunds on cross jurisdictional claims

Section 6(1) of the CGST Act, 2017 specifies that the officers appointed under the State Goods and Services Tax Act (SGST) or Union Territory Goods and Services Tax Act (UTGST) are authorized to be the proper officers for the purpose of this Act, subject to such conditions as the Government shall, on the recommendations of the GST Council, by notification specified. In this regard, Notification dated 13 October 2017 authorizes officers appointed under SGST Act/UTGST Act to be the authorized officers for the purposes of sections 54 and 55 of the said Act, who shall act as proper officers for the purpose of sanctioning of refunds under these sections except for Rule 96 of CGST Rules (Exports of goods with payment of IGST).

Based on the above provisions, the officers appointed under SGST/UTGST Act are empowered to sanction refund of the CGST or IGST components of claims in respect of taxpayers coming under their respective jurisdiction. Similarly, the proper officer under the CGST Act¹⁰⁵ is empowered to sanction refund of SGST/UTGST components of the claims pertaining to the taxpayers under his jurisdiction. The Chief Controller of Accounts in his office memorandums¹⁰⁶ addressed to Pr. Chief Commissioners of GST, Commissioners of GST, Chief Controller of Accounts and PAO advised divisional authorities to maintain proper records to minimise the risk of re-issuance and reconcile the refunds on monthly basis with PAO citing incidents of refund orders and payment advices being issued more than once.

The PFMS through which the payment of refund is initiated allows for download of the data of disbursement in Excel format which can be analysed for identifying cases of double payment. This can then be corroborated with

¹⁰⁵ Section 6 (1)

¹⁰⁶ Pr. CCA/CBEC/GST-IT/ePAO Refunds/33/2017-18 dated 4 June 2018 and Pr. CCA/CBEC/GST-IT/ePAO Refunds/33/2017-18/656 dated 28 December 2018.

the sanction orders attached with the bills to confirm whether the payments relate to the same sanction order.

Audit analysed the data of PFMS relating to GST refunds pertaining to the period from July 2017 to September 2019 (Pre-automation) received from 34 Commissionerates¹⁰⁷ and followed it up with substantive audit of the payment process. Audit noticed 410 instances of double payments amounting to ₹ 13.73 crore, out of which in 19 cases, the department recovered ₹ 1.03 crores after it was pointed out in audit.

In this regard, Audit observed the following lapses:

- In these cases, either the sanction orders were received twice from the State jurisdictional offices or payments were initiated twice on the same base documents. In one case, both the Central and State Authorities refunded the amount to the same taxpayer for the same period without due verification. In some cases, the payment for the same period was released based on different sanction orders.
- In respect of 23 cases, the taxpayers had suo moto returned ₹ 17.10 crore received by them twice.

Although the taxpayers intimated the Department of double payment, there was nothing on record to show that the Department investigated and analysed the reasons for double payments so that corrective measures to improve the system be initiated. This reflected a control deficiency in the manual payment process pertaining to cross-jurisdictional claims of CGST and IGST components in these Commissionerates. One illustrative cases in this regard are as follows:

(a) A taxpayer assigned to the jurisdiction of State GST Department, had claimed refund for January, February and March 2018 both with the State and Central jurisdictions. Both the jurisdictional authorities sanctioned the payment. Sanctioning the claim by the central tax authorities was contrary to the instructions of CBIC. This resulted in excess payment of ₹ 1.74 crore.

Further, the taxpayer was sanctioned provisional refund of CGST worth ₹ 62.73 lakh and IGST worth ₹ 59.95 lakh by the State tax authorities on 11 June 2019. Bengaluru North Central Tax Commissionerate generated the bills twice for payment of CGST/IGST amounts on two different dates without

¹⁰⁷ Agra, Ahmedabad North, Ahmedabad South, Belgaum, Bengaluru East, Bengaluru North, Bengaluru North West, Bengaluru South, Bengaluru West, Bhavnagar, Chennai North, Chennai Outer, Chennai South, Coimbatore, Gandhinagar, Ghaziabad, Jodhpur, Kanpur, Kochi, Kozhikode, Kutch, Madurai, Mumbai East, Mumbai West, Mysuru, Mangalore, Noida, Pune I, Salem, Surat, Thiruvananthapuram, Tiruchirapalli, Vadodara-I and Vadodara-II.

proper verification before transmitting them to the Pay and Accounts Officer (PAO) for payment. This resulted in excess payment of ₹ 1.23 crore.

Audit pointed this out in February 2021 and December 2021. Ministry, for the refund claims pertaining to January 2018, February 2018 and March 2018, stated (February 2022) that the entire amount was recovered from the assessee well before the intervention of Audit. Further, the assessee had also paid the interest amount on the erroneously sanctioned refund amount in January 2022. Regarding refund claims for the period October 2018 and November 2018, Ministry stated that double refund was sanctioned due to oversight. However, the erroneously sanctioned amount was recovered from the assessee immediately.

(b) Audit noticed in Ahmedabad South Commissionerate that a taxpayer was issued refund twice on three occasions amounting to ₹ 7.72 crore, which they returned *suo moto*. Similarly, another taxpayer was given refund of ₹ 43.74 lakh twice in September 2019 which they returned in December 2019 *suo moto*.

The Department neither noticed the double payment nor took immediate action to reconcile refund bills with that of PFMS data, even when the taxpayers were returning the refunds twice paid to them. The Department also did not take suitable steps to improve and correct the system lapse to avoid recurrence of such double payments. Audit came across 10 occasions of double payments amounting to ₹ 12.20 crore, out of which ₹ 8.16 crore was returned *suo moto* by the taxpayers, while ₹ 6.44 lakh was recovered after it was pointed out in audit and in three cases, recovery of ₹ 4.07 crore was pending.

When pointed out (December 2021), the Ministry stated (February 2022) that the reply would follow.

Recommendation 5: A comprehensive verification of PFMS data relating to the pre-automaton period may be undertaken in all Commissionerates to identify double payment cases that may have occurred due to lack of reconciliation.

Ministry, with respect to audit recommendation, stated (February 2022) that the issue would be taken up with the field formations for necessary action. Advisory was being issued to field formations for checking the double payment cases.

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

Internal audit is an independent management function, which involves a continuous and critical appraisal of the functioning of an entity. Internal Audit, being an integral part of the internal control system, has an important role to play in ensuring compliance with prescribed rules, regulations and guidelines.

According to CBIC Circular¹⁰⁸, refund orders are subject to post-audit based on extant guidelines of the erstwhile Central Excise Laws, which requires all refund claim papers be sent by the Divisional Deputy/Assistant Commissioner to the Commissionerate Headquarters for post-audit within a week of payment irrespective of the amount involved. As per guidelines, post-audit should be completed before the expiry of three months from the date of payment. Audit examination revealed the following shortcomings:

- Detailed instructions and guidelines for post-audit of refund cases have not been formulated by the Department after roll out of GST.
- Proper documentation of refund cases sent for post-audit and the current status of post-audit is not maintained in the CBIC field formations.
- Analysis of 8,448 pre-automation cases disclosed that 4,414 cases were not sent for post-audit. As for 449 cases, Audit could not ascertain whether the cases were sent for post-audit or not, as no details were available on the file.

In 2,363 cases, there were delays up to 649 days in carrying out the post-audit.

In respect of the post-automation period, none of the cases were post-audited by the Department. Besides contravention of Board's instructions, non-conduct/delayed conduct of post-audit has the risk of over-payment remaining undetected or getting time-barred.

On this being pointed out in audit (December 2020 to September 2021), Department accepted the audit observation in 426 cases pertaining to 23 Commissionerates.

In one case, the Department did not accept the observation and contended that the audit observation was raised on the basis of date of issue of sanction order and not on the basis of date of issue of payment advice. The reply is not acceptable, as the Department neither furnished the date of payment nor the reason for inordinate delay in issuing the payment advice. In the remaining 1,144 cases, pertaining to 45 Commissionerates, the replies are awaited (February 2022).

¹⁰⁸ Circular dated 15 November 2017

In Mumbai West Commissionerate, out of the 3,051 cases of refunds processed for payment of ₹ 638.11 crore, only 104 cases were sent for post-audit. None of the post-automation cases were sent for post-audit, despite the instructions (January 2020) of the Chief Commissioner of GST, Mumbai that all the refund orders should be reviewed by the Commissioner as well as post-audited as per extant rules. However, Audit noticed that none of the cases were reviewed by the Commissioner.

In reply, the Commissionerate stated that all cases pertaining to 2017-18 have been sent for post-audit and for subsequent period, files were being sent. They further added that for audit of post-automation cases, no guidelines have been specified and the GST system has no option for the Divisional Officer to transfer the task to the post-audit section. The GST system is not linked to review section for review.

This indicated that even after four years of implementation of GST, a proper system of review and post-audit had not been effectively institutionalized so that the Department may rectify mistakes in time.

Recommendation 6: A robust post-audit system based on detailed codified manual of instructions, checklist and SOP may be put in place. A proper module for post-audit of refunds may be introduced in the GST system for effective monitoring.

Ministry, with respect to audit recommendation, stated (February 2022) that field formations had been instructed vide Circular dated 15 November 2017 to conduct post-audit of the refund claims as per the extant guidelines i.e. the guidelines issued under pre-GST regime. Guidelines regarding post-audit of refund orders in the automated regime were under preparation. Ministry further informed that the matter had also been taken up with DG (Systems) to operationalize the post-audit module under the review module in the system.

5.7 Compliance issues

Audit examined compliance in individual sampled cases to the provisions of the CGST Act, associated rules, procedures, etc. related to refund of GST by the Central tax authorities. Audit noticed 522 cases where excess/inadmissible refund of ₹ 185.28 crore was sanctioned due to incorrect computation of Adjusted Total Turnover, consideration of ineligible accumulated ITC, claims which were time barred etc. Audit also noticed delays at various stages of processing of refunds that led to delay in sanction of refunds. The interest for delayed refunds was also not paid in the majority of cases. The details regarding the nature of audit observations and the extent of deviations are

included in **Table 5.4** (pre-automation period) and **Table 5.5** (post- automation period):

Table 5.4: Compliance deviations noticed during pre-automation period

Sl. No.	Nature of observation	Pre-automation				
		Cases audited		Audit observation in the sample audited ¹⁰⁹		Deviation rate (as a percentage of number of cases)
		No.	Amt. (in ₹ crore)	No.	Amt. (in ₹ crore)	Percentage
1	Delay in issue/non-issue of acknowledgement	5,451	6,320	374	468	6.86
2	Refund orders not sanctioned or paid in time	5,451	5,771	412	401	7.56
3	Provisional refund on account of zero-rated supply not sanctioned in time/not issued at all	3,237	4,500	281	360	8.68
4	Irregular sanction of refund under Inverted Duty Structure	1,345	1,060	46	21	3.42
5	Irregular grant of provisional refund to ineligible taxpayer	2,214	1,271	30	25	1.36
6	Sanction of refund without submission of copy of GSTR-2A along with refund application by taxpayer	4,486	5,456	21	53	0.47
7	Excess grant of refund due to non-reversal of ITC on exempted supplies	4,486	5,406	54	3	1.21
8	Irregular grant of refund on inadmissible input tax credit	4,486	5,406	29	2	0.65
9	Excess refund due to adoption of incorrect adjusted turnover	4,486	5,406	26	12	0.58

¹⁰⁹ Row No. 4 to 9 in the table 5.4 depict the compliance deviations as pointed out in para 5.7

Table 5.5: Compliance deviations noticed during post-automation period

Sl. No.	Nature of observation	Post-automation				
		Cases processed by Centre		Audit observation in the sample audited ¹¹⁰		Deviation rate (as a percentage of number of cases)
		No.	Amount (in ₹ crore)	No.	Amount (in ₹ crore)	Per cent
1	Delay in issue/non-issue of acknowledgement	90,888	32,008	11,683	4,472	12.85
2	Refund orders not sanctioned or paid in time	86,506	24,685	12,289	4,436	14.21
3	Provisional refund on account of zero-rated supply not sanctioned in time/not issued at all	30,534	17,221	20,050	9,360	65.66
4	Irregular sanction of refund under Inverted Duty Structure	2,180	2,051	31	3	1.42
5	Sanction of refund without checking status of filing of returns	86,506	24,685	13,589	2,229	15.71
6	Sanction of refund without submission of copy of GSTR-2A along with refund application by taxpayer	2,938	155	74	40	2.52
7	Sanction of refund when ITC shown was more than GSTR-2A	31,173	27,405	2,656	6,122	8.52
8	Delay in Issue of deficiency memo	53,926	17,003	9,001	4,682	16.69
9	Delay in disbursement of refunds beyond 15 days of sanction.	78,895	23,742	2535	1,972	3.21
10	Irregular grant of refund on inadmissible input tax credit	5,064	172	19	3	0.38
11	Excess refund due to adoption of incorrect adjusted turnover	5,064	172	58	13	1.15

¹¹⁰ Row No. 4 to 7 and 10 to 11 in the table 5.5 depict the compliance deviations as pointed out in para 5.7

5.7.1 Delays at various stages of refund processing

5.7.1.1 Delay in issue of acknowledgement

Pre-automation

Sub-rule (1) and (2) of Rule 90 of the CGST Rules provide that the acknowledgment shall be issued within fifteen days of filing of refund claim with the proper officer, if the application is found complete in all respects. In case of pre-automation cases, the stipulated period of 15 days will be counted from the date of manual submission of refund application along with all specified documents.

Audit examined 5,451 refund cases pertaining to the pre-automaton period and observed delays and omissions in 485 cases (nine *per cent*) under 53 Commissionerates as detailed below:

- In respect of 83 cases under 14 Commissionerates, wherein the refund claim was ₹ 68.34 crore, no acknowledgement had been issued, while there were delays in issue of acknowledgement in 291 cases ranging up to 369 days. In 49 cases, there was delay of more than 60 days. The delays and non-issue of acknowledgement constituted 6.99 *per cent* of the sample checked.
- In respect of 16 cases, Audit could not ascertain whether the acknowledgement was issued or not as records were not made available. In 32 Commissionerates, Audit could not ascertain the date of manual submission of application in 95 cases involving refund claim of ₹ 110.81 crore as proper records were not maintained for monitoring the receipt of applications.

In response to the audit observation (December 2020 to September 2021), the Department accepted the observation in 113 cases under 21 Commissionerates.

In 41 cases under 10 Commissionerates¹¹¹, the Department did not accept the observation and contended that there was delay in issue of acknowledgement due to late submission or short submission of documents by the tax payers. The reply is not acceptable as the Department had to either issue acknowledgement or if the documents were not complete, deficiency memo was to be issued within 15 days. In the remaining 248 cases under 28 Commissionerates, the replies were awaited (February 2022).

Two such cases are illustrated below:

¹¹¹ Delhi South and Raipur Commissionerate.

(a) A taxpayer under the Gurugram Commissionerate filed a refund application for zero-rated supply on 10 June 2019 followed by manual submission of application along with documents on 14 August 2019. A Deficiency memo was issued on 4 September 2019 and rectified application was submitted by the taxpayer on 5 November 2019. The Department issued acknowledgement on 26 May 2020 after a delay of more than 187 days from the receipt of completed application, and issued the sanction order for ₹ 10.11 crore on the same day.

When pointed out (August 2021/December 2021), the Ministry stated (February 2022) that due to Covid pandemic vide Notification dated 3 April 2020, issued under Section 168A of the CGST Act, the time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action was extended upto the 30th day of June 2020. Thus, there was no delay in sanctioning of above refund claim; however, the audit objection is agreed.

Ministry's reply is not acceptable in view of the fact that the taxpayer had originally submitted the refund application in August 2019. In reply to deficiency memo of November 2019, the taxpayer had submitted the revised refund application on 6 February 2020. Thus, the department was required to issue acknowledgment within 15 days from 6 February 2020 i.e. 21 February 2020. The lockdown, owing to Covid-19, was imposed from 23 March 2020. i.e. after more than a month of receipt of the revised refund application.

(b) A taxpayer under Haldia Commissionerate filed an application claiming refund of ₹ 65.56 lakh and submitted the documents physically on 28 January 2019. Acknowledgement was issued after 309 days on 3 December 2019 instead of within 15 days. The provisional refund of ₹ 59 lakh was granted on the same day and final refund of ₹ 6.55 lakh was granted on 19 December 2019.

When Audit pointed this out (January 2021/December 2021), the Ministry admitted the audit observation and stated (February 2022) that in future such issues would be dealt more cautiously. Further, efforts were being made to ensure maximum facilitation of taxpayers.

Post-automation

Analysis of the post-automation GSTN data during the period September 2019 to July 2020 disclosed that in 11,683 out of 90,888 cases, constituting about 13 per cent of cases, acknowledgments were issued with delays ranging up to

147 days. Consequently, the refunds in 3,724 cases were sanctioned beyond the stipulated period of 45 days¹¹² as detailed below:

Table 5.6: Delay in sanction of refund claim due to delay in acknowledgment (post- automation)

Delay in sanction of refund	Number of Cases	Amount Sanctioned (in ₹ crore)
1 day to 15 days	2,634	1,176
16 days to 45 days	933	420
46 days to 75 days	110	32
Beyond 75 days to 230 days	47	21
Total	3,724	1,649

Source: Compiled based on the data furnished by GSTN.

During detailed audit of 554 post-automation cases in 72 Commissionerates, Audit noticed delays in issue of acknowledgment up to 170 days with claim amount of ₹ 567 crore.

On this being pointed out in audit (December 2020 to April 2021), the Department accepted the observation in 197 cases and replied that the technical glitches and errors had resulted in delays. The Department contended in two cases, pertaining to two Commissionerates, that remote access was not provided during the Covid 19 pandemic. In 10 cases under one Commissionerate, the Department accepted the delay but did not elaborate on the reasons for the delay. Replies regarding 325 cases, under 52 Commissionerates, were awaited.

Recommendation 7: In case of issue of acknowledgement after 15 days, the proper officer should specify the reasons for such delay and the same should be monitored online by the Department.

Ministry, in response to audit recommendation, stated (February 2022) that issuance of acknowledgement was just a step in processing of refund and not the final step determining the payment of refund. However, instructions were being issued to the field formations of CBIC for strict adherence of the timelines for issuance of acknowledgement and deficiency memo.

¹¹² Circular dated 18 November 2019- The tax authorities were advised to issue the final sanction and payment order within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days.

5.7.1.2 Delay in sanction of refunds

Section 54 (5) and 54 (7) of CGST Act, 2017 provide that the proper officer shall issue sanction order within sixty days from the date of receipt of application complete in all respect. Wherever a deficiency memo (GST-RFD-03) is issued, the period of 60 days is counted from the date of receipt of reply to the said deficiency memo.

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

The Board held that interest has to be calculated from the date immediately after the expiry of sixty days from the date of receipt of the application till the date the amount is credited to the bank account of the applicant. The tax authorities were advised to issue the final sanction and payment order within 45 days of the date of generation of ARN so that the disbursement is completed within 60 days¹¹³.

Government extended the due date for issue of notice, sanction or approval etc. falling between 20 March 2020 and 30 August 2020 to 31 August 2020¹¹⁴ owing to Covid-19 pandemic. Time limit was also extended for issuance of order where the SCN was issued between 20 March 2020 and 29 June 2020, to fifteen days after the receipt of reply to the SCN or 30 June 2020 whichever was later¹¹⁵.

The notifications were primarily meant to take care of extraordinary circumstances of pandemic. The officials were granted remote access to the GSTN from 5 April 2020 so that officials could work from home. Hence, for any delay in sanction or issue of an order, there needed to be cogent recorded reasons.

Pre-automation

Audit examined 5,451 cases and noticed delays in issue of sanction orders/payment advice beyond 60 days from the date of receipt of completed applications in 412 cases constituting about 8 *per cent* of the total cases

¹¹³ Circular dated 18 November 2019

¹¹⁴ On 27 June 2020

¹¹⁵ In 9 June 2020

examined. Interest of ₹ 2.25 crore was not paid in these cases. The details are given in **Table 5.7** below:

Table 5.7: Delay in sanction of refund (pre-automation)

Delay in sanction of refund	Number of Cases	Amount Sanctioned (₹ in crore)	Interest payable (₹ in crore)
Up to 60 days	226	218	0.69
61 to 120 days	87	43	0.51
Beyond 120 days	99	140	1.05
Total	412	401	2.25

On this being pointed out in audit (December 2020 to September 2021), the Department accepted the observation in 149 cases under 18 Commissionerates, and stated that delays occurred due to heavy work load and shortage of staff. In three cases pertaining to Madurai Commissionerate, Department intimated payment of interest against the delayed refund.

In 52 cases under 11 Commissionerates, the Department did not accept the observation and contended that the delay in sanction of refund was due to late submission or short submission of documents by taxpayers. In six cases, the Department stated that the delay was due to delayed/intermittent replies by the taxpayers to the SCNs issued. The Department further stated that no interest has been demanded by the taxpayers. In the remaining 233 cases, under 25 Commissionerates, replies were awaited.

The Department's reply regarding non-payment of interest is not acceptable as the interest amount is to be paid *suo moto* by the Department. There is no requirement in the Rules that the taxpayers have to formally demand payment of interest.

An illustrative case is given below:

A taxpayer under Ahmedabad North Commissionerate, claimed refund of ₹ 19.40 crore on 8 October 2018. The acknowledgement was issued on 26 October 2018 and provisional refund of ₹ 17.46 crore was sanctioned on 12 November 2018. An SCN was issued after eleven months on 18 October 2019. After receipt of reply to the SCN on 26 October 2019, the final refund of ₹ 1.84 crore was paid on 22 November 2019, after excluding inadmissible amount of ₹ 9.36 lakh, resulting in inordinate delay in sanction/payment of final refund amount of about one year. Further, the Department did not pay interest to the taxpayer despite delayed payment of refund.

When Audit pointed this out (December 2021), the Ministry informed (February 2022) that the delay was due to implementation of GST, heavy work load, shortage of staff and vigorous /in depth verification of claims.

Ministry's reply is not acceptable as the refund application pertained to October 2018 whereas GST was implemented in July 2017, i.e. more than 15

months before the receipt of the refund application. Further, the reply of the Ministry is silent on the aspect of non-payment of interest on delayed payment of refund.

Post- automation

During the post-automation period, Audit observed that in respect of 86,506 cases, sanction orders for refunds amounting to ₹ 24,684.91 crore were issued. In 15,631 cases, constituting about 18 *per cent* involving sanctioned amount of ₹ 6,249.72 crore, the sanction orders were issued beyond the stipulated period of 45 days. In respect of 12,289 cases constituting about 14 *per cent*, the refund amount of ₹ 4,434.63 crore was paid beyond 60 days of the date of application. Further, the Department was required to pay an interest of ₹ 7.67 crore for delayed payments, but interest of only ₹ 12.38 lakh was paid.

Table 5.8: Delay in sanction of refund (post-automation)

Delay in sanction of refund	Number of Cases	Amount Sanctioned (in ₹ crore)	Amount paid through PFMS (in ₹ crore)	Amount of interest payable (in ₹ crore)	Interest paid (in ₹ crore)
1 to 60 days	10,544	3,850	3,849	3.82	0.01
60 days to 120 days	1,145	432	432	1.79	0.03
Beyond 120 days	600	154	154	2.06	0.08
Total	12,289	4,436	4,435	7.67	0.12

Source: Compiled based on data furnished by GSTN.

During detailed audit of 6,482 cases in 107 Commissionerates, Audit noticed delayed payment of refund in 186 cases amounting to ₹ 192.06 crore in 56 Commissionerates in which interest of ₹ 38.46 lakh was payable. However, interest of only ₹ 8,504 was paid in 11 cases.

On this being pointed out (February 2021 to August 2021), the Department attributed (January to May 2021) delays mainly to technical glitches, claim not shown in the task list, heavy workload, shortage of staff, delay in crediting the amount to the claimant's bank account despite issue of sanction order in time etc. In two cases, the Department replied that the delay occurred due to late submission of replies to show cause notices by the claimants and none of the taxpayers had demanded the interest. In the remaining 122 cases under 35 commissionerates, replies were awaited.

The reply of the Department in one case was not acceptable as the show cause notice itself was issued after 60 days of the ARN date, and in another case, sanction was delayed by 57 days. The law provides that the taxpayer has to

furnish the reply within 15 days of receipt of the show cause notice. The Department, therefore, could have sanctioned the refund claim after excluding the amount covered under SCN after 15 days of issue of SCN. In the remaining 122 cases under 35 commissionerates, replies were awaited (February 2022).

Two illustrative cases are given below:

(a) A taxpayer under Hyderabad Commissionerate, applied on 27 September 2019 for refund (supplies to SEZ without payment of tax) of ₹ 4.94 crore for the period of September 2017 to March 2018. The acknowledgment was issued on 10 October 2019, while the final payment of ₹ 4.94 crore was sanctioned on 2 March 2020, that is, after a delay of 97 days. Despite delay, Interest of ₹ 0.79 lakh due to the taxpayer was not paid.

In another case of the same taxpayer, the refund of ₹ 18.30 crore for the period of April 2018 to March 2019 was submitted on 30 September 2019. The acknowledgment was issued on 10 October 2019. The final payment of ₹ 18.30 crore was sanctioned on 2 March 2020, that is, after a delay of 94 days (2 March 2020). The Department was liable to pay interest of ₹ 2.83 lakh, which was not paid.

On this being pointed out in audit (February 2021/December 2021), the Department stated (July 2021) that the sanction order (RFD 06) was not issued as the taxpayer's bank accounts were shown as invalid; hence, there was no lapse on the part of the Department. The office as well as the taxpayer had taken up the matter through numerous emails with Saksham Seva and CBIC Mitra. The reply is not acceptable as the sanction order gets generated even if the bank accounts were invalid and only the Payment Advice does not get generated. In this case, the Sanction order itself was not issued within the stipulated time.

When Audit pointed this out (December 2021), Ministry stated (February 2022) that the reply would follow.

(b) A taxpayer under the Varanasi Commissionerate applied for refund of Cess worth ₹ 9.66 crore for the period of September 2019 on 4 January 2020. Acknowledgment was issued on 15 January 2020. However, provisional sanction order for ₹ 8.69 crore was issued on 17 February 2020 and the Payment advice was issued on 1 March 2020 after a delay of 38 days.

However, the final refund was pending disbursement even after a lapse of 547 days (2 September 2021).

When Audit pointed this out (May 2021/December 2021), the Ministry admitted that there was a delay of 38 days in sanction of provisional refund.

Ministry's reply, however, is silent on the reasons for the pending disbursement of final refund even after a lapse of 547 days.

Recommendation 8: The provisions regarding payment of interest on delayed refunds need to be amended to exclude the period of delays that is attributable to the taxpayers such as delay in reply to SCN or incorrect bank details for payment.

Ministry, in response stated (February 2022) that the audit recommendation had been noted for placing before the Law Committee of GST Council.

Recommendation 9: The GST system may be modified to automatically calculate the interest amount payable to the claimant in case of delay in processing of refunds beyond the prescribed time limit. Reasons for non-payment of interest may be mandatorily captured in the system and monitored.

Ministry, in response to audit recommendation, stated (February 2022) that the matter would be taken up with GSTN and DG (Systems).

5.7.1.3 Provisional refund on account of zero-rated supply not sanctioned in time

Rule 91 (1) of the CGST Rules, 2017 provides that provisional refund in accordance with the provisions of sub-section (6) of section 54 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 two hundred and fifty lakh rupees. Sub rule (2) further provides that the proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund under sub-rule (1) is due to the applicant in accordance with the provisions of sub-section (6) of section 54, shall make an order in **FORM GST RFD 04**, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days from the date of the acknowledgement under sub-rule (1) or sub-rule (2) of rule 90.

Pre-automation

Audit examined 3,237 cases of zero-rated supplies of goods and services for the pre-automation period, in which provisional refund was payable. In 281 cases, provisional refund was not paid within seven days of acknowledgement. In 234 out of 284 cases, the entire claim was refunded at once without

payment of provisional refund. In 134 such cases, the sanction amount of ₹ 160.68 crore was paid beyond 60 days of the date of manual submission of documents.

In 47 cases, where provisional refund was paid separately, there were delays in sanction of provisional refund up to 187 days. In five cases, there was delay of more than 60 days in sanction of provisional refund.

On this being pointed out in audit (December 2020 to September 2021), the Department accepted the observation in 24 cases under eight Commissionerates. In 32 other cases under eight Commissionerates, the Department did not accept the observation and contended that there was delay in issuing provisional refund either due to detailed verification or issue of SCN to the taxpayer.

In the remaining 222 cases (27 Commissionerates), replies were awaited (February 2022).

Post-automation

In post- automation cases, provisional refund of ₹ 17,220 crore was required to be granted in respect of 30,534 cases under the category of zero-rated export of goods and services. However, provisional refund of ₹ 7,652.06 crore was granted in only 10,080 cases constituting 33.33 *per cent* of the cases, despite issue of acknowledgement in the balance 20,454 cases. Consequently, there was no justification for the Department to skip provisional refund and grant refund after a delay of more than 22 days in 4,308 cases involving refund of ₹ 2251.72 crore.

In addition, Audit noticed delays in issue of provisional refund in 2,914 applications as detailed in **Table 5.9**:

Table 5.9: Delay in sanction of provisional refund (post-automation)

Description	Maximum delay in days	Number of Cases	Amount claimed (in ₹ crore)	Provisional refund (in ₹ crore)
Delay in both issue of Acknowledgement and Provisional refund	119	510	340	281
Delay in issue of Provisional refund where acknowledgement was issued within prescribed time.	119	1,619	1,349	1,071
Acknowledgment issued beyond 15 days though the provisional refund was issued within 7 days of acknowledgement.	134	785	643	448
Total		2,914	2,332	1,800

Source: Compiled based on data furnished by GSTN.

During detailed audit in 46 Commissionerates, Audit noticed that in 429 cases, provisional refund was not paid within seven days of the acknowledgement. In 337 out of 429 cases, the entire claim was refunded at once beyond the seven days of acknowledgment by skipping payment of provisional refund.

When these delays were pointed out (between December 2020 and September 2021), the Department accepted the audit observation in 64 cases under 16 Commissionerates and cited human omission and shortage of manpower as the reasons. In one case, the Department attributed the delay to system failure and in three other cases, it stated that the manpower was not conversant with the online process of refund. In four cases the delay was attributable to non availability of remote access.

In cases where provisional refunds were not sanctioned, the Department in respect of one case contended that it was not mandatory to sanction provisional refund. In nine cases under one Commissionerate, the Department¹¹⁶ stated that the claim was sanctioned within the prescribed time-limit of 60 days. In two cases under one Commissionerate, the Department accepted the audit observation and in one case, the Department attributed the delay to late submission of BRC. In the remaining 317 cases, replies were awaited.

In cases where the Department did not agree with the audit observation, it would be worthwhile to underline that the final refund (after skipping payment of provisional refund) was not sanctioned within seven days from the date of acknowledgment. The Department was required to sanction the provisional refund in view of the statutory provisions of Section 54 (6) of the Act read with Rule 91(2) of the Central Goods and Service Tax, 2017 where the word “shall” has been used which makes it mandatory to sanction the provisional refund once the proper officer is prima facie satisfied that the amount claimed as refund under sub-rule (1) is due to the applicant in accordance with the provisions of sub-section 6 of Section 54.

5.7.1.4 Delay in Issue of deficiency memo

An acknowledgment for receipt of refund application should be issued within 15 days if the documents are complete¹¹⁷ and in case of any shortcoming in refund application, a deficiency memo in RFD-03 has to be issued.

In pre-automation cases, the taxpayer had to resubmit the application after rectifying the deficiencies intimated by the Department. The date of resubmission was considered as the date of receipt of completed application.

¹¹⁶ Vadodara I Commissionerate

¹¹⁷ Rule 90 of CGST Rules

The Application Reference Number (ARN) generated at the time of online submission of application remained unchanged.

In the post-automation period, once a deficiency memo is issued, the refund application would not be further processed, and a fresh application had to be filed after rectification of deficiencies. This application would have a new ARN.

Delhi High Court¹¹⁸ had held that allowing the proper officer to issue a deficiency memo beyond the timelines would amount to enabling processing of the refund application beyond the statutory timelines. This could then also be construed as rejection of the petitioner's initial application for refund as the petitioner would thereafter have to file a fresh refund application after rectifying the alleged deficiencies. This would not only delay the taxpayer's right to seek refund, but also impair assessee's right to claim interest from the relevant date of filing of the original application for refund as provided under the Rules. The proper officer has lost the right to point out any deficiency, in the petitioner's refund application, at this belated stage.

Pre-automation

Audit examination revealed that in 26 cases under 13 Commissionerates, deficiency memos were issued with delays of two to 34 days. Besides non-observance of the aforesaid provisions, this delayed the taxpayers' right to seek refund.

When Audit pointed this out (December 2020 to March 2021), the Department accepted the delay in 18 cases (seven Commissionerates) and attributed (December, 2020 to March, 2021) the delays to shortage of staff. In two cases, the Department did not accept the observation and cited technical glitches and delayed submission of documents by the taxpayer as the reasons for delay. In six cases, replies were awaited (February 2022). Reply of the Ministry to the above observations was awaited (February 2022).

Post-automation

In the post-automation period, the Department had issued 53,926 deficiency memos. In 9,001 cases, constituting 17 *per cent*, the deficiency memos were issued beyond the stipulated period of 15 days with delays ranging up to 211 days. Analysis of delays are as follows:

¹¹⁸ JIAN INTERNATIONAL versus COMMISSIONER OF DELHI GOODS AND SERVICES TAX [2020] 117 taxmann.com 968

Table 5.10: Delay in issue of Deficiency memo (post-automation)

Delay in days	Number of Cases	Amount Claimed (in crore)
1 to 15 days	7,328	4,113
16 days to 30 days	965	253
30 days to 45 days	505	244
Beyond 45 days	203	72
Total	9,001	4,682

Source: Data compiled on the basis of information provided by GSTN

Recommendations 10: The Department needs to put in place an effective monitoring mechanism to ensure timely issue of deficiency memos in case of deficiency in the refund claims.

Ministry, with respect to audit recommendation, stated (February 2022) that instructions were being issued to the field formations of CBIC for strict adherence to the timelines for issuance of acknowledgement and deficiency memo.

Ministry's reply, however, is silent on the monitoring mechanism to ensure timely adherence to the extant instructions by the field formations.

5.7.1.5 Delay in disbursement of refunds

On receipt of the payment advice in Form RFD-05, the GST System generates a consolidated statement comprising all RFD-05 files at the end of the day. This statement is transmitted to PFMS electronically which validates the bank account details with the taxpayers' Master file. The designated Drawing and Disbursing Officer (DDO) thereafter prepares the electronic bill in the PFMS system, affixing his digital signature and forwards it to e-PAO (Refund) of Pr. CCA (CBIC). The e-PAO issues Payment authorization to the accredited bank¹¹⁹.

Audit analysed PFMS data pertaining to the period 26 September 2019 to 31 July 2020, and noticed that payments were made after lapse of 15 days from the date of issue of sanction order in 2,535 provisional/final refund cases out of 78,795 (3.21 per cent). Age-wise analysis of delays is detailed below:

¹¹⁹ Single authority refund disbursement process: concept document issued by GSTN on 24 September 2019.

Table 5.11: Delay in payment of refunds through PFMS

Delay in days	Provisional refund		Final payment	
	Number of Cases	Amount Claimed (in ₹ crore)	Number of Cases	Amount Claimed (in ₹ crore)
15 days to 45 days	599	454	1,735	1,376
45 days to 60 days	54	43	57	28
Beyond 60 days	74	69	16	3
Total	727	565	1,808	1,407

Source: Compiled based on data furnished by GSTN

The Department attributed the delays to delay in issue of payment advice, bank validation failure etc.

The delays are indicative of the fact that after sanction of claim, the Department did not ensure timely credit of the amount to the taxpayer's account in several cases.

5.7.1.6 Delayed disbursement of refund sanctioned by State Tax Authorities

During the pre-automation period, CBIC vide its circular ¹²⁰ specified that the refund order issued either by the Central tax authority or the State tax/UT tax authority shall be communicated to the concerned counterpart tax authority within seven working days for the purpose of payment of the relevant sanctioned refund amount of tax or cess, as the case may be. It must be ensured that the timelines specified under Section 54 (7) of the CGST Act and Rule 91(2) of the CGST Rules for the sanction of refund are adhered to.

Audit verified the records maintained in six Commissionerates¹²¹ and noticed that out of 5,451 cases test checked, sanction orders (RFD-06) in respect of 95 cases, involving refund amount of ₹ 23.89 crore, were communicated by the State tax authorities to Central tax authorities after delays ranging between two to 134 days.

In 47 cases, taxpayers received the payment of ₹ 8.75 crore after a delay ranging from 9 days to 749 days from the date of sanction by the State Authorities. Audit could not identify the authority (Central or State) that was responsible for the delay as the requisite details of receipt from State tax authorities were not available. Audit observed that even though interest was

¹²⁰ CBIC circular dated 21 December 2017.

¹²¹ Gandhinagar, Agra, Ranchi, Jamshedpur, Kozhikode, Thiruvananthapuram

payable at the time of the issue of payment advice (Form RFD 05) by the Central tax authority considering the total delay from the date of submission of application as per the provisions of 94 of the CGST Rules, no interest was worked out and included in the payment advice.

On this being pointed out in audit (December 2020), the Department attributed (January to March 2021) the delay to the State tax authority in communicating refund orders. As regards non-payment of interest in RFD-06, the Department stated that the refund claim papers were not available with the Central tax authorities, and the claimants had not claimed interest. In one case, the Department stated that there was no mention of disbursing interest amount in the refund sanction issued by the State GST Offices.

The contention of the Department is not acceptable, as payment of interest was a statutory requirement and the claimant was not required to claim it separately. Further, interest is payable at the time of Payment Advice (RFD 05) and not at the time of sanction. Once there is a delay in payment of refund beyond 60 days, the disbursing officer ought to include the interest in the Payment advice. In none of the cases, the date of receipt of refund orders from the State nodal officers were recorded by the Central authorities. Further, in respect of 14 cases, where the refund orders were forwarded by the Central nodal officers to the Commissionerates on the same day, payments were made to the claimants after a lapse of 32 days to 687 days.

In one case, where the delay in disbursement from the date of receipt of sanction order was 687 days, the Department stated that when RFD-06 from the state nodal officer was received, the taxpayer was not reflected in the All-in-ones (AIO) system of the jurisdiction of division office. Subsequently, when the taxpayer approached (January 2020) for the refund claim, RFD-05 was issued (January 2020) as the taxpayer was then reflecting under their jurisdiction.

The reply is not acceptable as the Department did not follow up the matter by intimating (May 2018) the discrepancy to the nodal officer. The refund was processed (January 2020) only when the claimant approached the Department after 585 days, indicating lack of monitoring/ follow up by the Department.

One such case is given below as illustration:

A taxpayer was sanctioned refund of ₹ 99.08 lakh on 25 October 2019 by the State tax authority. Records were not maintained by the Gandhinagar Commissionerate regarding the date of receipt of the sanction order from the

State authorities and by the Central nodal officer, and the date of forwarding the same to the Divisional officer for disbursement. The taxpayer finally received the payment of IGST of ₹ 99.08 lakh on 8 January 2020 *i.e.*, after 88 days from the issue of sanction order by the State authorities. Audit observed that the interest payable for the delayed refund was not included in the payment advice for payment to the taxpayer.

When Audit pointed this out (January 2021/December 2021), the Ministry stated (February 2022) that the delay in refund was due to delay in receipt of sanction orders from the SGST authority. Moreover, there were no specific instructions for payment of interest on delay by the SGST authority. Accordingly, this office had not calculated and paid interest to the taxpayer. Ministry also stated that the concerned taxpayer had not claimed any interest for the instant refund claim.

Ministry's reply is not acceptable in view of the fact that section 56 of the CGST Act, 2017 makes it mandatory for the interest to be paid in cases of delayed refund orders without making it contingent upon claim by the taxpayer.

5.7.2 Excess refund due to adoption of incorrect Adjusted Total Turnover

As per Rule 89(4) of the CGST Rules, in case of zero-rated supply of goods or services or both without payment of tax, refund of credit shall be granted as per the following formula:

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

Similarly, Rule 89(5) provides that in case of the inverted duty structure, refund of input tax credit shall be granted as per the following formula:

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

“Adjusted Total Turnover” (ATT) means the turnover in a State or a Union territory, as defined under sub-section (112) of Section 2, excluding the value of exempt supplies other than zero-rated supplies, during the relevant period.

Audit examination revealed that in respect of 84 refund cases under 35 Commissionerates, the incorrect amount of the Adjusted Total Turnover was considered by the Department while sanctioning the refund. This resulted in excess sanction of refund of ₹ 24.90 crore.

On this being pointed out in audit (December 2020 to September 2021), the Department accepted the audit observation in 22 cases with irregular refund of ₹ 2.49 crore (14 Commissionerates) and intimated recovery of ₹ 1.56 crore in 12 cases (10 Commissionerates). In the remaining 47 cases (19 Commissionerates), replies were awaited.

A few illustrative cases are discussed below:

(a) A taxpayer under Bengaluru South Central Tax Commissionerate claimed refund of ₹ 4.59 crore for the period April 2019 to June 2019 under 'Inverted Duty Structure' category. The Adjusted Total Turnover declared by the taxpayer in the claim was ₹ 11.90 crore. However, GSTR-3B for the relevant period indicated Adjusted Total Turnover of ₹ 14.76 crore. The incorrect adoption of Adjusted Total Turnover resulted in excess refund of ₹ 1.15 crore.

When Audit pointed this out (July 2021/December 2021), the Ministry contested the audit observation and stated (February 2022) that the values of GSTR-3B do not reflect the actual outward taxable supplies for the period but is reflected by GSTR-1 only.

Ministry's reply is not acceptable as Rule 89 (4) (E) of the CGST Rules, 2017 does not specify any particular return, i.e. GSTR-1 or GSTR-3B for determining the adjusted total turnover. However, GSTR-3B is a monthly summary return which captures the details of outward and inward supplies, separately, in table 3.1. Further, the tax liability of the taxpayer is also determined on the basis of the turnover declared in the GSTR-3B. Therefore, turnover declared in GSTR-3B can be a basis for determining the adoption of Adjusted Total Turnover.

(b) A taxpayer under Tirupati Commissionerate was sanctioned refund of ₹ 4.67 crore for the period October 2019 to December 2020 under the category of 'Exports without payment of tax'. While processing the refund, tax authorities incorrectly excluded the export of ₹ 31.53 crore from Adjusted Total Turnover. This resulted in excess grant of refund of ₹ 1.23 crore.

When Audit pointed this out (April 2021/December 2021), the Ministry accepted the audit observation and informed (February 2022) that the excess paid refund amount of ₹ 1.23 crore along with interest ₹ 24.22 lakh had been recovered from the taxpayer.

(c) A taxpayer, under the Chennai South Executive was sanctioned refund of IGST of ₹ 5.51 crore (April 2020) for the tax period April 2018 to September 2018. The Adjusted Total Turnover of outward supply as per GSTR-1 was ₹ 1,806.02 crore, whereas while processing the refund, Adjusted Total Turnover of ₹ 1,199.07 crore was adopted from GSTR 3B. Incorrect adoption of Adjusted Total Turnover resulted in excess refund of ₹ 2.27 crore.

When Audit pointed this out (December 2020/December 2021), the Ministry accepted the audit observation and informed (February 2022) that the excess paid refund amount of ₹ 1.43 crore along with interest of ₹ 37.16 lakh had been paid by the taxpayer.

5.7.3 Irregular grant of refund on inadmissible input tax credit

5.7.3.1 Irregular refund on ineligible credits in case of Zero-rated supplies without payment of tax

Section 17(5) of CGST Act stipulates that ITC is not available on supplies like food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, services of general insurances, goods, or services or both used for personal consumption.

In respect of 48 claims pertaining to 'Export Without Payment of GST' (EXWOP) under 19 Commissionerates, Audit noticed that the taxpayers had claimed refund of ITC on ineligible goods and services and credits which did not pertain to the period of claim amounting to ₹ 4.76 crore. However, the Department granted refund in these cases in contravention of the aforesaid provisions.

On this being pointed out in audit (December 2020 to September 2021), the Department accepted the audit observation in 10 cases under eight Commissionerates and intimated recovery of ₹ 2.72 lakh in three cases under the three Commissionerates. In three cases, under three Commissionerates, the Department did not accept the observation. In the remaining 35 cases (13 Commissionerates), replies were awaited (February 2022).

An illustrative case is given below:

A taxpayer under the Bengaluru North Central Tax Commissionerate, had claimed refund of the unutilized ITC for the period from October 2018 to March 2019 (May 2020). The net ITC claimed by the taxpayer included supplies of taxable value of ₹ 11.12 crore on which ITC credit of ₹ 1.85 crore was availed relating to Sodexo Facilities Management Service which had issued food coupons for the personal benefit of the employees. However, the Department granted refund of ₹ 1.85 crore resulting in excess refund on account of ineligible ITC, in contravention Section 17(5)(b) for the CGST Act, 2017.

When Audit pointed this out (July 2021/December 2021), the Ministry accepted the audit observation and informed (February 2022) that an SCN of ₹ 90.39 crore for the period April 2018 to March 2020 had been issued.

5.7.3.2 Irregular refund due to inclusion of inadmissible credit and ineligible input services under Inverted Tax Category

The term “Net ITC” used in the formula that is used to determine the amount eligible for refund in case of Inverted Duty Structure is defined under Explanation to Rule 89(5) to mean “input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rule 89(4A) or 89(4B) or both”.

Madras High Court in case of Tvl Transtonnelstroy Afcons Joint Venture vs Union of India held (September 2020) that the refund was a statutory right, and the extension of the benefit of refund only to the unutilised credit that accumulated on account of the rate of tax on input goods being higher than the rate of tax on output supplies by excluding unutilised input tax credit that accumulated on account of input services was a valid classification and a valid exercise of legislative power. This decision was upheld by the Supreme Court in its judgement dated 13 September 2021. Further, Section 17 (5) of CGST Act stipulates that ITC is not available on supplies like food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, services of general insurance, goods, or services or both used for personal consumption.

During detailed audit of 3,525 refund cases under Inverted Duty Structure category, Audit noticed 77 cases under 31 Commissionerates where the Commissionerates included ITC availed on input services and other ineligible ITC while granting refund. The omission to exclude the ITC availed on input services and other ineligible input tax credits resulted in irregular refund of ₹ 23.92 crore.

When Audit pointed this out (December 2020 to September 2021), the Department accepted the audit observation in 41 cases (19 Commissionerates), out of which recovery of ₹ 46.67 crore was made in 32 cases (16 Commissionerate). In the remaining cases, replies were awaited (February 2022).

Two illustrative cases are given below:

(a) A taxpayer under Jabalpur Commissionerate, got refund amounting to ₹ 20.70 crore, in case of four ARNs under the category of accumulated ITC due to Inverted Duty Structure. In all these cases, refund was sanctioned without disallowing inadmissible ITC on input services, capital goods and on the invoices not pertaining to the relevant period from “Net ITC”. Further, in three refund cases (except refund dated 8 February 2019), the Department sanctioned the refund considering Adjusted Total Turnover (ATT) shown in the refund application instead of ATT as per monthly returns (GSTR-01/GSTR-3B).

Lapse in disallowing ineligible ITC coupled with adoption of lower value of ATT resulted in excess refund of ₹ 18.81 crore.

When Audit pointed this out (March 2021/December 2021), the Ministry intimated (February 2022) reversal of ₹ 45.72 crore (pertaining to all nine months from July 2017 to March 2018). Ministry further informed that an SCN for recovery of interest and penalty was being issued.

(b) A taxpayer under Bengaluru Northwest Central Tax Commissionerate, claimed refund of accumulated ITC of ₹ 1.85 crore under Inverted Duty Structure. The “Net ITC” included credit of capital goods and input services amounting to ₹ 2.98 crore, which were not eligible. The omission to exclude the same resulted in excess sanction of refund amounting to ₹ 1.29 crore.

When Audit pointed this out (August 2021/December 2021), the Ministry stated (February 2022) that the reply would follow.

5.7.3.3 Irregular refund of ITC availed on capital goods

Rule 89(4) of CGST Rules prescribes the formula for refund of accumulated ITC in case of zero-rated supply of goods or services or both without payment of tax. The “Net ITC” means input tax credit availed on input goods and input services during the relevant period. It does not include ITC availed on capital goods.

Further, as per Rule 89(5) of CGST Rules, in case of refund on account of Inverted Duty Structure, “Net ITC” does not include ITC availed on Capital Goods and Input Services.

Audit examination revealed that in respect of 25 cases of refunds under the category of ‘Export without payment of tax’ and ‘Inverted Duty Structure’, under 13 Commissionerates, the ‘Net ITC’ used while calculating the refund amount included the ITC availed on capital goods resulting in excess refund of ₹ 1.83 crore, in contravention of the aforesaid provisions.

When pointed out in audit (December 2020 to September 2021), the Department accepted the observation in 16 cases (8 Commissionerates) and made a recovery of ₹ 84.07 lakh. In 3 cases, the Department (2 Commissionerate), while not accepting the observation, contested that ITC on capital goods was eligible for refund. The reply is not acceptable since “input” means any goods other than capital goods in view of the Rule 89(4). CBIC Circular¹²² of November 2017 also clarified that ITC on capital goods was not refundable. In the remaining six cases (5 Commissionerates), replies were awaited.

¹²² CBIC circular dated 16 November 2017

Two illustrative cases are mentioned below:

(a) A taxpayer under Kochi Commissionerate, was issued refund of ₹ 34.03 crore vide four sanctioned orders during December 2019 to January 2019 under Inverted Duty Structure category. It was noticed during audit that the “Net ITC” included inadmissible ITC claimed on capital goods resulting in excess refund of ₹ 56.23 lakh.

When Audit pointed this out (May 2021/December 2021), the Ministry intimated (February 2022) recovery of ₹ 56.23 lakh and interest of ₹ 14.52 lakh in June 2021.

(b) A taxpayer under the Guntur Commissionerate was sanctioned refund of ₹ 74.98 lakh for the period from October 2018 to December 2018 under the Inverted Duty Structure category. While calculating the refund amount as per the formulae under Rule 89 (5) of CGST Rules, the ITC of ₹ 1.03 crore availed on capital goods was incorrectly included in the Net ITC. The incorrect inclusion of ITC on capital goods resulted in excess sanction of refund of ₹ 46.70 lakh.

When Audit pointed this out (March 2021/December 2021), the Ministry stated (February 2022) that it was very difficult to distinguish ITC on capital goods or input services out of total ITC for the relevant tax period. To obviate the difficulties experienced by the proper officer, the Board had instructed (March 2020) to mention type of ITC availed in Annexure-B while filling the refund application. Ministry further stated that an SCN had been issued to the taxpayer.

5.7.3.4 Excess grant of refund due to non-reversal of ITC on exempted supplies

Section 17 (2) of the GST Act stipulates that when a registered person supplies partly taxable supplies and partly exempted supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies. If a supplier does not reverse the ITC pertaining to exempt supplies, ITC in ECL gets inflated which results in excess sanction of refund. The procedure for calculating the ITC attributable to exempt supplies is prescribed under Rule 42 of CGST Rules.

In 54 cases under 18 Commissionerates¹²³, Audit noticed excess grant of refund of ₹ 2.93 crore due to non-reversal of ITC on exempted supplies in contravention of the aforesaid provisions.

On this being pointed out in audit (December 2020 to September 2021), the Department accepted the audit observation in three cases and intimated recovery of ₹ 14.81 lakh in three cases. In three cases¹²⁴, the Department contented that exempted supply shown in GSTR-1 return was not on account

¹²³ Under the category of Export without payment of duty and Inverted rate of tax

¹²⁴ Coimbatore, Jaipur and Ludhiana

of provision of any supply of goods or services, but it was on account of sale of Merchandise Export from India Scheme (MEIS) License. Thus, reversal under rule 42 of CGST rule was not applicable in the instant case.

The reply is not acceptable as MEIS is a duty credit scrip which attracts nil rate of GST under Sl. No. 122A of the Notification dated 28 June 2017, as clarified by the Board vide Circular dated 01 March 2018. Hence, in view of definition of 'exempt supplies' under Section 2(47) of the CGST Act, the sale of licence is an exempt supply. Accordingly, the claimant was liable to reverse ITC.

An illustrative case is given below:

A taxpayer under Gurugram Commissionerate had applied for refund amounting to ₹ 83.08 lakh for the period of October 2018, and the divisional office had sanctioned the refund of ₹ 66.83 lakh under the category exports without payment of tax in April 2019. Audit noticed that the taxpayer had nil rated/exempted supply of ₹ 63.60 lakh but the taxpayer had not reversed the ITC of ₹ 8.83 lakh as per Rule 42, which was not noticed by the Department. This resulted in excess grant of refund of ₹ 7.02 lakh.

When pointed this out (April 2021), the Department accepted the observation and reported recovery of ₹ 7.02 lakh.

Post-automation

Analysis of data pertaining to 9,970 cases involving refund amount of ₹ 7,242.66 crore revealed that although the taxpayers had shown exempted supplies in GSTR-3B returns, they had not reversed the requisite ITC amount in 8,482 cases (85 per cent) involving refund of ₹ 3,781.57 crore. There is a risk of not only grant of excess refund in these cases but also leakage of revenue due to excess claim of ITC by the taxpayers who are mandated under the law to reverse the ITC attributable to exempted supplies.

During detailed audit of 54 cases in 16 Commissionerates, Audit noticed that the excess grant of refund due to non-reversal of ITC was ₹ 3.32 crore.

Recommendation 11: A system may be put in place to identify and monitor taxpayers with significant amount of non-taxable/exempted supplies to ensure timely reversal of ITC by them so that the same is not utilised or claimed as refund.

Ministry, in respect of audit recommendation, stated (February 2022) that it had been observed that initially, some of the taxpayers were not claiming ITC pertaining to exempt or nil rated supplies and therefore, they were not reversing any ITC as they have not availed any ITC in this regard. However, the

same had been addressed through auto-population of GSTR-3B returns from GSTR-2B, which would require the taxpayer to reverse the ITC attributable to exempt and nil rated supplies. Further, DGARM is issuing a red flag report since September 2021 in respect of such cases of non-reversal of ITC where taxpayer is making both taxable and exempt/Nil rated supplies.

5.7.3.5 Irregular refund due to inclusion of lapsed credit in 'Net ITC'

CBIC Notification dated 26 July 2018 allowed refund on account of Inverted Duty Structure in respect of goods falling under Harmonised system of nomenclature (HSN) 5516 (Textile and textile articles) received on or after 1 August 2018. It was clarified that the accumulated ITC lying unutilised in the ECL after payment of tax for the month of July 2018 on the inward supplies, received up to 31 July 2018, shall lapse. Board also clarified vide circular dated 24 August 2018 that ITC availed on inputs alone would lapse and not on input services and capital goods.

Audit noticed irregular refund payment of ₹ 15.41 lakh due to non-reversal of lapsed credit under Inverted Duty Structure in one case under Hyderabad Commissionerate. In three other cases, Audit noticed that though the taxpayer had reversed the lapsed credit, the Department did not adjust the interest payable of ₹ 60.27 lakh on the belated reversal of lapsed credit before releasing the refund amount.

On this being pointed out in audit (December 2020 to September 2021), the Department intimated recovery of ₹ 32.47 lakh in three cases (3 Commissionerates). Reply in the remaining cases was awaited (February 2022).

An illustrative case is given below:

A taxpayer under Coimbatore Commissionerate had unutilised balance of ITC of ₹ 66.81 lakh on account of Inverted Duty Structure. The refund included accumulated ITC of ₹ 63.65 lakh, pertaining to the period prior to July 2018 which had lapsed. The omission to exclude lapsed credit had resulted in excess grant of refund of ₹ 68.64 lakh, which was recoverable with interest of ₹ 31.40 lakh.

When Audit pointed this out (April 2021/December 2021), the Ministry accepted (February 2022) the observation and stated that two SCNs for ₹ 66.81 lakh for the lapsed credit and ₹ 68.64 lakh for the erroneous refund sanctioned to the taxpayer alongwith appropriate interest and penalty had been issued.

5.7.3.6 Excess refund due to non-consideration of ITC as per GSTR-2A

As per Section 54(4) (a) of the CGST Act, 2017, the application of refund shall be accompanied by such documentary evidence as may be prescribed to establish that a refund is due to the applicant. Initially during the manual processing of refunds of accumulated ITC, the taxpayers were required to file photo copies of invoices.

CBIC vide circular dated 4 September 2018 instructed that the proper officer shall not insist on submission of invoices, if details of invoices are present in GSTR-2A. If the invoices are not reflected in GSTR-2A, the proper officer may call for the hard copies of such invoices for examination. With the intention of curbing the practice of issue of fake invoices, a sub-clause (4) to Rule 36 of CGST Rules was inserted vide notification dated 9 October 2019 according to which ITC in respect of invoices/debit notes that were not uploaded by the supplier were restricted to specified percentage (20% - between 9 October 2019 and 25 December 2019, 10% - between 26 December 2019 and 31 December 2020, and 5 per cent from 1 January 2021) of eligible credit as per GSTR-2A.

The Board vide Paragraph 36 of Circular dated 18 November 2019 provided that self-certified copies of invoices in relation to which the refund of ITC is being claimed and which are declared as eligible for ITC in Annexure – B, but which are not populated in FORM GSTR-2A, shall be uploaded by the applicant along with the application in FORM GST RFD 01.

Subsequently, CBIC vide circular dated 31 March 2020 clarified that the refund of accumulated ITC shall be restricted to the ITC as per the invoices, the details of which are uploaded by the supplier in Form GSTR-1, and are reflected in the Form GSTR-2A of the applicant.

Audit examination revealed that in 20 refund applications filed after 31 March 2020 in 11 Commissionerates, the net ITC for the relevant refund period had not been restricted to the ITC reflected in GSTR-2A even after issue of aforesaid Circular mandating reflection of invoices in GSTR-2A. The excess refund due to deviation from the instructions amounted to ₹ 60.42 lakh.

On this being pointed out in audit (December 2020 to September 2021), the Department intimated recovery of ₹ 11.26 lakh in two cases. Reply in the remaining cases was awaited (February 2022).

Replies of the Ministry were awaited (February 2022).

5.7.3.7 Excess refund as ITC pertained to time barred invoices

Sub-section 4 of Section 16 of the CGST Act provides that a registered person shall not be entitled to take input tax credit on an invoice or debit note for supply of goods or services or both after the due date of furnishing the return by September following the end of the financial year to which such invoice or debit note pertains or furnishing of the relevant annual returns, whichever is earlier.

Audit noticed that in five cases, taxpayers had claimed refund of ITC taken on time-barrred invoices. The Input tax credit on these invoices was allowed and the credit was irregularly refunded to the extent of ₹ 74.59 lakh.

An illustrative case is given below:

A taxpayer under the Bengaluru North-West Central Tax Commissionerate, had claimed refund for the period January 2020 to February 2020. The net ITC considered for refund included input tax credit availed on time-barrred invoices that were more than one year old. This resulted in excess refund of ₹ 16.41 lakh.

Audit pointed this out in March 2021. Reply of the Department was awaited (February 2022).

5.7.3.8 Irregular Refund of ITC to units placed in SEZ

Section 16 (3) of Integrated Goods and Services Tax Act, 2017 stipulates that only the supplier of goods or services or both to SEZ Developer or SEZ Co-Developer or SEZ Units is eligible for claim of refund and thus, there is no provision for granting of refund to the SEZ unit in the IGST Act, 2017.

Rule 89 of CGST Rules, 2017 requires that SEZ unit/developers shall not avail input tax credit on the supplies received by them from non-SEZ suppliers and refund would be claimed only by the suppliers to the SEZ unit/developer. Thus, SEZ unit cannot avail Input Tax Credit.

A taxpayer under the Chennai South Executive Commissionerate, filed three claims for refund of IGST of ₹ 58.41 crore paid on export of services. Audit observed that the taxpayer had paid the IGST utilizing irregularly availed/inadmissible ITC of ₹ 83.60 crore. The Department sanctioned the refund during May 2020 to June 2020 in disregard of the aforesaid provisions.

When Audit pointed this out (December 2020/December 2021), the Ministry accepted (February 2022) the audit observation and issued SCN for ₹ 58.41 crore on erroneous refunds. The details of reversal of irregularly

accumulated/availed credit of ₹ 25.19 crore, however, were awaited from the Ministry.

5.7.4 Issue of refund despite deficiencies in refund applications

5.7.4.1 Sanction of refund without submission of requisite documents

Sub-rule (2) of Rule 89 of CGST Rules stipulates the list of documents to be accompanied with the refund application. Where the documents are not complete, a deficiency memo shall be issued by the Department as per provisions of Rule 90 (3) of CGST rules.

It was noticed in audit that refund of ₹ 93.26 crore was sanctioned in 95 cases by 17 Commissionerates¹²⁵ although mandatory documents such as GSTR-2A, Annexure-B and other documents were not filed by the taxpayers.

When Audit pointed this out (December 2020 to September 2021), the Department accepted the observation in 68 cases under 10 Commissionerates¹²⁶. In ten cases under four Commissionerates¹²⁷, the Department did not accept the observation and stated that Annexure-B containing details of HSN-wise summary was obtained from the taxpayers and no discrepancy was found on verification by the jurisdictional officer. In one case, Department stated (March 2021) that the claimant submitted the documents offline which were compared with the GSTR-2A online on the All-in-one (AIO) portal. The Department further stated that the claimant could not upload the document online due to system error. In the remaining 16 cases under seven Commissionerates, replies were awaited (February to May 2021).

The reply is not convincing, as the tax payers had not submitted details of HSN/Service Accounting Codes (SAC) of the goods/services in the modified Annexure-B during uploading of refund application on the portal. Further, offline submission of documents due to inability to upload documents in post-automation period indicated that the system had not stabilised even after lapse of two years. Further, acceptance of requisite documents offline does not leave any audit trail, besides being contrary to the instructions of the Board.

Reply of the Ministry was awaited (February 2022).

¹²⁵ Coimbatore, Faridabad, Panchkula, Palghar, Shimla, Alwar, Jaipur, Kolkata South, Udaipur, Ahmedabad South, Jodhpur, Guntur, Chennai South, Surat, Jalandhar, Mumbai Central, Kolkata North

¹²⁶ Ahmedabad South, Alwar, Coimbatore, Faridabad, Jaipur, Jodhpur, Kolkata South, Mumbai Central, Surat, Udaipur Commissionerates

¹²⁷ Coimbatore, Panchkula, Ahmedabad South and Udaipur Commissionerates

5.7.4.2 Irregular sanction of refund without ascertaining debit in electronic credit ledger (ECL)

Rule 89 (3) of CGST Rules, 2017 provides that where a registered person has claimed refund of any unutilized ITC from the Electronic Credit Ledger (ECL) in accordance with the provisions of Section 54 of the CGST Act, 2017, the amount to the extent of the claim shall be debited in the said ledger. Non-compliance to the provision would entail risk to Government revenue as the taxpayer may get refund even when there is no balance or lack of sufficient balance in the ECL.

In two cases under two Commissionerates¹²⁸, Audit noticed that although the taxpayers had submitted the requisite ITC ledger along with the refund application, debit of ₹ 4.17 crore, for which refund was claimed, was not available in the ITC ledger.

Audit pointed this out during December 2020 to September 2021. Reply of the Department was awaited (February 2022).

5.7.4.3 Sanction of refund without checking status of filing of returns

Section 54 (10) of the CGST Act provides that if a claimant has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, the proper officer may withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be and deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

The refund is required to be withheld to ensure that the taxpayer has paid all the dues before the refund is sanctioned and if any tax is due it is recovered from the refund amount. If the refund is granted without filing of the returns by taxpayers, there is a risk of non-recovery of dues from the defaulting taxpayer.

Audit analysed the GSTN data of post-automation cases and observed that 35,519 taxpayers were sanctioned refund of ₹ 3,546.85 crore even though both GSTR-1 and GSTR-3B were not filed for the earlier periods. 16,561 taxpayers were sanctioned refund of ₹ 1,422.89 crore even though they had not filed the GSTR-1 (though GSTR-3B was filed). 4,793 taxpayers were sanctioned refund of ₹ 1,444.49 crore even though they had not filed GSTR-3B (only GSTR-1 was filed) of the earlier periods.

¹²⁸ Mumbai Central and Nagpur-

Detailed audit in four Commissionerates¹²⁹ revealed that in 11 refund cases, although the GSTR-1/3B returns had not been filed by the taxpayers, the Department sanctioned refunds of ₹ 8.51 crore in contravention of the extant provisions. In six of the above cases, in two Commissionerates¹³⁰, the claimants had filed some of the due returns after the refund was sanctioned. The Department, therefore, sanctioned the refunds of the claimants without ensuring that the due returns were filed by the claimants.

On this being pointed out in audit (December 2020 to September 2021), Department accepted the audit observation in three cases and intimated recovery of ₹ 0.10 lakh (late fee) in respect of one case. In eight other cases, pertaining to two Commissionerates, the Department did not accept the observation and contended that, due to technical glitch, many times it so happened that the updated returns were not visible in the portal-and as such, there was no other option but to place trust on the claimant that the returns would have been filed in time before applying for refund.

The reply is not acceptable as the Department should have expeditiously addressed the technical issues to ensure adherence to the statutory provisions for safeguarding government revenue.

Reply of the Ministry was awaited (February 2022).

5.7.5 Irregular sanction of refund under Inverted Duty Structure

3,625 cases of refund under the Inverted Duty Structure category were examined in audit. The observations regarding excess refunds due to inclusion of ineligible credits in “Net ITC” and consideration of incorrect Adjusted Total Turnover have been included in para 5.7.2 of this report. Other audit observations relating to Inverted Duty Structure are discussed in the subsequent paras.

5.7.5.1 Ineligible refund under ‘Inverted Duty Structure’ on traded goods

Section 54 (3) of CGST Act stipulates that a registered person may claim refund of any unutilized ITC at the end of any tax period where accumulation of credit is on account of rate of tax on inputs being higher than the rate of tax on output supplies, subject to the conditions prescribed. CBIC in its circular dated 31 March 2020 had clarified that refund of accumulated ITC would not be applicable in cases where the input and the output supplies are the same (traded goods). Thus, where the inputs and output supplies were same and

¹²⁹ Ahmedabad North, Ahmedabad South, Bhavnagar and Dhimapur

¹³⁰ Ahmedabad North and Ahmedabad South

carried the same tax rate, there was no inverted duty structure and hence, were not eligible for refund.

Audit observed lack of a mechanism to differentiate the turnover of supply, where input and output were same, from the turnover of actual inverted rated supply or to make a self-declaration in this regard in the refund application, for the purpose of exclusion of such turnover while calculating the admissible refund. The findings are discussed in the succeeding paragraphs:

It was noticed in 17 cases that there was excess refund of ₹ 1.19 crore under 'Inverted Duty structure' due to inclusion of turnover where input and output supplies were the same.

On this being pointed out in audit (December 2020 to September 2021/December 2021), the Ministry informed (February 2022) that in one case, SCN was being issued. Replies in the remaining cases were awaited (February 2022).

An illustrative case is detailed below:

A taxpayer under Thiruvananthapuram Executive Commissionerate, was sanctioned a refund of ₹ 11.73 crore in eight refund applications. The turnover considered for computing maximum eligible refund irregularly included outward supply of 'Natural Rubber' having GST rate of 5 per cent. The rate of tax on inputs in this case was also 5 per cent. Since the inward and outward supplies were the same, inclusion of turnover of outward supply of natural rubber in the turnover of inverted rated supply was incorrect. The omission to disallow this amount in the turnover resulted in excess sanction of refund of ₹ 97.29 lakh excluding interest.

When Audit pointed this out (February 2021/December 2021), the Ministry accepted the audit observation and stated (February 2022) that an SCN would be issued in due course.

5.7.5.2 Irregular refund under Inverted Duty Structure on exports with payment of IGST

Rule 89(5) of CGST Rules, 2017 provides that in the case of inverted duty structure, refund of input tax credit shall be granted as per the following formula:

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

In four cases processed by Daman Commissionerate, the turnover of inverted supply considered by the Department included *exports with payment of tax*. The incorrect adoption of turnover resulted in excess sanction of refund of ₹ 1.12 crore.

On this being pointed out in audit (March and April 2021), the Department intimated (April and May 2021) recovery of ₹ 25.98 lakh along with interest of ₹ 6.53 lakh in two cases. Replies in the remaining two cases were awaited (July 2021).

5.7.5.3 Sanction of refund of inverted rate supply without ensuring export of goods within the prescribed period by merchant exporter

Refund of accumulated ITC on account of inverted rate is sanctioned under Section 54(3) of the CGST Act. Notification dated 23 October 2017 provides for supply of taxable goods at the rate of 0.1 *per cent* by a registered supplier to a merchant exporter registered with an Export Promotion Council or a recognized Commodity Board for export subject to conditions that the exporter shall export the goods within 90 days from the date of issue of invoice; copy of purchase orders placed by the merchant exporter to the supplier is provided to the jurisdictional tax officer of the supplier; and the goods shall be moved from the place of registered supplier directly to the Port or place of exportation.

Audit noticed in three cases processed by two Commissionerates¹³¹, that the claimants were granted refund of ₹ 3.07 crore in respect of inverted supplies made to merchant exporters under the aforesaid notification without verifying the fulfilment of above conditions. This resulted in irregular sanction of refund of inverted rate supply.

On this being pointed out in audit (February to May 2021), the Department stated (February to March 2021) that the proof of exports was not submitted by claimants, as it was not required under Section 54 (3) of the CGST Act or under Circular dated 18 November 2019. They further added that the requisite records have been called for submission to Audit.

The reply is not acceptable in view of the fact that although the said records were not required under Section 54(3) of the CGST Act, the relevant documents viz. shipping bill or bill of export containing details of GSTIN and tax invoice of the registered supplier along with proof of export general manifest are required as per notification dated 23 October 2017. The fact that the same were being now called from the claimant indicates that these documents were not submitted and verified by the Department before sanctioning the refunds.

¹³¹ Ahmedabad South and Surat

Reply of the Ministry was awaited (February 2022).

5.7.5.4 Irregular refund of compensation cess under Inverted Duty Structure category

CBIC in its Circular dated 30 May 2018 clarified that the refund of accumulated ITC of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking is available even if the exported product is not subject to levy of cess. The benefit of granting refund of compensation cess was not extended to any other category of refunds.

In three cases¹³², Audit noticed that the output supplies were exempt from compensation cess and hence, its accumulation was not refundable. The Department, however, incorrectly refunded the compensation cess of ₹ 3.20 lakh in contravention of the aforesaid provisions.

On this being pointed out in audit (January 2021 and March 2021), the Department intimated (March 2021) recovery of ₹ 2.60 lakh in one case. Replies in two cases were awaited (February 2022).

5.7.5.5 Sanction of refund without verifying the nature of outward supply

Services classified under Service Accounting Code (SAC) 9954 (Construction services) have varying tax rates as per the service provided. The tax rates for earth work to Government, construction related to oil exploration, works contract services, and construction services are 5, 12, 12 and 18 *per cent*, respectively. Refund of accumulated ITC on construction services is not admissible, as it is taxable at 18 *per cent* while refund is available for works contract services which are taxed below 18 *per cent*. Hence, it is difficult to ascertain whether the accumulated ITC was on account of inverted supplies unless additional documents/tax invoices are verified to ascertain the nature of service.

A taxpayer under Ahmedabad South Commissionerate was supplying services under SAC code 995428 (General construction services of other civil engineering works nowhere else classified). Audit noticed that the taxpayer while claiming refund had not submitted any documents to ascertain whether the service provided was construction service or works contract service. The Department sanctioned refund claim of ₹ 5.00 crore under the inverted duty structure category without verifying the actual rate of GST payable on the output supplies.

¹³² Kutch and Udaipur

When Audit pointed this out (March 2021/December 2021), the Ministry stated (February 2022) that SCN demanding erroneous refund of ₹ 11.06 lakh with interest/penalty under CGST Act, 2017 had been issued to the taxpayer.

5.8 Other Issues

5.8.1 Irregular acceptance of time-barred refund claims

Section 54 of the CGST Act prescribes that the refund can be claimed before the expiry of two years from the relevant date. In the case of refund of accumulated ITC on account of inverted rate supply, the relevant date is the due date for furnishing of return under Section 39 for the period in which such claim for refund arises¹³³. Similarly, in the case of export of goods without payment of tax where the goods are exported by sea or air, the relevant date is the date on which the ship or aircraft in which such goods are loaded, leaves India. A proviso was included vide notification dated 18 May 2021 in Rule 90(3) to exclude the time period between the date of filing the refund application and the issuance of Deficiency Memo for the calculation of two years.

Audit noticed irregular refund of ₹ 28.16 crore in respect of 41 cases under 23 Commissionerates where the claims were filed after the relevant date resulting in irregular sanction of refund.

On this being pointed out in audit (December 2020 to September 2021), the Department, while accepting the audit observation in 16 cases (8 Commissionerates) intimated recovery of ₹ 39.71 lakh in five cases (4 Commissionerates). In eight cases (six Commissionerates), the Department replied that the refund claim was filed within the stipulated time period of two years. In the remaining 17 cases, replies were awaited (February 2022).

Illustrative cases are discussed below:

(a) A taxpayer under Ahmedabad Commissionerate had filed a refund claim for ₹ 14.10 lakh on 5 May 2020 for the period July 2017 to March 2018, which was time-barred. The omission to disallow the same resulted in irregular sanction of refund to that extent of ₹ 14.10 lakh.

When Audit pointed this out (March 2021/December 2021), the Ministry stated (February 2022) that an SCN had been issued to the taxpayer (July 2021).

(b) A taxpayer under Bengaluru Northwest Central Tax Commissionerate, had claimed refund of accumulated ITC amounting to ₹ 2.05 crore on account of Inverted Duty Structure for the period July 2017 to March 2018 on 26 May

¹³³ As per amendment wef 1 February, 2019.

2020. The claim was refunded on 28 May 2020. The claim for the period from July 2017 to January 2018 was time barred as the relevant date for filing the GSTR 3B return for the period up to January 2018 was 10 March 2020. In this case, the taxpayer had preferred the claim on 26 May 2020. Hence, the refund sanctioned for the period up to January 2018 was irregular. The irregular refund sanctioned in this case amounts to ₹ 2.05 crore.

When Audit pointed this out (April 2021/December 2021), the Ministry stated (February 2022) that the claim was well within the time limit in view of Notification dated 3 April 2020, wherein the time limit for compliance of any action which falls within the period from 20 March 2020 to 29 June 2020 stands extended to 30 June 2020. Reply of the Ministry is not tenable as the due date for filing refund for the period up to January 2018 had expired on 10 March 2020 itself by virtue of Section 23 of the CGST (Amendment) Act 2018. Thus, the taxpayer was not eligible for refund for the period from July 2017 to January 2018.

(c) A taxpayer under Noida Commissionerate, had filed four refund applications during January 2020 to March 2020 for amount of ₹ 21.29 crore pertaining to the period September 2017 to November 2017 under the Inverted Duty structure category. Audit examination revealed that in view of the amendment w.e.f. 1 February 2019, which inserted an explanation (2) below Section 54 that the relevant date was considered from “the due date of furnishing the return under section 39 for the period in which such claim arises”, the entire claim had become time barred as the application was submitted after the amendment.

On being pointed out in audit, the Department replied that the change in time limit for filing refund claim cannot have retrospective effect and thus, the party had filed refund claim within the time limit.

The Department’s reply is not acceptable as the taxpayer had filed the refund claim after the amendment and, therefore, the claim should have been considered as time barred.

Reply of the Ministry in this regard was awaited (February 2022).

5.8.2 Irregular grant of provisional refund to ineligible taxpayer

Section 54 (6) of the CGST Act 2017 provides for sanction of refund on a provisional basis in case of refund on account of zero-rated supply of goods or services or both. Provisional refund cannot be granted in case of any claim on account of ITC accumulated due to Inverted Duty Structure (INVITC) or ‘Excess Balance in Cash Ledger’ (EXBCL).

Audit noticed that provisional refund of ₹ 23.73 crore was irregularly granted in 26 cases in 12 Commissionerate under the Inverted Duty Structure category. In four cases, provisional refund of ₹ 1.19 crore was irregularly granted under the category “Excess Balance in Cash Ledger” by four Commissionerates¹³⁴ in contravention of the aforesaid GST Act/Rules.

On this being pointed out in audit (December 2020 to September 2021), the Department accepted the observation in respect of 14 cases pertaining to six Commissionerates¹³⁵. In two cases (one Commissionerate¹³⁶), the Department stated that the provisional refund was admissible under the category of ‘Excess Balance in the Cash Ledger’ as per circular dated 15 November 2017, which is incorrect.

In two other cases under two Commissionerates, the Department stated that the proper procedure was being followed in sanctioning refund claims. The reply is not acceptable as section 54 (6) of the CGST Act stipulates for grant of provisional refund only in case of zero-rated supply. In the remaining 12 cases, reply of the Department was awaited.

Reply of the Ministry was awaited (February 2022).

5.8.3 Erroneous sanction of refund on deemed export

Refund of taxes paid on deemed exports can be claimed only if the procedure laid down in the Circular dated 6 November 2017 is substantively followed. The circular provides that the recipient Export Oriented Unit (EOU)/ Electronics Hardware Technology Park (EHTP)/ Software Technology Park (STP)/ Bio-Technology Park (BTP) unit has to furnish to the supplier as well as the jurisdictional GST officers in charge of the supplier the “Form-A”, duly approved by the Development Commissioner mentioning therein the goods that have to be procured from the Domestic Tariff Area. Commissioner (Appeal), in case of M/s. Mega Jewels Pvt. Ltd. [2020 (42) GSTL 353], held that refund was not admissible to the appellant EOU which had received supplies, since it failed to comply with provisions of the CBIC Circular.

A taxpayer under the Gandhinagar Commissionerate had filed a refund claim as recipient of goods. The taxpayer had not issued the requisite prior intimation in Form-A for purchase of goods despite which the claim of ₹ 1.12 crore was sanctioned by the Department.

¹³⁴ Alwar, Bolpur, Jabalpur and Noida

¹³⁵ Alwar, Bhopal, Faridabad, Jabalpur, Kolkata North and Palghar

¹³⁶ Bolpur

When Audit pointed this out (January 2021/December 2021), the Ministry stated (February 2022) that a Show Cause Notice for recovery of erroneous refund had been issued.

5.8.4 Non-credit of ITC in the ECL after rejection of refund

Where any amount claimed as refund is rejected under Rule 92 of the CGST Rules, 2017, the amount debited to the extent of rejection shall be re-credited to the electronic credit ledger by an order made in FORM GST PMT-03. A refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal. Also, where any deficiencies have been communicated in FORM GST RFD-03, the amount debited under sub-rule (3) of Rule 89 shall be re-credited to the electronic credit ledger.

Audit examination revealed that in 22,163 cases of post-automation period, an amount of ₹ 5,085.66 crore was considered as inadmissible and the sanction amount was reduced by that extent. Audit noticed that PMT-03 was issued only in 3,686 cases involving inadmissible amount of ₹ 244.21 crore. Therefore, in 18,477 cases involving inadmissible amount of ₹ 4841.35 crore, PMT-03 was not issued resulting in the taxpayers not getting the re-credit of the amount that was reduced from their claims.

During detailed audit in 16 Commissionerates, it was noticed that in 67 cases, PMT 03 was not issued for re credit of ₹ 91.13 lakh. On this being pointed out (December 2020 to September 2021), the Department accepted the audit observation in three cases (three Commissionerates).

In 52 cases, Department (14 Commissionerates) while not accepting the audit observation contended that for issue of PMT 03, the claimants were required to reinitiate the process by filing a declaration that they would not file an appeal, and that there was no time limit for issuing the PMT 03. In the remaining 12 cases (six Commissionerates), replies were awaited.

The reply of Department is not acceptable in view of the fact that although there was no prescribed time-limit, the taxpayer gets a maximum period of 120 days to file an appeal against the order. Once the taxpayer had not filed an appeal within the prescribed time, it could be construed that the taxpayer had accepted the sanction order and the Department was bound to issue PMT 03 and credit the amount to the taxpayer's Credit Ledger. Further, once the claimant agreed with the rejected amount in its reply in RFD-09, the claimant itself lost the ground to go on appeal against the rejected amount. Thus, it fulfilled the requirement of law and the PMT-03 was required to be issued.

Reply of the Ministry was awaited (February 2022).

Recommendation 12: Department may consider introducing a system regarding timely re-credit of rejected refund amount to ECL. In the event of an appeal by taxpayer and the final decision going in favour of the taxpayer, the amount shall be refunded back subject to debiting the same to ECL.

Ministry, in respect of audit recommendation, stated (February 2022) that the matter would be taken up with GSTN.

5.8.5 Other cases

In addition to the foregoing audit observations, Audit noticed other irregularities in 74 cases with money value of ₹ 4.44 crore. The irregularities are in the nature of incorrect allowance of refund on exports to SEZ without prescribed endorsement, non-payment of interest on delayed refund, non-issue of show cause notice, non-issue of DRC-07¹³⁷, etc.

On this being pointed out in audit (December 2020 to September 2021), the Department accepted audit observations in 18 cases (nine Commissionerates) and reported recovery of ₹ 6.42 lakh in six cases (five Commissionerates). In 18 cases, the Department (11 Commissionerates) did not accept the audit observation. Reply of the Department was awaited in the remaining 38 cases (February 2022).

5.9 Impact on State Goods and Services Tax

GST refunds involve various components of GST such as CGST, IGST, SGST, etc. The refund applications processed either by the Centre or State tax authority will impact the revenue of both Union and the States. For the audit observations highlighted in this chapter, the monetary impact of findings on the revenue of the States/UTs is given in **Appendix-IV**.

5.10 Conclusion

Timely refund process facilitates the taxpayers by providing much needed liquidity and cash inflows. During the course of examination of records, Audit observed systemic and compliance issues in relation to grant of refund by the Department, which need to be addressed.

Systemic weaknesses included deficiencies in the automated refund module, sanction of suspicious refunds to taxpayers without proper scrutiny, sanction of refund without complete documents, absence of mechanism to monitor the realisation of export proceeds in cases of export of goods/services, and instances of double payment of GST refunds. As regards the effectiveness of

¹³⁷ Digital summary of a demand order in GST

the internal control system in processing and payment of refund cases, it was observed that post-audit of refund cases needed to be strengthened.

On the compliance side, Audit noticed significant number of refund cases where the Department did not adhere to the prescribed timelines for processing of refunds leading to instances of delay in issue of acknowledgement, deficiency memo and sanction of refund orders. Further, in the majority of cases, the department did not pay interest to the taxpayers in case of delayed refunds. In addition, instances of irregular/excess refund in violation of the statutory provisions were also observed.

Out of 12 audit recommendations, included in this Chapter, Ministry accepted nine recommendations and stated that matter would be taken up with GSTN/DG(Systems) in respect of eight recommendations. In respect of one recommendation, Ministry stated that the matter would be taken up with the field formations and advisory was being issued. Further, the Department has accepted audit observations with money value of ₹ 92.08 crore and recovered ₹ 52.93 crore at the instance of audit.

5.11 Summary of Recommendations

1. A comprehensive profiling of the taxpayers needs to be implemented by integrating data from both internal and external systems such as Income Tax, Directorate General of Foreign Trade, and Ministry of Corporate Affairs. A system of real time/near real time red-flagging of high-risk taxpayers/refunds may be implemented in the refund related modules to avoid refunds of fake ITC.
2. The e-BRC module may be integrated with GSTN and cases where export proceeds have not been received within the prescribed time may be examined for overpayment of refund. This will also help prevent possible frauds by identifying taxpayers who sought refunds on fake exports.
3. A robust red flag system may be introduced by linking various systems such as ICEGATE, e-BRC and XOS statement etc. to alert proper officers in respect of non-compliant taxpayers for blocking their refunds and initiating recovery of ineligible refunds already sanctioned.
4. The Department may consider introducing requisite validations in the refund module to ensure that the eligible amounts are debited in the prescribed order.
5. A comprehensive verification of PFMS data relating to the pre-automaton period may be undertaken in all Commissionerates to

identify double payment cases that may have occurred due to lack of reconciliation.

6. A robust post-audit system based on detailed codified manual of instructions, checklist and SOP may be put in place. A proper module for post-audit of refunds may be introduced in the GST system for effective monitoring.
7. In case of issue of acknowledgement after 15 days, the proper officer should specify the reasons for such delay and the same should be monitored online by the Department.
8. The provisions regarding payment of interest on delayed refunds need to be amended to exclude the period of delays that is attributable to the taxpayers such as delay in reply to SCN or incorrect bank details for payment.
9. The GST system may be modified to automatically calculate the interest amount payable to the claimant in case of delay in processing of refunds beyond the prescribed time limit. Reasons for non-payment of interest may be mandatorily captured in the system and monitored.
10. The Department needs to put in place an effective monitoring mechanism to ensure timely issue of deficiency memos in case of deficiency in the refund claims.
11. A system may be put in place to identify and monitor taxpayers with significant amount of non-taxable/exempted supplies to ensure timely reversal of ITC by them so that the same is not utilised or claimed as refund.
12. Department may consider introducing a system regarding timely re-credit of rejected refund amount to ECL. In the event of an appeal by taxpayer and the final decision going in favour of the taxpayer, the amount shall be refunded back subject to debiting the same to ECL.

Chapter VI: Transitional Credits under GST

6.1 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 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 laws¹³⁸ 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.

6.2 Transitional arrangements for input tax

Section 140 of the CGST Act 2017 (and SGST Acts/UTGST Acts) enables the taxpayers to carry forward the Input Tax Credit (ITC) earned under the existing laws to the GST regime. The section, read with Rule 117 of CGST 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 Central Value Added Tax (CENVAT credit), State Value Added Tax (VAT) etc. 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 –Tran 1 and Tran 2.

¹³⁸ Central Excise, Service Tax and State Value Added Tax

Table 6.1: Forms and Tables prescribed for claiming Transitional credit

Form	Table No	Transitional credit component
Tran 1	5(a)	Closing balance of credit from the last legacy returns
Tran 1	6(a)	Un-availed credit on capital goods
Tran 1	7(a)A	Credit on duty paid stock with invoices
Tran 1	7(a)B	Credit on duty paid stock without invoices
Tran 1	7(b)	Credit on Inputs/input services in transit
Tran 1	8	Transfer of credit by centrally registered units
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	4	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 27th 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 CGST Rules, 2017¹³⁹ to accommodate such taxpayers. The due date for filing Tran 1 was further extended to 31st March 2020¹⁴⁰ for those taxpayers who could not file Tran 1 due to technical difficulties and those cases recommended by the GST Council.

6.3 Trends and perspectives

The transitional credit being a one-time flow of input tax credit from the legacy regime into the GST regime, can be availed both by the taxpayers migrating¹⁴¹ from the previous regime as well as new registrants under GST. A total of 10.13 lakh¹⁴² taxpayers had claimed the benefit of transitional credit of ₹ 1,72,584.96¹⁴³ crore under the Act, out of which 3.46 lakh taxpayers constituting 34 *per cent* of the taxpayers were on the Central side. The transitional credit claims of these 3.46 lakh taxpayers accounted for ₹ 1, 34,029.23 crore constituting 78 *per cent* of the total transitional credit claimed under the Act. The distribution of the credit claimed by these taxpayers under various sub-sections of the Section 140 of the Act is depicted in Chart 6.1.

¹³⁹ Vide Notification 48/2018 CT dated 10th September 2018

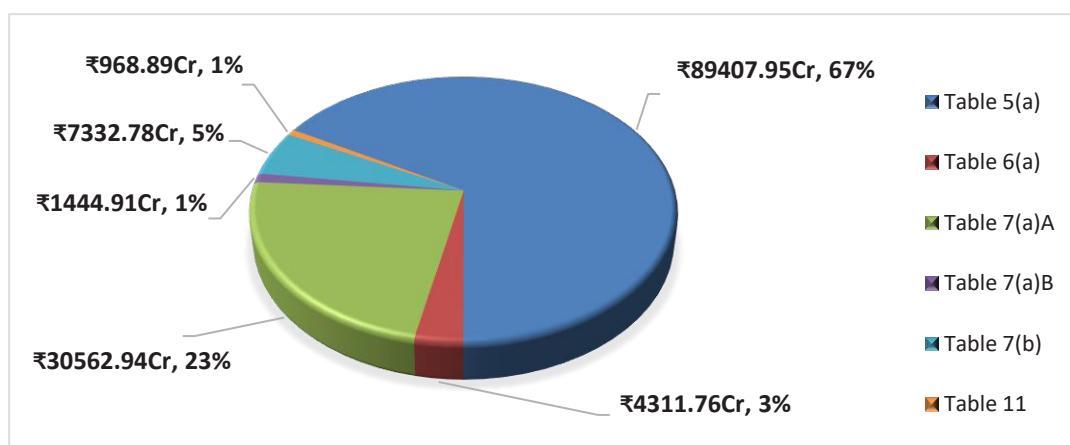
¹⁴⁰ Vide CBIC order No.01.2020-GST dated 07th February 2020

¹⁴¹ Taxpayers registered under existing Central Excise and Service Tax laws, now registered under Rule 24 of CGST Rules, 2017

¹⁴² Figures extracted (July 2021) from GSTN- Goods and Services Tax Network

¹⁴³ Source: GSTN (December 2021)

Chart 6.1: Table-wise break up of transitional credit claims

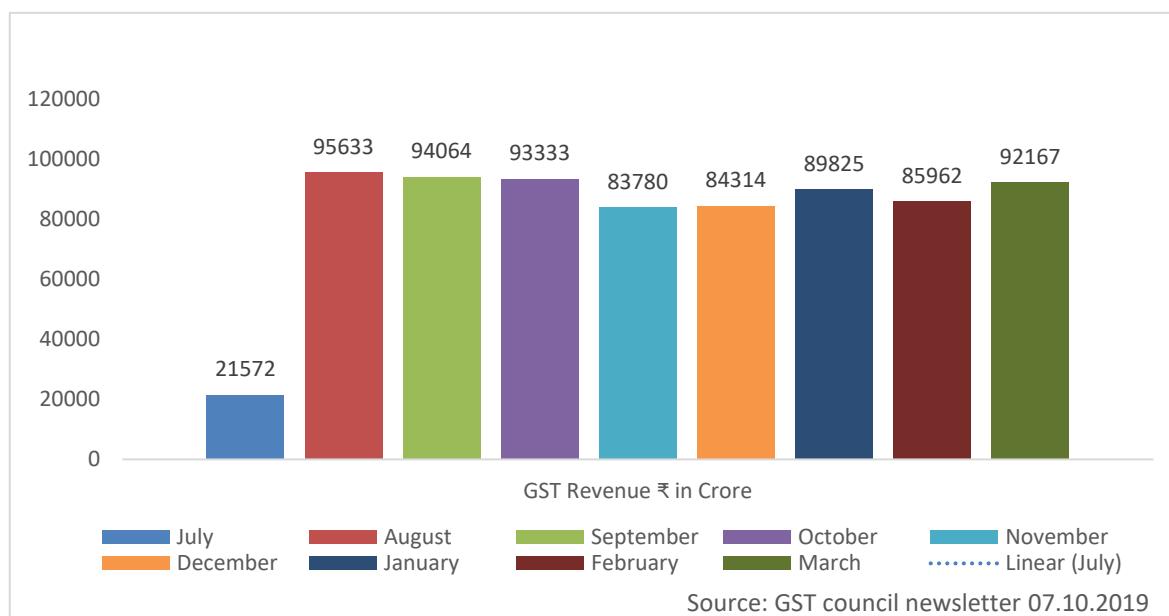


The transitional credit claims broadly flow from two sources viz., Legacy Returns and Books of Account. A significant majority of 70 *per cent* of claims represented by claims in Tables 5(a) and 6(a) flowed through the legacy returns as they signify claims declared as per legacy rules and the remaining 30 *per cent* represented by claims in other tables flowed from the books of accounts as they denote fresh declarations while transitioning into the GST regime.

a) Impact of transitional credit claims on GST collection: Transitional credit being the input tax credit carried forward from the legacy tax regime, would get set off against the tax liability under GST. The data on GST revenue collection provides a broad perspective of the impact of transitional credit claimed vis-à-vis the GST revenue, especially during the transition period. The Chart 6.2 on monthly GST revenue¹⁴⁴ collection suggests that the bulk of the transitional credit had potentially been utilized for the payment of tax for the month of July 2017 itself.

¹⁴⁴ GST revenue collection consist of CGST, SGST, IGST and Cess

Chart 6.2: GST Revenue Snapshot for the year 2017-18



b) Transitional credit as a focus area: In this context, the Central Board of Indirect Tax and Customs (CBIC), or the Board, had considered verification of transitional credit as a focus area for the year 2018-19 and identified the top 50,000¹⁴⁵ taxpayers in the order of transitional credit claimed, across the country, for detailed verification. The transitional credit claims of these 50,000 taxpayers constitute the majority of transitional credit claims on the Central side.

6.4 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; and
- ii. whether the transitional credits carried over by the taxpayers into GST regime were valid and admissible.

6.5 Audit scope and sample

The audit scope comprised review of the CGST component of transitional credit claims filed by the taxpayers under Section 140 of the CGST Act 2017

¹⁴⁵ Transitional credits of 50,000 taxpayers in order of transitional credit availed - source Antarang data set: Antarang is the Intranet platform for officers of the Central Board of Indirect Taxes and Customs

from the appointed date¹⁴⁶ to the end of March 2020. The top 50,000 cases of CGST portion of transitional claims (Antarang data set), identified by the Board, constituted the population from which the audit sample was drawn. A pan-India sample of 8,514 cases was drawn based on data analysis of the 50,000 cases and its associated data sets on the following parameters:

- i. Taxpayers who had claimed Transitional credit under table 5(a) in excess of the closing Cenvat credit balance available as per the legacy returns filed for the period immediately preceding the appointed day.
- ii. Taxpayers whose Cenvat claim in the last six months immediately preceding the appointed day showed a growth of 25 *per cent* or more.
- iii. Transitional claims of manufacturers or service providers who had claimed transitional credit under column 7B of Table 7a.
- iv. Transitional claims in Table 5(a) or 6(a) without corresponding legacy data.

Based on the above parameters, these 50,000 cases were categorized into two strata:

Strata I: The list of taxpayers satisfying any of the data analytic checks, which would constitute potentially risk prone cases for verification; and

Strata II: The list of taxpayers not satisfying the data analytic checks, which are comparatively less risk prone.

The sample size of 8,514 cases represented a transitional credit of ₹ 82,754.77 crore and constituted about 62 *per cent* of the total transitional credit on the Central side. 75 *per cent* of the sample size was drawn from Strata I and 25 *per cent* from Strata II. A scorecard approach based on the risk and materiality was used for selection of individual cases from each of the Strata. The strata wise sample size and its representation vis-à-vis the respective population is given in Table 6.2:

Table 6.2: Strata wise sample size vis-à-vis the respective population

Description	Strata I	Strata II
Population*	28,813	20,240
Sample size	6,392	2,122
Percentage of coverage	22.18	10.48

**claims less than Rs.20 lakh were excluded from the 50,000 cases.*

Out of the sample of 8,514 claims, 3,938 taxpayers come under the Central Tax jurisdictions and 4,573 taxpayers are under the State GST jurisdictions¹⁴⁷. The sample was distributed among nine field Audit Offices of the C&AG

¹⁴⁶ The date on which the provisions of this Act come into force, ie 1st July 2017

¹⁴⁷ Information in respect of three cases was not available

represented by the respective Director General/ Principal Director of Audit (Central).

6.6 Audit methodology

The methodology adopted for audit of transitional credit claims involved data analysis for determining the nature and extent of audit followed by review of records pertaining to Tran returns maintained in the field formations, verification process adopted by the department, follow up action taken on the deviations detected and the process adopted for implementation of cross-jurisdictional functions regarding transitional credit. It also involved an independent examination of selected transitional credit claims. The verification of Tran returns was carried out by leveraging the SSOID¹⁴⁸ access to the CBIC-GST application supplemented by review of underlying records either at the Audit Commissionerates or at jurisdictional offices under the Executive Commissionerates. The findings in this report were discussed during the Exit Conference held with CBIC in February 2022.

The draft SSCA report was issued to the Ministry for comments on 12 January 2022. Audit findings and recommendations were discussed with the Department during Exit Conference held on 7 February 2022. The Ministry's reply, received in February 2022, has been incorporated in the Chapter wherever applicable.

6.7 Audit criteria

Section 140 of the CGST Act 2017 governs the transition of Cenvat credit from legacy Central Excise and Service Tax provisions. This section, read with Rule 117 of the CGST Rules 2017, and relevant Notifications/Circulars issued by CBIC, constituted the criteria for this audit.

6.8 Scope limitation

The audit of transitional credits was primarily dependent upon the extent of verification records maintained by the Department and accessing the underlying records maintained by the taxpayer. As the sample selection was out of the population identified by the Department for verification, it was envisaged that the CBIC departmental field formations would provide verification records and the associated underlying records of taxpayers, which established the basis of verification by the department. Detailed audit of the

¹⁴⁸ Single Sign On Id (SSOID) is a secure authenticated access to CBIC-GST application

selected sample of transitional credit claims was carried out by the nine field audit offices.

In spite of requisitions and follow up, the CBIC departmental formations did not produce records of 954 claims. As a result, 11 *per cent* of sample size representing ₹ 6,849.68 crore of transitional credit claimed could not be audited. Further, in another 2,209 cases representing ₹ 19,660.72 crore of credit claimed, records were partially produced as the relevant underlying records determining the eligibility of credit were not produced, which constituted a substantial scope limitation. Additionally, record keeping by the departmental field formations varied widely and maintenance of records for verified cases was inadequate in many of the jurisdictions.

The details of non-production, partial production and inadequate maintenance of verification records in jurisdictional formations are brought out in the subsequent paragraphs.

6.8.1 Non-production of records

The jurisdiction wise non-production of records is given in **Table 6.3**.

Table 6.3: Non-production of records reported by Field Audit Offices
Amount in crores of ₹

Jurisdictional zone of CBIC	Sample		Non-production	
	Number of claims	Amount of Credit	Number of claims	Amount of Credit
Meerut	494	3,466.03	294	1,676.82
Bhopal	633	4,157.63	162	1,057.78
Ranchi	273	1,663.38	111	792.93
Delhi	333	2,071.34	70	593.34
Lucknow	146	1,186.63	67	334.14
Bengaluru	511	5,691.79	61	542.19
Hyderabad	635	2,166.10	61	39.99
Visakhapatnam	406	1,871.16	48	204.62
Mumbai	435	23,987.95	21	500.03
Chandigarh	173	986.10	19	42.33
Other zones ¹⁴⁹	4,475	35,506.66	40	1,065.51
Total	8,514	82,754.77	954*	6,849.68

* Note: Out of this, Ministry stated (February 2022) that 103 cases have since been produced to Audit, which would be audited and reported upon separately.

The non-production constituted 11 *per cent* of the sample size in terms of number and 8 *per cent* in terms of amount of credit claimed. For these cases, neither the departmental records nor the taxpayer records were provided for

¹⁴⁹ Kolkata- 13 cases (₹ 449.95 crore), Pune -9 cases (₹ 134.81 crore), Chennai – 5 cases (₹ 17.06 crore), Nagpur -5 cases (₹ 22.17 crore), Thiruvananthapuram- 2 cases (₹ 27.64 crore), Vadodara – 4 cases (₹ 410.31 crore), Panchkula- 2 cases (₹ 3.56 crore)

audit. The top 50 claims that could not be audited represent transitional credit of ₹ 3,954.21 crore. The top five cases among these amounted to ₹ 1,275.22 crore.

Ministry, while providing (February 2022) a detailed response, admitted non-production of records in 282 cases, did not admit non-production of records in 250 cases, and stated that the remaining 422 cases were being reconciled and assured that all these cases would be provided in due course.

Out of the 250 cases where Ministry did not admit non-production of records, the Ministry stated that in 95 cases taxpayers were not forthcoming with the records. Even though the Department may have pursued production of records with the taxpayers, the fact remains they have not been produced for audit. The remaining cases pertained to either the taxpayers being in a different jurisdiction (52 cases) or cases that have since been produced to Audit (103 cases). These cases will be reviewed subsequently by Audit.

6.8.2 Partial production of records

The jurisdiction wise partial production of records is given in **Table 6.4**. In these cases, the underlying records¹⁵⁰ for evaluating the eligibility of the credit were not produced.

Table 6.4: Partial production of records reported by Field Audit Offices
Amount in crores of ₹

Jurisdictional zone of CBIC	Sample		Partial production	
	Number of claims	Amount of Credit	Number of claims	Amount of Credit
Kolkata	1,232	3,188.24	917	2,157.56
Panchkula	312	7,274.11	226	6,157.92
Meerut	494	3,466.03	195	1,772.63
Delhi	333	2,071.34	167	1,164.26
Guwahati	379	1,559.58	151	1,343.08
Hyderabad	635	2,166.10	83	512.89
Lucknow	146	1,186.63	79	852.50
Visakhapatnam	406	1,871.16	76	430.12
Chennai	582	7,024.07	67	1,099.35
Ahmedabad	180	3,824.00	57	2,185.89
Vadodara	234	3,454.18	53	867.98
Other zones ¹⁵¹	3,581	45,669.33	138	1,116.54
Total	8,514	82,754.77	2,209*	19,660.72

* Note: Out of this, Ministry stated (February 2022) that 333 cases have since been produced to Audit, which would be audited and reported upon separately

¹⁵⁰ Duty paid documents, Asset ledger, Stock statements etc.,

¹⁵¹ Bhopal- 50 cases (₹ 537.26 crore), Chandigarh- 41 cases (₹ 184.06 crore), Thiruvananthapuram-14 cases (₹ 14.35 crore), Ranchi- 25 cases (₹ 319.91 crore), Jaipur- 8 cases (₹ 60.96 crore)

The partial production accounted for 26 *per cent* of the sample size in terms of number and 24 *per cent* in terms of amount of credit claimed. Of these, the amount of transitional credit claimed by the top 50 cases amounted to ₹ 11,347.81 crore. The top five cases of partial production amounted to ₹ 5,116.15 crore.

Of the cases where records were partially produced, Audit observed irregularities in 539 cases involving a transitional credit claim of ₹ 6,606.34 crore, representing a potential risk exposure as Audit could not perform all the envisaged detailed audit checks due to absence of the relevant underlying records.

Ministry, while providing (February 2022) a detailed response, admitted partial production in 980 cases, did not admit partial production of records in 638 cases, and stated that the remaining 591 cases were being reconciled and assured that all these cases would be provided in due course.

Out of 638 cases where Ministry did not admit partial production of records, the Ministry stated that in 225 cases taxpayers were not forthcoming with the records. Even though the Department may have pursued production of records with taxpayers, the fact remains that they have not been produced for audit. The remaining cases pertained to either the taxpayers being in a different jurisdiction (80 cases) or cases that have since been produced to Audit (333 cases). These cases will be reviewed subsequently by Audit.

6.8.3 Inadequate maintenance of verification records

The mechanism of carrying out verification of transitional claims differed between the jurisdictions. In some jurisdictions, the Audit Commissionerates carried out the verification while in the majority of the jurisdictions the verification was carried out both by the Executive Commissionerates and by the Audit Commissionerates. Though the CBIC had issued (March 2018) a guidance note¹⁵² prescribing a set of checks for verification of CGST transitional credit, it did not specify the nature, extent, and period of maintenance of documentation of the verification process carried out by the departmental field formations. The record keeping by the Audit Commissionerates and the Executive Commissionerates varied widely and was inadequate in many of the jurisdictions. Out of the sample size of 8,514 cases, of which 954 cases were not produced to Audit, the department had verified 6,999 claims. However, verification reports in respect of 1,800 claims out of 6,999 claims were not produced to Audit. The top five cases of non-production of verification reports amounted to ₹ 3,270 crore.

¹⁵² Chairman CBIC reference - D.O.F. No.267/8/2018-CX.8 dated 14th March 2018

Audit observed irregularities in 1,132 cases (16.17 *per cent*) out of 6,999 cases (including partial production) verified by the Department; due to inadequate maintenance of verification records the efficacy of verification process carried out by the departmental field formations could not be evaluated fully.

Ministry provided (February 2022) a response to the top five cases of non-production of verification records and stated that in four cases either the verification is yet to be concluded or verification reports have since been provided to audit, while in one case the Ministry assured a reply in due course.

These cases, along with other cases of non-production, are envisaged to be audited and reported upon separately.

6.9 Audit findings

Considering that the detailed audit addressed issues from a systems perspective as well as from an implementation perspective, the audit findings have been categorized as systemic and compliance findings. While systemic issues address the adequacy and effectiveness of the envisaged verification mechanism, the compliance issues address the deviations from the provisions of the Act/Rules. As brought out in para 6.8 above, non-production of underlying records of taxpayers and departmental verification records constituted a significant limitation of scope of our audit. Subject to this constraint, the outcome of detailed audit of the transitional credit cases produced to Audit has been included in the subsequent paragraphs.

6.9.1 Systemic issues

The systemic issues comprised a review of 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 Board had specified transitional credit verification as one of the key focus areas for the year 2018-19. The Board while identifying cases of transitional credit claims, accorded priority to verification of cases where the closing balance of Cenvat Credit between October 2016 and June 2017 had shown a growth of 25 *per cent* or more. The guidance note of March 2018 issued by the Board contained a checklist for verification of transitional credit claims and stated, inter-alia, that CGST officers have jurisdiction for verification of transitional credit of CGST component irrespective of the current jurisdiction of taxpayers (Centre or State) in GST. The CBIC jurisdictional formations took up verification in four phases to be completed by March 2019.

Audit review indicated inadequacies in the verification mechanism envisaged by the Department. The verification process was not yet completed even after a lapse of more than two years from the targeted completion date. In respect of verified cases, the recovery rate was lower.

Out of the audit sample of 8,514 cases, the Department has not verified 1,515 cases (18 *per cent*) and recovery actions were not initiated in 1,042 cases (12 *per cent*). Most of these cases, i.e. 846 cases pending for verification and 562 cases pending for recovery action were under the State jurisdiction suggesting that provisions of Section 6(1) of the Act establishing dual control were not enforced effectively in some zones, despite clarification in the guidance note. Audit also noticed that, in Meerut and Lucknow zones, the cases were pending verification due to non-resolution of jurisdictional issues within/between Central Tax Commissionerates.

6.9.1.1 Progress of verification

Audit noticed that 8,849 cases, out of the 50,000 identified cases, were pending verification as of November 2021. Ministry attributed the pendency to non/partial submission of documents by taxpayers, units being closed/defunct/under National Company Law Tribunal (NCLT) proceedings, Show Cause Notices being issued and verification being in progress for cases where documents were received. Audit indicated that pendency in verification was also influenced by jurisdictional issues:

(i) Cross jurisdiction: Out of the 8,849 cases which are yet to be verified, 1,515 cases were represented in the audit sample, of which 846 cases constituting 56 *per cent* of the cases pending verification were under the jurisdiction of the States. The issue was predominant in five zones as shown in **Table 6.5** suggesting that dual control provisions envisaged under Section 6(1) of the Act and Department's guidance note specifying that CGST officers shall have the jurisdiction for verification of Transitional credit of CGST irrespective of the present jurisdiction of the taxpayer, could not be effectively implemented in these zones.

Table 6.5: Cases pending verification under the State jurisdiction

Zone	Claims yet to be verified	Under State jurisdiction
Delhi	181	113
Kolkata	668	400
Meerut	119	93
Bhopal	98	53
Panchkula	92	49
Other zones	357	161
Total	1,515	846

(ii) Co-ordination amongst central jurisdictional formations: The information on reasons for pendency of verification was not forthcoming from 19 out of the 21 zones. From the data provided by Lucknow and Meerut zones it emerges that 318 cases, as detailed in **Table 6.6**, were not verified due to lack of co-ordination and clarity between various formations within the Commissionerate or between Commissionerates on deciding the departmental formation that should verify the transitional credit claim.

Table 6.6: Cases pending verification for jurisdictional issues

Zone	CGST Commission erates	Cases pending verificati on	Number of cases not verified due to jurisdictional issue		Percentage of pendency
			Within Commissionerate	Between Commissionerates	
Meerut	Ghaziabad	181	81	10	50
Meerut	Noida	318	133	44	56
Lucknow	Kanpur	36	Nil	31	86
Meerut	G B Nagar	29	12	7	66
	Total	564	226	92	56

Ministry stated (February 2022) that all 81 cases of Ghaziabad Commissionerate have since been re-allotted to jurisdictional ranges/divisions. Ministry further stated that now no case was pending verification at Kanpur Commissionerate, and 26 out of the 29 cases have since been verified at G B Nagar Commissionerate (the remaining three cases have been forwarded to Noida Commissionerate).

6.9.1.2 Follow up measures to recover ineligible claims

As per Rule 121 of CGST Rules 2017, transitional credit wrongly availed and credited to Electronic Credit Ledger (ECL)¹⁵³ under sub-rule (3) of rule 117 may be recovered under section 73 or, as the case may be, under section 74 of the Act. Further, adequacy of the verification mechanism is determined by the outcome of the examination, continued follow up and initiation of recovery measures against the irregularities detected.

The Ministry of Finance stated (June and November 2021) that verification of transitional credit claims had resulted in detection of irregular ITC to the tune of ₹ 8,378 crore out of which ₹ 3,135 crore had been recovered. Ministry of Finance also stated that out of the detected irregularities, recoveries were yet to be effected from 4,172 taxpayers and attributed the lower rate of recovery to taxpayers contesting the case, not complying with the detection despite follow up and filing appeals in High Courts.

¹⁵³ Electronic Credit Ledger refers to the ledger mentioned under Section 49(2) of CGST Act, 2017, to which the amount of ITC claimed shall be credited

Out of 4,172 cases where recoveries were not initiated, 1,042 cases were covered in our sample of which 562 cases were under the jurisdiction of the States. In detailed audit, we noticed that in 32 claims, where the verification had resulted in detection of ineligible credit amounting to ₹ 68.89 crore, recovery measures were not initiated even after a lapse of two years of verification. The inordinate delay in initiation of recovery measures may potentially hamper the realisation of revenue due to the Government. An illustrative case is given below:

Verification of transitional credit claims of a taxpayer under Ahmedabad South Central Tax Commissionerate, by the Audit Commissionerate had resulted in detection of ineligible carry forward of credit of Education Cess, Secondary and Higher Education Cess, Krishi Kalyan Cess and Clean Energy Cess amounting to ₹ 23.58 crore (September 2018). The taxpayer did not agree with the contention of the Department and did not reverse the irregular credit claimed. However, the Department had not initiated any action to recover the ineligible credit pointed out even after a lapse of three years from the verification.

When Audit pointed this out (March 2021) the Ministry stated (February 2022) that a draft SCN had been submitted to the competent authority.

6.9.1.3 Conclusion and Recommendations

Overall, 37 *per cent* of the cases selected for detailed audit were either not produced or partially produced for audit, which constituted a significant limitation on Audit scope. Further, most of the jurisdictions did not maintain/produce basic verification records.

From a system's perspective, Audit observed that though the Department had identified the top 50,000 cases for verification as a priority for 2018-19, the exercise was not yet completed, and the Department was yet to verify 8,849 cases. The rate of recovery of detected irregularities was low. Cross jurisdictional issues and lack of co-ordination in Central Tax jurisdictions in some zones impeded verification and initiation of recovery actions. In view of these findings, we recommend the following:

The Department may:

1. *Ensure production of records for cases for which envisaged detailed audit checks could not be completed. These will be reviewed subsequently by Audit.*
2. *Address the issue of inadequate maintenance of verification records in the jurisdictional formations as they are not amenable to review in the present form.*

3. *Expedite verification of CGST portion of transitional credit claimed by the taxpayers under the State administration in the zones where the bulk of the non-verified cases are under the State jurisdiction.*

Ministry provided an updated status of verification and stated (February 2022) that another 4,770 cases had since been verified and 4,079 cases were pending verification, and that irregular ITC detection had gone up to ₹ 10,965.91 crore out of which ₹ 3,596.10 crore had been recovered. Ministry also stated that the Board was actively monitoring the expeditious verification of transitional credit claims.

6.9.2 Compliance issues

The compliance issues pertain to the validity and admissibility of the transitional credits carried over by the taxpayers into GST regime. Taxpayers were required to claim transitional credits in the various specified Tables¹⁵⁴ of Tran 1 and Tran 2 Forms as applicable. Broadly, these tables provide for credit in respect of Cenvat credit carried over from the legacy Returns ER1 (Central Excise) and ST3 (Service Tax), unavailed Cenvat credit in respect of capital goods, Cenvat credit in respect of inputs/semi-finished goods/finished goods held in stock and Cenvat credit of inputs or input services in transit. The sample identified for audit represented claims under each of these tables.

Audit review disclosed significant irregularities in the transitional credit claims of taxpayers across various categories regulated by the sub sections of Section 140, Section 142(11) as well as Section 50(1) of the CGST Act 2017 pertaining to payment of interest. The summary of the nature and extent of compliance deviations noticed in the audited sample is given in **Table 6.7**:

¹⁵⁴ Tran 1-Tables: 5(a)-Closing Credit balance of legacy returns; 6(a)-Unavailed credit on capital goods; 7a(A)-Credit on duty paid stock with invoices; 7a(B)-Credit on duty paid stock without invoices; 7(b)-Credit on inputs or input service in transit; 8-Transfer of credit by centrally registered units; 11-Credit of tax paid on advances: Tran 2-Table 4: Credit afforded on stocks without invoices

Table 6.7: Summary of nature of observations and deviation rates

Nature of observations	Sample audited		Deficiencies noticed		Deficiencies as percentage of audited sample	
	Number	Amount (₹ in crore)	Number	Amount (₹ in crore)	Number	Amount
Ineligible duties transitioned- All Tables	7,560	75,905.09	299	52.57	3.96	0.07
Irregular claim on closing balances- Table 5(a)	5,164	61,547.78	335	502.20	6.49	0.83
Irregular claim on unavailed credit on capital goods- Table 6(a)	3,279	2,740.53	402	231.02	12.26	8.43
Ineligible credit of duty paid goods in stock with documents-Table 7(a)A	4,151	7,262.27	148	56.48	3.57	0.78
Ineligible credit of duty paid goods in stock without documents-Table 7(a)B	579	260.02	75	13.18	12.95	5.06
Ineligible credit on inputs or input services in transit -Table 7(b)	3,514	3,842.89	397	75.29	11.30	1.96
Irregular credit by Centralised registered units- Table 8	254	*	7	20.97	2.76	
Irregular credit of tax paid on supplies attracting VAT and Service Tax-Table 11	373	465.67	23	25.83	6.17	5.55
Total			1,686	977.54		

* Credit already featured under closing balance category

As evident from the table above, Audit noticed 1,686 irregularities in 1,438 cases amounting to ₹ 977.54 crore. Relatively higher number of irregularities were noticed in following categories viz; ineligible credit of duty paid goods in stock without documents, irregular claim on unavailed credit on capital goods, ineligible credit on inputs or input services in transit and irregular claim on closing balances. Out of the 1,438 cases where irregularities were noticed in the audit sample, 1,132 cases had already been verified by the Department. The irregularities noticed amounted to ₹ 735.69 crore in the 1,132 cases that had already been verified by the Department.

The nature and extent of compliance deviations have been elaborated in the subsequent paragraphs. In each section, for a perspective on materiality, while providing the respective population size extracted from GSTN we have also provided the representation of the top 100 cases¹⁵⁵ of the population in the audit sample and have distinctly indicated the deviations observed in these cases. In addition, the outcome of data analysis of the transitional credit data in GSTN has been appropriately featured. Further, we have typically included the money value of the top five irregularities noticed in each section and have

¹⁵⁵ less than 100 cases in some sections where the claims were comparatively lower.

featured illustrative cases for an appreciation of the nature and significance of the deviations.

6.9.2.1 Ineligible duties carried forward

Section 140 of the CGST Act provides for transition of eligible duties paid on inputs and input services under existing laws into GST regime. Eligible duties for the purpose of the section are as defined under Explanation 1 and 2 under the Section. A retrospective amendment was carried out vide CGST Amendment Act, 2018 (No.31 of 2018) dated 29th August 2018, which restricted the applicability of 'Cenvat credit' under Section 140 of the Act, to 'Cenvat credit of Eligible duties' as specified in Explanation 1 and 2 thereunder. Further, Explanation 3 specifically excludes any cess which has not been specified in Explanation 1 or 2 and any cess which is collected as additional duty of Customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 from the expression 'credit of Eligible duties'.

Thus, the Cenvat credit of Education Cess, Secondary and Higher Education Cess, Krishi Kalyan Cess, Swatch Bharat Cess and Clean Energy Cess were not eligible duties for transition to GST.

Audit examined 7,560 transitional credit claims involving total transitional credit of ₹ 75,905.09 crore. These encompass claims under the different sub-sections under Section 140 of the Act, preferred under various tables of Tran 1 return. Out of these cases, Audit noticed non-compliance in 299 cases involving claim of ineligible duties amounting to ₹ 52.57 crore. The deviations were in the category of ineligible cess credit carried forward; credit claimed on VAT; and credit claimed on Personal Ledger Account (PLA)¹⁵⁶ balances.

When this was pointed out, the Ministry/Department accepted the audit observations in 161 cases with ineligible amount of ₹ 31.05 crore, of which ₹ 13.41 crore was recovered in 121 cases.

Ineligible Duties transitioned

A total of 299 taxpayers had claimed ineligible duties amounting to ₹ 52.57 crore

Table 5(a)- 259 claims involving ineligible duties of ₹ 42.95 crore.

Table 7(a)A- 15 claims involving ineligible duties of ₹ 2.64 crore.

Table 7(b)- 16 claims involving ₹ 0.46 crore.

Table 8- One claim involving ₹ 0.23 crore.

Table 11- 12 claims involving ₹ 6.27 crore.

¹⁵⁶ PLA is a mandatory requirement of Rule 8A of Central Excise Rules for deposit of Central Excise duty; Circular No.249/83/96-CX dated 11th October 1996

The top five irregularities noticed under this category amounted to ₹ 15.83 crore. An illustrative case is featured below.

A taxpayer coming under the jurisdiction of Bhubaneswar Central Tax Commissionerate had claimed transitional credit of duty paid on coal held in stock under section 140(3) of the CGST Act, amounting to ₹ 3.07 crore. During verification of the claim, Audit noticed that the transitional credit included Clean Energy Cess of ₹ 2.56 crore on coal in Table 7(a) A of Tran 1 return, which was not eligible.

When this was pointed out (July 2021), the Ministry while admitting the audit observation intimated (February 2022) that action was being initiated to recover the ineligible credit claimed by the taxpayer.

6.9.2.2 Closing balance of the credit in the last returns (Table 5(a) of Tran 1)

As per Section 140(1) of the CGST Act 2017, a registered person, other than a person opting to pay tax under Section 10, shall be entitled to take in his ECL the amount of Cenvat Credit of Eligible duties 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 in such manner as may be prescribed. The registered person shall not be allowed to take credit in the following circumstances.

- (i) where the said amount of credit is inadmissible as input tax credit under the Act; or
- (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or
- (iii) where the said amount of credit relates to the goods manufactured and cleared under such exemption notification as are notified by the Government

Table 5(a) of the Tran 1 returns was specified for the claim under this section. On pan-India basis, a total of 1,07,408 taxpayers had claimed transitional credit of Cenvat credit amounting to ₹ 89,407.95 crore carried forward from the legacy returns under Section 140(1) of the Act. The top 100 claims under this category accounted for 48 *per cent* of the total transitional credit claimed in this category. Audit examined 5,164 claims under this category, of which 64 claims were from the top 100 claims.

Audit noticed deviations in 335 claims involving transitional credit of ₹ 502.20 crore, which included nine claims out of the top 100 claims. The deviations were in the categories of ineligible credit carried forward; credit claimed without filing legacy returns; and excess credit carried over.

(i) Ineligible credit carried forward

Eligibility of the credit to be carried forward from the legacy returns filed for the period ending with the day immediately preceding the appointed day was determined under Section 16 and 17 of CGST Act. The registered person is not entitled to the credit of any input tax unless he is in possession of a duty paid document and has received the goods or services or both.

Further, Section 17 of the Act specifies the nature of supplies on which input tax credit shall not be available, which *inter-alia* includes a) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract services and b) goods or services or both received by a taxable person for construction of an immovable property on his own account including when such goods or services or both are used in the course of furtherance of business.

Audit noticed irregularities in 91 claims where taxpayers had transitioned ineligible credit amounting to ₹ 174.18 crore. Ineligible credits transitioned in this category were on account of works contract services used for the construction of buildings; inputs used for construction of buildings for own account; credit claimed on services or goods not received by the taxpayers; and credit claimed on time barred documents.

When this was pointed out, the Ministry/Department accepted the audit observations in 26 cases with irregular amount of ₹ 66.64 crore, and ₹ 17.78 crore has been recovered in 11 cases. The top five irregularities noticed in this category amounted to ₹ 82.31 crore. Two illustrative cases are featured below.

a) A taxpayer coming under the jurisdiction of Bhubaneswar Central Tax Commissionerate had carried forward Cenvat Credit of ₹ 54.75 crore under Section 140(1) of the Act. The closing balance of Cenvat credit available as per the ST3 return for the period ending June 2017 was transitioned into GST under Table 5(a) of Tran 1 return. On scrutiny of the claim, Audit noticed that the credit claimed by the taxpayer included the credit on inputs like TMT bars and input services like works contract services used for civil constructions. As the taxpayer was not engaged in supply of works contract services, the input tax credit claimed in these categories was not allowed as per section 17 of the Act.

Hence the credit claimed of ₹ 30.31 crore on account of the ineligible inputs and services was not eligible for transition.

When this was pointed out (February 2021), the Ministry while accepting the observation, intimated (February 2022) that action was being initiated to recover the ineligible credit from the taxpayer.

b) A taxpayer coming under the jurisdiction of Belgaum Central Tax Commissionerate was a manufacturer of Cement under legacy central excise regime. The taxpayer had claimed transitional credit of closing balance of Cenvat credit, carried forward from his legacy returns, amounting to ₹ 21.45 crore. During verification, Audit noticed that the taxpayer had closed his manufacturing activity completely from November 2015 and no clearance of manufactured products happened since then. However, the taxpayer had claimed Cenvat credit on capital goods and input services amounting to ₹ 19.07 crore during 2016-17. As the goods or services were not used in the factory of the manufacturer for taxable activity, the transitional credit claim of ₹ 19.07 crore was *ab initio* ineligible.

When this was pointed out (October 2021), the Ministry stated (February 2022) that the taxpayer intended to start the production and accordingly credit was claimed. However, the production could not be started due to some policy issues. The credit is eligible as neither the existing law nor the GST law cast any embargo for claiming the Cenvat credit.

The reply is not tenable as the Cenvat credit was eligible only when the goods or services were used for manufacturing dutiable goods or for provision of taxable services as per Rule 2(a)(k)(l) of the Cenvat Credit Rules, 2004. In this case, as the factory was closed and no manufacturing activity was happening, goods and services were not used for taxable activity to claim the Cenvat credit.

(ii) Credit claimed without filing legacy returns

Transitional credit under Section 140(1) is permissible only when the taxpayer had furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date. Pan-India data analysis of the transitional credit claims under this category (Table 5(a)) disclosed that 34,824¹⁵⁷ taxpayers, who did not furnish legacy returns for the period ending June 2017, had claimed transitional credit amounting to ₹ 43,548.32 crore.

¹⁵⁷ Data extracted from GSTN for the taxpayers who had not filed legacy returns/not filed within the due date under ST/CE but claimed transitional credit in Table 5(a)

Audit during detailed examination of sampled cases noticed 30 claims where taxpayers had carried forward Cenvat credit without filing legacy returns. The irregular transition of credit in these cases amounted to ₹ 60.32 crore.

When this was pointed out, the Ministry/Department accepted the audit observations in three cases with irregular amount of ₹ 3.30 crore and ₹ 0.43 crore had been recovered in two cases. The top five irregularities noticed in this category amounted to ₹ 21.71 crore. An illustrative case is featured below.

A taxpayer coming under the jurisdiction of Bengaluru East Central Tax Commissionerate had claimed transitional credit of Cenvat credit carried forward from the legacy Central Excise (ER1) and Service Tax (ST3) returns, under Table 5(a) of Tran 1 returns amounting to ₹ 12.01 crore. The amount of credit carried forward in ER1 and ST3 returns furnished for the period ending with the month immediately preceding the appointed day was ₹ 4.07 crore and ₹ 7.94 crore, respectively. The taxpayer had filed Tran 1 returns for the above claim during the month of November 2017 and the amount was credited to the ECL on 27th December 2017. Audit noticed that the taxpayer had not filed ST 3 returns for the period ending with June 2017, at the time of filing the Tran 1 return. The ST3 return for the said period was filed during the month of September 2018, after a lapse of almost 10 months from date of filing Tran 1. Therefore, the taxpayer was not eligible to claim Cenvat credit in respect of the returns, which was not furnished at the time of claiming transitional credit. The ineligible transitional credit amounted to ₹ 7.94 crore.

When this was pointed out (October 2021), the Ministry stated (February 2022) that the issue was under examination.

(iii) Excess credit carried over from legacy returns

The Cenvat credit balance in the return furnished by a taxpayer for the period ending with the day immediately preceding the appointed day under the existing law was eligible for transition under the section. Under the legacy regime, every assessee had to submit a return electronically through ACES system (Automation of Central Excise and Service Tax) as specified under Rule 7 of Service Tax Rules 1994 and Rule 12(5) of the Central Excise Rules, 2002. In this context, ACES system included a red flag facility to mark the transitional credit claims where the credit carried forward by the taxpayer was not as per the system with the last return filed under Central Excise/Service Tax.

Pan-India data analysis of the claims under this category disclosed potential excess claim in 828 cases¹⁵⁸ amounting to ₹ 1,048.07 crore, wherein the

¹⁵⁸ GSTINs having ITC claims more than the Cenvat Credit Balance in the legacy returns

taxpayers had transitioned credit in excess of the Cenvat credit balance in the legacy returns filed for the period ending June 2017.

During detailed examination of the sampled cases, Audit noticed that in 214 claims the taxpayers had transitioned Cenvat credit of ₹ 267.70 crore in excess of the credit balances in legacy returns furnished for the period ending with the day preceding the appointed day.

When this was pointed out, the Ministry/Department accepted the audit observations in 97 cases with irregular amount of ₹ 71.64 crore, and ₹ 6.28 crore was recovered in 36 cases. The top five irregularities noticed in this category amounted to ₹ 85.97 crore. An illustrative case is featured below.

A taxpayer coming under the jurisdiction of Mumbai East Central Tax Commissionerate had claimed transitional credit of Cenvat credit, carried forward from the legacy return furnished for the period ending June 2017, amounting to ₹ 0.44 crore. The credit claimed was reflected in their ECL on 27th December 2017. On scrutiny of the claim, Audit noticed that the ECL of the taxpayer was again credited with transitional credit of ₹ 19.62 crore on 16th January 2019, for which the credit was not available as per the legacy returns. Thus, the credit claimed amounting to ₹ 19.62 crore was not in accordance with the provisions.

When this was pointed out (July 2021), the Ministry, while accepting the observation, intimated (February 2022) that the taxpayer had been directed to reverse the excess credit.

6.9.2.3 Un-availed credit on capital goods (Table 6(a) of Tran 1)

As per Section 140(2) of the CGST Act 2017, a registered person other than a person opting to pay tax under section 10, shall be entitled to take in his ECL, credit of un-availed Cenvat Credit 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. Provided that the registered person shall not be allowed to take credit unless said credit was admissible as Cenvat credit under existing law and is also admissible as input tax credit under this Act.

The unavailed Cenvat credit means the amount that remains after subtracting the amount of Cenvat credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of Cenvat credit to which the said person was entitled in respect of the said capital goods under the existing law.

Credit in respect of un-availed portion of capital goods was to be claimed in Table 6(a) of Tran 1 return. A total of 19,244 taxpayers had claimed transitional

credit of Cenvat credit in respect of capital goods amounting to ₹ 4,311.75 crore. The top 100 claims under this category accounted for 58 *per cent* of the total transitional credit claimed under this category. Audit examined 3,279 claims in this category including 64 from the top 100 claims covering 33 *per cent* of the total transitional credit claimed under this category.

Audit noticed irregularities in 402 claims, including 17 claims from the top 100 claims, involving irregular transitional credit amounting to ₹ 231.02 crore. The deviations were due to irregular credit claimed; and availing of 100 *per cent* credit on capital goods as unavailed portion of Cenvat credit on capital goods, which was inadmissible.

(i) Irregular credit claimed

As per the proviso under Section 140(2) of the Act, transitional credit shall not be allowed unless the credit was admissible as Cenvat credit under the existing Cenvat Credit Rules, 2004 and is also admissible as input tax credit under the Act. As per Rule 2(a) of Cenvat Credit Rules, 2004, capital goods means the goods, which were used:

1. in the factory of the manufacturer of the final products but does not include any equipment or appliances used in an office.
2. for providing output services

Thus, the credit on capital goods is permissible only on the goods, which were used in the manufacturing or provision of services under the existing laws, and are also being used for taxable supply under GST.

In 27 claims, Audit noticed that the taxpayers had claimed irregular credit on capital goods amounting to ₹ 45.05 crore. The deviations were on account of credit taken on the capital goods, which were ineligible for credit under the existing laws.

When this was pointed out, the Ministry/Department accepted the audit observations in 12 cases with irregular amount of ₹ 31.21 crore, and ₹ 0.73 crore was recovered in four cases. The top five irregularities noticed in this category amounted to ₹ 40.07 crore. Two illustrative cases are featured below.

a) A taxpayer coming under the jurisdiction of Bhubaneswar Central Tax Commissionerate had claimed transitional credit of unutilised Cenvat credit on capital goods under section 140(2) of the CGST Act. The credit was claimed on the components and parts of Nitric Acid and Ammonium Plants imported during April 2017 for the manufacturing unit. The credit claimed on these goods amounting to ₹ 29.07 crore was credited to the ECL of the taxpayer during December 2017. During verification of the claim, Audit noticed that the capital goods were stored in a warehouse as stated in the Bill of Entry and the

taxpayer had neither received the goods in the factory of production nor used them for manufacturing activity to claim the Cenvat credit on the goods under the provisions of the existing law. Therefore, credit was not claimed in their legacy Central Excise Returns (ER1) and the entire amount was claimed as unavailed portion of Cenvat credit under the GST transitional provisions. As per the proviso under Section 140(2), the taxpayer was eligible for transition of unavailed portion of Cenvat credit only when the credit was also eligible under the existing law, which was not fulfilled in this case. Hence, the transitional credit claimed by the taxpayer under Table 6(a) of Tran 1 return in respect of the goods not used for manufacturing was irregular. The irregular credit transitioned in this case amounted to ₹ 29.07 crore.

When this was pointed out (March 2021), the Ministry while accepting the observation intimated (February 2022) that the taxpayer was under the State jurisdiction and the draft show cause notice would be forwarded for recovery of irregular credit.

b) A taxpayer coming under Guwahati Central Tax Commissionerate had claimed transitional credit of unavailed Cenvat credit in respect of capital goods under Table 6(a) of Tran 1 return amounting to ₹ 4.44 crore. The taxpayer was covered under the erstwhile centralised registration under Service tax provisions (AAACB2894GST036) for which the Centralised unit (06AAACB2894G1ZR) coming under Gurugram Central Tax Commissionerate had already claimed transitional credit as per Section 140(8) of the CGST Act. Further, the credit claimed by the Gurgaon unit was also distributed among the units covered under the erstwhile centralised registration. As such, the other units of the centralised registrant were not eligible to claim the benefit of transitional credit provisions of the Act. Thus, the transitional credit claimed by Guwahati unit, being one of the units covered under the erstwhile centralised registration, amounting to ₹ 4.44 crore under Section 140(2) of the Act was irregular.

When this was pointed out (August 2021), the Ministry stated (February 2022) that a show cause notice was being issued to the taxpayer to safeguard revenue.

Audit noticed another 19 cases pertaining to the other registered units of same taxpayer covered under the Centralised registration claiming transitional credit of ₹ 159.22 crore under Section 140(2). As the Centralised unit had already claimed the transitional credit and distributed the credit to the units covered under the centralised registration as per section 140(8) of the Act, these individual claims from other registered units have a potential risk exposure of irregular credit.

(ii) Availing of 100 per cent credit on capital goods

The unavailed portion of Cenvat credit represents the balance of credit in respect of goods on which portion of credit had already been taken under the legacy rules. As per Rule 4(2)(a) of Cenvat Credit Rules, the credit in respect of capital goods at any point of time in a financial year shall be taken only for an amount not exceeding 50 per cent of the duty paid on such capital goods in the same financial year. Hence, the section provides for transition of 50 per cent of the credit in respect of capital goods on which credit was claimed under the legacy returns. The restriction is in line with the provisions of existing rules to safeguard against potential misuse of credit on goods that are either ineligible for credit or on which benefit of depreciation on the Cenvat credit portion was claimed under Section 32 of the Income Tax Act 1961. This view was expressed in para 5.1 of the Boards' guidance note.

Audit noticed irregularities in 375 claims wherein taxpayers had claimed 100 per cent credit on the capital goods as unavailed portion of Cenvat credit on capital goods. Irregular transitional credit involved in these claims amounted to ₹ 185.96 crore.

When this was pointed out, the Department accepted the audit observation in 124 cases with irregular amount of ₹ 43.31 crore, and ₹ 2.78 crore was recovered in 28 cases. The top five irregularities noticed in this category amounted to ₹ 74.23 crore. An illustrative case is featured below.

A taxpayer coming under the jurisdiction of Udaipur Central Tax Commissionerate had claimed transitional credit of unavailed portion of Cenvat credit on capital goods under Section 140(2) of the Act amounting to ₹ 15.56 crore. On scrutiny of the claim, Audit noticed that the taxpayer had claimed 100 per cent credit in respect of the capital goods, which was not permissible under the extant provisions.

When this was pointed out (July 2021), the Ministry stated (February 2022) that the taxpayer was eligible for credit as the credit was not claimed earlier.

The reply is inconsistent with para 5.1 of the Boards' guidance note, which states that "if no credit was availed earlier, credit of entire amount cannot be availed through this Table."

Audit is of the view that the Department may ensure that the records of taxpayers, who have carried forward 100 per cent of the credit, on capital goods in GST regime, are examined to rule out availment of a portion (50 per cent) of the credit in the previous legacy returns of 2016-17 and 2017-18 (first quarter). Further, the Department needs to take a uniform

position on this issue by clarifying the instructions contained in Para 5.1 of the Board's guidance.

6.9.2.4 Credit on duty paid stock (Table 7(a) A and B of Tran 1)

As per Section 140(3) of the Act, a registered person, who was not liable to register under the existing law or who was engaged in the manufacture of exempted goods or provision of exempted services or who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated 20th June, 2012 is entitled to take, in his ECL, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions.

- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said registered person is eligible for input tax credit on such inputs under this Act;
- (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;
- (iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
- (v) the supplier of services is not eligible for any abatement under this Act:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other document evidencing payment of duty in respect of inputs, then, such registered person shall also be allowed to take credit at such rate and in such manner, subject to such conditions as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient.

A) Claims with duty paid documents

The credit under this category is claimed under column 7A of Table 7(a) of Tran 1 return. A total of 1,91,301 taxpayers had claimed transitional credit of eligible duties paid on inputs, semi-finished goods or finished goods held in stock on the appointed date amounting to ₹ 30,562.94 crore. Out of this, the credit claimed by 13,989 migrated¹⁵⁹ taxpayers accounted for 98 *per cent* of the total

¹⁵⁹ Taxpayers who were registered under existing Central Excise and Service Tax laws and are registered under Rule 24 of CGST Rules, 2017.

credit under this category. Audit examined 4,151 claims under this category including 2,004 claims of migrated taxpayers.

Audit noticed deviations in 148 claims involving irregular transitional credit of ₹ 56.48 crore, including 61 deviations from the claims of migrated taxpayers. The irregularities were in the nature of credit claimed on duty paid goods either not in stock or in excess of declared stock; irregular credit claimed by works contract suppliers; credit claimed on time barred documents; credit claimed by ineligible taxpayers; and credit claimed without supporting duty paid documents.

Significant audit findings under each of the categories are discussed in the subsequent paragraphs.

(i) Credit claimed on duty paid goods either not in stock or in excess of declared stock

Transitional credit of duty paid on goods is available if the registered person had held such goods in stock on the appointed day. The taxpayer should claim the credit of duty paid on such goods with the prescribed documents evidencing duty payment.

In 12 claims, Audit noticed that the taxpayers had claimed credit on goods either not in their possession on the appointed day or on the quantity of goods in excess of the stock held on the appointed day, involving irregular credit amounting to ₹ 14.78 crore.

When this was pointed out, Ministry/Department accepted the audit observations in seven cases with irregular amount of ₹ 12.04 crore, and ₹ 0.08 crore was recovered in four cases. The top five irregularities noticed in this category amounted to ₹ 14.52 crore. Two illustrative cases are featured below.

a) A taxpayer coming under the jurisdiction of Pune-1 Central Tax Commissionerate had claimed transitional credit of ₹ 13.60 crore in respect of duty paid goods held in stock on the appointed date under section 140(3) of the Act, in respect of which the taxpayer was in possession of the duty paid documents. During verification, Audit noticed that in many duty paid documents the consignee was different from the claimant, evidencing that the taxpayer was not in possession of the goods for which credit was claimed on the appointed day. Thus, the claim of the taxpayer of ₹ 9.26 crore based on the invoices against other consignees, at different State jurisdictions, was irregular.

When this was pointed out (August 2021), the Ministry, while accepting the audit observation, intimated (February 2022) that DRC-01A¹⁶⁰ had been issued to the taxpayer.

b) A taxpayer coming under the jurisdiction of Howrah Central Tax Commissionerate had claimed transitional credit of duty paid on finished goods held in stock on the appointed day under section 140(3) of the Act. The taxpayer had filed the details of goods held in stock on the appointed date in respect of which duty paid documents were available. During verification of the claim, Audit noticed that the taxpayer had claimed credit on the quantity of goods in excess of the declared quantity of stock as on the appointed day resulting in excess credit. The excess credit of duty claimed on these goods amounted to ₹ 1.37 crore.

When this was pointed out (April 2021), the Ministry, while accepting the audit observation, intimated (February 2022) that an amount of ₹ 0.04 crore had been recovered from the taxpayer.

(ii) Irregular credit claimed by works contract suppliers

A registered person who was providing works contract services under the existing law is eligible to claim the credit on duty paid goods held in stock on the appointed date subject to the condition that he was availing the benefit of Notification 26/2012-Service tax dated 20th June 2012. The notification was available for the service providers who were engaged in providing construction of building or civil structure or part there of intended for sale to a buyer, where the value of taxable services includes the land value.

Audit noticed that the works contract suppliers who had not availed the benefit of the above said notification, claimed transitional credit of duty paid stock held on the appointed date; the irregular credit claimed in 11 such claims amounted to ₹ 5.49 crore.

When this was pointed out, the Ministry intimated (February 2022) that show cause notices had been issued in two cases. The top five irregularities noticed in this category amounted to ₹ 5.09 crore. Two illustrative cases are featured below.

a) A taxpayer coming under the jurisdiction of Visakhapatnam Central Tax Commissionerate had claimed transitional credit of duty paid stocks held on the appointed date under Section 140(3) of the Act. Amount of credit claimed by the taxpayer under Table 7(a)A of Tran 1 return under this category

¹⁶⁰ The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.”

amounted to ₹ 1.75 crore. During examination, Audit noticed that the taxpayer, as works contract service provider under legacy service tax provisions, had not claimed the benefit of notification 26/2012 ST dated 26th June 2012. Hence, the taxpayer was ineligible to claim the benefit of transitional credit in respect of duty paid stock held by him on the appointed date. Accordingly, the credit of ₹ 1.75 crore representing duty paid goods held in stock transitioned by the taxpayer under the section was irregular.

When this was brought to the notice (August 2021), the Department stated (December 2021) that the taxpayer was eligible for credit under the section as the taxpayer was engaged in works contact services.

The reply is not tenable as the taxpayer was not availing benefit of Notification 26/2012-Service tax dated 20th June 2012 under the existing law, which was an essential condition for claiming transitional credit on stocks for the works contract service providers.

Ministry stated (February 2022) that the observation was being examined.

b) A taxpayer registered under Kochi Central Tax Commissionerate had claimed transitional credit of duty paid goods held in stock on the appointed date, under Table 7(a) A of Tran 1 return, for which duty paid documents were in possession. The credit transitioned by the taxpayer under Section 140(3) of the Act amounted to ₹ 0.98 crore. On verification of the claim, Audit noticed that the taxpayer was providing works contract services for industrial or commercial constructions on sub-contract basis by paying tax under Rule 2(A)(ii) of Service tax (Determination of value) Rules, 2006. Thus, the taxpayer was not availing the benefit of notification 26/2012 ST dated 26th June 2012, which was required for claiming the transitional credit benefit under Section 140(3) of the Act. Hence, the credit of ₹ 0.98 crore claimed by the taxpayer was irregular.

When this was pointed out (March 2021), the Ministry stated (February 2022) that the taxpayer was at present under the State GST jurisdiction, and the matter was under correspondence with them.

(iii) Credit on duty paid stock claimed without supporting or eligible documents

Credit under the section is permissible only on the basis of duty paid invoices or other prescribed documents duly indicating the evidence of payment of duty under the existing law in respect of the goods on which credit is claimed.

In 18 claims, Audit noticed that the taxpayers had claimed credit of duty paid on the goods held in stock without having the prescribed duty paid documents evidencing payment of duty. Irregular credit claimed in these cases amounted to ₹ 8.93 crore.

When this was pointed out, the Ministry/Department accepted the audit observations in five cases with irregular amount of ₹ 3.46 crore, and ₹ 0.04 crore was recovered in one case. The top five irregularities noticed in this category amounted to ₹ 3.10 crore. An illustrative case is featured below.

A taxpayer coming under Bhopal Central Tax Commissionerate jurisdiction had claimed transitional credit of ₹ 1.26 crore on duty paid goods held in stock on the appointed date under Table 7(a)A of Tran 1 return. During verification of the claim, Audit noticed that the taxpayer was not in possession of the invoices or documents evidencing payment of Central Excise duty on the said goods under the existing Central Excise Act, 1944. Thus, the transitional credit claimed by the taxpayer of ₹ 1.26 crore was ineligible as the taxpayer had not borne the Central Excise Duty for which claim was made.

When this was pointed out (March 2021), the Ministry stated (February 2022) that the observation was being examined.

(iv) Credit claimed on time barred documents

One of the conditions specified for claims under Section 140(3) of the Act was that the invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day. Hence, the credit on documents or invoices issued earlier than 30th June 2016 were not eligible for credit under the Act.

In 53 claims, Audit noticed that taxpayers had claimed transitional credit of duty paid on good held in stock on the appointed day based on the documents issued earlier than 12 months from the appointed day. Irregular transitional credit claimed on these documents amounted to ₹ 3.38 crore.

When this was pointed out, the Ministry/Department accepted the audit observations in 36 cases with irregular amount of ₹ 2.12 crore, and ₹ 0.76 crore was recovered in 21 cases. The top five irregularities noticed in this category amounted to ₹ 1.81 crore. An illustrative case is featured below.

A taxpayer coming under the jurisdiction of Bengaluru North West Central tax Commissionerate had claimed transitional credit of ₹ 65.08 crore under the Table 7a(A) of Tran 1 return for the duty paid goods held in stock on the appointed day. On verification of the duty paid documents produced in support of the claim, Audit noticed that some of the duty paid documents, for

which credit was claimed, were issued earlier than 12 months from the appointed date. Hence, the same were time barred for claiming the credit under the Act. The irregular credit claimed on these time barred documents amounted to ₹ 0.40 crore.

When this was pointed out (October 2021), the Ministry stated (February 2022) that the issue was under examination and action would be taken to safeguard the revenue.

(v) Ineligible credit claimed

Credit under Section 140(3) of the Act is permissible in respect of eligible duties paid on inputs held in stock and inputs contained in semi-finished goods or finished goods held in stock on the appointed day. Hence, the credit in respect of input services is not envisaged under the section. Further, the eligibility of credit on the goods depends upon the condition that the goods are used or intended to be used for making taxable supplies under the Act for which input tax is eligible.

In 54 claims, Audit noticed that the taxpayers had transitioned ineligible credit involving transitional credit of ₹ 24.24 crore. The ineligible credits represented credit claimed on input services and other ineligible credits comprising excess credit claimed and credit claimed by taxpayer claiming abatement under the Act.

When this was pointed out, the Ministry/Department accepted the audit observations in 26 cases with irregular amount of ₹ 2.60 crore, and ₹ 0.31 crore was recovered in 11 cases. The top five irregularities noticed in this category amounted to ₹ 18.10 crore. An illustrative case is featured below.

A taxpayer coming under the jurisdiction of Bengaluru East Central Tax Commissionerate was a registered importer dealer under the legacy Central Excise Act. The taxpayer had claimed transitional credit of ₹ 10.41 crore, under Table 7(a) of Tran 1 return as duty paid goods held in stock at the job workers' premises. The taxpayer had claimed that these goods were supplied to his job-worker through challans as per job-work provisions of the Central Excise Act. Audit noticed that the taxpayer was not entitled to claim the benefit of job-work provisions under the erstwhile Central Excise Act, as he was neither a registered manufacturer nor had followed the prescribed procedures¹⁶¹ for job work manufacturing. Further, the taxpayer had not paid excise duty on the goods claimed to be manufactured through job-workers nor furnished any

¹⁶¹ Notification 214/86 CE Dated 25th March 1986 specifies the conditions and procedures for job-work manufacturing, which inter alia requires permission from the Commissioner of Central Excise.

assessment returns to that effect. The taxpayer, as registered importer dealer, was actually supplying goods to the job-worker through the Cenvat invoices or bill of entries as mentioned in the Excise returns filed by the taxpayer. Hence, the Cenvat credit of duty paid goods consigned to the job workers as on the appointed date does not qualify under Section 140(3), and the irregular credit claimed amounted to ₹ 10.41 crore.

When this was pointed out (October 2021), the Ministry stated (February 2022) that the case had been entrusted to anti-evasion wing for detailed verification.

B) Claim without duty paid documents

A registered person when not in possession of documents evidencing payment of duty, was also eligible for taking credit in respect of duty paid goods held in stock if he passed on the benefit of such credit by way of reduced prices to the recipient. This scheme of deemed credit was available only to taxpayers other than a manufacturer or a supplier of services who was not in possession of invoice or any other document evidencing payment of duty in respect of inputs held in stock as on the appointed day. The scheme was applicable for a period of six months from the appointed date and the credit shall be availed subject to the conditions specified under Rule 117(4) of CGST Rules.

As per the proviso to Section 140(3) of the CGST Act, a registered person can be allowed to take input tax credit on goods held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of central excise duty. The registered person availing of this scheme had to specify separately the details of stock held on the appointed day in accordance with the provisions of clause (b) of Rule 117(2) of CGST Rules 2017. However, the benefit of input tax was restricted to 60% of tax payable on such goods, which attract CGST at the rate of nine *per cent* or more, and 40% of tax payable for other goods on supply of such goods after the appointed date. The amount of input tax credit shall be credited to ECL after the central tax applicable on such supply has been paid, as declared in Tran 2 return.

A total of 89,653 taxpayers had claimed transitional credit of duty paid goods held in stock without duty paid documents as declared in column 7B of Table 7(a) of Tran 1 return. Out of this, 27,328 taxpayers declared the supply of goods on payment of GST in Tran 2, against which the transitional credit of Central Tax amounting to ₹ 1,444.91 crore was afforded to the ECL of the taxpayers. Audit examined 579 claims under this category.

Audit noticed deviations in 75 claims involving irregular transitional credit of ₹ 13.18 crore. Deviations were of the nature of ECL credited from both Tran 1 and Tran 2 or credit afforded in ECL without filing Tran 2; credit claimed on stocks not declared or more than that declared in Tran 1 and ineligible credits claimed.

Significant audit findings under each of the categories are discussed in the subsequent paragraphs.

(i) Input tax credited to ECL from both Tran 1 and Tran 2 or without filing Tran 2

Taxpayers had to furnish details of stock held on the appointed date on which credit was claimed in Table 7(a)7B of Tran 1 return. Eligible credit in respect of the goods was to be credited to ECL of the taxpayer on filing Tran 2 returns duly indicating the supply of these goods on payment of GST. The proportionate credit afforded to the ECL would be based on the rate of tax paid on the supplies declared in Tran 2 returns.

Pan-India analysis¹⁶² of the claims preferred under Table 7(a)B of Tran 1 return and the amount of central tax credited to ECL against such claims disclosed that the 'eligible duties' declared under Table 7(a)B of Tran 1 had been credited to ECL before furnishing Tran 2 returns detailing supply of goods on payment of GST. Audit observed that the lack of proper validation in the GSTN had resulted in affording irregular credit through Tran 1 return in 2,102 claims amounting to ₹ 114.96 crore. Out of these, 1,792 taxpayers had received credit without filing Tran 2 returns, and ECL was credited twice in respect 310 taxpayers.

Audit noticed that 1,792 taxpayers had received irregular transitional credit of ₹ 92.71 crore without filing Tran 2 returns, based on mere declaration of stocks made under Tran 1. In respect of 310 taxpayers, who had filed Tran 2, the ECL was credited twice- ₹ 22.25 crore on filing Tran 1 and ₹19.86 on filing Tran 2, resulting in an irregular credit of ₹ 22.25 crore. Detailed audit of sample cases in CBIC field formations confirmed these irregularities in 66 claims involving irregular credit of ₹ 10.60 crore.

When this was pointed out, the Ministry/Department accepted the audit observations in 36 cases with irregular amount of ₹ 5.82 crore, and ₹ 4.10 crore was recovered in 18 cases. The top five irregularities noticed in

¹⁶² Analysis GSTN data on amount credited to ECL as per Table 7(a)B of Tran 1 and Credit afforded on filing Tran 2 or cases where Tran 2 not filed.

this category amounted to ₹ 5.02 crore. Two illustrative cases are featured below.

a) A taxpayer coming under the jurisdiction of Bengaluru North West Central Tax Commissionerate had claimed credit in respect of duty paid goods held in stock under Table 7(a) B of Tran 1 return. On verification of the claim, it was noticed that the taxpayer had claimed credit of ₹ 2.25 crore on the goods valued at ₹ 26.80 crore through Tran 1 against which no supporting documents were available. Audit further noticed that the input tax of ₹ 2.25 crore claimed was credited to ECL even before the taxpayer filed Tran 2 return. Further, the ECL of the taxpayer was again credited with ₹ 1.06 crore when these goods were supplied on payment of GST and subsequently declared in Tran 2. This resulted in double credit to the ECL, and the credit of ₹ 2.25 crore afforded without filing of Tran 2 was irregular.

When this was pointed out (October 2021), the Ministry stated (February 2022) that the credit from Tran 1 was incorrectly transferred to electronic credit ledger due to GST portal issue. In this case, the credit was not utilised and the taxpayer had reversed the amount in GSTR-3B.

b) A taxpayer coming under the Central Tax jurisdiction of Ghaziabad Commissionerate had claimed transitional credit of eligible duties paid on goods held in stock under proviso to Section 140(3) of the Act. The taxpayer had declared the details of stock of electronic goods falling under chapter heading 84 and 85, valued at ₹ 7.21 crore. The eligible duties in respect of these goods were claimed under column 6 of Table 7(a)B of Tran 1 amounting to ₹ 1.17 crore, which was credited to the ECL as input tax credit under CGST on 29 August 2017 without the taxpayer filing Tran 2. On verification of the claim, Audit noticed that the taxpayer had filed Tran 2 for the period from July 2017 to December 2017 declaring supply of these goods on payment of GST and the corresponding CGST credit of ₹ 0.30 crore attributed to the supply was credited to the ECL during March 2018. This resulted in double credit to the ECL, and the credit of ₹ 1.17 crore afforded through Tran 1 was irregular.

When this was pointed out (September 2021), the Ministry stated (February 2022) that the issue was under examination, and the revenue would be protected.

(ii) Credit claimed on stocks not declared or in excess of declaration in Tran 1

According to Rule 117(2)(b) of CGST Rules, 2017, the registered person claiming transitional credit of eligible duties under section 140(3) of the CGST Act is required to specify separately the details of stock held on the appointed day in Tran 1. Rule 117(4)(b)(iii) of the said rules specifies the submission of Tran 2 return detailing the supply of such goods effected during the subsequent six tax periods from the appointed date indicating payment of tax on such supplies.

Audit noticed irregularities in nine claims involving irregular transitioning of credit amounting to ₹ 2.58 crore. Irregularities included claiming credit on goods not in stock on the appointed date; and claiming credit on goods supplied in excess of stock declared in Tran 1.

When this was pointed out, the Ministry/Department accepted audit observations in four cases with irregular amount of ₹ 1.11 crore. The top five irregularities noticed under this category amounted to ₹ 2.42 crore. Two illustrative cases are featured below.

a) A taxpayer coming under the Central Tax jurisdiction of Mumbai East Commissionerate had claimed transitional credit of ₹ 21.75 crore under Table 5(a), 6(a) and 7(b) of Tran 1, under Section 140(1), (2) and (5), respectively. The taxpayer had not declared any duty paid goods held in stock on the appointed date in Table 7(a)B, and was thus not eligible for credit under Section 140(3) of the Act. However, Audit noticed that the ECL of the taxpayer was credited with CGST component based on the supply of duty paid goods as declared in Tran 2. This was contrary to the provisions of Section 140(3) of the Act. Hence, the amount of credit afforded to ECL on the basis of Tran 2 filed during the period from July 2017 to December 2017, amounting to ₹ 1.12 crore was irregular as the goods were not held in stock on the appointed date.

When this was pointed out (July 2021), the Ministry stated (February 2022) that the observation was being examined.

b) A taxpayer coming under the Central Tax jurisdiction of Chennai North Commissionerate had claimed transitional credit of eligible duties on goods held in stock on appointed date. The motor vehicle parts on which credit was claimed were valued at ₹ 0.99 crore. On verification of the claim, it was noticed that the taxpayer had claimed credit of duty paid on goods not declared in the details of closing stock furnished in Tran 1 return and on some goods the supply was shown more than the quantity of stock declared in Tran 1. These

goods were supplied on payment of duty during the period from July 2017 to December 2017 and declared in the Tran 2 returns. Thus, the taxpayer by declaring supply of goods in excess of the stock held, received excess credit in the ECL. The credit claimed on goods which were not in stock on the appointed date had resulted in excess credit of ₹ 0.57 crore in the ECL.

When this was pointed out (July 2021), the Ministry, while accepting the observation, intimated (February 2022) that a show cause notice demanding ₹ 0.64 crore had been issued to the taxpayer.

6.9.2.5 Inputs/input services in transit

Section 140(5) of the Act provides that a taxpayer shall be entitled to take credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of 30 days from the appointed date or within such further extended 30 days period as permitted by the Commissioner.

The credit under Section 140(5) was to be claimed under Table 7(b) of Tran 1 return. Under this category, a total of 25,959 taxpayers had claimed transitional credit of ₹ 7,332.78 crore in respect of inputs or input services received on or after the appointed date, but the duty or tax on which was paid under the existing law. The top 100 cases in this category accounted for 36 *per cent* of the total transitional credit claimed under this category. Audit examined 3,605 claims involving transitional credit of ₹ 3,649.41 crore, which included 67 claims out of the top 100 claims under this category.

Audit noticed irregularities in 397 claims involving irregular transitional credit of ₹ 75.29 crore, which included irregularities in seven claims from the top 100 claims. Irregularities were in the nature of availing credit on invoices not accounted for within the prescribed time limit; transitioning ineligible or excess credit; and irregular credit claimed on capital goods.

Significant audit findings under each of the categories are discussed in the subsequent paragraphs.

(i) Credit claimed on invoices /documents not accounted for within the prescribed time

Section 140(5) of the Act envisages that the credit under this category was admissible when the invoice or any other duty or tax paying document of the same was recorded in the books of account of the taxpayer within a period of 30 days from the appointed day. The proviso under Section 140(5) provided for extension of this time limit for a further period not exceeding 30 days by the Commissioner¹⁶³, on sufficient cause being shown.

A pan-India analysis of the transitional credit data under this category, extracted from GSTN, showed 5,711 claims being non-compliant with the mandatory condition of accounting the supplies within the stipulated time, even when the time limit was considered as 60 days from the appointed date. The amount of transitional credit involved in these claims was ₹ 127.91 crore. Detailed audit confirmed non-compliance in 249 claims resulting in transitioning of irregular credit of ₹ 54.46 crore.

When this was pointed out, the Ministry/Department accepted the audit observations in 101 cases with irregular amount of ₹ 16.13 crore, and ₹ 0.51 crore was recovered in 27 cases. The top five irregularities noticed in this category amounted to ₹ 17.30 crore. An illustrative case is featured below.

A taxpayer coming under the Central Tax jurisdiction of Dibrugarh Central Tax Commissionerate had claimed transitional credit of ₹ 3.18 crore in respect of inputs or input services received on or after the appointed day under section 140(5) of the Act. On scrutiny of the claim, it was noticed that the taxpayer had taken credit of ₹ 2.89 crore on certain input services which were not accounted for within the time limit specified. The taxpayer had not received any extension of time limit from the jurisdictional Commissioner to avail the credit on these tax paying documents. Hence, the credit claimed on the documents which were not accounted for within the specified time limit was contrary to the provisions resulting in irregular claim amounting to ₹ 2.89 crore.

When this was pointed out (August 2021), the Ministry, while accepting the observation, stated (February 2022) that a show cause notice had been issued.

¹⁶³ The Commissioner has power to condone the delay in accounting the tax paid documents beyond 30 days from the appointed date, for a further period not exceeding 30 days on sufficient cause shown.

(ii) Irregular credit claimed on capital goods

Section 140(5) of the Act provides for the transition of eligible duties and taxes in respect of inputs or input services received on or after the appointed day. Hence, the provision does not envisage transition of Cenvat credit on capital goods received on or after the appointed day.

In 40 cases, Audit noticed that the taxpayers had transitioned Cenvat credit of duty paid on capital goods amounting to ₹ 7.06 crore under this category.

When this was pointed out, the Ministry/Department accepted the audit observations in 13 cases with irregular amount of ₹ 2.20 crore, and ₹ 0.60 crore was recovered in four cases. The top five irregularities noticed under this category amounted to ₹ 4.40 crore. Two illustrative cases are featured below.

a) A taxpayer coming under Madurai Central Tax Commissionerate had claimed transitional credit of ₹ 4.54 crore under section 140(5) of CGST Act on inputs and input services received on or after the appointed date. On verification of the claim under Table 7(b) of Tran 1 return, it was noticed that the taxpayer had claimed credit on rolling resistance testing machine, mixer feeding system and parts of the machines used in the manufacture of tyres which come under capital goods whereas section 140(5) of CGST Act provides for transition of duty or tax paid in respect of inputs or input services only. Therefore, the credit claimed of ₹ 1.64 crore on these goods was irregular.

When this was pointed out (April 2021), the Ministry stated (February 2022) that the matter was referred to the Audit Circle which had verified the transitional credit claim of the taxpayer and final reply would be furnished on receipt of their report.

b) A taxpayer coming under the jurisdiction of Mangaluru Central Tax Commissionerate had claimed transitional credit of ₹ 1.27 crore under section 140(5) of the Act on inputs and input services received on or after the appointed date. Audit noticed that the taxpayer had claimed Cenvat credit of duty paid on paper making machines, transformers, other machines and parts of machines which the taxpayer had declared as capital goods. As the provisions do not provide for transition of duty paid in respect of capital goods, the transitional Cenvat credit claimed in respect of these goods amounting to ₹ 1.05 crore was irregular.

When this was pointed out (March 2021), the Ministry stated (February 2022) that DRC-01A had been issued to the taxpayer and SCN will be issued within due date if tax dues are not paid by the taxpayer.

(iii) Ineligible or excess credit claimed

Section 140 (5) of the Act, provides for transition of eligible duties or taxes paid on inputs or input services, which are received by the taxpayer on or after the appointed day, but the eligibility is determined by the usage of such supplies.

In 108 claims, Audit noticed that the taxpayers had claimed Cenvat credit on goods or services ineligible for transition. These include the Cenvat credit claimed on documents that are time barred; Cenvat credit on goods or services *ab initio* ineligible under Cenvat credit rules; supplies not used in furtherance of business etc. The transitional credit involved in these cases amounted to ₹ 13.77 crore.

When this was pointed out, the Ministry/Department accepted the audit observation in 41 cases with irregular amount of ₹ 4.19 crore, and ₹ 0.76 crore was recovered in 10 cases. The top five irregularities noticed in this category amounted to ₹ 2.72 crore. Two illustrative cases are featured below.

a) Credit under Section 140 (5) of CGST Act is permitted in respect of eligible duties and taxes paid under the existing law. A taxpayer coming under Agartala Central Tax jurisdiction had claimed transitional credit of ₹ 0.93 crore in respect of goods received on or after the appointed date. During verification of the claim, Audit noticed that the taxpayer had claimed credit on the basis of documents which did not contain duty paid details, indicating the taxpayer had not borne the incidence of duty. Hence, the credit claimed by the taxpayer amounting to ₹ 0.93 crore was ineligible for transition.

When this was pointed out (August 2021), the Department accepted the audit observation and issued a show cause notice demanding the ineligible credit claimed.

b) As per Rule 4(1) of Cenvat Credit Rules, 2004, the Cenvat credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or the in the premises of the provider of output service, provided that the manufacturer or the provider of output service shall not take Cenvat credit after one year of the date of issue of any of the documents specified in Sub-Rule (1) of Rule 9.

A taxpayer coming under Hyderabad Central Tax jurisdiction had claimed input tax credit of ₹ 1.17 crore in respect of goods received on or after the appointed date under Section 140(5) of CGST Act. However, during verification of the claim it was noticed that the taxpayer had claimed credit in respect of duty paid documents that were time barred for claiming credit as per Cenvat credit rules. Further, the goods were cleared earlier than one year from the appointed date, which does not satisfy the condition that the goods were received on or after the appointed date. Hence, the credit claimed amounting to ₹ 0.36 crore on these invoices was irregular.

When this was pointed out (March 2021), the Ministry while admitting the observation intimated (February 2022) that a show cause notice was being issued.

6.9.2.6 Credit in respect of registered persons with centralized registration under the existing law (Table 8 of Tran 1)

As per Section 140(8) of CGST Act 2017, a registered person having centralised registration under the existing law who has obtained a registration under GST Act shall be allowed to take, in his ECL, credit of the amount of Cenvat credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed. The credit claimed under the sub section is eligible for transfer to any of the registered persons having the same Permanent Account Number (PAN) for which the centralized registration was obtained under the existing law.

Credit under this category was to be claimed for transfer under Table 8 of Tran 1 return. A total of 974¹⁶⁴ taxpayers had claimed and transferred transitional credit of ₹ 16,284.83 crore under Section 140(8) of the Act. The top 20 records under this category accounted for 65 *per cent* of the transitional credit claimed and distributed. Audit selected 284 claims under this category involving transitional credit of ₹ 10,435.49 crore and audited 254 cases involving ₹ 10,032.55 crore.

Audit noticed irregularities in seven claims, either due to irregular credit transfer or excess credit claimed amounting to ₹ 20.97 crore.

The top five irregularities noticed under this category amounted to ₹ 20.47 crore. Two illustrative cases are featured below.

¹⁶⁴ Pan-India transitional credit data extracted from GSTN

(i) Irregular credit transfer

The credits under Section 140(8) are eligible for transfer to any of the registered persons having the same Permanent Account Number (PAN) for which the centralized registration was obtained under the existing law. Audit noticed in five cases, the taxpayers had transferred credit to other registered persons who were not part of the centralized registration obtained under the existing law.

A taxpayer coming under Hyderabad Central Tax Commissionerate jurisdiction had transitioned closing balance of Cenvat credit of ₹ 20.79 crore into GST from his legacy service tax returns filed for the month of June 2017. The taxpayer had centralised registration under the existing service tax provisions, covering two of his registered premises at Hyderabad and Chennai. However, the taxpayer, from the claim furnished under Table 8 of Tran 1 return, had transferred ₹ 11.18 crore to his other registered premises which were not covered under the centralised registration under the existing law. This was irregular as the credit transfer is permissible only to the registered persons having the same PAN for which the centralized registration was obtained under the existing law.

When this was pointed out (August 2021), the Ministry stated (February 2022) that, with the introduction of GST, the Cenvat credit accumulated with the erstwhile centralized registrants was allowed to transition to all its constituent entities, whose activities were hitherto monitored and taxes were paid centrally. Thus, the provisions were designed to allow them to distribute the accumulated credit across these constituents irrespective of the fact that they were part of the erstwhile centralized registration.

Reply of the Ministry is not tenable as the units which were not part of the erstwhile centralized units were not part of the erstwhile value added tax chain, and hence were not eligible for credit accumulated under legacy rules. Further, section 140(8) of the Act specifically mentions that the credit claimed by the centralized units is eligible for transfer only to the registered persons for which the centralized registration was obtained under the existing law.

(ii) Excess credit claimed

The transition of credit under Section 140(8) is subject to the condition that the registered person had furnished his return for the period ending with the

day immediately preceding the appointed day within three months of the appointed day, and the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier. Further, the credit shall be admissible as input tax credit under GST Act.

A taxpayer who is centrally registered provider of taxable services under the existing law falling within Bengaluru East Central Tax jurisdiction had claimed the transitional credit of Cenvat credit from the legacy returns under section 140(8) of the Act. The taxpayer had carried forward Cenvat credit into his ECL and distributed the ITC among its other units having the same PAN number. During verification of the claim, it was noticed that the taxpayer had revised the legacy return for the period ending with the day immediately preceding the appointed date. The original return with the closing balance of Cenvat credit amounting to ₹ 112.38 crore was filed on 14 August 2017 and the revised return with closing balance of Cenvat credit ₹ 118.99 crore was filed on 28 September 2017, within the stipulated 90 days from the appointed date. However, it was observed that the ECL of the taxpayer was credited with the amount carried over from the revised return, which had higher Cenvat credit amount. This was in contravention to the rule provisions which stipulated that revised amount is permissible only when the credit had been reduced from that claimed earlier. The deviation from the rules provisions had resulted in excess credit of ₹ 6.61 crore.

When this was pointed out (October 2021) the Ministry, while accepting the audit observation, stated (February 2022) that a show cause notice was being issued.

6.9.2.7 Credit in respect of tax paid on supply both under Value Added Tax Act and under Finance Act, 1994 (Table 11 of Tran 1)

As per Section 142(11)(c) of the CGST Act, where tax was paid on any supply both under the Value Added Tax Act (VAT) and under Chapter V of the Finance Act, 1994 (Service tax) on which tax shall be leviable under this Act, the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day. Further, Rule 118 of CGST Rules, specifies that the registered person to whom the provisions of 142(11) of the Act applies shall submit a declaration in Tran 1 furnishing the proportion of supply on which VAT or Service tax has been

paid before the appointed day but the supply is made after the appointed day, and the input tax credit admissible thereon.

Transitional credit in such instances was to be claimed in Table 11 of Tran 1. A total of 3,034 taxpayers had claimed transitional credit of service tax paid under the provisions of Finance Act 1994, amounting to ₹ 968.89 crore for the supplies made after the appointed date under Section 142(11)(c) of the Act. The top 20 claims under this category accounted for 51 *per cent* of the total transitional credit claimed under the table. Audit examined 373 claims under this category involving transitional credit of ₹ 465.67 crore, which included 12 claims out of the top 20 claims.

Audit noticed irregularities in 23 claims involving transitional credit of ₹ 25.83 crore, which included three claims from the top 20 claims. Audit noticed irregular credit claimed on supplies not liable for tax under GST; supplies completed prior to the appointed date; credit claimed without payment of service tax and credit taken twice on same supplies.

Significant findings are illustrated in the following paragraphs.

(i) Irregular Credit on Service Tax paid on advances

Credit under Section 142 11(c) is permissible on the supplies where tax was paid under both VAT and Service tax rules, on which tax shall also be leviable under this Act.

A taxpayer coming under Secunderabad Central Tax Commissionerate had claimed transitional credit of ₹ 3.33 crore under Table 11 of Tran 1 return. The credit claimed was in respect of service tax paid on mobilisation advances against which the supplies were made after the appointed date. However, the Authority of Advance Ruling¹⁶⁵ vide order No.03/ARA/2020 dated 31st March 2020 had ruled that the taxpayer was not liable to pay GST on the mobilisation advances transitioned into GST regime. Thus, the taxpayer would not pay GST on the supply made after the appointed date against the mobilisation advances transitioned into GST. However, we noticed that the taxpayer had claimed transitional credit on the service tax paid on mobilisation advances that remained unadjusted as on the appointed date, which is irregular as the

¹⁶⁵ Authority of Advance Ruling is the authority constituted under the provisions of Section 96 of the CGST Act, 2017 empowered to issue rulings on the clarifications sought by the taxpayers.

tax is not liable on the supply to that extent. The irregular credit claimed by the taxpayer in this regard amounted to ₹ 3.33 crore.

When this was pointed out (September 2021), the Ministry stated (February 2022) that the reliance placed on the Advance ruling is misplaced as the said decision pertains to GST, whereas the instant case relates to availing transitional credit on service tax paid on advances received prior to the appointed date, for which supply was made after the appointed date on payment of GST.

Department, therefore, needs to specifically confirm that GST was paid by the taxpayer on the supply to the extent of consideration received as mobilisation advance.

(ii) Irregular credit claimed on supplies made prior to the appointed date

Credit under Section 142 11(c) is permissible on service tax paid on advances to the extent of supplies made after the appointed date. However, Audit noticed instances wherein the taxpayers had claimed transitional credit of service tax paid on advances received prior to the appointed date for which supply was also completed prior to the appointed date.

In 12 cases, Audit noticed that the taxpayers had claimed ineligible credit amounting to ₹ 11.67 crore. The irregularities were in the nature of credit claimed on the supplies made prior to the appointed date; and ineligible credit claimed under the section.

When this was pointed out, the Ministry/Department accepted the audit observations in eight cases with irregular amount of ₹ 7.95 crore, and ₹ 0.58 crore was recovered in one case. The top five irregularities noticed in this category amounted to ₹ 10.76 crore. Two illustrative cases are featured below.

a) A taxpayer coming under the jurisdiction of Mumbai South Central Tax Commissionerate had claimed transitional credit under Table 11 amounting to ₹ 45.55 crore. On verification, it was noticed that the credit claimed by the taxpayer included Cenvat credit on the input services on which tax was paid under reverse charge basis. As the supplies in this case were made prior to the appointed date for which payment was also made under the existing rules,

credit was irregular. The irregular credit transitioned in this case amounts to ₹ 5.82 crore.

When this was pointed out (February 2021), the Ministry stated (February 2022) that DRC-01A had been issued to the taxpayer and a show cause notice was being prepared.

b) A taxpayer engaged in works contract supply coming under the jurisdiction of Bengaluru East Central Tax Commissionerate had claimed transitional credit of ₹4.07 core, being service tax paid on advances received prior to the appointed date under Section 142(11)(c) of the CGST Act. Verification of the claim revealed that in many instances the credit was claimed in respect of the projects for which supplies had already been completed to the extent of advances received, indicating completion of provision of services to that extent. However, the taxpayer claimed credit stating that the supply was to be made after the appointed date, which is irregular. The irregular credit claimed in this case amounted to ₹ 2.47 crore.

When this was pointed out (October 2021), the Ministry stated (February 2022) that the observation was not admitted but no reasons were recorded.

The reply of the Ministry is not tenable as it did not substantively address the issue pointed out.

(iii) Credit claimed without payment of Service tax

As per section 142(11)(c) of the CGST Act, the credit is permissible on the value added tax or service tax paid under the existing law.

In 10 claims, Audit noticed that the taxpayers had taken ineligible credit amounting to ₹ 10.83 crore under the section without payment of service tax

When this was pointed out, the Ministry/Department accepted the audit observations in six cases with irregular amount of ₹ 5.05 crore, and ₹ 1.24 crore was recovered in two cases. The top five irregularities noticed in this category amounted to ₹ 10.23 crore. An illustrative case is featured below.

A taxpayer under Mumbai East Central Tax Commissionerate, engaged in supply of construction services, had claimed transitional credit of service tax under Section 142(11)(c) of CGST Act. The credit was claimed in respect of service tax of ₹ 2.17 crore paid on advances received during the month of June

2017. However, verification of service tax returns (ST3) of the taxpayer for the relevant period revealed that the taxpayer had not discharged any service tax liability during the period in respect of the advances received. Hence, the credit claimed in this case was without discharging service tax liability under the provisions of chapter V of the Finance Act, 1994. The irregular credit claimed amounted to ₹ 2.17 crore.

When this was pointed out (September 2021), the Ministry, while accepting the audit observation, intimated (February 2022) that ITC of ₹ 1.23 crore had been recovered. Further, action was being taken to recover the balance ITC of ₹ 0.41 crore while the remaining ITC of ₹ 0.53 crore pertained to SGST credit taken against VAT payment.

6.9.2.8 Non-payment of interest on ineligible transitional credit

Rule 117(3) of CGST Rules, 2017 specifies that the amount of credit specified in the application in Form GST Tran 1 shall be credited to the ECL of the applicant maintained in Form GST PMT 2 on the common portal. As per Rule 121, the recovery of amount credited under sub-Rule (3) of Rule 117 may be initiated under Section 73 or, as the case may be, Section 74 of the Act. The proceedings under Section 73 or 74 shall require the taxpayer to pay the credit along with interest payable thereon under Section 50 of the Act.

Further, Section 50(1) of the Act stipulates that every person liable to pay tax in accordance with the provisions of this Act or rules made thereunder but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay interest at 18 *per cent*.

Audit noticed that in 60 cases, the irregular transitional credit claimed by the taxpayers amounting to ₹ 95.20 crore was recovered. However, the interest on irregular credit claimed amounting to ₹ 2.92 crore was not recovered.

When this was pointed out, the Ministry/Department accepted the audit observations in 29 cases with interest amount of ₹ 1.30 crore, and ₹ 0.27 crore was recovered in 16 cases. The top five irregularities noticed in this category amounted to ₹ 1.28 crore. An illustrative case is featured below.

A taxpayer coming under the jurisdiction of Jamshedpur Central Tax Commissionerate had claimed transitional credit amounting to ₹ 3.90 crore, which was credited to the ECL on 19th December 2017. Out of this, the taxpayer had paid back irregular transitional credit of ₹ 1.28 crore on 31st January 2020. Though the Department had directed the taxpayer to pay the interest on the irregular credit claimed, the taxpayer contested the interest liability and the same was not recovered. However, Audit noticed that the taxpayer had utilized the irregular credit of ₹ 1.28 crore towards CGST payment during the month of December 2017 itself. Hence, the irregular credit claimed had resulted in short payment of duty attracting interest liability under Section 50(1) of the Act. The non-payment of interest worked out to ₹ 0.49 crore.

When this was pointed out (September 2021), the Ministry stated (February 2022) that the show cause notice would be issued to protect the revenue.

6.9.2.9 Conclusion and recommendations

Out of 7,560 cases that were examined in detail, Audit observed 1,686 compliance deviations in 1,438 cases amounting to ₹ 977.54 crore, constituting a deviation rate of 22 *per cent*. Irregularities noticed were relatively higher in following categories viz; ineligible credit of duty paid goods in stock without documents, irregular claim with respect to unavailed credit on capital goods, ineligible credit on inputs or input services in transit and irregular claim on closing balances. Out of 1,438 cases, where Audit noticed irregularities, 1,132 cases constituting 79 *per cent*, had already been verified by the Department. The irregularities noticed in these 1,132 cases amounted to ₹ 735.69 crore. Considering the extent of Department's verification, the deviation rate suggested that verification process carried out by the Department suffered from certain inadequacies.

Further, data analysis disclosed that transitional credit claims through Table 7aB of Tran 1 were leading to excess credits in many cases as ECL was getting incorrectly populated from both Tran 1 and Tran 2. Pan-India data analysis also indicated a significant number of cases where transitional credit claims in Table 5a had exceeded the closing balance of legacy return.

In view of the above compliance findings, Audit recommends the following:

The Department may:

1. Ensure verification of the high risk claims reflected in Table 7(a)B of Tran 1 (Credit on duty paid stock without invoices) and the cases where the transitional credit claim under Table 5(a) (Closing credit balance of legacy returns) was in excess of the closing balance of legacy return.
2. Initiate remedial measures for the compliance deviations pointed out during this audit before the claims become time barred.



(SATISH SETHI)

New Delhi

Dated: 31 March 2022 Principal Director (Goods and Services Tax-II)

Countersigned



(GIRISH CHANDRA MURMU)

New Delhi

Dated: 31 March 2022 Comptroller and Auditor General of India

APPENDICES

**Appendix-I: Audit findings noticed during the period prior to
2020-21**

(Refer Para No. 2.3)

Amount in ₹. Crore

DAP NO.	State	Commissionerate	Amount Objected	Amount Accepted	Amount Recovered	SGST Component (For GST observations)	Ministry's Reply	Audit Comments
Service Tax								
Failure of Department in detecting irregular availing of CENVAT Credit								
1	Karnataka	Bengaluru North	50.14	0.04	0.04	NA	Not Received	NA
Failure of department in detecting non/short payment of Service Tax								
2	Karnataka	Bengaluru East	3.9	3.9		NA	Accepted	Nil
3	Maharashtra	Mumbai South	19.8	-	-	NA	Not accepted	NA
Sub-total			73.84	3.94	0.04	-	-	-
Goods and Services Tax								
Incorrect carry forward of CENVAT credit of ST/Tax/cess in TRAN-1								
1	Maharashtra	Belapur	5.16	-	-	No SGST component as this is related to CENVAT credit carried forward under section 140 of CGST Act	Not Received	NA
5	Madhya Pradesh	Indore	0.32	0.32	0.23	No SGST component as this is related to CENVAT credit carried forward under section 140 of CGST Act	Accepted	Nil
6	Madhya Pradesh	Ujjain	0.12	-	-	No SGST component as this is related to CENVAT credit carried forward under section 140 of CGST Act	Not Received	NA
8	Madhya Pradesh	Jabalpur	1.2	1.2	0.49	0.36	Not Received	NA
23	Haryana	Gurgaon	0.15	-	-	No SGST component as this is related to CENVAT credit carried forward under section 140 of CGST Act	Accepted	NA

Report No. 5 of 2022 (Indirect Taxes – Goods and Services Tax)

DAP NO.	State	Commissionerate	Amount Objected	Amount Accepted	Amount Recovered	SGST Component (For GST observations)	Ministry's Reply	Audit Comments
Non-payment of GST								
2	Maharashtra	Belapur	1.85	1.85		0.67	Accepted	Nil
4	Delhi	Delhi West	0.48	0.34	0.34	0.24	Not Received	NA
Incorrect availing of ITC credit of GST								
3	Gujarat	Ahmedabad South	0.42	0.42	0.42	0.21	Accepted	Nil
Non-payment of Interest on delayed payment of GST								
7	Madhya Pradesh	Jabalpur	0.16	0.16	0.16	0.08	Accepted	Nil
9	Madhya Pradesh	Jabalpur	0.18	0.18	0.18	0.09	Accepted	Nil
1	Jharkhand	Jamshedpur	0.19	0.19	-	0.095	Accepted	Nil
Irregular sanction of Refund Claim under GST								
15	Goa	Goa	4.29	-	-	0.11	Not accepted. Ministry stated (January 2022) that SCN for wrong ITC had been issued to the assessee which was confirmed along with interest. Further, it was not possible to adjust the demand while sanctioning refund due to time constraint for issuing notice in RFD-08, allowing taxpayer to reply the notice and passing the order considering taxpayer's reply and liability of interest in case of delayed refund	Reply is not acceptable as a period of 60 days has been provided to verify the refund claim which also include issuing of notice under RFD 08 and finalizing refund considering taxpayer's reply. Further, as per section 54(10), in case of any payment of tax, interest, penalty by the taxpayer, department may withheld the amount or refund the partial amount by deducting the amount payable by the taxpayer.
Sub-total			14.52	4.66	1.82	1.75	-	-

DAP NO.	State	Commissionerate	Amount Objected	Amount Accepted	Amount Recovered	SGST Component (For GST observations)	Ministry's Reply	Audit Comments
Incorrect mapping of tax payers in All in One (AIO) system data base								
16	Goa	Goa	NMV ¹⁶⁶	NMV	NMV	NA	Accepted	NA
Non-synchronization of GST portal and All in One data for 'filing of returns'								
24	Goa	Goa	NMV	NMV	NMV	NA	Not Received	NA
Total			88.36	8.6	1.86	1.745	-	-

¹⁶⁶ No money value

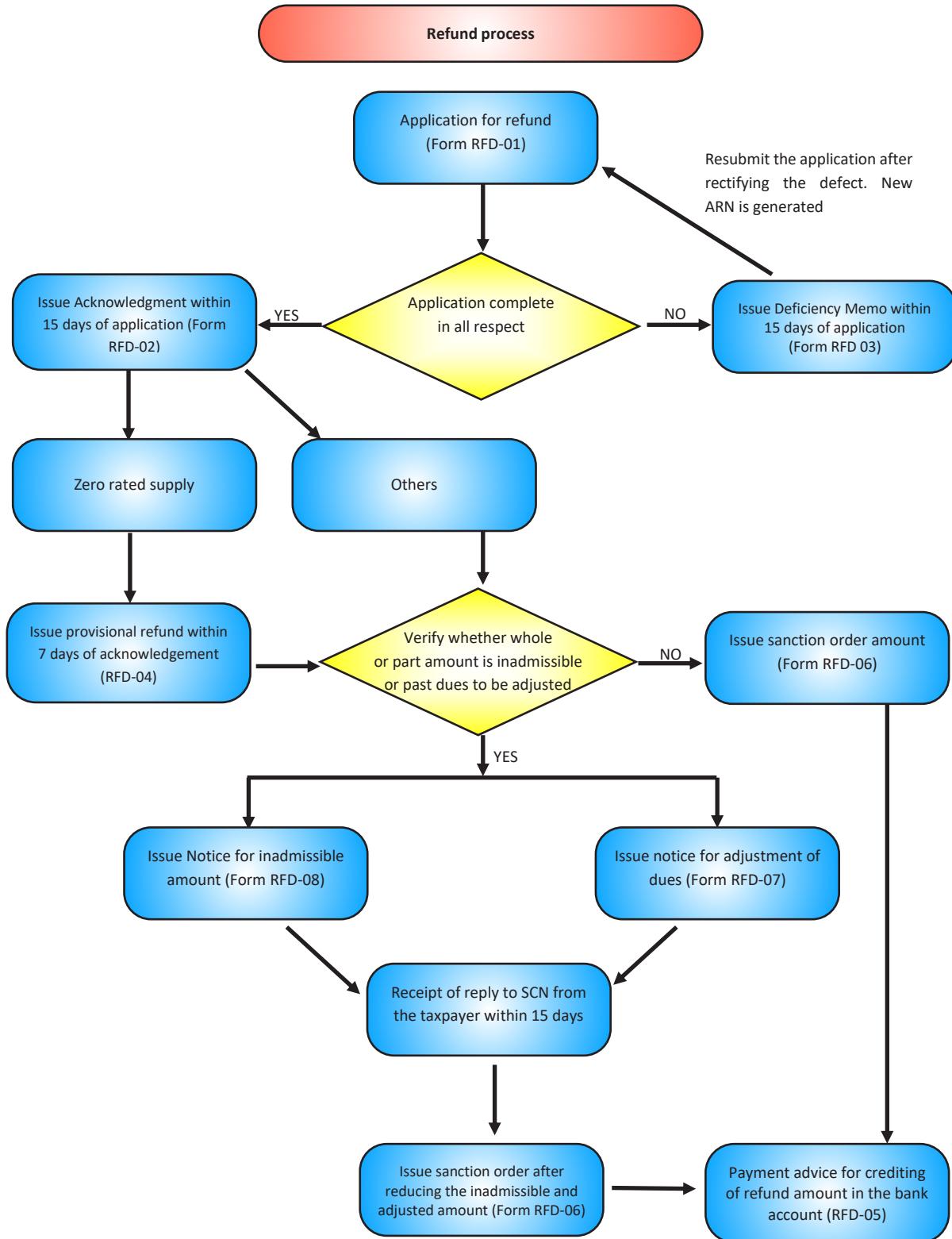
**Appendix-II: Achievement of the recovery targets by the Field Formations
(Refer Para No. 3.6.5)**

Amount in ₹. Crore

Sl. No.	Name of Zone	Target	Arrears realized	Target achieved (Percent)	Shortfall in target achieved (Percent)
2019-20					
1	MEERUT CE & GST	458	191.73	41.86	58.14
2	THIRUVANANTHAPURAM CE & GST	235	74.23	31.59	68.41
3	BHOPAL CE & GST	862	225.33	26.14	73.86
4	RANCHI CE & GST	575	90.45	15.73	84.27
5	KOLKATA CE & GST	1,201	84.50	7.04	92.96
2020-21					
1	MEERUT CE & GST	1,592	693.81	43.58	56.42
2	VADODARA CE & GST	294	121.89	41.46	58.54
3	GUWAHATI CE & GST	51	21.14	41.44	58.56
4	CHANDIGARH CE & GST	267	97.48	36.51	63.49
5	BHOPAL CE & GST	623	150.80	24.20	75.80
6	KOLKATA CE & GST	1,065	153.59	14.42	85.58

Appendix-III: Payment of refunds

(Refer Para No. 5.1.1.4)



**Appendix IV: Impact on State Goods and Services Tax
(Refer Para 5.9)**

(Amount in ₹ lakh)

State/UT Para No.	No. of cases	SGST amount involved	SGST amount accepted	SGST amount recovered
Andhra Pradesh	13	86.44	31.22	1.95
5.7.3.1	3	1.93	0.73	0.73
5.7.3.2	1	0.01	0.01	0.00
5.7.3.3	2	25.88	23.05	0.00
5.7.3.4	1	0.07	0.07	0.07
5.8.1	1	1.26	0.00	0.00
5.8.5	5	57.30	7.36	1.15
Arunachal Pradesh	1	0.01	0.01	0.00
5.8.5	1	0.01	0.01	0.00
Assam	7	0.05	0.04	0.00
5.7.1.2	7	0.05	0.04	0.00
Bihar	5	0.04	0.00	0.00
5.7.1.2	5	0.04	0.00	0.00
Chhattisgarh	1	0.00	0.00	0.00
5.7.1.2	1	0.00	0.00	0.00
Delhi	51	36.60	16.71	3.45
5.7.1.2	40	2.38	0.03	0.00
5.7.2	4	13.69	13.61	0.49
5.7.3.2	2	5.26	0.11	0.00
5.7.3.6	3	3.80	2.96	2.96
5.8.5	2	11.47	0.00	0.00
Gujarat	38	818.47	75.83	37.84
5.7.1.2	12	6.58	0.00	0.00
5.7.2	7	142.58	50.10	37.84
5.7.3.2	10	18.72	13.28	0.00
5.7.3.7	1	12.45	12.45	0.00
5.7.5.3	2	167.92	0.00	0.00
5.7.5.5	1	250.00	0.00	0.00
5.8.1	1	7.05	0.00	0.00
5.8.3	1	22.56	0.00	0.00
5.8.5	3	190.61	0.00	0.00
Haryana	47	376.60	2.15	1.28
5.6.1.1 to 5.6.1.3	1	3.25	0.00	0.00
5.7.1.2	22	0.94	0.00	0.00
5.7.2	7	308.97	0.00	0.00
5.7.3.1	1	12.54	0.00	0.00
5.7.3.2	3	14.49	0.00	0.00
5.7.3.4	12	26.49	2.15	1.28
5.8.1	1	9.92	0.00	0.00
Himachal Pradesh	1	0.03	0.00	0.00
5.7.1.2	1	0.03	0.00	0.00

State/UT Para No.	No. of cases	SGST amount involved	SGST amount accepted	SGST amount recovered
Jammu	1	0.00	0.00	0.00
5.7.1.2	1	0.00	0.00	0.00
Karnataka	48	343.53	4.22	0.45
5.7.2	3	10.20	0.07	0.07
5.7.3.1	22	78.65	0.39	0.38
5.7.3.3	6	9.91	2.78	0.00
5.7.3.6	8	7.74	0.98	0.00
5.7.3.7	1	0.89	0.00	0.00
5.8.1	4	157.47	0.00	0.00
5.8.2	4	78.66	0.00	0.00
KERALA	142	136.60	23.89	1.46
5.7.1.2	83	6.35	3.79	0.00
5.7.3.1	1	0.69	0.69	0.00
5.7.3.2	1	2.73	0.00	0.00
5.7.3.4	40	51.46	0.72	1.46
5.7.3.6	6	7.91	1.55	0.00
5.7.5.1	5	28.75	0.00	0.00
5.8.1	4	17.95	17.14	0.00
5.8.5	2	20.76	0.00	0.00
Madhya Pradesh	22	966.88	950.43	0.00
5.7.1.2	9	0.38	0.00	0.00
5.7.2	4	11.61	0.00	0.00
5.7.3.2	3	868.90	868.90	0.00
5.7.3.3	2	1.74	1.74	0.00
5.8.1	1	1.57	0.00	0.00
5.8.2	2	79.79	79.79	0.00
5.8.5	1	2.89	0.00	0.00
Maharashtra	73	552.80	0.94	0.00
5.6.2	6	310.33	0.00	0.00
5.7.1.2	54	5.85	0.00	0.00
5.7.3.1	3	8.10	0.00	0.00
5.7.3.3	1	0.94	0.94	0.00
5.7.3.5	1	0.65	0.00	0.00
5.7.3.6	1	0.54	0.00	0.00
5.7.4.2	2	206.63	0.00	0.00
5.8.2	5	19.76	0.00	0.00
Mizoram	1	0.02	0.00	0.00
5.7.1.2	1	0.02	0.00	0.00
Nagaland	1	0.00	0.00	0.00
5.7.1.2	1	0.00	0.00	0.00
Odisha	2	0.03	0.00	0.00
5.7.1.2	2	0.03	0.00	0.00
Punjab	49	122.20	8.38	1.39
5.7.1.2	24	1.50	0.00	0.00

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State/UT Para No.	No. of cases	SGST amount involved	SGST amount accepted	SGST amount recovered
5.7.2	4	37.15	5.44	0.00
5.7.3.2	13	60.68	1.55	0.00
5.7.3.4	6	21.76	0.29	0.29
5.8.1	1	0.57	0.57	0.57
5.8.5	1	0.53	0.53	0.53
Rajasthan	19	72.35	12.21	2.71
5.6.1.4	1	2.71	2.71	2.71
5.7.1.2	2	0.00	0.00	0.00
5.7.2	2	0.72	0.00	0.00
5.7.3.2	4	7.67	6.34	0.00
5.7.3.3	1	1.99	1.99	0.00
5.7.3.4	4	8.10	0.00	0.00
5.8.1	2	1.31	1.17	0.00
5.8.5	3	49.85	0.00	0.00
Tamil Nadu	116	901.45	0.00	0.00
5.6.2	18	749.61	0.00	0.00
5.7.1.2	71	1.10	0.00	0.00
5.7.3.1	3	12.06	0.00	0.00
5.7.3.2	1	2.45	0.00	0.00
5.7.3.4	21	103.25	0.00	0.00
5.7.3.5	1	31.40	0.00	0.00
5.8.5	1	1.58	0.00	0.00
Telangana	23	432.91	400.54	16.44
5.6.2	2	378.23	378.23	0.00
5.7.1.2	4	2.41	0.00	0.00
5.7.2	3	5.10	5.10	5.10
5.7.3.1	5	6.29	6.29	6.29
5.7.3.2	5	3.22	3.22	0.00
5.7.3.3	1	2.66	2.66	0.00
5.8.2	1	5.05	5.05	5.05
5.8.5	2	29.96	0.00	0.00
Uttar Pradesh	79	146.89	3.25	0.00
5.6.1.1 to 5.6.1.3	1	0.32	0.32	0.00
5.7.1.2	38	1.78	0.00	0.00
5.7.2	16	42.65	0.00	0.00
5.7.3.1	4	4.70	1.30	0.00
5.7.3.2	1	0.04	0.00	0.00
5.7.3.3	4	7.64	0.00	0.00
5.7.3.7	3	47.31	0.00	0.00
5.8.1	4	12.57	1.63	0.00
5.8.2	2	12.65	0.00	0.00
5.8.5	6	17.23	0.00	0.00
UttraKhand	1	13.96	0.00	0.00
5.7.2	1	13.96	0.00	0.00

State/UT Para No.	No. of cases	SGST amount involved	SGST amount accepted	SGST amount recovered
WEST BENGAL	54	85.44	83.86	47.04
5.7.1.2	34	0.56	0.00	0.00
5.7.2	4	3.41	3.41	0.03
5.7.3.2	7	1.53	0.51	0.00
5.7.3.4	1	0.39	0.39	0.00
5.7.3.6	1	1.14	1.14	1.14
5.8.1	5	78.11	78.11	45.57
5.8.5	2	0.30	0.30	0.30
Grand Total	795	5093.31	1613.68	114.01

Glossary

ACES	Automation of Central Excise and Service Tax
ADVAIT	Advanced Analytics in Indirect Taxation
AIO	All-in-one Systems
ATT	Adjusted Total Turnover
BIFA	Business Intelligence and Fraud Analytics
BIFR	Board for Industrial and Financial Reconstruction
BRC	Bank Realisation Certificate
BTP	Bio-Technology Park
CA	Chartered Accountant
CAROTAR	Customs (Administration of Rules of Origin under Trade Agreements) Rules
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise and Customs
CBIC	Central Board of Indirect Taxes and Customs
CENVAT	Central Value Added Tax
CESTAT	Customs Excise and Service Tax Appellate Tribunal
CGST	Central Goods and Services Tax
CHA	Customs House Agents
CSO	Central Statistics Office
CVD	Countervailing duty
DDM	Directorate of Data Management
DDO	Drawing and Disbursing Officer
DGARM	Directorate General of Analytics and Risk Management

DGCEI	Directorate General of Central Excise Intelligence
DGFT	Director General of Foreign Trade
DGGI	Directorate General of Goods and Services Tax Intelligence
DGPM-TAR	Directorate General of Performance Management -Tax Arrears Recovery
DoR	Department of Revenue
DRI	Directorate of Revenue Intelligence
ECL	Electronic Credit Ledger
EGM	Export General Manifest
EHTP	Electronics Hardware Technology Park
EOU	Export Oriented Unit
EXPWOP	Export without payment of tax
FIRC	Foreign Inward Remittance Certificate
FTA	Free Trade Agreements
GST	Goods and Services Tax
GSTAM	Goods and Services Tax Audit Manual
GSTIN	Goods and Services Tax Identification Number
GSTN	Goods and Services Tax Network
GSTR	Goods and Services Tax Return
HSN	Harmonised system of nomenclature
ICAI	Institute of Chartered Accountants of India
IFF	Invoice Furnishing Facility
IGST	Integrated Goods and Services Tax
IIP	Index of Industrial Production

INVITC	Inverted Duty Structure
ISD	Input Service Distributor
ITC	Input Tax Credit
ITR	Income Tax Return
LDPE	Low Density Polyethylene
MEIS	Merchandise Exports from India Scheme
MIS	Management Information System
MoF	Ministry of Finance
MOU	Memorandum of Understanding
MPRs	Monthly Performance Reports
NACEN	National Academy of Customs, Excise & Narcotics
NACIN	National Academy of Customs, Indirect Taxes & Narcotics
NCLT	National Company Law Tribunal
OIA	Order-in-Appeal
OIOs	Orders-in-Original
PAN	Permanent Account Number
PAO	Pay and Accounts Officer
PFMS	Public Financial Management System
PIB	Press Information Bureau
PLA	Personal Ledger Account
QRMP	Quarterly return with monthly payment
RBI	Reserve Bank of India
RCM	Reverse Charge Mechanism
REAP	Returns Enhancement and Advance Project

RMS	Risk Management System
SAC	Service Accounting Codes
SAD	Special Additional Duty
SCN	Show Cause Notice
SEZWOP	Special Economic Zone without payment of tax
SGST	State Goods and Services Tax
SOP	Standard Operating Procedure
SSCA	Subject Specific Compliance Audit
STP	Software Technology Park
TDS	Tax Deducted at Source
UDIN	Unique Document Identification Number
UT	Union Territory
UTGST	Union Territory Goods and Services Tax
VAT	Value Added Tax
XOS	Export Outstanding Statement

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