

CHAPTER IV

COMPLIANCE AUDIT OF REVENUE SECTOR

Snapshot of chapter:

This chapter contains results of three Compliance Audits pertaining to Commercial Tax- GST Department under Revenue Sector.

The Subject Specific Compliance Audit (SSCA) on Transitional Credit of Goods and Services Tax (GST) was conducted to assess the adequacy and effectiveness of the departmental mechanism for verification of transitional credit claims earned for various taxes paid under the existing laws such as Value Added Tax (VAT credit) and to examine the validity and admissibility of transitional credit carried over by the assessee into the GST regime. Audit observed several deficiencies such as irregular availment of transitional credit claims; excess forward of VAT transitional credit; non-payment of interest on reversal of excess transitional credit claimed and the Department did not cross verify all the transitional credit cases with VAT details.

Subject Specific Compliance Audit of refund cases under Goods and Services Tax regime was aimed to assess the adequacy of Act, Rules, notifications, circulars etc.; the compliance to extant provisions by the tax authorities; the efficacy of the systems in place to ensure compliance by taxpayers and existence of effective internal control mechanism to check the performance of the departmental officials in disposing the refund applications to facilitate trade. Audit observed deficiencies such as (i) delay in issue of acknowledgement of refund claim, sanction of refund order and communication of refund orders to counterpart department and rejection of refund claims without following due procedure; (ii) cases of excess refund due to non-observance of Act/Rules and error in calculation and (iii) irregular grant of refund due to sanction of provisional refund in cases other than zero rated supply of goods and services etc.

The Compliance Audit of Commercial Tax Department was conducted to ascertain and evaluate whether the assessment under Value Added Tax, Central Sales Tax and Entry Tax was made as per the laid down procedure; applicable rates for tax exemptions/concessions granted by the assessing authority were supported by valid declaration forms, and the assessing authority exercised due diligence in preliminary scrutiny of the tax return filed. Audit observed that the Department applied incorrect rate of VAT and Entry tax due to misclassification of goods, and allowed concessional rate of tax under CST without statutory Forms for interstate sale, transit sale and stock transfer.

4.1 Subject Specific Compliance Audit on Transitional Credit of Goods and Services Tax

4.1.1 Introduction

Introduction of Goods and Services Tax (GST) is a significant reform in the field of indirect taxes in our country, which replaced multiple taxes levied and collected by the Centre and States. GST is a destination based tax on supply of goods or services or both, which is levied at multi-stages, wherein the taxes will move along with supply. The tax will accrue to the taxing authority which has the jurisdiction over the place of supply. Tax is levied simultaneously by the Centre and States on a common tax base. Central GST (CGST) and State GST (SGST) is levied on intra state supplies and 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 will avoid cascading effect of taxes and ensures uninterrupted flow of credit from the seller to buyer. To ensure the seamless flow of input tax from the existing laws to GST regime, a 'Transitional arrangements for input tax' was included in the GST Acts to provide for the entitlement and manner of claiming input tax in respect of appropriate taxes or duties paid under existing laws. Transitional credit provisions are important for both the Government and business. For business, the transitional credit provisions ensure transition of accumulated credits from the legacy returns, input tax in respect of raw materials, work in progress, finished goods held in stock as on the appointed day as well as credit in respect of capital goods into the GST regime. The provisions enable taxpayers to transfer such input credits only when they are used in the ordinary course of business or furtherance of business.

4.1.2 Tax administration

There are five divisions and 30 circles under the State Tax Department. The State Tax Department is administered at the Government level by the Principal Secretary. The Commissioner is the head of the State Tax Department and is assisted by one Special Commissioner, three Additional Commissioners, 12 Joint Commissioners, 26 Deputy Commissioners, 72 Assistant Commissioners, 121 State Tax Officers, 174 Inspectors of State Tax in performance of such function as may be assigned to them under the Chhattisgarh Goods and Services Tax (CGGST) Act, 2017. Against the above sanctioned post, 10 Joint Commissioners, 20 Deputy Commissioners, 54 Assistant Commissioners, 71 State Tax Officers, 115 Inspectors of State Tax are presently working in the Department, as of 4 October, 2021.

4.1.3 Transitional arrangements for input tax-Legal provisions

Section 140 of the CGGST Act, 2017 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 CGGST 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 Value Added Tax (VAT credit) can be carried forward to the GST regime as under:

- a) **Closing balance of the credit in the last returns:** The closing balance of the VAT credit available in the returns filed under existing law for the month immediately preceding the appointed day can be taken as credit in Electronic Credit Ledger.
- b) **Un-availed credit on capital goods:** The balance installment of un-availed credit on capital goods can be taken by filing the requisite declaration in GST Tran -1.
- c) **Credit on tax paid stock:** A registered taxable person, other than the manufacturer or service provider, may take the credit of the tax paid on goods held in stock based on the invoices.
- d) **Credit on tax paid stock when registered person does not possess the document evidencing payment of VAT:** For traders who do not have VAT invoices, there is a mechanism to allow credit to them on the tax paid stock.
- e) **Credit relating to exempted goods under the existing law which are now taxable:** Input Tax Credit of VAT in respect of input, semi-finished and finished goods stock attributable to exempted goods or services which are now taxable in GST.
- f) **Input/input services in transit:** The input or input services received on or after the appointed day but the duty or tax on the same was paid by the supplier under the existing law.
- g) **Tax paid under the existing law under composition scheme:** The taxpayers who had paid tax at fixed rate or fixed amount in lieu of the tax payable under existing law, now working under normal scheme under GST can claim credit on their input stock, semi-finished and finished stock on the appointed date.
- h) **Credit in respect of tax paid on any supply both under Value Added Tax Act and under Finance Act, 1994:** Transitional credit in respect of supplies which attracted both VAT and Service Tax under existing laws, for which tax was paid before the appointed date and supply of which is made after the appointed date.

Tax payers can claim the components of transitional credit, under the relevant sub-sections of Section 140 of the Act, in the appropriate tables mentioned below, in the two forms- Tran -1 and Tran -2.

Return	Table No.	Transitional Credit component
Tran-1	5(c)	State/UT Tax credit carried forward
Tran-1	6 (b)	Un-availed State/UT Tax credit
Tran-1	7(b)	Eligible duties and taxes/VAT/[ET] in respect of inputs
Tran-1	7(c)	Amount of VAT and Entry Tax paid on inputs supported by invoices
Tran-2	7(d)	Stock of goods not supported by invoices/documents evidencing payment of tax
Tran-1	10(a)	Goods held in stock on behalf of principal
Tran-1	11	Details of credit availed in terms of Section 142 (11) (c)

All registered taxpayers, except those who opt for payment of tax under the composition scheme (under section 10 of the Act), are eligible to claim transitional credit by filing Tran 1 returns within 90 days from the appointed day. The time limit for filing Tran 1 returns was extended initially till 27 December, 2017. However, many taxpayers could not file the return within the due date due to technical difficulties. Thus, sub-rule 1A was inserted under Rule 117 of CGGST Rules, 2017 vide Notification 48/2018 CT dated 10 September, 2018, to accommodate such taxpayers and the time limit was extended to 31 March 2019.

4.1.4 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 were adequate and effective; and
- ii. Whether the transitional credits carried over by the assessee into GST regime were valid and admissible.

4.1.5 Scope of Audit

The audit scope comprised review of transitional credit returns filed by the taxpayers under Section 140 of the CGGST Act, 2017 from the appointed date¹ to the end of March 2020. This involved examination of adequacy of rules specified for transitional credit under the Act, effectiveness of departmental verification process, follow up action taken on the deviations detected, process adopted for implementation of cross-jurisdictional functions regarding transitional credit and independent examination of selected transitional credit claims for compliance assurance.

4.1.6 Audit Methodology

The methodology adopted for audit of transitional credit claims involved data analysis of the selected samples, nature and extent of audit of underlying records to be conducted. The substantive audit involved the examination of the

¹ The date on which the provisions of this Act come into force.

records pertaining to transitional credit maintained in the field formations, process adopted for implementation of cross-jurisdictional functions regarding transitional credit, Tran return verification process adopted by the Department and follow up action taken on the deviations detected. It also involved an independent examination of selected transitional credit claims for compliance assurance. The verification of Tran returns was carried out at the Commissionerate and circle/jurisdictional offices.

4.1.7 Audit Criteria

The criteria, against which the audit objectives and sub-objectives are to be verified, comprises of the provisions of Section 140 of the CGGST Act, 2017 read with Rules 117 of the CGGST Rules, 2017 and Notification/Circulars issued by the Department and State Government from time to time.

4.1.8 Audit sample

There were a total of 365 sampled transitional cases out of 2,826 cases in 21 circles in the State which were selected for Compliance Audit. The circle wise details of transitional cases selected for Compliance Audit are shown in **Table 4.1.1.**

Table 4.1.1: Number of transitional cases selected for verification

Sl. No.	Name of the circle	Total no. of transitional cases in the Circle	No. of transitional cases selected for verification
1	Ambikapur	62	9
2	Bilaspur-1 to 3	354	45
3	Dhamtari	77	9
4	Durg-1 to 4	720	99
5	Raigarh-1 and 2	213	19
6	Raipur-1 to 9	1239	167
7	Rajnandgaon	161	17
Grand Total		2826	365

4.1.9 Audit findings

The audit findings are categorised into two broad areas as systemic and compliance issues, based on the objectives of audit. 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.

4.1.9.1 System issues

The system issues comprised a review of the provisions applicable for dual control, the verification mechanism envisaged by the Department in terms of extent of coverage against the targets, policy/procedural gaps in the verification mechanism and efficiency of the recovery process.

4.1.9.1 (i) Verification mechanism envisaged by the Department

Apart from the statutory requirements prescribed under both Legacy as well as GST laws, the Department had specified transitional credit verification as one of the key focus areas for the year 2018-19. Scrutiny of transitional credit data revealed that 3,335 taxpayers claimed transitional credit amounting to ₹ 285.13 crore as SGST. Out of 3,335 cases, the Department had identified only 222 (6.66 per cent) cases in all circles on the basis of mismatch of ITC with the last legacy return (1st quarterly return of 2017-18) for verification. The details of cases selected for verification by the Department are given in the **Table 4.1.2**.

Table 4.1.2: Number of transitional credit cases selected for verification by the Department

Claims of transitional credit by taxpayers	Total number of Tran-1 cases	Transitional credit to Electronic Credit Ledger (₹ in crore)	No. of cases selected for verification by the Department	Mismatch transitional credit with legacy return (₹ in crore)
Above ₹ 10 lakh	405	236.11	18	29.91
Between ₹ one to ₹ 10 lakh	2926	49.11	204	2.68
Zero claim	3117	(-) 0.09	0	0
Total	6448	285.13	222	32.59

(Source: Information furnished by Commercial tax-GST Department)

Deputy Commissioner, State Tax (GSTN), Chhattisgarh, Raipur informed DAG (RS) of the office of Accountant General (Audit), Chhattisgarh, Raipur on 22 July 2019 that scrutiny of cases, where transitional credit claimed were excess than the credit available in 1st return of 2017-18 and the difference were above ₹ 10 lakh, had to be done at Headquarters level. Besides, as per the instructions issued (July 2018) by the Commissioner (State Tax), where transitional credit claimed were excess than the credit available in 1st return of 2017-18 and the difference was below ₹ 10 lakh are to be scrutinised at the circle level. Further, the Commissioner (State Tax) instructed the circles to recover transitional credit claimed where it was found excess and intimate the same.

Audit noticed that, the Assistant Commissioners (State Tax) verified 165 transitional credit cases out of 189 identified cases (difference below ₹ 10 lakh) in the audited 21 circles. Information about 24 cases were not provided to Audit and out of remaining 165 transitional credit cases, no irregularities were found in 31 cases and these cases were filed by the Department. In 134 cases, excess transitional credit claims to the tune of ₹ 6.89 crore were detected, out of which ₹ 1.18 crore (including interest and penalty) was recovered from 62 cases. In the remaining 72 cases, demand notices have been issued to the taxpayers. However, even after a lapse of more than two years, no concrete action was taken to recover the balance amount of ₹ 5.71 crore from the taxpayers.

Further, despite transitional credit being the focus area of tax administration, 13 per cent of claims (24 cases) are yet to be verified in the audited 21 circles.

Audit verified the 31 cases filed by the Department and found irregularities in two cases as detailed below:

- a) Audit found in Circle-4, Raipur, that a tax payer M/s Shivam Industries (GSTIN: 22BBJPJ9167J1ZB) claimed ₹ 2.78 lakh as ITC in Tran-1 and carried forward to Electronic Credit Ledger. Further, the dealer filed revised Tran-1 and claimed ₹ 1.43 lakh as ITC but the excess ITC credited in his Electronic Credit Ledger was not reduced/reversed. This resulted in excess ITC credit of ₹ 1.35 lakh which may be recovered along with interest.
- b) Audit found in Circle-1, Raigarh that a tax payer M/s Rajesh Sales (GSTN:22CRKPP4428C1ZZ) credited ITC in his Electronic Credit Ledger for ₹ 1.99 lakh by filing Tran-1. The dealer further filed revised Tran-1 and claimed ITC for ₹ 0.44 lakh and reversed (debit) the excess amount credited in Electronic Credit Ledger of ₹ 1.55 lakh. However, the dealer did not pay interest on the excess ITC retained for three months in his Electronic Credit Ledger which was also utilised by him. This resulted in non-payment of interest of ₹ 9,323.

On this being pointed out, Department replied (January 2023) that 5,351 nos. of cases have been initiated for verification. Out of 5,351 cases, 3,726 cases (70 per cent) have been verified and 1,625 cases are under scrutiny.

The matter was reported to the Government (December 2021). Reply is awaited (December 2022).

4.1.9.2 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 Tables of Tran 1 and Tran 2, as applicable. Broadly, these tables provide for credit in respect of VAT credit carried over from the Legacy Returns, unavailed VAT credit in respect of capital goods, VAT/ET credit in respect of inputs/semi-finished goods/finished goods held in stock and VAT credit of inputs or input services in transit. The sample identified for audit represented claims under each of these tables so that the adequacy of provisions applicable table wise could be examined for overall compliance assurance.

Audit broadly disclosed various deficiencies in the transitional credit claims of tax payers across various categories under Section 140(1), 140(3) as well as Section 50(3) of the CGGST Act, 2017. These deficiencies in the nature of compliance deviations were observed on transition of the closing balance of credit from legacy returns, credit on VAT paid stock claimed with or without supporting documents, non-payment of interest on irregular transitional credit availed and subsequently reversed, and non-production of records.

We observed 175 compliance deviations amounting to ₹ 26.33 crore in the 365 cases in 21² audited circles constituting an error rate of 48 per cent. These compliance deviations are detailed in the ensuing paragraphs.

² Circle-Ambikapur; Bilaspur-1 to 3; Dhamtari, Durg-1 to 4, Raigarh-1 to 2, Raipur-1 to 9 and Rajnandgaon

4.1.9.2 (i) Irregular availment of transitional credit without filing VAT returns

According to Section 140 (1) of CGGST Act, 2017, a registered person, other than a person opting to pay tax under Section 10 of the Act, *ibid* is allowed to take credit of VAT, if any, shown as carried forward in his last return furnished by him under existing law to his Electronic Credit Ledger if,

- (i) the credit is otherwise admissible under the new law;
- (ii) the returns of last six months are furnished under the existing law;
- (iii) the credit is not related to exempted manufactured goods; and
- (iv) the credit is not related to goods in respect of which any assistance or incentive is payable to such registered person. The above VAT Transitional Credit is to be transferred to Electronic Credit Ledger of the registered person through filing of Tran-1 return.

Further, Section 50(3) stipulates that a taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding 24 per cent.

During scrutiny of 365 transitional credit cases out of 2,826 transitional cases in 21 audited circles, Audit found that 36 taxpayers in 14 circles³ did not submit their last six months returns or submit their returns after filing Tran-1 but claimed/availed Transitional Credit (ITC) of ₹ 7.92 crore in their Electronic Credit Ledger by filing Tran-1. This resulted in irregular availment of transitional credit of ₹ 7.92 crore as detailed in **Appendix 4.1.1** which may be recovered along with interest.

On this being pointed out, Government stated (June 2022) that ₹ 6.86 lakh has since been recovered in respect of two cases, demand for ₹ 10.56 crore has been raised in 20 cases and action is being initiated on remaining 14 cases.

An illustrative case is given below:

During test check of transitional credit cases in Circle-9, Raipur, Audit observed that a dealer M/s Rukmani Electrical and Corporation Pvt. Ltd. (GSTIN 22AABCR6640R1Z1) carried forward transitional credit of ₹ 2.62 crore to its Electronic Credit Ledger by filing Tran-1. Further scrutiny of returns revealed that the dealer did not file quarterly returns for the 1st quarter of 2017-18. Hence, as per the above provision the taxpayer is not eligible to avail transitional credit. This resulted in irregular availment of transitional credit of ₹ 2.62 crore which may be reversed/recovered along with interest.

³ Circle-2 to 5, 7,8 & 9, Raipur, Circle-2 & 3, Durg, Circle-1 & 3, Bilaspur, Circle Ambikapur, Dhamtari and Rajnandgaon

4.1.9.2 (ii) Excess carry forward of VAT transitional credit

During scrutiny of 365 transitional credit cases out of 2,826 transitional cases in 21 circles, Audit found that 47 taxpayers in 21 circles⁴ availed excess transitional credit of ₹ 7.03 crore in their Electronic Credit Ledger by filing Tran-1. The taxpayers carried forward excess transitional credit than the credit available in their last VAT returns, resulting in irregular carry forward of transitional credit of ₹ 7.03 crore, as detailed in **Appendix 4.1.2** which may be recovered along with interest.

On this being pointed out, Government stated (June 2022) that ₹ 43.43 lakh has since been recovered in respect of seven cases, demand for ₹ 3.92 crore has been raised in 15 cases and action is being initiated on remaining 25 cases.

An illustrative case is given below:

During test check of transitional credit cases in Circle-9, Raipur, Audit observed that a taxpayer M/s BPL Medical Equipments Pvt. Ltd. (GSTIN 22AAF3158EZ5) carried forward excess amount to his Electronic Credit Ledger through filing Tran-1. Closing balance of the taxpayer in his last return (1st quarter of 2017-18) was 'NIL' whereas transitional credit carried forward was ₹ 0.21 crore. This resulted in excess credit carried forward of ₹ 0.21 crore which may be reversed/recovered along with interest.

4.1.9.2 (iii) Excess transitional credits claimed under Table 5(c) of Tran-1 without payment of differential tax on pending C-forms

According to Section 140 (1) of Chhattisgarh GST Act, 2017, a registered person, other than a person opting to pay tax under Section 10 of the Act, *ibid* is allowed to take credit of VAT, if any, shown as carried forward in his last return furnished by him under the existing law to his Electronic Credit Ledger. Further, if a registered taxpayer under any State VAT has any pending C-Form/F-Form/H or I-Form then he is required to pay the differential tax as he is not eligible to claim concessional Central Sales Tax rate. Such differential tax payable will be deducted from the ITC balance available in the last return filed by him and the remaining credit will be carried forward under GST Regime as transitional credit.

Section 50(3) stipulates that a taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding 24 *per cent*.

Further, Central Sales Tax Act, 1956 provides for levy of tax at the rate of two *per cent* with effect from June 2008 on interstate sales of goods made against declaration in Form 'C'. In absence of Form 'C', the taxpayer is liable to pay tax at the rates prescribed in the CGVAT Act for that commodity.

⁴ Circle-1 to 9, Raipur; Circle 1 to 4, Durg; Circle 1 to 3, Bilaspur; Circle 1 & 2, Raigarh, Circle Ambikapur; Dhamtari and Rajnandgaon

Audit test checked records of 365 cases out of 2,826 cases in 21 circles and noticed that 31 taxpayers in four circles⁵ did not submit the required 'C' forms for interstate sale for ₹ 269.05 crore made during the period 2016-17 (4th quarter) and 2017-18 (1st quarter) but paid concessional rate of tax of two *per cent*. In the absence of 'C' forms the taxpayers are liable to pay the differential tax of ₹ 8.10 crore or adjust the same from their available ITC in the last VAT return and carry forward the remaining ITC to GST regime. However, it was noticed that the taxpayers neither paid the differential tax nor adjusted the tax from the ITC available in their last returns but carried forward the ITC to Electronic Credit Ledger by filing Tran-1. This resulted in excess transitional credit claimed of ₹ 5.63 crore as detailed in **Appendix 4.1.3** which may be recovered along with interest.

On this being pointed out, Government stated (June 2022) that ₹ 0.82 lakh has since been recovered in respect of one case, in 21 cases assessment for the year 2016-17 has been processed and the cases for the year 2017-18 is allotted to concerning Assistant Commissioner for assessment on priority basis and in nine cases notices have been issued to the taxpayers.

An illustrative case is given below:

During test check of transitional credit cases in Circle-3, Durg, Audit found that a taxpayer M/s Shivam Hi-Tech Steels Pvt. Ltd. (GSTN: 22AAJCS7718R1ZN) had not submitted 'C' forms for ₹ 41.44 crore for interstate sales done during 2016-17 (4th quarter) and 2017-18 (1st quarter) however, paid concessional rate of tax of two *per cent*. In the absence of 'C' forms, the taxpayer is liable to pay the differential tax of ₹ 1.24 crore or adjust the tax from the ITC available in his last return. But, it was noticed that the taxpayer neither paid the differential tax nor adjusted the tax from available ITC but carry forward the ITC to his Electronic Credit Ledger by filing Tran-1. This resulted in irregular availment of transitional credit of ₹ 1.24 crore which may be recovered along with interest.

4.1.9.2 (iv) Irregular availment of transitional credit on inputs held in stock

According to Section 140 (3) of CGGST Act, 2017, a registered person, who was not liable to be registered under the existing law, or who was engaged in the sale of exempted goods or tax free goods by whatever name called, or goods which have suffered tax at the first point of their sale in the State and the subsequent sales of which are not subject to tax in the State under the existing law but which are liable to tax under this Act or where the person was entitled to the credit of input tax at the time of sale of goods, if any, shall be entitled to take, in his Electronic Credit Ledger, credit of the VAT 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, namely:

- (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;

⁵ Circle-8, Raipur, Circle-2,3 &4, Durg

- (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of such inputs; and
- (iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

During scrutiny of 365 cases out of 2,826 cases in 21 circles, Audit noticed that 16 taxpayers in nine⁶ circles claimed transitional credit for ₹ 1.59 crore under Table 7(c) in Tran-1 return. The essential condition for availing transitional credit in respect of VAT paid goods held in stock under Table 7(c) of Tran -1 return is that the registered person was in possession of invoices or other prescribed documents evidencing payment of VAT under the existing law in respect of such inputs. However, no such documents were made available to Audit for scrutiny of the transitional credit claim, in the absence of which the authenticity of such credit could not be ascertained. This resulted in possible irregular availment of transitional credit of ₹ 1.59 crore, as detailed in **Appendix 4.1.4**.

On this being pointed out (December 2021) by Audit, Government replied (June 2022) that demand for ₹ 2.25 crore has been raised in 12 cases and action is being initiated on remaining four cases.

An illustrative case is given below:

During test check of transitional credit cases in Circle-4, Durg, Audit observed that a taxpayer M/s Surjeet Agriculture Industries (GSTIN 22ABMPH0624A1Z1) claimed transitional credit of ₹ 0.23 crore under Table 7(c). However, no such documents were made available to Audit for scrutiny of the transitional credit claim, in the absence of which the authenticity of such credit could not be ascertained. This resulted in possible irregular availment of credit of ₹ 0.23 crore.

4.1.9.2 (v) *Non-payment of interest on reversal of excess transitional credit claimed*

As per Rule 121 of the Chhattisgarh GST Rules, 2017, the recovery of amount credited under sub-rule (3) of Rule 117 may be initiated under Section 73 or Section 74 of the CGGST Act, 2017, as the case may be. The proceeding under Section 73 or 74 shall require the taxpayer to pay the credit along with interest payable at the rate as notified by the State Government under Section 50(3) of the CGGST Act, 2017.

Further, as per notification no. F-10/44/2017/CT/V (87) dated 29 June 2017 the rate of interest under Sub-Section (3) of Section 50 is 24 *per cent*.

Audit test checked the records of 365 cases out of 2,826 cases in 21 circles and found that three taxpayers in three circles⁷ credited excess amount of transitional credit in to their Electronic Credit Ledger and later on reversed (debit) the excess credit. However, the taxpayers did not pay any interest on the excess amount credited to their Electronic Credit Ledger of ₹ 8.52 lakh leading to non-payment of interest of ₹ 67,547 as detailed in **Appendix 4.1.5**.

⁶ Circle-3,4 & 7, Raipur; Circle-2,3 & 4, Durg and Circle-1,2 & 3, Bilaspur

⁷ Circle-2, Raipur; Circle-2 & 3, Bilaspur

On this being pointed out (December 2021) by Audit, Government replied (June 2022) that demand for ₹ 0.76 lakh has been raised in two cases and notice has been issued to the taxpayer in one case.

4.1.9.2 (vi) Irregular availment of transitional credit of stock without invoice by filing Tran-2

Rule 117(4) (b) (iii) of the CGGST Rules, 2017 prescribes that the registered persons who are not in possession of an invoice or any other documents evidencing payment of tax in respect of inputs have to initially submit details of such stock in FORM GST Tran 1 under Table 7(d) and thereafter on effecting supply of these goods within six tax periods from the appointed date, have to file a return in FORM GST Tran-2 showing the details of goods supplied in each tax period.

During scrutiny of 365 cases out of 2,826 cases in 21 circles, Audit found that three taxpayers in three circles⁸ claimed transitional credit of ₹ 0.16 crore by filing of Tran -2. However, it was noticed that the taxpayers did not declare their goods held in stock in Table 7 (d) of Tran -1 but claimed through Tran -2 and availed ITC which is against the provision of the above rule. This resulted in irregular availment of transitional credit of ₹ 0.16 crore, as detailed in **Appendix 4.1.6** which should be recovered along with interest.

On this being pointed out (December 2021) by Audit, Government replied (June 2022) that demand for ₹ 9.14 lakh has been raised in one case and notices have been issued in remaining two cases.

An illustrative case is given below:

During scrutiny of records in Dhamtari Circle, it was found that a taxpayer M/s Dinesh Medical Stores (GSTN: 22AFPPK7470Q1ZP) had claimed VAT transitional credit of ₹ 0.08 crore by filing Tran-2. However, it was noticed that the taxpayer did not declare the goods held in stock in table 7 (d) of Tran-1 return but claimed only through Tran-2 return and availed ITC of ₹ 0.08 crore, which is against the provision of the rules and should be recovered along with interest.

4.1.9.2 (vii) Non production of records to Audit for scrutiny

Audit test checked the records of 365 cases out of 2,826 cases in 21 circles and found that 14 circles⁹ did not provide records like stock register, invoices (purchase/sale), books of accounts etc. of 39 taxpayers involving transitional credit of ₹ 3.99 crore claimed under Table no. 6(b), 7(b), 7(c), 7(d), 10(a) and 11(c) in Tran-1. Due to non-production of records by the Department, Audit could not verify the genuineness of the transitional credit availed by the taxpayers. The details are given in **Appendix 4.1.7**.

On this being pointed out, Government stated (June 2022) that ₹ 14.70 lakh has since been recovered in respect of two cases, demand for ₹ 4.62 crore has been raised in 21 cases and action is being initiated on remaining 16 cases.

⁸ Circle-1, Durg, Dhamtari and Rajnandgaon

⁹ Circle-1 to 9, Raipur; Circle 2,3 & 4, Durg; Circle 1 & 3, Bilaspur

4.1.10 Conclusion

Audit observed that the Department did not cross verify all the transitional credit cases with VAT details although, it was a one time important exercise leading to rectify the irregularities. Audit further observed that though the Department verified 222 transitional cases, no concrete action was taken to recover the revenue where irregularities were detected.

4.1.11 Recommendations

- 1. The Department may verify all the pending transitional credit cases to quantify actual input tax credit.*
- 2. The Department may take appropriate action to recover the revenue in the cases where irregularities have been detected by the Department.*

4.2 Subject Specific Compliance Audit on GST refunds

4.2.1 Introduction

Timely refund mechanism is essential in tax administration, as it facilitates trade through release of blocked funds for working capital, expansion and modernisation of existing business. Goods and Services Tax Act, 2017 provides a mechanism to streamline and standardise the refund procedures.

Every claim has to be filed online in a standardised form. However, due to unavailability of electronic refund module online, the applicants were required to file the refund applications in form GST-RFD-01A, take a printout of the same and submit it physically to the jurisdictional office along with all the supporting documents. The processing of those refund applications was done manually. The refund applications in form GST RFD-01A, along with all supporting documents, were to be submitted electronically¹⁰. However, post submission stages of processing the refund application continued to be manual. The refund procedure became fully electronic from 26 September 2019 onwards, wherein all the steps from submission of application to processing were undertaken electronically.

4.2.2 Tax administration

There are five divisions and 30 circles under State Tax Department. The State Tax Department is administered at the Government level by the Principal Secretary. The Commissioner is the head of the State Tax Department and is assisted by one Special Commissioner, three Additional Commissioners (Addl. Commissioner), 12 Joint Commissioners (JCs), 26 Deputy Commissioner (DCs), 72 Assistant Commissioners (ACs), 121 State tax officers (STOs), 174 Inspectors of State tax (STIs) in performance of such function as may be assigned to them under the Chhattisgarh Goods and Services Tax (CGGST) act 2017. Against the above sanctioned posts, 10 Joint Commissioners (JCs), 20 Deputy Commissioners (DCs), 54 Assistant Commissioners (Acs), 71 State tax officers (STOs), 115 Inspectors of State tax (STIs) are presently working in the Department as of October 2021.

4.2.3 Statutory Provision

The provisions pertaining to refund are contained in Sections 54 to 58 of the Chhattisgarh/ Central Goods and Services Tax Act 2017 and Sections 15 and 16 of the IGST Act 2017. A claim for refund may arise on account of

- (i) Export of goods or services;
- (ii) Supplies to Special Economic Zones (SEZs) units and developers;
- (iii) Deemed exports;
- (iv) Refund of taxes on purchase made by United Nation or embassies etc.;
- (v) Refund arising on account of judgement, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court;
- (vi) Refund of accumulated Input Tax Credit of GST on account of inverted duty structure/Reverse Charge cases.
- (vii) Finalisation of provisional assessment;

¹⁰ Circular No. 79/53/2018-GST, dated 31 December 2018.

- (viii) Refund of balance in electronic cash ledger.
- (ix) Refund of pre-deposit;
- (x) Excess GST payment;
- (xi) Refunds to International tourists of GST paid on goods in India and carried abroad at the time of their departure from India;
- (xii) Refund on account of issuance of refund vouchers for taxes paid on advances against which, goods or services have not been supplied;
- (xiii) Refund of CGST & SGST paid by treating the supply as intra-state supply which is subsequently held as inter-state supply and vice versa.

4.2.4 Refund Procedure

The application for refund of GST shall be forwarded to the proper officer who shall, within a period of fifteen days of filing of the said application, scrutinise the application for its completeness and if the application is found to be complete in all terms, acknowledgement shall be made available to the applicant through the common portal electronically. However, till the time the refund module on the Goods and Services Tax Network (GSTN) portal is operationalised, facility for manual filing of refund claims has been provided. After scrutiny of the refund claim and on being *prima facie* satisfied that the amount claimed as refund is correct, the proper officer has to issue the order sanctioning the final refund after due verification and examination of claim within 60 days from the date of receipt of application failing which interest at the rate of six *per cent* will become payable along with refund on the expiry of 60 days till the date of payment of refund.

4.2.5 Trends of Refund

A total number of 3,616 refund claims involving ₹ 678.89 crore were received up to 31 July 2020 (2,386 pre-automation cases involving ₹ 458.91 crore and 1,230 post-automation cases involving ₹ 219.98 crore). Out of these, 3,102 refund claims involving ₹ 609.07 crore were sanctioned and refunded (2,144 pre-automation cases involving ₹ 405.05 crore and 958 post-automation cases involving ₹ 204.02 crore) up to 31 July 2020.

Number of refund claims received and refund sanctioned along with amount during the period July 2017 to July 2020 are detailed in **Table 4.2.1**.

Table 4.2.1: Trend of refunds

(₹ in crore)

Period	Year	No. of registered taxpayers	Refund claims received		Refund Sanctioned	
			No. of cases	Amount Claimed	No. of cases	Amount Sanctioned
Pre automation Period (1 July 2017 to 25 September 2019)	2017-18 (July'17 to March'18)	96,897	602	80.03	567	79.08
	2018-19 (April'18 to March'19)	101327	1,224	155.59	1,096	114.45
	2019-20 (up to 25 September'19)	110197	560	223.29	481	211.52
Total No. of refund cases (pre-automation period)			2,386	458.91	2,144	405.05
Post automation period (26 September 2019 onwards)	2019- 20 (26 September 2019 to March'20)	119841	665	77.61	540	73.43
	2020-21 (up to July'20)	124710	565	142.37	418	130.59
Total No. of refund cases (post-automation period)			1,230	219.98	958	204.02
Total			3,616	678.89	3,102	609.07

4.2.6 Audit Objectives

Audit of refund cases under Goods and Services Tax (GST) regime was conducted to assess:

- (i) the adequacy of Act, Rules, Notifications, Circulars etc. issued in relation to grant of refund;
- (ii) the compliance of extant provisions by the tax authorities and the efficacy of the systems in place to ensure compliance by taxpayers; and
- (iii) whether effective internal control mechanism exists to check the performance of the departmental officials in disposing the refund applications.

4.2.7 Criteria

The provision of the following Acts, Rules and Circular of the State Tax Department were used as sources for audit criteria:

- Chhattisgarh Goods and Services Tax (CGGST) Act, 2017;
- Central Goods and Services Tax (CGST) Act, 2017
- Chhattisgarh Goods and Services Tax (CGGST) Rules, 2017;
- Integrated Goods and Services Tax Act 2017; and
- Notifications/circulars/orders and instructions issued by Central/State Government from time to time.

4.2.8 Scope of Audit

GSTN provided pan-India refund data for the period from July 2017 to July 2020. For the period prior to 26 September 2019, i.e. pre-automation period, the refund applications under each category were sorted in descending order of refund amount claimed by taxpayers. The sorted refund applications were divided into four quartiles for drawing the sample.

For selecting refund applications filed after 26 September 2019, a composite risk score was devised using risk parameters such as refund amount claimed (60 *per cent* weightage), delay in sanctioning refund (15 *per cent*), refund sanctioned to refund amount claimed ratio (10 *per cent*) and issue of deficiency memo issued. Based on the risk score arrived as per this process, refund applications were selected.

Based on the above procedure, 292 sampled refund cases were selected, out of which 153 pre-automation refund cases (received from 1 July 2017 to 25 September 2019) and 139 post-automation refund cases (received from 26 September 2019 to 31 July 2020) processed till July 2020 in 30 circles under five GST divisions in the State. The audit of post-automation refunded claims has been conducted online. The circle wise details of refund cases selected for Subject Specific Compliance Audit (SSCA) on GST refund is shown in **Table 4.2.2**.

Table 4.2.2: Pre-automation and Post-automation cases

Sl. No.	Name of Divisions	Name of the circle	Pre-automation		Post-automation	
			No. of cases selected	No. of cases audited	No. of cases selected	No. of cases audited
1	Raipur - 1	Raipur -1	4	4	2	2
2		Raipur -2	4	4	2	2
3		Raipur -3	14	14	12	12
4		Raipur -4	1	1	0	0
5		Raipur -5	9	9	6	6
6		Mahasamund	1	1	0	0
7	Raipur - 2	Raipur -6	14	14	0	0
8		Raipur -7	20	20	10	10
9		Raipur -8	2	2	3	3
10		Raipur -9	6	6	13	13
11		Dhamtari	3	3	5	5
12		Jagdapur-1	1	1	5	5
13		Jagdapur-2	2	2	1	1
14		Bhatapara	7	7	0	0
15	Bilaspur-1	Bilaspur-1	4	4	6	6
16		Bilaspur -2	10	10	10	10
17		Ambikapur	1	1	6	6
18		Manendragarh	0	0	2	2
19	Bilaspur-2	Bilaspur-3	8	8	10	10
20		Korba-1	1	1	2	2
21		Korba-2	2	2	6	6
22		Raigarh-1	4	4	1	1
23		Raigarh-2	3	3	5	5
24		Janjgir	2	2	4	4
25	Durg	Durg-1	5	5	2	2
26		Durg-2	7	7	0	0
27		Durg-3	7	7	6	6
28		Durg-4	6	6	13	13
29		Kawardha	1	1	0	0
30		Rajnandgaon	4	4	7	7
Grand Total			153	153	139	139

4.2.9 Audit Findings

4.2.9.1 Delay in compliance of refund cases

Refund is a time bound process where the application must be acknowledged within 15 days and refund should be sanctioned or rejected within 60 days from the date of application. Further, the sanctioned refund must be

communicated to the counterpart tax authority within seven days. Audit observations based on the above statutory provisions are depicted below.

4.2.9.1 (i) Delay in issue of Acknowledgment

Rule 90(1) and (2) of CGGST Rules, 2017 stipulates that the acknowledgment shall be issued within 15 days of filing of refund claim by the proper officer, if the application is found complete in all respects, through the common portal. 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 supporting documents.

During scrutiny of refund cases, Audit observed that in 60 refund cases of 19 circles (50 pre-automation cases in 15 circles and 10 post automation cases in seven circles) there was delay in issue of acknowledgement ranging from 4 to 232 days. The details are given in **Appendix 4.2.1A** and **Appendix 4.2.1B**. The age wise analysis of the observations relating to delays is as follows:

Table 4.2.3: Age wise analysis of delay in issue of acknowledgement

Sl. No	Delay ranges	Number of refund cases		
		Pre-automation	Post automation	Total
1.	Up to three months	38	9	47
2.	three-six months	9	1	10
3.	More than six months	3	0	03
Total		50	10	60

On this being pointed out, the concerned Assistant Commissioners, State Tax Department stated that the delay was mainly due to non-updation of bank accounts by the taxpayers, detailed scrutiny of invoices, wrong/incomplete bank details given by taxpayer, frequent transfer of Assistant Commissioners and delayed allocation of GSTN module.

The replies are not acceptable, as the Act/ Rules has specified the timeline according to which the acknowledgement has to be issued within 15 days. This has resulted in non-observance of the provision of Rule 90 of the CGGST Rules, 2017. Further, it has been noticed that out of the above 60 cases of delay in issue of acknowledgement of refund applications, in 29 refund cases there is also delay in issue of refund sanction order. Hence, this delay may lead an extra burden on the exchequer in the form of interest liability under Section 56 of the CGGST Act, 2017.

4.2.9.1 (ii) Delay in sanction of Refund order

Section 54(7) of the CGGST Act 2017 read with Rule 92 of the CGGST Rules 2017 stipulates that upon submission of refund application, the officer shall carry out the examination process and if found correct/ incorrect the refund order/rejection order accordingly, in form GST RFD 06, shall be issued within 60 days of receipt of application. Otherwise, as per Section 56 of the CGGST Act, 2017, the Department is liable to pay interest to the taxpayers at six *per cent* per annum.

During scrutiny of refund cases in 16 Circles, Audit observed that, in 46 refund cases (33 pre-automation cases in 12 circles and 13 post automation cases in six circles) there was delay in sanction of refund ranging from 4 to 651 days, out of which, in 21 cases there was delay of more than three months. This has resulted in non-observance of the provisions of Section 54(7) of the CGGST Act 2017 read with Rule 92 of the CGGST Rules 2017. Consequently, the Department had not paid interest under section 56 to the claimants which creates liability to the exchequer amounting to ₹ 0.35 crore (July 2021). The details of pre-automation and post-automation refund cases are given in **Appendix 4.2.2A** and **Appendix 4.2.2B** respectively. The age wise analysis of the observations relating to delays is mentioned in **Table 4.2.4**.

Table 4.2.4: Age wise analysis of delay in sanction of Refund Orders

Sl No.	Delay ranges	Number of refund cases in which delay was noticed		
		Pre-automation	Post automation	Total
1.	Up to three months	15	10	25
2.	Three-six months	5	2	07
3.	More than six months	13	1	14
Total		33	13	46

On this being pointed out, Assistant Commissioners, State Tax Department stated the same reasons as delay in issue of acknowledgement (**para 4.2.9.1 (i)**).

The replies of the ACs are not acceptable as refund application was not disposed of within the time limit as per Act and Rules.

Further, the nature wise break up of delay in sanctioning refund has been depicted in **Table 4.2.5**.

Table 4.2.5: Nature wise break up of delay in sanctioning refund

(₹ in crore)

Sl No.	Nature of refund	Total no. of cases selected	No. of cases in which delay was noticed	Period of delay	Total Amount Refunded
1.	Export of goods and services without payment of tax. (EXWOP)	57	27	10 days to 1 year and 286 days	30.70
2.	Refund on account of inverted duty structure. (INVITC)	64	3	5 to 74 days	0.02
3.	Refund due to Excess balance in Cash ledger. (EXBCL)	132	12	4 to 160 days	0.35
4.	Excess payment of tax. (XSPAY)	11	2	64 to 94 days	0.05
5.	Any other. (ANYOTH) & ASSORD	28	2	29 to 68 days	0.12
Total		292	46	4 days to 1 year and 286 days	31.24

4.2.9.1 (iii) Delay in communicating refund orders to counterpart tax authority

As per Central Board of Excise and Custom’s circular No. 24/24/2017 GST DT 21/12/2017, refund order issued either by central tax authority or state tax/UT tax authority shall be communicated to the concerned counterpart tax authority within seven working days for the purpose of payment of relevant sanctioned amount of tax or cess, as the case may be. It was also reiterated therein to ensure adherence to timeline specified under section 54(7) and rule 91(2) of CGGST Act and Rules respectively for sanction of refund orders.

During scrutiny of refund cases in seven Circles, Audit observed that, in 22 pre-automation refund cases, out of 40 pre-automation refund cases, amounting to ₹ 0.28 crore, the State Authority forwarded the sanctioned refund order to central tax authorities with a delay ranging from 4 to 46 days. The details are given in **Appendix 4.2.3**. The age wise analysis of the observations relating to delays is mentioned in **Table 4.2.6**.

Table 4.2.6: Age wise analysis of delay in communicating refund orders to counterpart tax authority

Sl. No	Year of application for refund	Number of refund cases in which delay noticed
1.	2017-18	00
2.	2018-19	12
3.	2019-20	10
Total		22

Thus, apparently the Department did not adhere to the timeline prescribed by the Board¹¹ and interest as admissible under section 56 of CGSGT Act was not paid to the claimants (July 2021).

4.2.9.2 Excess Refund due to non-observance of Act/ Rules

Rule 89(5) of the CGGST Rules 2017 prescribes the formula for maximum refund of unutilised ITC on account of inverted duty structure. As per the rule, Net ITC includes the input tax credit availed only on inputs during the relevant period and does not include credit availed on input services. Further, Rule 89(4) of the CGGST Rules, 2017, prescribes the formula as per which the refund in the case of zero-rated supply of goods or services shall be granted. In the formula, "Net ITC" means input tax credit availed on inputs and input services during the relevant period. Thus, ITC availed on capital goods shall not be considered.

As per CBIC circular (March 2018), the value of goods declared in the GST invoice and the value in the corresponding Shipping bill/ bill of export should be examined, and lower of the values should be sanctioned as refund. It is specifically mentioned in the circular that the instructions given in the circular apply to exports made on or after 1 July 2017.

Audit observations based on the above statutory provisions are detailed below:

¹¹ Circular No. 24/24/2017-GST, dated 21 December 2017 of Central Board of Excise and Customs

4.2.9.2 (i) *Excess refund due to erroneous inclusion of credit on services in net Input Tax Credit*

As per section 54 (3) of the CGGST Act 2017, a registered person may claim refund of any unutilised Input Tax Credit¹² (ITC) at the end of any tax period where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (i.e. Inverted Duty Structure). Further, Rule 89(5) of the CGGST Rules 2017 prescribes the formula for maximum refund of unutilised ITC on account of inverted duty structure. As per the Rule, Net ITC includes the input tax credit availed only on inputs during the relevant period and does not include credit availed on input services.

During test check of records, it was observed that in eight refund cases out of 57 refund cases (27 pre-automation and 30 post-automation refund cases) of four circles, the amount claimed by the taxpayers included the ITC availed on input services which should be excluded while computing the refund claim. However, while computing the refund claim, the Department included the input services in calculating Net ITC, which resulted in irregular allowance of refund to the tune of ₹ 81.67 lakh. The details are shown in **Table 4.2.7**.

We noticed during test check of 57 refund cases in four circles, excess refund was made in eight refund cases due to erroneous inclusion of credit on services in net Input Tax Credit, out of which five refund cases pertain to Rashi Steel and Power Ltd. One out of the five case of Rashi Steel and Power Limited is illustrated below:

The refund case of Rashi Steel and Power Ltd. (GSTN-22AAECR6450Q1Z0 and Acknowledgment Receipt No. (ARN)-AA2209190006938) for the month of February 2019 is that the Net ITC includes Input services amounting to ₹ 0.42 crore. As per the above-mentioned rule, Net ITC does not include credit availed on Input services. After disallowing ₹ 0.42 crore from the available ITC as per Annexure-B and Form GSTR-3B of ₹ 1.27 crore, the Net ITC comes to ₹ 0.85 crore, whereas, the tax payable on such inverted rated supply of goods and services is ₹ 0.92 crore, which is more than the net input tax credit. Hence, the entire amount of refund of ₹ 0.35 crore is inadmissible.

Table 4.2.7: Details of inverted duty structure refund cases which include input services in Net ITC

(₹ in lakh)				
Name of the circle	Name of the taxpayers	GST Registration No	Acknowledgment Receipt No.	Amount
Bilaspur 3	Rashi Steel and power limited	22AAECR6450Q1Z0	AA221217158220R	3.26
			AA2212182189943	14.30
			AA2207172774307	0.01
			AA2211180915657	13.87
			AA2209190006938	35.27
Raipur 2	Unum Energy Private Limited	22AACCU0922C1Z3	AA220619007235H	0.26

¹² Input tax credit is the credit received available to be set-off against paying output taxes. In simple terms, ITC is the refund on the tax paid by a person at the time of purchase.

Raipur 3	M/s. Mahesh Nebhani	22ABHPN7881L1Z5	AA220518006456E	0.03
Ambikapur	M/s Durgesh Solar Agencies	22AJAPG7746A1ZT	AA221219003483N	14.67
Total				81.67

On this being pointed out, the Assistant Commissioners assured that they will take necessary steps after verification of facts and figures, while the Assistant Commissioner of Raipur circle-3 had recovered the entire amount along with interest.

4.2.9.2 (ii) Excess refund due to erroneous inclusion of credit on capital goods in Net Input Tax Credit

As per Section 54 (3) of the CGGST Act, 2017, refund of unutilised input tax credit (ITC) can be claimed by a registered person at the end of any tax period.

Rule 89(4) of the CGGST Rules, 2017, prescribes the formula as per which the refund in the case of zero-rated supply of goods or services shall be granted. In the formula, "Net ITC" means input tax credit availed on inputs and input services during the relevant period. Thus, ITC availed on capital goods shall not be considered.

Rule 89(5) of the CGGST Rules 2017 prescribes the formula for maximum refund of unutilised ITC on account of inverted duty structure. As per the Rule, Net ITC includes the input tax credit availed only on inputs during the relevant period and does not include credit availed on input services and capital goods. Thus, ITC availed on capital goods shall not be considered.

Audit observed that in four refund claims in three circles, the amount of ITC availed on capital goods was included in the calculation of 'Net ITC' to arrive at the refund amount. This resulted in excess sanction of refund of ₹ 47,006 due to inclusion of capital goods during calculation of refund, which is recoverable along with interest in terms of Section 73 of CGGST Act, 2017. The details are shown in **Table 4.2.8**.

Table 4.2.8: Details of refund cases which include capital goods in Net ITC

<i>(in ₹)</i>			
Name of the circle	Name of the taxpayers and GST No.	Acknowledgment Receipt No.	Amount
Bilaspur-2	Anand Plastic India GST No. - 22AAZPG3018K1ZL	AA2208171512691	8640
Raipur -6	Sri Sainath Industry Pvt. Ltd. GST No. - 22AALCS6148P1ZR	AA2209190052890	3661
Rajnandgaon	Khetani Boards	AA220719002771E	24320
	Suntech Geotextile Pvt. Ltd. GST No. - 22AATCS5208C1ZJ	AA220319193179Y	10385
Total			47006

On this being pointed out, Assistant Commissioner, State Tax Department, Rajnandgaon circle has recovered ₹ 34,705 along with interest amounting to ₹ 9,880 and remaining two circle officers assured that the amount will be recovered along with interest.

4.2.9.2 (iii) Excess refund due to non-observance of the relevant period clause

CGGST Rule 89(4) and (5) prescribes the formula as per which the refund in the case of zero-rated supply of goods or services and inverted duty structure shall be granted. According to the formula, relevant period means the period for which the refund claim has been filed.

Further, Serial no. 2.3 of Central Board of Indirect Tax and Customs circular no. 59/33/2018-GST dated 4 September 2018 states that in view of the difficulties being faced by the claimants of refund, it has been decided that the refund claim shall be accompanied by a print-out of Form GSTR-2A of the claimant for the relevant period for which the refund is claimed. The proper officer shall rely upon Form GSTR-2A as evidence of the accounting of the supply by the corresponding supplier in relation to which the input tax credit has been availed by the claimant. In some cases the details of all the invoices relating to the input tax credit may not be availed, possibly because the supplier's Form GSTR-1 was delayed or not filed. In such case, the proper officer may call for the hard copies of such invoices if he deems it necessary for the examination of the claim for refund.

During test check of 50 refund cases in two circles¹³, it was observed that in six refund cases the relevant period clause was not considered while sanctioning the amount of refund. The details of the same are shown in Table 4.2.9.

Table 4.2.9: Details of refund cases in which relevant period clause was not observed

(₹ in lakhs)

Name of the Circle	Name of the taxpayers and GST No.	Acknowledgment Receipt No.	Excess amount refunded	Reasons
Raipur-Circle-7	M/s Thakur Petrochemicals GST No.- 22ADLPT9120C1ZQ	AA2206190062320	6.11	refund was applied for the months-June 2018 to August 2018 but adjusted total turnover and Net Input Tax Credit were calculated from July 2017 to August 2018
Bilaspur - Circle-2	Anand Plastic India GST No.- 22AAZPG3018K1ZL	AA2208171512691	0.48	ITC availed on invoices of July, 2017 against the relevant period August 2017
	Ujala Rubber Industries GST No.- 22ABLPK7698A1ZK	AA220917175588L	0.78	ITC availed on invoices of August, 2017 against the relevant period September, 2017.
		AA221218231333Q	0.98	ITC availed on invoices of September, 2018 against the relevant period October 2018 to December 2018
		AA2203181757047 (Relevant period Jan 2019 to March 2019)	1.79	ITC availed on invoices of Nov-December, 2018 against the relevant period January 2019 to March 2019.
	Acme Plastic Industries GST No.- 22AIYPD9181FIZZ	AA220318019814D	0.32	ITC availed on invoices of Oct-Dec, 2017 against the relevant period January 2018 to March 2018
Total			10.46	

¹³ Raipur circle 7 and Bilaspur circle 2

On this being pointed out, the Assistant Commissioners assured that necessary steps will be taken after due verification of facts and figures.

4.2.9.3 Irregular Refund

Section 54(6) of the CGGST Act, 2017 stipulates that provisional refund amounting to 90 per cent shall be granted only to those taxpayers who makes zero rated supply of goods and services. As per Circular No. 45/ 19/2018-GST dated 30.05.2018, it was clarified that refund of accumulated ITC of compensation cess on account of zero-rated supplies made under Bond/ Letter of Undertaking is available and the registered person can claim refund of compensation cess.

Further, as per rule 86 (4A) of the CGGST Rule, 2017, where a registered person has claimed refund of any amount paid as tax but was wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in Form GST PMT-03.

Audit observations based on the above statutory provisions are depicted below:

4.2.9.3 (i) Irregular grant of provisional refund

As per section 54(6) of the CGGST Act, 2017, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, 90 per cent of refund claimed may be sanctioned on a provisional basis and thereafter an order made under sub section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant. Thus, sanction of provisional refund is allowed on account of zero-rated supply of goods and / or services and not in other categories.

During test check of records, in seven refund cases out of 52 refund cases in three circles (27 pre-automation cases and 25 post-automation cases), the Department had issued provisional refund to those cases which do not come under the category of zero-rated supply of goods or services. Thus, the provisional grant of refund in these cases resulted in irregular grant of provisional refund of ₹ 26.17 lakh. The details are shown in **Table 4.2.10**.

Table 4.2.10: Details of refund cases other than zero rated supply of goods and services in which provisional refund was sanctioned

(₹ in lakh)

Name of the Circle	Name of the Taxpayers and GST No.	Acknowledgment Receipt No.	Amount	Date of Sanction of Provisional refund order
Raipur 03	M/s Mahesh Nebhani & co GST No. - 22ABHPN7881L1Z5	AA220318007923G	0.12	25/05/2019
		AA221118088909S	0.10	25/05/2019
		AA220518006456E	0.08	25/05/2019
	Rich Phyto Care Pvt. Ltd GST No. - 22AACCR8543G1ZH	AA220219126530P	0.90	22/07/2019
Raipur 09	Asquare Food and	AA220119103527L	8.85	01/04/2019

	Beverages Pvt. Ltd. GST No. - 22AANCA8045R1Z3	AA221118087175A	10.05	01/04/2019
Bhatapara	Quality Bag Makers GST No. - 22AAAFQ5093M1Z2	AA2211180878034	06.07	04/05/2018
Total			26.17	

On this being pointed out, the Assistant Commissioners replied that the concerned cases are of the initial period of GST regime and proper training was not imparted to the Assistant Commissioners in the initial phase of GST.

4.2.9.3 (ii) Irregular refund in case of Compensation Cess

It was clarified vide Circular No. 45/ 19/ 2018-GST dated 30.05.2018 that 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. After the issuance of this circular, the registered person can claim refund of Compensation Cess, paid on the inputs used in the months of July 2017 to May 2018, in the successive months. In such case, refund on account of Compensation Cess is to be recomputed as per the formula of maximum refund in case of zero-rated supply of goods and if the aggregate of these recomputed amounts of refund of Compensation Cess is less than or equal to the eligible refund of Compensation Cess calculated in respect of the month in which the same has actually been claimed, then the aggregate of the recomputed refund of Compensation Cess of the respective months would be admissible.

During test check of records, in two circles, out of 21 refund cases (10 pre-automation and 11 post-automation cases), two cases pertained to refund of Compensation Cess. Audit observed that the aggregate of recomputed amounts of refund of Compensation Cess was more than the eligible refund of Compensation Cess calculated in respect of the month in which the same has actually been claimed. Hence, the refunded amount of Compensation Cess of ₹ 1.25 crore was inadmissible. The details of the refund cases are shown in **Table 4.2.11**.

Table 4.2.11: Details of refund cases in which irregular allowance of Compensation Cess was observed

(₹ in crore)			
Name of Circle	Name of the taxpayers and GST No.	ARN	Amount
Raigarh 2	Monnet Ispat and Energy Ltd. GST No. – 22AAACM0501D1ZK	AA220719008102P	1.20
Durg 3	J. K. Lakshmi Cement Ltd. GST No. – 22AAACJ6715G2ZW	AA220719001037L	0.05
Total			1.25

On this being pointed out, the Assistant Commissioner of Raigarh Circle-2 stated that as per the judgement of the Hon'ble Supreme Court dated 27 April, 1993 the refund of Compensation Cess is admissible. The reply is not acceptable as the judgement pertains to pre-GST period.

4.2.9.3 (iii) Irregular refund in bank account in place of Electronic Credit Ledger

Section 54 (3) of CGGST Act, 2017 states that a registered person may claim refund of any unutilised input tax credit at the end of any tax period: provided that no refund of unutilised input tax credit shall be allowed in cases other than— (i) zero rated supplies; (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies).

Further, as per rule 86 (4A) CGGST rule, 2017, where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in Form GST PMT-03.

During scrutiny of records, Audit observed in five refund cases that the Department had allowed refund in the bank account of the tax payers against the refund which was supposed to be credited into the electronic credit ledger of the taxpayer. The non-compliance of the above-mentioned rule had led to irregular refund of ₹ 49.05 lakh due to procedural lapse. Further, the irregular refund had resulted in undue benefit to the taxpayers which increases the flow of working/ operating capital of the taxpayer. The details of the same is given below in the **Table 4.2.12**.

Table 4.2.12: Details of refund cases where ITC was refunded in bank account

(₹ in lakh)

Name of Circle	Name of the taxpayers	GSTIN	Acknowledgment Receipt No.	Amount
Jagdapur 1	M/S Urja Properties Pvt. Ltd	22AABCU6244N1Z6	AA220319203621Q AA220219126461M	38.20
Jagdapur 1	M/s Bhawar Lal Jain	22ACKPJ2062P1ZH	AA220420002181C	0.06
Jagdapur 2	Arihant Agency	22BVBPS7954N1ZY	AA220720003638M	6.98
Jagdapur 1	M/S Baba General Store	22AVXPS7197Q1Z4	AA2207190028267	3.81
Total				49.05

On this being pointed out, the Assistant Commissioners assured that it will be recovered along with the applicable interest.

4.2.9.4 Excess/Less payment of refund due to error in calculation

Rule 89 (5) of CGGST Rules, 2017 prescribes the formula for maximum refund in case of inverted duty structure. According to the formula, Net ITC does not include ITC availed on Capital Goods and Input Services.

Rule 89(4) of CGGST Rules, 2017, prescribes the formula as per which the refund in the case of zero-rated supply of goods or services. According to the formula, Net ITC doesn't include ITC availed on Capital Goods.

Further, Adjusted Total Turnover means the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the value of exempted supplies other than zero-rated supplies, during the relevant period.

Audit observations based on the above statutory provisions are depicted below.

4.2.9.4 (i) **Excess/Less refund due to error in calculation in case of Inverted Duty Structure**

As per Rule 89 (5) of CGGST Rules, 2017 in the case of refund on account of inverted duty structure, refund of Input Tax Credit shall be granted as per the prescribed formula¹⁴.

During test check of 55 refund cases (27 pre-automation and 30 post-automation refund cases) in four Circles, it was observed that in two refund cases, the tax payable on inverted rated supply of goods and services during the relevant period was more than the Net Input Tax Credit.

Further, there was error in calculation of refund in six refund cases. Thus, non-adherence to the formula for granting the refund of Input Tax Credit, resulted in excess payment of ₹ 121.43 lakh.

One out of five cases in which excess refund was sanctioned due to error in calculation (tax payable was higher than the net ITC) relating to Hindalco Industries Ltd. is illustrated below:

In refund case of Hindalco Industries Ltd (GSTN-22AAACH1201R1ZX and ARN: AA220318001451X) for the tax period July to March (2017-18), the taxpayer had applied refund of ₹ 24.61 crore on Net ITC amounting to ₹ 62.89 crore which includes input services. After disallowing input services, the Net ITC amounts to ₹ 1.81 crore which is less than tax payable (₹ 38.22 crore) on such inverted rated supply of goods and services. Hence, the entire refund of ₹ 0.90 crore is inadmissible.

Further, in two refund cases out of 12 refund cases (11 pre-automation and one post-automation refund cases) of two circles, less refund amounting to ₹ 5.89 lakh was sanctioned due to error in calculation. The details of excess and less payment of refund are shown in **Table 4.2.13**.

Table 4.2.13: Details of Inverted duty structure refund cases in which excess/less refund was sanctioned due to error in calculation

(₹ in lakh)

Name of the circle	Name of the taxpayers and GST No.	Acknowledgment Receipt No.	Amount	Reason
Excess Payment				
Raipur Circle-5	Levant solar Pvt Ltd GST No. - 22AADCL2329R1ZB	AA220719005563C	0.14	Tax payable is more than the Net ITC.
Raigarh – Circle-2	M/s Hindalco Industries Ltd. GST No. - 2AAACH1201R1ZX	AA220318001451X	90.36	Tax payable is more than the Net ITC.
Durg Circle-4	Kothari Engineering	AA220919006402H	0.23	Due to mismatch in

¹⁴ Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services during the relevant period) x Net ITC of the relevant period ÷ Adjusted Total Turnover of the relevant period} - tax payable on such inverted rated supply of goods and services during the relevant period. Note- Net ITC does not include Input services.

	works GST No. - 22AETPK2294K1Z3	AA220819004652C	0.52	Net ITC as per statement 1 & purchase register vs GST RFD 01.
Durg Circle-3 (Post-automation)	M/s Kothari Chemicals Ltd GST No. - 22AETPK2241N1ZA	AA221219002744K	11.52	Net ITC as per books was 0.398 crore but taken in GST RFD 01 as 1.32 crore
Durg Circle- 4 (Post-automation)	Kothari Engineering works GST No. - 22AETPK2294K1Z3	AA220420001789L	5.19	Due to mismatch in Net ITC as per statement 1 & purchase register vs GST RFD 01.
		AA221119012426O	4.57	
		AA221019000917J	8.90	
Total			121.43	
Less Payment				
Raigarh 1	M/s Agarwal Bricks Udyog GST No. – 22ADZPA6983C1ZE	AA2209170057547	2.41	The refund was rejected without any valid reason.
Bhatapara	Quality Bag Makers GST No. - 22AAAFQ5093M1Z2	AA2203180878034	3.48	Due to misinterpretation of rules and mistake in calculation.
Total			5.89	

On this being pointed out, the Assistant Commissioners assured that necessary steps will be taken after due verification.

Further, the Assistant Commissioner, Raigarh circle recovered ₹ 90.36 lakh vide DRC-03 (8th November 2021) and Bhatapara circle had refunded of ₹ 0.03 crore to the taxpayer.

4.2.9.4 (ii) *Excess/Less refund due to error in calculation in case of Export without payment of Tax*

Rule 89(4) of the CGGST Rules, 2017, prescribes the formula¹⁵ as per which the refund in the case of zero-rated supply of goods or services shall be granted. The Adjusted Total Turnover means the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the value of exempt supplies other than zero-rated supplies, during the relevant period.

During test check of refund claim of Sri Sainath Industry Private Limited (GST No. - 22AALCS6148P1ZR) of Raipur Circle -6, Audit observed that excess/ less refund has been made due to erroneous calculation of refund claims. The details are shown in **Table 4.2.14**.

¹⁵ Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

Table 4.2.14: Details of Export without payment of tax refund cases in which excess/less refund was sanctioned due to mistake in calculation*(₹ in lakh)*

Acknowledgment Receipt No.	Amount	Reasons
Excess Payment		
AA2208181019918	0.06	Outward taxable supply of ₹ 581958 was not included in adjusted total turnover.
AA2209180024958	7.95	The Taxpayer Claimed refund of ₹ 34.31 lakh initially and submitted revised claimed for ₹ 26.36 lakh. However, the Department refunded ₹ 34.31 lakh instead of revised claim of ₹ 26.36 lakh. Thus, an amount of ₹ 7.95 lakh was refunded in excess.
Total	8.01	
Less payment		
AA2209190052890	0.59	Calculation is done after taking exempted/nil rated supply in Adjusted total turnover.
Total	0.59	

On this being pointed out, the Assistant Commissioner of Raipur Circle-6 replied that necessary action will be taken after due verification of facts and figures.

4.2.9.5 Refund claimed from different tax head

Sl. No. 3.2 of Central Board of Indirect Tax and Customs Circular No. 59/33/2018-GST dated 04.09.2018 states that after calculating the least of the three amounts, as detailed in Sl. No. 3.1 of the said circular, the equivalent amount is to be debited from the electronic credit ledger of the claimant in the following order:

- Integrated tax, to the extent of balance available.
- 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 (i.e., State tax/Union Territory tax, in this case).

During audit of the 30 circles, it was observed that in two refund cases of Raipur Circle-7, the amount of maximum refund of ₹ 0.03 crore and ₹ 0.15 crore has been initiated against SGST for the month of February 2019 and in June 2019 respectively, although the credit was available in IGST & CGST. On this being pointed out, the replies are still awaited.

4.2.9.6 Refund rejected without following the due procedure

Rule 92(3) of the CGGST Rule states that where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice¹⁶ to the applicant, requiring him to furnish a reply¹⁷ within a

¹⁶ Form GST RFD-08

¹⁷ Form GST RFD-09

period of 15 days of the receipt of such notice and after considering the reply, make an order¹⁸ sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, *mutatis mutandis*, apply to the extent refund is allowed:

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.

Audit noticed that in two refund cases out of five refund cases (two pre-automation and three post-automation cases) of Circle-8 of Raipur, the refund claim was rejected due to non-availability of supporting documents without issuing the Deficiency Memo (GST RFD-03) and Show Cause Notice by the Department.

The reply of Assistant Commissioner is awaited (December 2022) in this regard.

4.2.9.7 *Non-issue of acknowledgement/ deficiency through common portal*

Rule 90(1), (2) and (3) of CGGST rules, 2017 stipulates that an acknowledgement/ deficiency shall be made available to the applicant within fifteen days from the date of application for refund.

Audit noticed in 16 refund cases out of 38 refund cases (18 pre-automation and 20 post-automation cases) of Bilaspur Circle 2 and Bilaspur Circle-3 that the acknowledgement/ deficiency was not made available to the applicant. The details of the same is given in **Appendix 4.2.4**.

On this being pointed out, the Assistant Commissioners did not provide any specific reason for it however, they assured that such mistake will not be repeated again.

4.2.9.8 *Excess refund due to non-compliance of Minimum threshold limit of ₹ 1000*

Section 54(14) of CGGST Act states that no refund shall be paid to an applicant if the amount is less than rupees one thousand. Further, it is clarified that the limit of rupees one thousand shall be applied for each tax head separately and not cumulatively – para 60 CBI&C Circular No. 125/44/2019-GST dated 18 November 2019.

On scrutiny of records, it was observed that the Department had not complied with the above-mentioned threshold limit of ₹ 1000 each head in two cases. The details of the same are shown in **Table 4.2.15**.

¹⁸ Form GST RFD-06

Table 4.2.15: Details of refund cases in which amount was refunded without considering the minimum threshold limit

(in ₹)

Name of Circle	Name of the Taxpayers	GSTIN	Acknowledgment Receipt No	CGST	SGST
Jagdarpur-Circle-1	M/S Deepak Kumar Diwan	22ACVPD1425B1Z8	AA220620008811V	814	814
	M/S Sandeep Sajawat	22ACSFS3667B1Z1	AA2206200052318	991	991

On this being pointed out, the Assistant commissioner assured that it will be recovered along with interest.

4.2.9.9 Excess refund due to non-compliance of GST Circular No.135/05/2020 – GST dated 31/03/2020

Serial Number 5 of GST Circular No. 135/05/2020-GST dated 31/03/2020 states that in terms of Para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to Rule 36 of the CGGST Rules, 2017 vide notification No. 49/2019-GST dated 9 October 2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.

The matter was examined by CBIC and it was decided that the refund of accumulated ITC shall be restricted to the ITC as per those 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. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18 November 2019 stands modified to that extent.

During test check of records of Raipur Circle 7, in three refund cases out of 30 refund cases (20 pre-automation and 10 post-automation cases) it was observed that the net ITC included data from GSTR 2A as well as the data of invoices which were not uploaded in GSTR 2A. Hence, the Assistant Commissioner sanctioned ₹ 27.93 lakh in excess. The details are shown in **Table 4.2.16**.

Table 4.2.16: Details of refund cases in which GST Circular 135/05/2020 was not observed

(₹ in crore)

Name of circle	Name of the taxpayers	GST Registration No.	ARN	Amount
Raipur 7	Radiant off shore Consultancy LLP	22AATFR5203M1ZY	AA220620000498P	0.84
	Sunflag Agrotech	22ALVPA2615H1ZE	AA220520005365X	0.85
	Jinkushal Industries Pvt. Ltd.	22AAACZ3367N1Z0	AA220620003385V	26.24
Total				27.93

On this being pointed out, the Assistant Commissioner replied that they will take necessary action after verification of facts and figures.

4.2.9.10 Non production of records

During audit of five circles, complete records of 19 pre-automation refund cases out of 43 pre-automation refund cases, were not made available to Audit. In the absence of these records, Audit could not verify the performance of the State Tax Department in these cases. The details of such cases are given in **Appendix 4.2.5**.

Further, as per **Annexure A** of Central Board of Indirect Tax and Customs Circular No 125/44/2019-GST dated 18th November, 2019, statements/declarations/undertakings/certificates and other supporting documents are required to be uploaded along with the application of refund. The details of the same are shown in **Table 4.2.17**.

Table 4.2.17: List of all statements/declarations/undertakings/certificates and other supporting documents to be provided along with the refund application

Sl. No	Type of refund	Declaration/Statement/Undertaking/ Certificates to be filled online	Supporting documents to be additionally uploaded
1.	Refund of ITC unutilised on account of accumulation due to inverted tax structure	i. Declaration under second and third proviso to section 54(3). ii. Declaration under section 54(3)(ii) Undertaking in relation to sections 16(2)(c) and section 42(2). iii. Self-certified copies of invoices entered in Statement 1 under rule 89(5). iv. Statement 1A under rule 89(2)(h). v. Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise.	i. Copy of GSTR-2A of the relevant period. ii. Statement of invoices (Annexure-B). iii. Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period.
2.	Refund of unutilised ITC on account of exports without payment of tax	I. Declaration under second and third proviso to section 54(3) II. Undertaking in relation to sections 16(2)(c) and section 42(2) III. Statement 3 under rule 89(2)(b) and rule 89(2)(c) IV. Statement 3A under rule 89(4)	I. Copy of GSTR-2A of the relevant period II. Statement of invoices (Annexure-B) III. Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period IV. Bank Realisation Certificate (BRC)/ Foreign Inward Remittance Certificate (FIRC) in case of export of services and Shipping bill (only in case of exports made through non-Electronic Data Interchange (EDI) ports) in case of goods.
3.	Refund of tax paid on export of services made with payment of tax	I. Declaration under second and third proviso to section 54(3) II. Undertaking in relation to sections 16(2)(c) and section 42(2) III. Statement 2 under rule 89(2)(c)	I. BRC/FIRC /any other document indicating the receipt of sale proceeds of services. II. Copy of GSTR-2A of the relevant period. III. Statement of invoices (Annexure-B).

			<p>IV. Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period.</p> <p>V. Self-declaration regarding non-prosecution under sub-rule (1) of rule 91 of the CGST Rules for availing provisional refund.</p>
4.	Refund of unutilised ITC on account of Supplies made to SEZ units/developer without payment of tax.	<p>I. Declaration under third proviso to section 54(3).</p> <p>II. Statement 5 under rule 89(2)(d) and rule 89(2)(e).</p> <p>III. Statement 5A under rule 89(4).</p> <p>IV. Declaration under rule 89(2)(f).</p> <p>V. Undertaking in relation to sections 16(2)(c) and section 42(2).</p> <p>VI. Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) Otherwise.</p>	<p>I. Copy of GSTR-2A of the relevant period</p> <p>II. Statement of invoices (Annexure-B)</p> <p>III. Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period.</p> <p>IV. Endorsement(s) from the specified officer of the SEZ regarding receipt of goods/services for authorised operations under second proviso to rule 89(1)</p>

During audit of 139 sampled post-automation refund cases in 24 circles, Audit observed that in 40 refund cases, the required documents such as GSTR-2A, statement of invoices etc., were not found uploaded in the Chhattisgarh GST *boweb* portal along with the application of refund. In 25 refund cases, the documents which are required for calculation of Net ITC, were not uploaded by the taxpayer and in 15 refund cases the copy the electronic cash ledger showing the debit entry of the amount of refund was not uploaded, as detailed in **Appendix 4.2.6**. Thus, Audit could not detect the cases of possible excess/irregular refund.

4.2.9.11 Internal Control Mechanism (ICM)

The Internal Audit Wing (IAW) of the Department is a vital arm of the internal control mechanism and is generally defined as the control of all controls to enable an organisation to assure itself that the prescribed systems are functioning reasonably well.

The Central Board of Excise and customs circular No 17/17/2017-GST dated 15 November 2017 elaborately laid down the procedure for manual processing of refunds of zero rated supplies. The circular, inter alia, stipulated that the pre-audit of manually processed refund applications is not required till separate detailed guidelines are issued by Board, irrespective of amount involved. However, it was clarified that the post audit of refund order shall be continued as per the extant guidelines.

On this being pointed during audit, the Department stated that the Internal Audit Wing (IAW) has been formed with 10 audit parties, consisting of 42 officers, to carry out the internal audit of the Department. However, neither internal audit of refund cases was conducted by the Department for the period pertaining to July 2017 to July 2020, nor any sample cases sent for post audit.

Thus, lack of functioning of internal audit and post audit coupled with wide spread system deficiency pointed out in the report is a fair indication that the internal control mechanism is weak.

4.2.10 Conclusion

Scrutiny of 292 sampled refund claims pertaining to the period 01 July 2017 to 31 July 2020 relating to the Chhattisgarh State disclosed that there were delays (up to 651 days) in disposal of claims. The Department sanctioned refund in bank account of the taxpayers in place of electronic credit ledger which reflect undue benefit in flow of working/ operating capital of the taxpayer. Post audit of refund claims was not carried out despite having specific instructions. Excess refund was made after, incorrect consideration of Input Tax Credit, capital goods in Net ITC and non-observance of tax period restrictions, irregular allowance of Compensation Cess. Further complete documents required to be uploaded by taxpayers were either not uploaded or the accesses of the same was not given to audit team.

4.2.11 Recommendations

- 1. *The Department should devise a work plan to deal with refund cases in a timely manner to avoid liability of payment of interest.***
- 2. *The Department should strictly comply with the relevant Acts/Rules/ Circular issued by CBIC and the State Government while calculating the Net ITC to avoid excess/ irregular payment of refund.***
- 3. *The Department should strictly comply with the relevant Acts/ Rules/ Circulars in order to avoid irregularities and procedural lapse in payment of refund.***
- 4. *The Department should make an annual audit plan and carry out audit of refund cases.***

4.3 Compliance Audit of Commercial Tax Department

4.3.1 Introduction

The Chhattisgarh Value Added Tax Act, 2005 (CGVAT Act), Central Sales Tax Act, 1956 (CST Act) and Entry Tax Act, 1976 (ET Act) governed the levy, assessment and collection of VAT, CST and ET respectively in Chhattisgarh. VAT is a multi-stage tax levied at each stage of value addition chain, with a provision to allow Input Tax Rebate (ITR) on tax paid at an earlier stage, which can be utilised against the VAT/CST liability on subsequent sale.

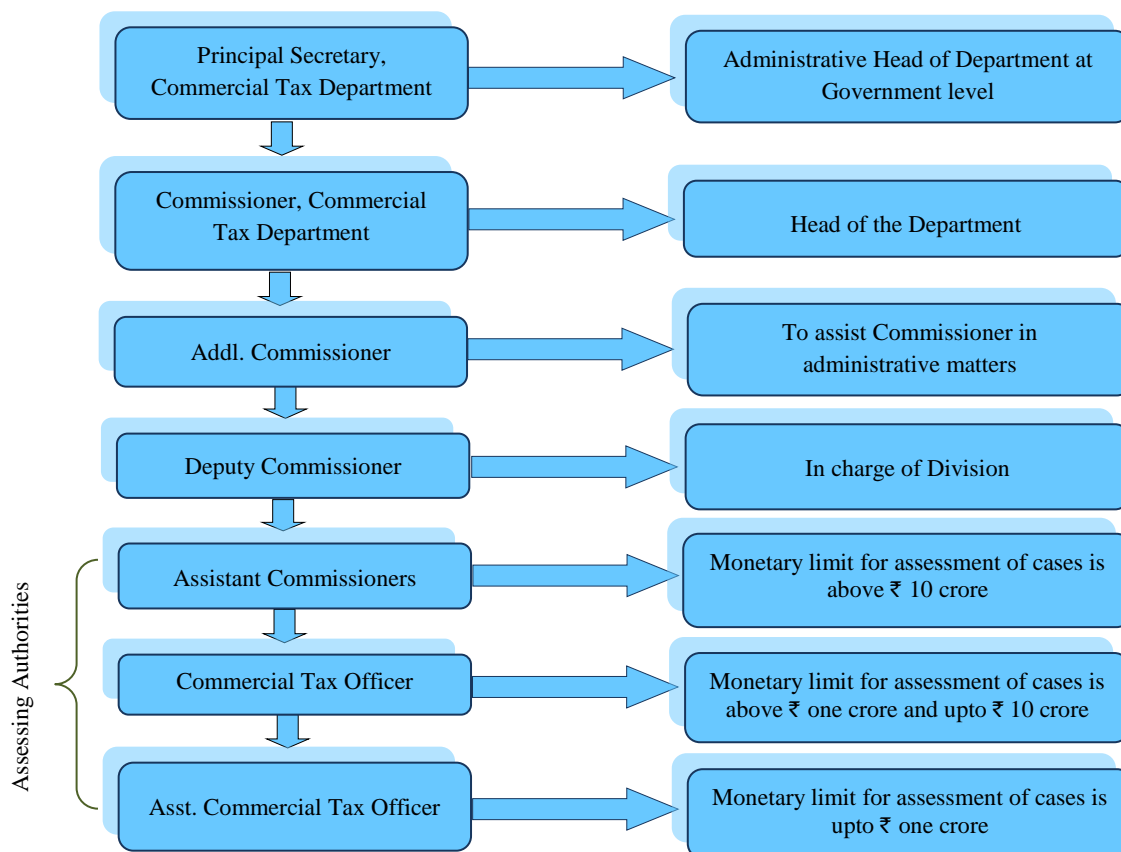
Goods and Service Tax (GST) was implemented in Chhattisgarh with effect from 01 July, 2017. Prior to implementation of GST, CGVAT Act, 2005, CST Act, 1956 and ET Act, 1976 were applicable. Even after implementation of GST, VAT and CST are still applicable in certain commodities like Petroleum products and Alcohol for human consumption.

Since GST has been rolled out from 1 July 2017, the legacy issues relating to VAT regime such as disposal of pending assessment cases have to be resolved on priority. The assessment of cases of old tax regime (first quarter of 2017-18) is still pending. However, it is ascertained from the notifications issued by the Department to this effect that target of May 2022 has been set for disposal of these old assessment cases for the first quarter of 2017-18.

4.3.2 Organisational Set-up

The Principal Secretary, Commercial Tax Department (CTD) is the administrative Head of the Department at the Government level. The Commissioner of Commercial Tax is the Head of the Department and is assisted by three Additional Commissioners, 12 Deputy Commissioners (DCs), 26 Assistant Commissioners (ACs), 72 Commercial Tax Officers (CTOs), 121 Assistant Commercial Tax Officers (ACTOs) and 174 Inspectors of Commercial Tax in performance of such functions as may be assigned to them under the Act. Against the above sanctioned posts, 10 DCs, 20 ACs, 54 CTOs, 71 ACTOs and 115 CTIs are presently working in the Department.

Organisational setup



4.3.3 Audit Objectives

The Compliance Audit was conducted to ascertain and evaluate whether:

- the assessment under VAT, CST and ET was made as per the laid down procedure and applying the applicable rates of tax;
- exemptions/concessions granted by the assessing authority were supported by valid declaration forms, and
- the assessing authority exercised due diligence in preliminary scrutiny of the tax return filed.

4.3.4 Audit Criteria

Provisions of the following Acts, Rules and Circulars/Notifications were used as audit criteria:

- Chhattisgarh Value Added Tax Act, 2005 (CGVAT Act)
- Chhattisgarh Value Added Tax Rules, 2006 (CGVAT Rules)
- Central Sales Tax Act, 1956 (CST Act)
- Central Sales Tax Rules, 1957 (CST Rules)
- Chhattisgarh Entry Tax Act, 1976 (CGET Act)
- Chhattisgarh Entry Tax Rules, 1976 (CGET Rules)
- Rules, Circulars, Exemption Notification and Instructions issued by the Department and State Government from time to time.

4.3.5 Scope of audit and methodology

Out of 50 units in the State comprising 30 CTOs and 20 ACs, 16 units (8 CTOs and 8 ACs) were selected for Compliance Audit. Of these selected 16 units, eight units under CTOs were selected on the basis of simple random sampling without replacement which constitutes 25 per cent of total CTOs and remaining eight units under ACs were automatically drawn from the eight selected CTOs which come under the jurisdiction of these ACs. Compliance Audit of 14¹⁹ units (7 CTOs and 7 ACs) was conducted between November 2020 and September 2021 for the financial year 2014-17 assessed by Assessing Authorities (AAs) during the assessment year 2018-22.

4.3.6 Trend of revenue

Budget estimates and actual receipts under VAT, CST and ET during the year 2014-15 to 2016-17 are detailed in **Table 4.3.1**:

Table 4.3.1: Budget Estimates and Actual Receipts

(₹ in crore)

Year	No. of registered dealer	Budget estimates (BEs)	Actual receipts (ARs)				Variation between BEs and ARs/Percentage of variation
			VAT	CST	ET	Total	
2014-15	72468	9800.00	7495.75	932.36	768.44	9196.55	(-) 603.45/6.15
2015-16	73495	10998.00	7971.08	911.32	743.51	9625.91	(-) 1372.09/12.48
2016-17	80358	11928.37	9000.77	914.25	1294.16	11209.18	(-) 719.19/6.03

(Source: Finance Accounts of Government of Chhattisgarh)

It may be seen from above table that revenue receipts from the VAT/CST/ET increased during 2014-15 to 2016-17. VAT receipts alone accounted for more than 80 per cent of the total receipts during 2014-17. The increase in revenue during 2016-17 in comparison to 2015-16 was due to increase in VAT rate and number of registered dealers.

4.3.7 AUDIT FINDINGS

4.3.7.1 Application of incorrect rate of tax

Application of lower rate of VAT resulted in non/short levy of tax of ₹ 6.50 crore.

Section 8 of CGVAT Act provides for levy of tax at the rates as prescribed in the Schedules appended to the Act, depending upon the classification of the goods. Further, as per entry no. 1 of Part IV of Schedule II appended to CGVAT Act, 2005, all goods not included in Schedule I, Part I (1 per cent), Part II (5 per cent) and Part III (25 per cent) of Schedule II are taxable at the rate of 14/14.5 per cent.

From test check of the assessment records of 2,138 (1,152 self assessed and 986 scrutiny) out of 9,356 (3,047 self assessed and 6,309 scrutiny) cases in

¹⁹ Two units i.e., CTO-2, Durg and AC-2, CT, Durg could not be taken up due to COVID-19.

10²⁰ units, Audit noticed that there was short levy of tax of ₹ 649.50 lakh in 25 cases (17 self-assessed and 8 scrutiny) as detailed below.

- (a) In 17 self-assessed cases, dealers in their tax returns either applied concessional rate of tax/incorrect rate of tax of zero, two and five *per cent* against applicable rates of five/seven and 14/14.5 *per cent* or claimed tax free sale without any supporting declaration form²¹. The Assessing Authorities (AAs) failed to verify the correctness and completeness of information submitted by the dealers during the preliminary scrutiny of tax returns. However, Audit cross-checked the documents (sale/purchase details) enclosed with the returns and observed application of incorrect rate of tax due to misclassification of goods and allowance of tax free sale without declaration certificate. This resulted in short realisation of tax of ₹ 516.34 lakh.
- (b) In eight assessment cases under five units, Audit noticed short levy of tax of ₹ 133.16 lakh due to misclassification of commodities e.g. treating fish medicines as fish feed, solar batteries as solar energy equipment, water pump set and motor parts as submersible pump and steel trunk as tin trunk etc.

The details of above cases are mentioned in **Appendix 4.3.1**. One of the above cases involving tax impact of ₹ 85.19 lakh is detailed below.

Short levy of VAT due to misclassification of solar batteries as solar energy equipment

According to Part IV of Schedule II of Chhattisgarh VAT Act, 2005, “All other goods not included in Schedule I and in Part I, II and III of Schedule II are taxable at the rate of 14 *per cent* for the year 2013-14”. Accordingly, all residuary goods are taxable at the rate of 14 *per cent*. The State Government vide notification no. F-10/15/2012/CT/V (20) dated 31.03.2012 exempted solar energy equipment and components from tax for the period from 01.04.2012 to 31.03.2015²².

Audit scrutiny of records revealed that in an assessment case under ACCT Circle-I, Raipur, the dealer had sold solar energy equipment and solar batteries and took deduction of the same as tax-free goods during the period 2013-14. The dealer had purchased solar batteries and sold them along with the solar energy equipment without paying any tax. Audit noticed that the assessing authority did not levy any tax on sale of solar batteries treating the same tax free under the item solar energy equipment and component in the notification no.20 dated 31 March 2012. However, the Commissioner, Commercial Tax Department, Chhattisgarh vide its order dated 24.02.2014 in the case of M/s Panacea Distributors clarified that ‘solar battery’ was not covered in notification No. F-10/15/2012/CT/V (20) dated 31.03.2012 (which provide exemption to solar energy equipment and component) and in other entries

²⁰ CTO-1, Raipur; CTO-2, Raipur; CTO-3, Raipur; CTO-4, Raipur; CTO-6, Raipur; CTO-7, Raipur; CTO-9, Raipur; AC-1, Raipur; AC-2, Raipur and AC-9, Raipur

²¹ Vide notification no. F-10/128/2007/CT/V(42) dated October 2007.

²² Substituted figure 2013 and 2014 vide notification no. 07 and 44 dated 22.03.2013 and 04.03.2014.

listed in part-I, II and III of Schedule-II of CG VAT Act, 2005. Therefore, it was taxable as residuary item at the rate of 14 *per cent*.

Thus deduction for solar batteries as tax free goods resulted in non-levy of VAT of ₹ 85.19 lakh on sale of solar batteries.

On this being pointed out (October 2021), the Government replied (May 2022) that in six cases demand notices of ₹ 1.93 crore had been issued and in 16 cases notices have been issued to the dealers for reassessment. In the remaining three cases involving three dealers, the reply of the Government is enumerated in **Table 4.3.2**:

Table 4.3.2: Reply of the Government

Name of the Unit	Reference to Sl. No. of Appendix 4.3.1	Detail reply of the Government	Rebuttal of Audit
CTO, Circle-4, Raipur (Unistone Panels Pvt. Ltd. TIN: 22801406624)	8	Aluminum Composite Panel (ACP) comes under aluminum product. Hence, it is taxable at the rate of five <i>per cent</i> .	The reply of the Government is not acceptable because ACP is a composite material in which thermoplastic polythene core and the fire-retardant core material are sandwiched between two thin aluminium sheets and cannot be held as aluminium product. Hence ACP are covered under residuary entry and thus taxable at the rate of 14 <i>per cent</i> . Moreover, Commissioner, Commercial Tax Department, Karnataka vide clarification dated 26.01.2012 has clarified that ACP are liable to VAT at the rate of 14 <i>per cent</i> .
CTO, Circle-4, Raipur (Pearl Enterprises TIN: 22091406287)	9	Mushroom and sweet corn come under fresh vegetables and fruits under the entry no.23 of Schedule I of CGVAT Act, So it is taxfree.	The reply of the Government is not acceptable because entry no. 41 of Schedule II of CGVAT Act clearly stipulates the taxability of 'vegetable mushroom' at the rate of five <i>per cent</i> . Further, specific entry of goods always supersedes the general entry. Hence Mushroom is taxable at the prescribed rate mentioned in the Act.
CTO, Circle-3, Raipur (Suryadhan TIN: 22861307942)	10	Solar battery comes under solar energy equipment and component and accordingly exempted.	The reply of the Government is not acceptable as per the clarification of the Commissioner, Commercial Tax Department, Chhattisgarh dated 24.02.2014, in the case of M/s Panacea Distributors wherein it was held that 'solar batteries' will not be covered under the Notification No.F-10-15-2012-CT-V (20) dated 31.3.2012 (which exempt solar energy equipment and component from VAT) and accordingly taxable at the rate of 14 <i>per cent</i> .

4.3.7.2 *Application of incorrect rate of Entry Tax*

Non/short realisation of ₹ 2.65 crore of Entry Tax (ET) due to application of incorrect rate of tax on entry of goods into local area.

According to Section 3 of CGET Act, 1976 a dealer is liable to pay entry tax on the entry of goods in the course of business of the dealer at the rate as specified in Schedule II, into each local area for consumption, use or sale therein. Further, entry tax at specified rate is leviable on goods specified in Schedule III which enter into each local area for consumption or use but not for sale therein. Further, Section 4-A of CGET Act, provides for levy of enhanced rate of tax for such goods as notified by the State Government which are used or consumed in such local area or areas mainly for the manufacture of other goods or as packing materials.

During test check of 2,278 (1,221 self assessed and 1,057 scrutiny) out of 9,119 (2,678 self assessed and 6,441 scrutiny) cases in eleven²³ units, Audit noticed that in 30 (17 self assessed and 13 scrutiny) cases of 27 dealers, the AAs/dealers did not apply correct rates of entry tax, as prescribed in the Schedule II and III of Entry Tax Act, 1976 and notifications while assessing/filing the returns. This resulted in non-levy of tax of ₹ 203.70 lakh and short levy of tax of ₹ 61.51 lakh, as detailed in the **Appendix 4.3.2**.

On this being pointed out (October 2021), the Government replied (May 2022) that in seven cases demand notices of ₹ 36.16 lakh had been issued and in one case recovery of ₹ 5.61 lakh had been made. Reassessment notices have been issued to the dealers in 23 cases.

4.3.7.3 *Concessional rate of tax allowed under Central Sales Tax (CST) Act without declaration forms for interstate sale*

The AAs allowed the concessional rate of tax without ensuring submission of declaration Form 'C' resulting in short levy of CST amounting to ₹ 1.80 crore.

CST Act, 1956 provides for levy of tax at the rate of two *per cent* of turnover or tax rate applicable in the concerned State, whichever is lower, with effect from June 2008, on interstate sales of goods made against declaration in Form 'C'. In the absence of Form 'C', the dealer is liable to pay tax at the rates prescribed in the CGVAT Act, 2005 for that commodity.

During test check of 2,140 (1,144 self assessed and 996 scrutiny) out of 8,850 (2,628 self assessed and 6,222 scrutiny) cases in eleven²⁴ units, Audit noticed that in one scrutiny case and 24 self-assessed cases of 22 dealers, Form 'C' valuing ₹ 48.43 crore was not furnished in support of interstate sales. In the absence of Form 'C', the dealers were to pay tax at the rates of five or 14/14.5 *per cent* instead of concessional rate of tax of zero/two *per cent*. The AAs should allow the concessional rate of tax as per the rules on the interstate

²³ CTO-1, Raipur; CTO-2, Raipur; CTO-3, Raipur; CTO-4, Raipur; CTO-6, Raipur; CTO-7, Raipur; CTO-9, Raipur; AC-2, Raipur; AC-3, Raipur; AC-4, Raipur and AC-7, Raipur

²⁴ CTO-2, Raipur; CTO-3, Raipur; CTO-4, Raipur; CTO-7, Raipur; CTO-9, Raipur; AC-1, Raipur; AC-2, Raipur; AC-3, Raipur; AC-4, Raipur; AC-7, Raipur and AC-9, Raipur

transactions supported Form 'C'. However, in above cases, dealers availed concessional rate of zero/two *per cent* of tax under CST Act without C-Form resulting in short realisation of tax amounting to ₹ 179.91 lakh, as detailed in **Appendix 4.3.3**.

On this being pointed out (October 2021), the Government replied (May 2022) that in five cases demand notices of ₹ 11.13 lakh had been issued and recovery of ₹ 0.99 lakh had been made in one case. Further it was also stated that reassessment notices have been issued to the dealers in 20 cases.

4.3.7.4 Exemption of tax allowed under Central Sales Tax (CST) Act without statutory forms for transit sale

The AAs allowed exemption of tax to the tune of ₹ 1.07 crore without submission of statutory Forms 'E1 and C'.

CST Act, 1956 provides for exemption of tax in respect of transit sale. For claiming exemption, dealers are required to furnish Form 'E-I/II' and Form 'C' in support of such sale. In the absence of E-I/C forms, the tax on these goods is leviable at the rates as prescribed in the CGVAT Act, 2005 and CST Act, 1956.

Audit test checked 546 (322 self assessed and 224 scrutiny) out of 924 (463 self assessed and 461 scrutiny) cases in four²⁵ units, and noticed that in seven self assessed cases, dealers had claimed exemption from payment of tax on transit sale of ₹ 23.04 crore without submitting 'E1'/'C' forms in support of transit sales under CST Act, 1956. In the absence of statutory forms, the dealers were required to pay tax at the rate of two/four/five or 14 *per cent*. Incorrect claim of exemption of tax without attaching supporting forms with the return by the dealers resulted in short realisation of tax amounting to ₹ 107.16 lakh, as detailed in **Appendix 4.3.4**.

On this being pointed out (October 2021), the Government replied (May 2022) that in three cases demand notices of ₹ 55.96 lakh had been issued and reassessment notices have been issued to the dealers in four cases.

4.3.7.5 Exemption of tax allowed under Central Sales Tax (CST) Act without statutory forms for stock transfer

The AAs allowed exemption of tax to the tune of ₹ 2.35 crore without submission of statutory Forms 'F'.

CST Act, 1956 provides for exemption of tax in respect of branch transfer. For claiming exemption, dealers are required to furnish Form 'F' in support of such transfer. In absence of F forms, the tax on these goods is leviable at the rates as prescribed in the CGVAT Act, 2005.

During test check of 1,142 (639 self assessed and 503 scrutiny) out of 5,849 (1,366 self assessed and 4,483 scrutiny) cases in six²⁶ units, Audit noticed that in 11 self assessed cases of 9 dealers, Form 'F' of ₹ 18.07 crore were not furnished in support of branch transfer under CST Act, 1956 but

²⁵ AC- 3,Raipur; AC-4, Raipur ; AC-6, Raipur and AC-7, Raipur

²⁶ CTO-3, Raipur; CTO-7, Raipur; AC-1, Raipur; AC-2, Raipur; AC- 3, Raipur and AC-9, Raipur

dealer/assessee had claimed exemptions from payment of tax on above transactions. In absence of statutory forms, the dealers were liable to pay tax at the rate of five or 14/14.5 *per cent*. Incorrect claim of exemption of tax by the dealers/assesseees without supporting declaration forms resulted in short levy of tax of ₹ 235.33 lakh as detailed in **Appendix 4.3.5**.

On this being pointed out (October 2021), the Government replied (May 2022) that in two cases demand notices of ₹ 160.13 lakh had been issued and reassessment notices have been issued to the dealers in nine cases.

4.3.8 Other cases of interest

4.3.8.1 Submission of bogus forms for transit sales

Submission of bogus 'E1' forms for transit sales led to evasion of tax of ₹ 1.42 lakh.

Section 6(2) of the Central Sales Tax (CST) Act, 1956 provides for exemption from levy of tax on transit sales of goods made against declaration in Form 'C' and 'E-1'.

During test check of the assessment records in ACCT, circle-1, Raipur, Audit noticed (December 2020) that the assessment authority allowed exemption of tax on transit sale of iron and steel valuing ₹ 35.81 crore on submission of E1/C-Form vide assessment order dated December 2019 under section 21(5) of VAT Act, 2005. The dealer was allowed exemption of full tax on the same under section 6(2) of CST Act, 1956 and accordingly the dealer had also submitted 'E1' forms of Chhattisgarh (Selling dealer) and 'C' forms of out of Chhattisgarh (Purchasing dealer). Further scrutiny of 'E1' forms revealed that the printing format and texture of the paper quality of six 'E1' forms valued at ₹ 70.77 lakh were different from other 'E1' forms submitted with the case. These 'E1' forms were verified from the issuing circle (Circle-5, Raipur) of Chhattisgarh Commercial Tax Department and Audit noticed that above 'E1' are fake/bogus as the issuing circle stated that above forms were not issued by them. This resulted in evasion of tax to the tune of ₹ 1.42 lakh (two *per cent* of ₹ 70.77 lakh). Penalty of ₹ 7.10 lakh under Section 54 of CGVAT Act, 2005 as applicable in case of tax evasion is also leviable.

On this being pointed out (October 2021), no reply had been received from the Government (December 2022).

4.3.9 Conclusion

The Compliance Audit of Commercial Tax Department through test check of 14 units of CTOs and ACs revealed cases of application of incorrect rate of VAT and Entry tax due to misclassification of goods short levy of VAT of ₹ 6.50 crore and Entry Tax of ₹ 2.65 crore. The Assessing Authorities allowed concessional rate of tax/ exemption of tax under CST on interstate sale/branch sale/transit sale without submission of statutory forms by the assessee which resulted in short realisation of tax of ₹ 5.22 crore.