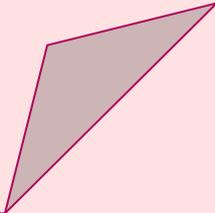


**Chapter II**  
**Goods and Services Tax &**  
**Taxes/ VAT on Sales,**  
**Trade, etc.**





## CHAPTER - II GOODS AND SERVICES TAX & TAXES/ VAT ON SALES, TRADE, ETC.

### 2.1 Tax Administration

Department of Taxes is the major source of revenue of Government of Kerala, accounting for the  $\frac{3}{4}$ <sup>th</sup> of its revenues. The main goal of department is to ensure voluntary tax compliance through transparent and simplified procedures; to eliminate corrupt practices and embracing relevant technology for seamless accessibility to services. The main activities of department are collection of tax, registration of dealers, recovery of arrears of tax, prevention and detection of tax offenses under a series of legislations enacted by the State and Central Governments. The critical functions of department such as filing of returns, payment of tax, issue of statutory forms, declaration of consignments etc., are now fully automated.

Goods and Services Tax (GST) Act, Kerala General Sales Tax (KGST) Act, Kerala Value Added Tax (KVAT) Act, Kerala Money Lending Act, Luxury Tax Act and Agricultural Income Tax Act are administered by department. The Commissioner, SGST department is the head of the SGST department who is assisted by Additional Commissioner, Joint Commissioners (JCs), Deputy Commissioners (DCs), Assistant Commissioners (ACs) and State Tax Officers (STOs). The assessment, levy and collection of tax are done by ACs and STOs.

KGST is leviable on sale of ganja, opium, foreign liquor and certain petroleum products. KVAT was leviable on the Intra-State sale of remaining commodities and Central Sales Tax (CST) on Inter-State sales. GST came into effect from 01 July 2017 subsuming VAT, CST etc.

The Government has implemented Kerala Flood Cess under Section 14 of the Finance Act, 2019 for the purpose of providing reconstruction, rehabilitation and compensation needs which had arisen due to the massive flood which occurred in the State of Kerala in the month of August 2018, for a period of two years from 01 August 2019.

### 2.2 Internal Audit

After the restructuring, the internal audit is undertaken by Internal Audit and Internal Vigilance Cell that performs departmental audit and disciplinary functions in the GST department. In addition, a Review Cell is also formed that verifies the legality and propriety of the order passed by the adjudicating authorities at the Taxpayer verticals. The Internal Audit and Internal Vigilance Cell consist of one Deputy Commissioner, one State Tax officer and three Assistant State Tax Officers (ASTO) while the Review cell has three Deputy Commissioners, six STOs and ten ASTOs. No specific training has been imparted to the officers.

During 2022-23, out of the overall outstanding of 8,742 paragraphs, only 3,330 paragraphs (38.09 *per cent*) were cleared. In addition, e-audits have been

conducted and additional demands created thereby improving the economy, efficiency and effectiveness of department.

### **2.3 Results of Audit**

There were 55 auditable units in the SGST department. Out of these, 45 units were selected for Audit during the year 2022-23 including 34 units for the SSCA. Test check of the records relating to KVAT/ KGST/ CST assessments and connected documents during 2022-23 showed under-assessment of tax and other irregularities in 14 cases relating to non/ short levy of tax/ interest, irregular allowance of input tax credit, escape of turnover from assessment and other lapses amounting to ₹1,647.34 crore. These cases are only illustrative as these are based on the test-check of records. As this was test audit in the test-checked cases and the audit observation is of a nature that may reflect in other cases not covered in test audit, department may therefore, like to internally examine the position in rest of the units with a view to ensure that the instances of non-compliance are taken care of by taking remedial measures, and may also fix responsibility for the lapses in all such cases. Audit pointed out some of the similar omissions in the earlier years also. Not only do these irregularities persist, but they also remain undetected till the next audit is conducted. Under-assessment of tax and other irregularities involving ₹1,647.34 crore in 14 cases, including one SSCA, which fall under the following categories are given in **Table – 2.1**.

**Table – 2.1: Details of under-assessment of tax and other irregularities**

Sl. No.	Categories	Number of cases	Amount (₹ in crore)
1	SSCA on 'Department's Oversight on GST Payments and Return filing'	1	1,645.56
2	Short payment of tax due to ineligible/ excess exemption	2	0.70
3	Short payment of tax due to turnover escaped assessment	1	0.13
4	Short payment of tax due to irregular availing of input tax credit	2	0.92
5	Others	8	0.03
<b>Total</b>		<b>14</b>	<b>1,647.34</b>

Source: Records maintained by Accountant General.

During the year 2022-23, department accepted under assessment and other deficiencies amounting to ₹6.65 crore in 221 cases, which were pointed out by Audit. An amount of ₹20.55 crore pointed out in 749 cases were realised during the year.

## **2.4 Subject Specific Compliance Audit on ‘Department’s oversight on GST payments and Return filing’ for the year 2018-19 to 2020-21**

### **2.4.1 Introduction**

The introduction of Goods and Services Tax (GST) has replaced multiple taxes levied and collected by the Centre and States. GST, which came into effect from 01 July 2017, is a destination-based consumption tax on the supply of goods or services or both levied on every value addition. The Centre and States simultaneously levy GST on a common tax base. Central GST (CGST) and State GST (SGST)/ Union Territory GST (UTGST) are levied on intra state supplies, and Integrated GST (IGST) is levied on inter-state supplies.

Section 59 of the SGST Act, 2017, stipulates GST as a self-assessment based tax, whereby the responsibility for calculating tax liability, discharging the computed tax liability and filing returns is vested with the taxpayer. The GST returns must be filed online regularly on the common GST portal, failing which penalties will be payable. Even if the business has had no tax liability during a particular tax period, it must file a nil return mandatorily. Further, Section 61 of the Act read with Rule 99 of SGST Rules, 2017, stipulate that the Proper Officer may scrutinize the return and related particulars furnished by taxpayers, communicate discrepancies to the taxpayers and seek an explanation.

This Subject Specific Compliance Audit (SSCA) was taken up considering the significance of the control mechanism envisaged for tax compliance and the oversight mechanism of the State Goods and Services Tax Department (SGSTD), Government of Kerala (GoK) in this new tax regime.

### **2.4.2 Audit objectives**

Audit of ‘Department’s oversight on GST Payments and Return filing’ was taken up with the following audit objectives to seek an assurance on:

- i. whether the rules and procedures were designed to secure an effective check on tax compliance and were being duly observed by taxpayers; and
- ii. whether the scrutiny procedures, internal audit and other compliance functions of the Circles were adequate and effective.

### **2.4.3 Audit scope**

The scope of audit comprises examination of taxpayers’ compliance, scrutiny process and subsequent follow-up carried out by the department on returns filed by the registered taxpayers. In addition, the SSCA includes review of records of a sample of taxpayers for the period 2018-19 to 2020-21. The scope of this SSCA also includes evaluation of functions of selected Circles.

The period of review of the scrutiny of returns and verification of taxpayers' records was from April 2018 to March 2021 and that for audit of functions of selected Circles was for 2020-21.

#### **2.4.4 Audit methodology and Sample selection**

A data driven approach was adopted for planning, as also to determine the nature and extent of substantive audit. The sample for this SSCA is comprised of

- a sample of Circles for evaluating the compliance functions of the Circles;
- a set of deviations identified through data analysis for centralised audit that did not involve field visits; and
- a sample of taxpayers for detailed audit that involved field visits and scrutiny of taxpayer's records at departmental premises.

This SSCA has three distinct parts as under:

##### **(i) Part I – Audit of Circles**

For evaluation of oversight functions, ten<sup>5</sup> assessment circles with jurisdiction over highest number of selected samples for Detailed Audit were considered as the sample for audit of assessment circles.

##### **(ii) Part II – Centralised audit**

Audit analysed GST returns data pertaining to 2018-19 to 2020-21 at GSTN premises and identified a set of deviations and logical inconsistencies between GST returns filed by taxpayers. A set of 16 parameters<sup>6</sup> were identified such as mismatch of ITC availed between Annual Returns and Books of accounts, short payment of interest etc. Audit selected a sample of 703 cases for evaluation of the adequacy and effectiveness of the scrutiny procedure of the department. The audit review was limited to queries issued to the respective Taxpayer Services Circles (TPSCs) between June and September 2023. There was no further scrutiny of taxpayer records.

##### **(iii) Part III – Detailed audit**

Audit selected 70 taxpayers<sup>7</sup> for detailed audit which involved field visits for verification of records available with the TPSCs. Taxpayers' records like returns and related attachments and information were accessed through Circles for evaluation of the extent of tax compliance by taxpayers. Audit utilised the

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<sup>5</sup> Special Circle - II, Ernakulam; Special Circle - III, Ernakulam; Special Circle (Produce), Mattancherry; STO I Circle, Thripunithura; Special Circle, Thiruvananthapuram; STO (Works Contract), Thiruvananthapuram; IAC, Thiruvananthapuram; IAC, Palakkad; STO (Works Contract), Kozhikode; Special Circle, Kannur.

<sup>6</sup> 16 parameters are indicated in Table 2.2 as D1 to D21; D8, D15, D16, D18 and D19 are absent.

<sup>7</sup> Total registered taxpayers in the State is 3,73,940 as on 31 March 2021.

SSOIDS<sup>8</sup> provided to the maximum extent feasible to examine data/ documents relating to taxpayers (*viz.*, registration, tax payment, returns and other departmental functions). Efforts were made to access the relevant granular records such as invoices from the taxpayers on a risk based approach through respective assessment circles.

Entry Conference of this SSCA was held on 27 July 2023 with the Commissioner, State GST Department and Additional Secretary (Taxes Department), Government of Kerala (GoK), in which the audit objectives, sample selection, audit scope and methodology were discussed. The Exit Conference was held on 12 September 2024 with the Commissioner, State GST Department and Joint Secretary (Taxes Department), Government of Kerala, in which the audit findings were discussed. The views expressed by the State Government during the Exit Conference and the written replies to the draft report have been suitably incorporated in the relevant paragraphs.

#### **2.4.5 Audit Criteria**

The source of audit criteria comprised the provisions contained in the SGST Act, 2017, IGST Act, 2017, and Rules made thereunder. In addition, the notifications and circulars issued by State Tax department relating to filing of returns and Standard Operating Procedures (SoP) containing instructions to departmental officers on various aspects related to filing returns, scrutiny of returns, cancellation of registrations also formed part of the audit criteria.

#### **Audit Findings**

#### **2.4.6 Audit of Circles (Part I)**

As per Section 61 of the SGST Act, 2017, various returns filed by taxpayers must be scrutinised by Proper Officer to verify the correctness of the returns, and suitable action has to be taken on any discrepancies or inconsistencies reflected in the returns. Proper Officer designated for this purpose is the Assistant Commissioner/ State Tax Officer<sup>9</sup>. Further, Rule 99 of the SGST Rules, 2017, mandates that the discrepancies, if any noticed, shall be communicated to the taxpayer to seek his explanation. If the taxpayer does not furnish a satisfactory explanation within 30 days of being so informed, or does not take any corrective action, Proper Officer may initiate appropriate action, including the issuance of demand notices under Section 73 or Section 74 of the Act, *ibid.*

Section 73 of the SGST Act, 2017, deals with assessment by Proper Officer, where it appears that any tax has not been paid or short paid by the taxpayer, due to any reason specified therein. Before issuing an assessment order, Proper Officer shall issue a notice to the taxpayer, at least three months prior to the time limit specified in Section 73(10) for issuance of order. The time limit for issuance of order for the financial year 2017-18 was extended<sup>10</sup> to 31 December

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<sup>8</sup> Single SignON IDs – Unique user ID and password issued to responsible officers for accessing GSTN Backend.

<sup>9</sup> Order No. GSTC 24614/2017/CT dated 06 July 2017.

<sup>10</sup> Notification No. 09/2023-Central Tax dated 31 March 2023.

2023 and for 2018-19 to 30 April 2024. As such, the due date for issue of notices for FY 2017-18 was 30 September 2023 and for FY 2018-19 was 31 January 2024. Hence, no assessment can be made under Section 73(10) for the year 2017-18 and 2018-19, if notices were not issued within the corresponding time limit specified above. As per Section 2(91) of SGST Act, 2017, Proper Officer means the officer of the State Tax Office who is assigned that function by the Commissioner.

#### **2.4.6.1 Deficient monitoring mechanism on return filing**

Out of a sample of 10 Circles, the monitoring mechanism for recovery of demand from non-filers was deficient in all the 10 Circles. Further, in all the 10 Circles, the details of issuing GSTR-3A (notice for defaulters who have not filed GST returns) and following it with ASMT-13 (Best Judgement Assessment order in cases where the taxpayers have not complied with GSTR-3A notices) and DRC-07 (Summary of Demand order as a follow up of ASMT-13) were not available with the office.

This was brought to notice of the Government in August 2024. Reply is awaited (September 2024).

#### **2.4.6.2 Slow pace in scrutiny of returns**

It was noticed that during the year 2020-21, in the 10 selected Circles, 1,665 cases were identified and selected for scrutiny by Proper Officers. Out of these Audit test checked the records of 364 cases and found that in 44 cases, the department incurred loss of revenue of ₹103.67 crore. The loss is due to the following reasons:

- failure in issuing notices within the time limit and completion of assessment under section 73 of the SGST Act, 2017, on the defects identified, amounting to ₹57.73 crore in eight cases,
- deficiency in return scrutiny and determination of tax due, amounting to ₹40.38 crore in 21 cases,
- irregular acceptance of replies and dropping of discrepancies after issue of intimation/ notice amounting to ₹5.56 crore in 15 cases. The department, after issuing ASMT-10/ SCN, has dropped sustainable discrepancies without proper verification of replies.

On this being brought to notice (August 2024), Government stated (September 2024) that the department had verified 22 cases and stated that in two cases, additional demand of ₹0.18 crore (DRC-07) issued, and in seven cases show cause notices under section 74 of the SGST Act, 2017, was issued, in three cases notice will be issued, and in 10 cases, no irregularities were found. Though it was stated that in 10 cases no irregularities were found, no supporting documents to substantiate the reply was furnished. As per the Exit Conference held on 12 September 2024, the department stated that the reason for dropping/ not taking further action on cases by Proper Officers would be viewed seriously.

Illustrative cases in each category are detailed below:

- i. In Special Circle III Ernakulam, scrutiny of the returns filed by a taxpayer for FY 2017-18 was carried out by Proper Officer and ASMT-10 was issued to the taxpayer intimating mismatch of GSTR-2A and GSTR-3B comparison of ₹14.47 crore. However, Proper Officer has not initiated action to determine the tax and other dues as per Section 73 within the prescribed time (30 September 2023). Non-initiation of action within the specified time resulted in loss of revenue.

On this being brought to notice (August 2024), Government stated (September 2024) that the department had verified the case and found that the taxpayer has more ITC in GSTR-2A than in GSTR-3B and hence no excess ITC was claimed by the taxpayer.

The reply is not acceptable as copy of the documents in support of the claim was not submitted. Audit examined the reply with documents available in GSTN. As per the GSTR-2A available in the Model 1 backend, Audit found that the taxpayer has available ITC of ₹12.37 crore each under CGST and SGST and ₹63.66 crore under IGST. However, the Taxpayer vide GSTR-3B, has availed ₹21.29 crore each under CGST and SGST and ₹94.94 crore under IGST. Thus, the taxpayer has availed excess ITC of ₹49.12 crore. This aspect was not seen considered while dropping the case of excess ITC availed by the taxpayer.

- ii. In STO (WC) Kozhikode, scrutiny of the returns filed by a taxpayer for FY 2018-19 was carried out by Proper Officer and ASMT-10 was issued (September 2020), intimating discrepancies on output tax liability and ITC utilisation. Further, notice – DRC-01 was issued (December 2023) and based on the reply by the taxpayer, the cases were dropped by the Deputy Commissioner (TPS Division) vide DRC-05 (March 2024).

As per returns filed, the taxpayer had deducted ₹65.56 crore from the taxable turnover, claiming to be unadjusted advances at the beginning of the Financial Year 2018-19 and Turnover as per Audited Financial Statements after adjustment of the advances is shown as ₹71.23 crore (GSTR-9C 5P). Audit noticed that this adjusted turnover does not match with the unadjusted advances shown at the end of 2017-18 (Nil), indicating that the taxpayer's claim was incorrect. Hence, the taxpayer is liable to pay tax on a turnover of ₹136.79 crore. Further, though the taxpayer engaged in the services of construction of premium villas, apartments and commercial projects, which attracts GST at the rate of 18 *per cent*, the taxpayer paid tax at 12 *per cent* for a turnover of ₹66.20 crore. Failure in identifying these discrepancies by the Proper Officer resulted in loss of revenue of tax ₹15.86 crore, interest ₹14.51 crore and penalty ₹1.59 crore totalling to ₹31.96 crore.

On this being brought to notice (August 2024), Government stated (September 2024) that the department issued Show Cause Notice (SCN) under section 74 of the SGST Act, 2017, to the taxpayer demanding tax of ₹16.38 crore each under CGST and SGST.

- iii. In Special Circle II Ernakulam, scrutiny of the returns filed by a taxpayer for the year 2017-18 was carried out by the Proper Officer and an intimation in ASMT-10 was issued to the tax payer noticing short payment of tax and excess ITC utilisation. Assistant State Tax Officer, vide ASMT-12 dropped the cases intimating that no further action is required to be taken in the matter.

As per GSTR-3B filed by the taxpayer, the taxpayer claimed ITC of ₹7.30 crore being IGST paid on Import of goods. Audit noticed that, as per GSTR-2A, IGST on 'Import of goods from overseas on bill of entry' was only ₹6.42 crore. Thus, the taxpayer claimed excess ITC of ₹0.88 crore. However, the department has failed to initiate action to determine the amount of tax, interest and penalty under Section 73 of the SGST Act, 2017. This resulted in loss of revenue on account of tax ₹0.88 crore, interest ₹0.90 crore and penalty ₹0.08 crore totalling to ₹1.86 crore.

Moreover, the Assistant State Tax Officer has not been assigned by the Commissioner of State GST<sup>11</sup>, the functions of Proper Officer under Section 61(2). However, the Assistant State Tax Officer issued ASMT-12 without proper authority.

This was brought to the notice of the department (May 2024) and the Government (August 2024). Reply is awaited (September 2024).

**Recommendation 1:**

**The department may explore the possibility of introducing an automated system to match the data relating to ASMTs issued with follow up action.**

**2.4.6.3 Lack of action on late-filers and non-filers of GST returns**

Section 46 of the SGST Act, 2017, read with Rule 68 of the SGST Rules, 2017, stipulates issue of a notice in FORM GSTR-3A requiring filing of return within fifteen days if the taxpayer had failed to file the return within the due date. In case the taxpayer fails to file the returns even after such notice, the Proper Officers may proceed to assess the tax liability of the said person to the best of their judgment, taking into account all the relevant material which is available or gathered and issue an assessment order in FORM ASMT-13. This assessment order should be issued within a period of five years from the due date for furnishing the annual return for the financial year, which the tax default relates to. A summary of such order should be uploaded in the system in FORM DRC-07.

The details of action taken on late filers and non-filers in respect of selected ten assessment circles were sought for by Audit but not provided by the department. Non-furnishing of information/ relevant documents restricted the

<sup>11</sup> Order No. GSTC 24614/2017/CT dated 06 July 2017.

scope of audit. Audit verified filing of returns by 70 taxpayers selected for detailed audit and it was noticed that nine taxpayers filed returns with a delay ranging from 1 day to 309 days. However, Proper Officers had not initiated any action regarding assessment and cancellation of registration in these cases.

This was brought to the notice of the department (May 2024) and the Government (August 2024). Reply is awaited (September 2024).

**Recommendation 2:**

**Department may issue instruction to Proper Officers to issue notices to non-filers and late filers of return within the stipulated time.**

**2.4.6.4 Inadequate follow up on non-filing of GSTR-10 after cancellation of registration**

Section 45 of the SGST Act, 2017, stipulates that every registered person who is required to furnish a return under Section 39(1) and whose registration has been cancelled shall furnish a final return (GSTR-10) within three months of the date of cancellation or date of order of cancellation, whichever is later. The purpose of the final return is to ensure that the taxpayer discharges the outstanding liability. In case of non-filing of GSTR-10, the same procedure as adopted for non-filing of any return must be followed by the tax officer.

The last date for furnishing of GSTR-10 by those taxpayers whose registration has been cancelled on or before 30 September 2018 was extended till 31 December 2018<sup>12</sup>. As per Rule 68 of SGST Rules, 2017, if GSTR-10 has not been filed, notice in GSTR-3A has to be issued to the taxpayer and if the taxpayer fails to file the final return within 15 days of the receipt of notice, an assessment order in FORM ASMT-13 has to be issued to determine the tax liability. If the taxpayer did not file the final return within 30 days from the issue of order in ASMT-13, the Proper Officer may initiate proceedings under Section 73 of the SGST Act, 2017.

Audit observed compliance deficiencies in filing of GSTR-10 in 157 cases across five Circles as detailed in **Appendix - II**. In remaining five circles the data was not provided to the audit.

An illustrative case is given below:

In STO I Circle Thripunithura, GSTR-10 was not filed in 141 cases out of 239 cases in which registration was cancelled during 2020-21. Further action taken on these 141 cases are not available with the circle.

This was brought to the notice of the department (May 2023) and the Government (August 2024). Reply is awaited (September 2024).

<sup>12</sup> Notification No. 58/2018 – Central Tax dated the 26 October 2018.

**Recommendation 3:**

**Department may issue instruction to Proper Officers to take action on taxpayers who failed to file GSTR 10 return within the stipulated time limit.**

**2.4.7 Centralised Audit (Part II)**

Audit analysed GST returns data pertaining to 2018-2021 as made available by GSTN. Rule-based deviations and logical inconsistencies between GST returns filed by taxpayers were identified on a set of 16 parameters, which can be broadly categorised into two domains – Input Tax Credit (ITC) and Tax payments.

Out of the 15 prescribed GST returns<sup>13</sup>, the following basic returns that apply to normal taxpayers were considered for the purpose of identifying deviations, inconsistencies and mismatches between GST returns/ data:

- GSTR-1: monthly return furnished by all normal and casual registered taxpayers making outward supplies of goods and services or both and contains details of outward supplies of goods and services.
- GSTR-3B: monthly summary return of outward supplies and input tax credit claimed, along with payment of tax by the taxpayer to be filed by all taxpayers except those specified under Section 39(1) of the Act. This is the return that populates the credit and debits in the Electronic Credit Ledger and debits in Electronic Cash Ledger.
- GSTR-6: monthly return for Input Service Distributors (ISD) providing the details of their distributed input tax credit and inward supplies.
- GSTR-8: monthly return to be filed by the e-commerce operators who are required to deduct TCS (Tax Collected at Source) under GST, introduced in October 2018.
- GSTR-9: annual return to be filed by all registered persons other than an Input Service Distributor (ISD), Tax Deductor at Source/ Tax Collector at Source, Casual Taxable Person, and Non-Resident taxpayer. This document contains the details of all supplies made and received under various tax heads (CGST, SGST and IGST) during the entire year along with turnover and audit details for the same.

<sup>13</sup> GSTR-1, GSTR-3B, GSTR-4 (taxpayers under the Composition scheme), GSTR-5 (non-resident taxable person), GSTR-2A (auto generated statement of B2B inward supplies), GSTR-5A (Non-resident OIDAR service providers), GSTR-6 (Input service distributor), GSTR-7 (taxpayers deducting TDS), GSTR-8 (E-commerce operator), GSTR-9 (Annual Return), GSTR-9C (Reconciliation of annual return and financial statements), GSTR-10 (Final return), GSTR-11 (person having UIN and claiming a refund), CMP-08, and ITC-04 (Statement to be filed by a principal/ job-worker about details of goods sent to/ received from a job-worker).

- GSTR-9C: annual audit form for all taxpayers having a turnover above ₹5 crores in a particular financial year. It is basically a reconciliation statement between the annual returns filed in GSTR-9 and the taxpayer's audited annual financial statements.
- GSTR-2A: a system-generated statement of inward supplies for a recipient. It contains the details of all B2B transactions of suppliers declared in their Form GSTR-1/5, ISD details from GSTR-6, details from GSTR-7 and GSTR- 8 respectively by the counterparty and import of goods from overseas on bill of entry, as received from ICEGATE Portal of Indian Customs.

#### 2.4.7.1 Audit findings based on data analysis

The details of data analysis pertaining to state jurisdiction on the 16 identified parameters and extent of deviations/ inconsistencies observed are summarised in **Table 2.2**.

**Table – 2.2: Summary of statewide data analysis**

Sl No.	Parameter	Algorithm used	Number of deviations	Amount (₹ in crore)
<b>Domain : ITC</b>				
1	Excess availing of ITC [D1]	ITC available as per GSTR-2A with all its amendments was compared with the ITC availed in GSTR-3B in Table 4A(5) (accrued on domestic supplies) excluding the reversals in Table 4B(2) but including the ITC availed in the subsequent year from Table 8C of GSTR-9.	77	529.06
2	ITC passed on by the supplier without remitting tax [D2]	ITC available for the assessment year as per Table 8A of GSTR-9 compared with the ITC available in GSTR-2A. Table 8A of the GSTR-9 is auto-populated (non-editable) from GSTR-2A, as available on 31 October of the following financial year.	50	186.36
3	ITC availed on GSTR-3B filed after limitation period [D3]	ITC availed through Table 4 of GSTR-3B pertaining to 2018-19, 2019-20 and 2020-21 filed by the taxpayer beyond the due dates of September GSTR-3B return of the following year.	50	69.44
4	Excess ITC availed under ISD mechanism [D4]	ISD transferred in GSTR-9 Table 6G or GSTR-3B Table 4A(4) was compared with the sum of Table 5A, Table 8A, and Table 9A of GSTR-6 of recipient GSTINs.	21	26.20

SI No.	Parameter	Algorithm used	Number of deviations	Amount (₹ in crore)
5	Short payment of tax under Reverse Charge Mechanism (RCM) [D5]	RCM payments in GSTR-9 Table 4G (tax payable) was compared with ITC availed in GSTR-9 Table 6C, 6D and 6F (ITC availed). In cases where GSTR-9 was not available, RCM payment in GSTR-3B Table 3.1(d) was compared with GSTR-3B 4A(2) and 4A(3). Greater of difference in GSTR-9 and GSTR-3B considered where both were available.	49	88.47
6	Mismatch in ITC availed between Annual Return and Financial Statements (Table 12F of GSTR-9C) [D6]	Positive figure in GSTR-9C Table 12F and examination of reasons provided in Table 13 for mismatch.	17	10.38
7	Reconciliation between ITC declared in Annual Return with expenses in financial statement (Table 14T of GSTR-9C) [D7]	Positive figure in GSTR-9C Table 14T and examination of reasons provided in Table 15 for mismatch.	18	61.07
<b>Domain : Tax liability</b>				
8	Undischarged tax liability [D9]	The greater of tax liability between GSTR-1 (Tables 4 to 11) and GSTR-9 (Tables 4N, 10 and 11) was compared with tax paid details in GSTR-3B Tables 3.1(a) and 3.1(b). In cases where GSTR-9 was not available GSTR-3B tax paid was compared with GSTR-1 liability. The amendments and advance adjustments declared in GSTR-1 and 9 were duly considered.	94	643.29
9	Suppression in taxable value in comparison with E-Way bills [D10]	Relevant data related to tax liability declared in GSTR-3B for the years 2018-19 to 2020-21 were compared with disclosures made in E-way bill.	73	0 #
10	Mismatch in tax paid between books of accounts and Annual Return (Table 9R of GSTR-9C) [D11]	Negative figure in GSTR-9C Table 9R and examination of reasons provided in Table 10 for mismatch.	16	24.05
11	Suppression of taxable value	Taxable value declared on account of outward taxable supplies (other	21	0 #

SI No.	Parameter	Algorithm used	Number of deviations	Amount (₹ in crore)
	identified through TDS/ TCS declaration [D12]	than zero rated, nil rated and exempted) in GSTR-3B were less than the net amount liable for TCS and TDS credit, as auto populated in Table 9 of GSTR-2A.		
12	Suppression of taxable value identified through mismatch in unbilled revenue declared in Table 5 of GSTR-9C [D13]	Table 5B figures of GSTR-9C, the unbilled revenue at the beginning of the financial year, was compared with Table 5H of the previous GSTR-9C returns, which captures the unbilled revenue at the end of that year, to review the extent of identified mismatch in turnover declared in the Annual Return with the Financial Statements.	17	0 #
13	Mismatch in taxable turnover between Annual Return and Financial Statements (Table 7G of GSTR-9C) [D14]	Negative figure in GSTR-9C Table 7G and examination of reasons provided in Table 8 for mismatch.	18	0 #
<b>Domain : Registration</b>				
14	E-commerce benefactors under composition levy [D17]	Datasets pertaining to GSTR-8 filed by the e-commerce operators and CMP-08 filed by the composition taxpayers were compared to check whether the recipients mentioned in GSTR-8 have also filed CMP-08. Checked whether turnover as declared by the E-Com provider in the GSTR - 8 returns pertaining to the taxpayer is more than the turnover declared by the taxpayers in their CMP-08.	5	0 #
<b>Domain : Non-filing of returns</b>				
15	Cases where GSTR-3B not filed but GSTR-1 available [D20]	Taxpayers who have not filed GSTR-3B but have filed GSTR-1 indicating taxpayers carrying on the business without discharging tax.	52	55.85
<b>Domain : Non-payment of interest</b>				
16	Short Payment of interest on delayed payments [D21]	Interest calculated at the rate of 18 <i>per cent</i> on cash portion of tax payment on delayed filing of GSTR-3B <i>vis-a-vis</i> interest declared in GSTR-3B.	125	29.25

Source: Comprehensive analysis of data in GSTN.

# Amount shown as zero since these are related with turnover mismatch.

#### **2.4.7.2 Response to Audit**

Audit selected a sample of 703 cases from amongst the top deviations/ inconsistencies in each of the 16 parameters for the year 2018-21. The audit queries were issued to the respective TPSCs (between June and September 2023) without further scrutiny of taxpayer's records. The audit check in these cases was limited to verifying the department's action on the identified deviations/ mismatches.

Initial responses were yet to be received, as of September 2024, for 329 inconsistencies (46.80 *per cent*) communicated to the Department which represent deviations of ₹600.28 crore in 260<sup>14</sup> cases as detailed in **Appendix - III**.

#### **Recommendation 4:**

**Department may urgently pursue the 329 inconsistencies and deviations pointed out by Audit, for which responses have not been provided and intimate the results to Audit.**

#### **2.4.7.3 Results of Centralised Audit**

Based on responses received from the department to the Audit Queries, the extent to which each of the 16 parameters translated into compliance deviations is summarised in **Appendix - IV**.

Audit noticed deviations from the provisions of the Act in 271 cases constituting 72 *per cent* of the 374 inconsistencies/ mis-matches in data, for which the department provided responses, which involve a short levy of tax of ₹683.50 crore in 229 cases and turnover mismatch in 42 cases. Relatively higher rates of deviations were noticed in risk parameters such as short/ non-payment of interest, undischarged liability and excess ITC availed.

In 99 cases, constituting 26 *per cent*, where the department's reply was acceptable to Audit, data entry errors by taxpayers comprised 41 cases, Department had proactively taken action in 27 cases and 31 cases had valid explanations (**Appendix - V**).

In four cases, constituting one *per cent*, though the department did not accept the deviations pointed out by Audit, its contention was not borne out by evidence, and was thus not amenable to verification by Audit.

#### **2.4.7.4 Cases where department accepted the Audit Observations**

Out of the 374 deviations in Appendix - V the department has accepted the audit observations or initiated examination in 252 cases which involve 213 cases with tax effect of ₹589.17 crore and 39 cases with turnover difference of ₹1,989.93 crore.

<sup>14</sup> Remaining 69 cases out of 329 are turnover mismatch cases.

An illustrative case for each dimension is given below:

**(i) Excess ITC availed (Dimension 1)**

GSTR-2A is a dynamic tax return on Inward Supply that is automatically generated for each business by the GST portal, whereas GSTR-3B is a monthly return in which summary of outward supplies along with ITC declared and payment of tax are self-declared by the taxpayer.

To analyze the veracity of ITC, relevant data were extracted from GSTR-3B and GSTR-2A for the year 2019-20, and the ITC paid as per suppliers' details was matched with the ITC availed by the taxpayer.

Audit observed that in case of a taxpayer under TPSC, Vyttila, the ITC available for the assessment year 2019-20, as per GSTR-2A was ₹318.53 crore and the ITC availed in Table 4A(5)<sup>15</sup> of GSTR-3B was ₹360.73 crore<sup>16</sup>. This resulted in mismatch of ITC availed amounting to ₹42.20 crore, which was communicated to the department (July 2023). In response, the department stated (October 2023) that ASMT-10 was issued to the taxpayer.

This was brought to the notice of Government (August 2024). Reply is awaited (September 2024).

**(ii) ITC passed on by the supplier without remitting tax (Dimension 2)**

Section 16(2) of SGST Act, 2017, provides that a taxpayer is entitled to take ITC on a supply if invoice details of the same was uploaded by the supplier and tax charged on such supply is actually paid to the government. GSTR-2A is generated based on the disclosures made by the suppliers in their GSTR-1. Table 8A of GSTR-9 is auto-populated (non-editable) from GSTR-2A, as available on 31 October of the following financial year.

Audit observed that in case of a taxpayer under TPSC, Vyttila, the ITC available for the assessment year 2019-20, as per Table 8A of GSTR-9, was ₹311.19 crore and the ITC available in GSTR-2A was ₹331.10 crore. Thus, there was a mismatch of ITC amounting to ₹19.91 crore. which was communicated to the department (July 2023). In response, the department stated (October 2023) that ASMT-10 was issued to the taxpayer.

This was brought to the notice of the Government (August 2024). Reply is awaited (September 2024).

**(iii) ITC availed on GSTR-3B filed after limitation period (Dimension 3)**

Section 16(4) of SGST Act, 2017, stipulates that ITC on any invoice can be availed only till the due date of furnishing GSTR-3B for the month of September following the end of the financial year to which such ITC pertains or furnishing of relevant Annual Return, whichever is earlier. Accordingly, if any GSTR-3B

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<sup>15</sup> All other eligible ITC.

<sup>16</sup> Including the ITC ₹36.54 crore availed in the subsequent year 2020-21 from Table 8C of GSTR-9.

is furnished after such time, ITC availed therein becomes inadmissible. In order to review the extent of excess/ irregular ITC availed on this account, the ITC availed through Table 4 of GSTR-3B pertaining to 2018-19, 2019-20 and 2020-21 filed by the taxpayer beyond the due dates of September GSTR-3B return of the year, were identified at data level.

Audit observed that a taxpayer under TPSC, Vyttila, filed GSTR-3B for the month of March 2021 on 31 March 2022. This resulted in claim of irregular ITC amounting to ₹5.14 crore, which was communicated to the department (July 2023). In response, the department stated (October 2023) that ASMT-10 was issued to the taxpayer.

This was brought to the notice of the Government (August 2024). Reply is awaited (September 2024).

**(iv) Excess ITC availed under ISD mechanism (Dimension 4)**

As per Section 20 of SGST Act, 2017, an Input Service Distributor (ISD) can distribute his input tax credit to a recipient of credit, if both are having the same PAN. To analyse whether the ITC availed by the taxpayer is in excess of that transferred by the ISD, ITC availed as declared in the returns of the taxpayer is compared with the ITC transferred by the ISD in their GSTR-6.

In case of a taxpayer under TPSC, Vyttila, audit observed that during 2019-20, the ITC availed as per Table 6G<sup>17</sup> of GSTR-9 of the taxpayer was ₹99.97 crore, as per Table 7H of GSTR-9, reversal of ITC was ₹12.83 crore resulting ITC availment of ₹87.14 crore. ITC transferred by the ISD as per the sum of Table 5A<sup>18</sup>, Table 8A<sup>19</sup> and Table 9A<sup>20</sup> of their GSTR-6 was ₹76.10 crore. This resulted in mismatch between ITC availed and that transferred by the ISD, amounting to ₹11.04 crore which was communicated to the department (July 2023). In response, the department stated (October 2023) that ASMT-10 was issued to the taxpayer.

This was brought to the notice of the Government (August 2024). Reply is awaited (September 2024).

**(v) Short payment of tax under Reverse Charge Mechanism (RCM) (Dimension 5)**

As per Section 9(3) of the SGST Act, 2017, the liability to pay tax under reverse charge mechanism is fixed on the recipient of the supply instead of its supplier.

The extent of availing of ITC under RCM, without discharging equivalent tax liability or short payment of tax under RCM during the audit period was analysed by comparing the datasets pertaining to GSTR-3B and annual return GSTR-9 to check whether the tax has been discharged fully on the activities/ transactions under RCM. In cases where GSTR-9 was filed, the RCM payments

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<sup>17</sup> ITC received from ISD.

<sup>18</sup> Distribution of the amounts of eligible ITC for the tax period.

<sup>19</sup> Mismatch of ITC reclaimed and distributed.

<sup>20</sup> Redistribution of ITC distributed to a wrong recipient.

in Table 4G<sup>21</sup> was compared with ITC availed in Table 6C, 6D and 6F. In cases where GSTR-9 was not available, the check was restricted within GSTR-3B where the tax discharged part in GSTR-3B Table 3.1(d) was compared with the ITC availing part of GSTR-3B 4A(2)<sup>22</sup> and 4A(3)<sup>23</sup>.

Audit observed that in case of a taxpayer under TPSC, Vyttila, the RCM payments during the year 2019-20 in Table 4G of GSTR-9 was ₹40.65 crore (GSTR-3B also shows RCM payment of ₹40.65 crore) and the ITC availed as per Table 6C, 6D and 6F of GSTR-9 was ₹46.67 crore. This resulted in mismatch in availment of 'ITC on RCM without payment of tax' amounting to ₹6.02 crore which was communicated to the department (July 2023). In response, the department stated (October 2023) that ASMT-10 was issued to the taxpayer.

This was brought to the notice of the Government (August 2024). Reply is awaited (September 2024).

**(vi) Mismatch in ITC availed between Annual Return and Financial Statements (Table 12F of GSTR-9C) (Dimension 6)**

Table 12 of GSTR-9C reconciles ITC declared in annual return (GSTR-9) with ITC availed as per audited annual financial statement or books of accounts. Column 12F of this table deals with unreconciled ITC. The certified reconciliation statement submitted by the taxpayer as required under Rule 80(3) of SGST Rules, 2017, in Form GSTR-9C for the year 2018-19 to 2020-21 was analysed at data level to review the extent of identified mismatch in ITC declared in the Annual Return with the Financial Statements.

In the case of a taxpayer under TPSC, Thripunithura, Audit noticed unreconciled ITC of ₹1.29 crore in Table 12F of GSTR-9C, for the year 2020-21. It is the difference between eligible ITC based on financial statements and ITC availed in GST returns. This was communicated to the department (July 2023). In response, the department stated (August 2023) that ASMT-10 was issued to the taxpayer.

This was brought to the notice of the Government (August 2024). Reply is awaited (September 2024).

**(vii) Reconciliation between ITC declared in Annual return with expenses in financial statement (Table 14T of GSTR-9C) (Dimension 7)**

Table 14 of GSTR-9C reconciles ITC declared in annual return (GSTR-9) with ITC availed on expenses as per audited annual financial statement or books of accounts. Column 14T of this table deals with unreconciled ITC. The certified reconciliation statement submitted by the taxpayer as required under Rule 80(3) of SGST Rules, 2017, in Form GSTR-9C for the year 2018-19 to 2020-21 was analysed at data level to review the extent of identified mismatch in ITC

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<sup>21</sup> Inward supplies on which tax is to be paid on reverse charge basis.

<sup>22</sup> Import of services.

<sup>23</sup> Inward supplies liable to reverse charge other than Import of Goods and Services.

declared in the Annual Return with the expenses reported in the Financial Statements.

In the case of a taxpayer under TPSC, Vytila, Audit noticed that during 2020-21, unreconciled ITC of ₹6.71 crore was declared in Table 14T of GSTR-9C, being ITC availed in GST returns in excess of eligible ITC based on expenses reported in financial statements. This was communicated to the department (July 2023). In response, the department stated (October 2023) that ASMT-10 was issued to the taxpayer.

This was brought to the notice of the Government (August 2024). Reply is awaited (September 2024).

**(viii) Undischarged tax liability (Dimension 9)**

GSTR-1 captures the details of outward supplies of Goods or Services. This detail is also assessed by the taxpayer and mentioned in annual return GSTR-9 in the relevant columns. Further, taxable value and tax paid thereof are also shown in GSTR-3B.

To analyse the undischarged tax liability, relevant data were extracted from GSTR-1 and GSTR-9 and the tax payable in these returns was compared with the tax paid as declared in GSTR-9. Where GSTR-9 was not available, a comparison of tax payable between GSTR-1 and GSTR-3B was resorted to. The amendments and advance adjustments declared in GSTR-1 and 9 were also considered for this purpose. In the case of GSTR-3B, tables 3.1(a)<sup>24</sup> and 3.1(b)<sup>25</sup> were taken into account.

Audit observed that in case of a taxpayer under TPSC, Kottayam Town, the tax payable during the year 2018-19, as per GSTR-1 was ₹3.97 crore and the tax payable declared in GSTR-3B was ₹1.68 crore. This resulted in mismatch of tax liability amounting to ₹2.29 crore between GSTR-1 and GSTR-3B, which was communicated to the department (September 2023). In response, the department stated (September 2023) that SCN was issued to the taxpayer.

This was brought to the notice of the Government (August 2024). Reply is awaited (September 2024).

**(ix) Mismatch in tax paid between books of accounts and Annual Return (Table 9R of GSTR-9C) (Dimension 11)**

The certified reconciliation statement submitted by the taxpayer as required under Rule 80(3) of SGST Rules, 2017, in Form GSTR-9C for the audit period was analysed at data level to review the extent of identified mismatch in tax paid between the Annual Return and the books of account. Table 9 of GSTR-9C attempts to reconcile the tax paid by segregating the turnover rate-wise and comparing it with the tax discharged as per annual return GSTR-9. The unreconciled amounts could potentially indicate tax levied at incorrect rates, incorrect depiction of taxable turnover as exempt or *vice versa* or incorrect levy

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<sup>24</sup> Outward taxable supplies (other than zero rated, nil rated and exempted).

<sup>25</sup> Outward taxable supplies (Zero rated).

of CGST/ SGST/ IGST. There can also be situations wherein supplies/ tax declared are reduced through amendments (net of debit notes/ credit notes) in respect of a financial year transactions carried out from April to September of the subsequent year. Consequential interest payments - both short payments and payments under incorrect heads – also need to be examined in this regard.

In the case of a taxpayer under TPSC, Vyttila, Audit noticed unreconciled payment of tax declared in Table 9R of GSTR-9C during the year 2020-21, amounting to ₹4.91 crore. This was communicated to the department (August 2023). In response, the department stated (October 2023) that ASMT-10 was issued to the taxpayer.

This was brought to the notice of the Government (August 2024). Reply is awaited (September 2024).

**(x) Cases where GSTR-3B not filed but GSTR-1 available (Dimension 20)**

Audit verified the taxpayers who have not filed GSTR-3B but have filed GSTR-1. GSTR-3B return is the instrument through which the liability is discharged. The filing of GSTR-1 and non-filing of the corresponding GSTR-3B indicate that the taxpayers had undertaken/ carried on the business during the period but have not discharged their tax liability. It also means passing of ITC without the payment of tax.

A taxpayer under TPSC, Kasaragod failed to file any of the GSTR-3B during the period 2019-20. But as per GSTR-1 return filed during this period the taxpayer has tax liability of ₹1.64 crore. The case was communicated to the department (August 2023). In response, the department stated (August 2023) that ASMT-10 was issued to the taxpayer.

This was brought to the notice of the Government (August 2024). Reply is awaited (September 2024).

**(xi) Short Payment of interest on delayed payments (Dimension 21)**

Section 50 of the SGST Act, 2017 stipulates that every person liable to pay tax in accordance with the provisions of this Act or the Rules made thereunder, but fails to pay the tax or any part thereof to the government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay interest at the rate notified.

The extent of short payment of interest on account of delayed remittance of tax during the audit period was identified using the tax paid details in GSTR-3B and the date of filing of the GSTR-3B. Only the net tax liability (cash component) has been considered to work out the interest payable.

Audit observed that in case of a taxpayer under TPSC, Vatakara, wherein the returns in GSTR-3B, for all the months of the period 2018-19 were filed belated. This resulted in short payment of interest amounting to ₹1.19 crore which was communicated to the department (August 2023). In response, the department stated (September 2023) that ASMT-10 was issued to the taxpayer.

This was brought to the notice of the Government (August 2024). Reply is awaited (September 2024).

**(xii) *Suppression in taxable value in comparison with E-Way bills (Dimension 10)***

In order to analyse the extent of short-payment of tax, relevant data related to tax liability declared in GSTR-3B for the years 2018-19 to 2020-21 were compared with disclosures made in E-way bill. Output tax liability as well as the tax payable under reverse charge basis for inward supplies are discharged by a normal taxpayer through the monthly returns filed in Form GSTR-3B. Movement of goods either by supply or transfer involving turnover above specified limit are made through e-way bill.

Audit noticed that the total tax liability declared in e-way bills generated during the year 2019-20, by a taxpayer under TPSC, Vyttila, was ₹441.89 crore, whereas, the tax liability declared and paid through the GSTR-3B for the year was only ₹69.57 crore. This resulted in mismatch amounting to ₹372.32 crore, which was communicated to the department (July 2023). In response, the department stated (October 2023) that ASMT-10 was issued to the taxpayer.

This was brought to the notice of the Government (August 2024). Reply is awaited (September 2024).

**(xiii) *Suppression of taxable value identified through TDS/TCS declaration (Dimension 12)***

TDS and TCS details are declared in GSTR-7 and GSTR-8 respectively and communicated to the registered person in Table 9 of GSTR-2A. Audit identified the cases where the taxable value declared on account of outward taxable supplies (other than zero rated, nil rated and exempted) in GSTR-3B were less than the net amount liable for TCS and TDS credit, as auto populated in Table 9 of GSTR-2A.

Audit observed that a taxpayer under TPSC, Irinjalakkuda declared an outward supply turnover of ₹4.40 crore in GSTR-3B for the year 2019-20. But the taxable amount as per TDS/ TCS credits reflected in Table 9 of GSTR-2A was ₹32.55 crore. Mismatch of turnover amounting to ₹28.15 crore was communicated to the department (August 2023). In response, the department stated (September 2023) that ASMT-10 was issued to the taxpayer.

This was brought to the notice of the Government (August 2024). Reply is awaited (September 2024).

**(xiv) *Suppression of taxable value identified through mismatch in unbilled revenue declared in Table 5 of GSTR-9C (Dimension 13)***

In order to review the extent of identified mismatch in taxable turnover reported in the Annual Return *vis-à-vis* the Financial Statements, the relevant data points

pertaining to disclosures of unbilled revenue<sup>26</sup> submitted by the taxpayer in Table 5 of the GSTR-9C for the years 2018-19 to 2020-21 was analysed at data level. Table 5B figures of GSTR-9C, which capture the unbilled revenue at the beginning of the financial year, was compared with Table 5H of the previous GSTR-9C returns, which captures the unbilled revenue of the end of that year, to review the extent of identified mismatch in turnover declared in the Annual Return with the Financial Statements.

Audit noticed that a taxpayer under TPSC, Vypin declared the unbilled revenue at the end of financial year 2017-18 for ₹31.95 crore. But unbilled revenue at the beginning of 2018-19 is Zero. Unbilled revenue at the end of 2017-18 does not match with the unbilled revenue at the beginning of 2018-19. The case was communicated to the department (August 2023). In response, the department stated (September 2023) that ASMT-10 was issued to the taxpayer.

This was brought to the notice of the Government (August 2024). Reply is awaited (September 2024).

**(xv) Mismatch in taxable turnover between Annual Return and Financial Statements (Table 7G of GSTR-9C) (Dimension 14)**

Table 7 of GSTR-9C is the reconciliation of taxable turnover. Column 7G of this table captures the unreconciled taxable turnover between the annual return GSTR-9 and that declared in the financial statement for the year after the requisite adjustments. The certified reconciliation statement submitted by the taxpayer in GSTR-9C for the audit period was analysed at data level to review the extent of identified mismatch in taxable turnover reported in the Annual Return *vis-à-vis* the Financial Statements. The unreconciled amount in cases where the turnover in GSTR-9 is less than the financial statement indicates non-reporting, under-reporting, short-reporting, omission, error in reporting of taxable supplies. It could also be on account of non-reporting of both taxable and exempted supplies.

In the case of a taxpayer under TPSC, Poojappura, Audit noticed a difference in taxable turnover as captured in Table 7G of GSTR-9C, amounting to ₹435.25 crore. This was communicated to the department (August 2023). In response, the department stated (October 2023) that ASMT-10 was issued to the taxpayer.

This was brought to the notice of the Government (August 2024). Reply is awaited (September 2024).

**(xvi) E-commerce benefactors under composition levy (Dimension 17)**

Audit attempted to identify those composition taxpayers who have availed e-commerce facility for making their supplies. For that the datasets pertaining to GSTR-8 filed by the e-commerce operators and CMP-08 filed by the composition taxpayers were compared to check whether the recipients

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<sup>26</sup> Unbilled revenue accounts for that part of transactions that are recorded in the books of accounts on an accrual basis but against which no invoices have been issued till the close of the financial year.

mentioned in GSTR-8 have also filed CMP-08. Apart from noticing that the taxpayer irregularly availed the benefit of composition levy, it is also noticed that the turnover as declared by the E-Com provider in the GSTR-8 returns pertaining to the taxpayer is more than the turnover declared by the taxpayers in their CMP-08.

Audit noticed that a taxpayer under TPSC, Perumbavoor, has made supply amounting to ₹3.60 crore through e-commerce operator as per GSTR-8 by the E-Com provider. As per Section 10(2)(d) of the SGST Act, 2017, the registered person shall be eligible to opt composition levy if he is not engaged in making any supply of goods or services through an electronic commerce operator. The case was communicated to the department (August 2023). In response, the department stated (August 2024) that ASMT-10 was issued to the taxpayer.

This was brought to the notice of the Government (August 2024). Reply is awaited (September 2024).

**Recommendation 5:**

**Department may instruct Proper Officers to complete the proceedings in a time bound manner on all the deviations pointed out by Audit.**

### **2.4.8 Detailed Audit (Part III)**

In a self-assessment regime, the onus of compliance with law is on the taxpayer. The role of the department is to establish and maintain an efficient tax administration mechanism to provide oversight. Given the limited resources, it is crucial to have an efficient governance system to manage tax administration effectively, ensure legal compliance, and facilitate revenue collection. An IT driven compliance model enables maintaining a non-discretionary regime of governance on scale and facilitates a targeted approach to enforce compliance.

From an external audit perspective, Audit also focused on a data driven risk-based approach. Apart from identifying inconsistencies/ deviations in GST returns through pan India data analysis, a detailed audit of GST returns was also conducted as a part of this review by selecting risk-based sample of 70 taxpayers. The methodology adopted was to initially conduct a desk review of GST returns and financial statements filed by the taxpayers as part of the GSTR-9C and other records available in the back-end system to identify potential risk areas, inconsistencies/ deviations and red flags. Based on desk review results, detailed audit was conducted in SGST TPSCs by requisitioning corresponding granular records of taxpayers such as financial ledgers, invoices etc., to identify causative factors of the identified risks and to evaluate compliance by taxpayers.

As brought out in the previous paragraphs detailed audit involved a desk review of GST returns and other basic records to identify risks and red flags, which were followed up by field audit to identify the extent of non-compliance by taxpayers and action taken by the TPSCs. Non-compliance by taxpayers at various stages ultimately impacts the veracity of returns filed, of ITC and

discharge of tax payments. The audit findings are therefore under a) Returns b) Utilisation of ITC and c) Discharge of tax liability.

#### **2.4.8.1 Scope limitation**

During the desk review of taxpayers' records available in the back-end system, Audit identified the risks related to excess ITC and tax liability mismatches for detailed examination. On the ITC dimension, the mismatches were identified by comparing GSTR-3B with GSTR-2A and GSTR-9, and the declarations made in Table 12 and 14 of GSTR-9C. On the tax liability dimension, the mismatches were identified by comparing GSTR-3B with GSTR-1 and GSTR-9 and the declarations in Table 5, Table 7, and Table 9 of GSTR-9C.

Audit requisitioned granular records of 70 taxpayers from 38 TPSCs. However, only in 17 cases, the records were produced for audit. In the remaining 53 cases under 31 TPSCs, the department did not produce the corresponding granular records such as the supplementary financial ledgers, invoices, agreement copies etc., required for examining the causative factors for mismatches of ITC and tax liability.

The granular records were partially produced in 76 *per cent* of cases (53 cases), as a result the identified risks relating to excess/ irregular ITC availment and undischarged liability of ₹314.85 crore could not be examined in detail by Audit.

The detailed audit of returns filed by 70 taxpayers disclosed that interest payments were not discharged by taxpayers, irregularities in utilisation of ITC and undischarged liability in a significant number of cases, which are brought out below.

#### **2.4.8.2 Non/ short payment of interest by taxpayers**

Audit observed in nine cases, constituting 13 *per cent* of the sample audited, that taxpayers had either filed their returns belatedly or had erroneously utilised excess ITC credits, which were paid back but the interest liability were not discharged amounting to ₹0.91 crore.

An illustrated case is given below:

A taxpayer under TPSC, Feroke had filed the GSTR-3B returns for the months in 2018-19, 2019-20 and 2020-21 belatedly and paid the tax dues in these returns by debiting the Cash Ledger. However, interest amounting to ₹0.40 crore was not paid.

This was brought to the notice of the department (January 2024) and the Government (August 2024). Reply is awaited (September 2024).

### **2.4.8.3 Utilisation of Input Tax Credit**

Input Tax Credit (ITC) means the credit of Goods and Services Tax paid by a taxable person on inward supply of goods and/ or services that are used in the course or furtherance of business. To avoid cascading effect of taxes, credit of taxes paid on input supplies can be used to set-off for payment of taxes on outward supplies.

Section 16 and 17 of the SGST Act, 2017, prescribe the eligibility and conditions to avail ITC. Credit of CGST cannot be used for payment of SGST/ UTGST and *vice versa*. Rules 36 to 45 of the SGST Rules, 2017, prescribes the procedures for availing and reversal of ITC.

Audit observed 112 compliance deficiencies amounting to ₹824.06 crore. The deficiencies were due to ineligible ITC, non or short reversal of ITC and excess availment of ITC on Input Service Distribution.

#### **i) Availing of ineligible ITC**

Section 17 of the SGST Act, 2017, provides a list of goods and supplies on which the Input Tax Credit cannot be availed except when the outward taxable supply is of the same category of services.

Audit observed non-compliance in 13 cases where taxpayers had availed ineligible ITC of ₹139.47 crore. The deficiencies were mainly on account of availing ITC on supply of goods and services not used in the business, credit availed on blocked/ not allowed items etc.

An illustrated case is given below:

As per Section 17(5) (c) of the SGST Act, 2017, input tax credit shall not be available in respect of works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.

A taxpayer under TPSC, Kawdiar, as per Table 8A of GSTR-9, availed input tax credit of ₹9.58 crore for the year 2019-20 and ₹24.30 crore for the year 2020-21, for the supply from another taxpayer, who is a supplier of works contract service. As per registration details, the taxpayer had rental services of water vessels including passenger vessels, freight vessels etc., with or without operator and other support services not elsewhere classified (HSN 996602 and 998599). Since the supply of works contract services from the other taxpayer is not for further supply of works contract, the taxpayer is not eligible for the ITC for that works contract receipts. It resulted in irregular ITC of ₹33.88 crore.

This was brought to the notice of the department (January 2024) and the Government (August 2024). Reply is awaited (September 2024).

**ii) Non-reversal/ Short reversal of ITC**

Section 17(2) of the SGST Act, 2017, read with Rules 42 and 43 of the SGST Rules, 2017, states that where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero rated supplies.

Audit observed non-compliance in 22 cases where taxpayers had either not reversed or short reversed ITC of ₹136.98 crore, due to incorrect application of Rule 42 and 43 of SGST Rules, 2017.

An illustrated case is given below:

A taxpayer under TPSC, Ernakulam Central, is carrying out both taxable and exempted supply. As per Table 5D of GSTR-9, the taxpayer had exempted supply during 2018-21. The taxpayer availed ITC of ₹123.44 crore during 2018-21 against the ITC attributed to taxable supply amounting to ₹57.07 crore. Non restriction of ITC to that attributed to taxable supply resulted in excess ITC of ₹66.37 crore<sup>27</sup>.

This was brought to the notice of the department (January 2024) and the Government (August 2024). Reply is awaited (September 2024).

**iii) Excess availing of ITC through Input Service Distribution**

Section 2(61) of the SGST Act, 2017 defines “Input Service Distributor” (ISD) as an office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services and issues a prescribed document for the purpose of distributing the ITC to a supplier of taxable goods or services or both having the same Permanent Account Number (PAN) as that of the said office. Section 20 of the SGST Act, 2017 prescribes the manner of distribution of credit by ISD and the ISD shall issue invoice in accordance with the provisions made under Rule 39(1) of the SGST Rules, 2017.

Audit observed non-compliance in 15 cases amounting to ₹188.89 crore where taxpayers had either irregularly availed ITC through ISD or had availed it in excess.

An illustrated case is given below:

A taxpayer under TPSC, Ernakulam Central, availed ISD credit of ₹73.11 crore as per Table 6(G) of GSTR-9 for the period 2018-19 to 2020-21. However, as per GSTR-2A of the assessee, ITC invoices issued by the ISD were only for

<sup>27</sup> 2018-19 - ₹13.18 crore, 2019-20 - ₹42.86 crore and 2020-21 - ₹10.33 crore.

₹0.80 crore. This shows that the taxpayer availed excess ITC on ISD credit amounting to ₹72.31 crore<sup>28</sup>.

This was brought to the notice of the department (January 2024) and the Government (August 2024). Reply is awaited (September 2024).

**iv) Availing ITC without satisfying the conditions for taking input tax credit**

As per Section 16 of the SGST Act, 2017, every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person. Also, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless -

- i. he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
- ii. he has received the goods or services or both.
- iii. subject to the provisions of Section 41, the tax charged in respect of such supply has been actually paid to the government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and
- iv. he has furnished the return under Section 39.

As per Section 41 of the SGST Act, 2017, every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger. The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person.

Audit observed non-compliance in 51 cases where taxpayers had availed ineligible ITC of ₹291.75 crore. The deficiencies were on account of availing ITC in excess of the input tax credit available as per the return GSTR-2A.

An illustrated case is given below:

A taxpayer under TPSC, Vytilla has an excess ITC claim of ₹104.89 crore as per inward supply recorded in Table 8D of GSTR-9 filed by the taxpayer for the period from 2018-19 to 2020-21.

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<sup>28</sup> 2018-19 - ₹8.40 crore, 2019-20 - ₹41.86 crore and 2020-21 - ₹22.05 crore.

On this being brought to notice (July 2023), department stated (August 2023) that directions to proceed in this case has been requested from Joint Commissioner.

**v) Scrutiny by Audit on action taken by department**

As per second proviso below Section 16(2) of SGST Act, 2017, where a recipient fails to pay to the supplier, the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, as prescribed.

As per Section 73(10) of SGST Act, 2017, Proper Officer shall issue the order under sub-section 9 within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised. Due date for issuance of adjudication orders for 2018-19 was 30 April 2024.

Upon scrutiny of the 45 cases where action has been taken by the department on the basis of audit observations, Audit observed that lack of proper action by the department in 11 cases resulted in loss of ₹66.97 crore to the exchequer.

On this being brought to notice (August 2024), Government stated (September 2024) that the department had verified four cases out of the 11 cases and stated that in two cases no irregularities found, in one case additional demand of ₹10.34 lakh was created and in one case SCN under section 73(1) of SGST Act, 2017, was issued. In two cases, the department furnished reply and the deviations admitted. Reply awaited in remaining five cases. In the Exit Conference (September 2024), the department stated that the reason for dropping/ not taking further action on cases by Proper Officers would be viewed seriously.

Three cases in this category are illustrated below:

- In respect of a taxpayer under TPSC, Kawdiar, Audit had communicated the difference in ITC availed in GSTR-3B as compared to that detailed in GSTR-2A<sup>29</sup>. The State Tax Officer dropped the proposal to determine tax for the period 2018-19 on the ground that the taxpayer filed reply along with reconciliation statement of GSTR-2A and GSTR-3B.

On verification of the reconciliation statement, it was noticed that the taxpayer shown 'ITC received in 2018-19 but availed in 2019-20' of ₹28.79 crore. However, on verification of Table 13 of GSTR-9 of 2018-19, it was noticed that 'ITC received in 2018-19 but availed in 2019-20' was ₹46.31 crore. Hence, the reconciliation statement is not correct. This resulted in loss of tax including interest and penalty of ₹35.04 crore to the exchequer.

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<sup>29</sup> Circular No. 183/15/2022-GST and 193/05/2023-GST clarifies how to deal with difference in ITC availed in GSTR-3B as compared to that detailed in GSTR-2A.

On this being brought to notice (May 2024) the department stated (May 2024) that the State Tax Officer has not intimated, communicated to the supervisory officers regarding the possibility of issuance of SCN under section 73 against this taxpayer before the last date for issuance of such SCNs. This reply is not relevant to the audit objection.

- In respect of a taxpayer under TPSC, Vyttila, audit had communicated the difference in ITC availed in GSTR-3B as compared to that detailed in GSTR-2A for the year 2018-19. The department issued SCN on the case and the taxpayer filed reconciliation statement of ITC and the department admitted ₹129.61 crore as IGST on import of goods. On verification of the import documents in support of the claim admitted by department, Audit found that 63 invoices with IGST value ₹8.63 crore pertains to the year 2017-18, and as per Table 8C of GSTR-9 for 2018-19, the taxpayer has Nil ITC claim on inward supplies received during 2017-18. The taxpayer, vide Table 6E of GSTR-9 claimed only ₹121.25 crore as IGST on import of goods for the year 2018-19. Hence, the admission of ₹129.61 crore as IGST on import of goods, which was not claimed by the taxpayer, is not in order and this resulted in loss of ₹19.85 crore including interest and penalty.

On this being brought to notice (May 2024), the department stated (September 2024) that the taxpayer has paid IGST of ₹79.16 crore on import of goods for the year 2017-18 and has unclaimed ITC of ₹8.36 crore for the year 2017-18 on import of goods, which the taxpayer claimed through GSTR-3B for 2018-19.

The reply is not acceptable as ITC available for the taxpayer as per GSTR-2A (Bill of entry) is rupees two crore only for 2017-18 and the amount has been fully availed in 2017-18. The department accepted the taxpayers claim of IGST without verifying the fact.

- In respect of a taxpayer under TPSC, North Paravur, Audit had communicated the difference in ITC availed in GSTR-3B as compared to that detailed in GSTR-2A for the year 2018-19. The Proper Officer issued SCN intimating the excess ITC availed and determined tax amounting to ₹0.49 crore under Section 73. On scrutiny, it was found that excess credit availed was ₹3.69 crore resulting short determination of tax of ₹3.20 crore and interest of ₹2.87 crore.

On this being brought to notice (May 2024) the department stated (May 2024) that the discrepancies pointed out in Audit will be escalated to review cell for further proceedings.

#### **2.4.8.4 Discharge of tax liability**

Section 9 of the SGST Act, 2017, stipulates levy and collection of tax on all intra-State supplies of goods or services or both, except on supply of alcoholic liquor for human consumption. The tax is to be levied on value determined under Section 15 of the Act *ibid* and at such rates not exceeding 20 per cent under each Act, i.e., CGST Act, 2017 and SGST Act, 2017. Section 5 of the

IGST Act, 2017, provides for levy and collection of IGST on interstate supply of goods and services with maximum rate of 40 *per cent*.

Under Section 8 of the Goods and Services Tax (Compensation to States) Act, 2017, a cess is levied on all inter-state and intra-state supply of such goods or services or both which are listed in the schedule of the said Act such as tobacco products, aerated drinks, cigarettes, vehicles etc. Section 9(4) of the SGST Act, 2017, and Section 5 of the IGST Act, 2017 provide for reverse charge levy on certain supplies, wherein the recipient instead of supplier becomes liable to pay tax.

Audit observed 55 instances of compliance discrepancies involving tax effect of ₹33.42 crore (in 37 instances) and turnover escape of ₹482.09 crore (in 16 instances). The deficiencies were mainly caused due to mis-classification of supplies, exclusion of taxable supplies, not adhering to time of supply provisions, short payment of tax under reverse charge basis, non-payment of interest, short discharge of tax liability, short payment of Kerala Flood Cess and non fulfilment of cash payment condition.

**i) Short payment of tax due to misclassification of supplies**

As per Notification No. 11/2017-Central Tax (Rate), 24/2017-Central Tax (Rate) and 1/2018-Central Tax (Rate), the CGST rate of six *per cent* is applicable for the works contract services provided to Central Government, State Government, Union Territory, a local authority, a Governmental authority or a Government entity for a civil structure or any other work if it is meant predominantly for use other than for commerce, industry or any other business or profession. Otherwise, the rate applicable is nine *per cent*.

Audit observed compliance deficiencies in one case amounting to ₹9.91 crore, due to misclassification of supplies of services by the taxpayer and consequent discharge of tax liability at lower rates by the taxpayer.

A taxpayer under TPSC, Thripunithura supplied works contract service to a joint venture, who received a contract receipt of ₹29.53 crore in 2019-20 and ₹135.70 crore in 2020-21 for which tax was paid at the rate of six *per cent* to the Government. As the service supplied is not to any entities specified in the notification, the tax was to be levied at nine *per cent*. This resulted in short levy of tax ₹1.77 crore in 2019-20 and ₹8.14 crore in 2020-21.

On this being brought to notice (August 2023), the department stated (August 2023) that for short payment of tax due to incorrect rate of tax, ASMT-10 was issued to the taxpayer.

**ii) Mismatch of turnover due to exclusion of taxable supplies**

As per Section 7 of SGST Act, 2017, supplies includes all forms of supply made for a consideration by a person in the course or furtherance of business, and also includes import of services for a consideration whether or not in the course or furtherance of business. Schedule I specify certain activities which even made without a consideration shall be treated as supply. Schedule II specifies treatment of certain activities or transactions as either supply of goods or supply of services. Section 8 of SGST Act, 2017, deals with composition and mixed supplies.

Audit observed compliance deficiencies in six cases amounting to ₹173.23 crore, due to taxpayers excluding taxable supplies and consequently not discharging the tax liability.

An illustrated case is given below:

The turnover of a taxpayer registered under TPSC, Edappally, for the years 2018-21 as per financial statements is ₹3,223.84 crore. But the turnover reported as per GSTR-9 for these years is ₹3,085.30 crore only resulting in mismatch in turnover of ₹138.54<sup>30</sup> crore.

This was brought to notice of the department (January 2024) and the Government (August 2024). Reply is awaited (September 2024).

**iii) Short payment of tax due to non-adherence to the time of supply**

The provisions of Section 12 and 13 of SGST Act, 2017, determine the time of supply of goods and services, and Section 14 of SGST Act, 2017, deals with change of rates of tax on supply of goods and services. By virtue of section 20 of the IGST Act, 2017, these provisions are also applicable to inter-State supplies leviable to Integrated tax.

Audit observed compliance discrepancies in two cases amounting to ₹1.49 crore, due to taxpayers not adhering to the time of supply provisions, thereby not discharging tax liability.

An illustrated case is given below:

A taxpayer under TPSC, Ernakulam Central, received advance payment of ₹4.83 crore during 2020-21. As per GSTR-9C, unbilled revenue at the end of 2019-20 and unbilled revenue at the beginning of 2020-21 are Nil. Instead of adding advance received to the turnover, the taxpayer deducted it from turnover which resulted in escape of turnover for ₹9.66 crore and corresponding short levy of tax at the rate of 18 *per cent* amounting to ₹1.39 crore.

<sup>30</sup> 2018-19 - ₹50.45 crore, 2019-20 - ₹69.06 crore, 2020-21 - ₹19.03 crore.

This was brought to the notice of the department (January 2024) and the Government (August 2024). Reply is awaited (September 2024).

**iv) Short payment of tax under Reverse Charge Mechanism**

As per the provisions of Section 9(3) of SGST Act, 2017, and Section 5(3) of IGST Act, 2017, the Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Audit observed compliance deficiencies in two cases amounting to ₹3.45 crore, due to taxpayers incorrectly discharged tax payments under the Reverse Charge Mechanism leading to short levy of tax.

An illustrated case is given below:

Verification of annual return and financial statements of a taxpayer under TPSC, Palakkad revealed short payment of tax under Reverse Charge Mechanism (RCM) on inward supplies “legal and professional fee”, “directors commission” and “directors sitting fee”. Inward supply on which RCM applicable is ₹18.86 crore during 2018-21. As per table 4G of GSTR-9 tax paid under RCM corresponding to the supplies is only ₹0.30 lakh, resulting in non-payment of tax amounting ₹3.39 crore.

This was brought to the notice of the department (January 2024) and the Government (August 2024). Reply is awaited (September 2024).

**v) Non-payment of interest**

As per Section 50 of the SGST Act, 2017, every taxpayer who fails to pay the tax or input tax credit has been wrongly availed or fails to pay tax on reverse charge basis to the government within the period prescribed, shall pay interest at such rate for the period for which the tax remains unpaid.

Audit observed compliance deficiencies in seven cases amounting to ₹7.08 crore, due to taxpayers not adhering to provisions of interest payments.

An illustrated case is given below:

A taxpayer under TPSC, Vatakara, claimed exemption for the receipts towards annuity and early completion bonus amounting to ₹139.14 crore received during 2018-21. Authority for Advance Ruling vide order KER/138/2021 dated 21 June 2022 clarified that annuity payments and bonus received by the applicant are taxable at the rate of 12 *per cent*. Subsequently the taxpayer paid

tax for this turnover but didn't discharge the interest liability amounting to ₹6.66 crore<sup>31</sup>.

This was brought to the notice of the Government (August 2024). Reply is awaited (September 2024).

**vi) Short discharge of tax liability**

As per Section 9(1) of SGST Act, 2017, there shall be levied a tax called the Kerala State Goods and Services Tax on the value determined under section 15 of the Act and at such rates, not exceeding twenty *per cent*, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Audit observed compliance deficiencies in three cases amounting to ₹8.85 crore, due to taxpayers not adhering to provisions on discharge of tax liability.

An illustrated case is given below:

As per Table 9 of GSTR-9 filed by a taxpayer under TPSC, Ernakulam Central, total tax payable for the year 2018-19 is ₹123.27 crore. On verification, Audit found that taxpayer paid ₹114.66 crore only as per Table 6 of GSTR-3B. It resulted in short discharge of ₹8.61 crore.

This was brought to the notice of the department (January 2024) and the Government (August 2024). Reply is awaited (September 2024).

**vii) Short payment of Kerala Flood Cess**

As per Section 14(1) of the Kerala Finance Act, 2019, read with Kerala Flood Cess Rules, 2019, a Cess called the Kerala Flood Cess has been levied at the rate of one *per cent* on the taxable value of supplies of goods and services or both for which tax rate is fixed at six *per cent*, nine *per cent* and 14 *per cent* as per SGST Act, 2017, on the intra-state supply of goods or services or both, for a period of two years with effect from 01 August 2019. Every taxable person liable to pay the Kerala Flood Cess shall file a monthly return in Form KFC-A on or before the due date of filing GSTR-3B.

Audit observed compliance deficiencies in nine cases amounting to ₹1.44 crore, due to taxpayers not adhering to the provisions of discharging Kerala Flood Cess.

An illustrated case is given below:

As per GSTR-1 B-to-C return filed by a taxpayer under TPSC, Ernakulam Central, for the year 2020-21, the total value of intra-state supplies having SGST tax rates six *per cent*, nine *per cent* and 14 *per cent* amounts to ₹432.21 crore.

<sup>31</sup> 2018-19 – ₹3.24 crore, 2019-20 – ₹2.21 crore, 2020-21 - ₹1.21 crore.

As per KFC-A filed by the taxpayer, Kerala flood cess has been paid for a turnover of ₹384.01 crore showing that KFC for a balance intra-state taxable value of ₹48.20 crore has not been paid by the taxpayer. The undischarged liability comes to ₹0.48 crore.

This was brought to the notice of the department (January 2024) and to the Government (August 2024). Reply is awaited (September 2024).

**viii) Cash payment condition not fulfilled**

As per Rule 86B of the SGST Rules, 2017, the registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine *per cent* of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees with effect from 01 January 2021.

Audit observed compliance deficiencies in 13 cases amounting to ₹1.20 crore, due to taxpayers not following restrictions on utilisation of credit in electronic credit ledger.

An illustrated case is given below:

As per GSTR-3B for the period February 2021, a taxpayer under TPSC, Panampilly Nagar, has a tax liability of ₹45.40 crore, which was discharged fully utilising the amount available in Electronic Credit Ledger. As per Rule 86B of SGST Rules, 2017, a minimum of ₹0.45 crore out of the tax liability was to be paid through cash.

This was brought to the notice of the department (January 2024) and to the Government (August 2024). Reply is awaited (September 2024).

**ix) Improper claim of Zero-rated supply without payment of tax**

As per Rule 96A of SGST Rules, 2017, any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner. The details of the export invoices contained in FORM GSTR-1 furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system. The taxpayer is bound to pay the tax due along with interest, if the goods are not exported out of India within a period of fifteen days after the expiry of three months from the date of issue of the invoice for export.

Audit observed irregularity in 10 cases where supply amounting to ₹308.86 crore were claimed as zero-rated supply without payment of tax, which was not established as prescribed.

An illustrated case is given below:

As per Table 5A of GSTR-9, a taxpayer under TPSC, Kattappana, has zero rated supply without payment of tax for ₹52.67 crore and ₹137.47 crore respectively in 2018-19 and 2020-21. Confirmation from Customs that the goods covered by the invoices have been exported out of India was not available in GST portal. The Proper Officer also did not furnish to Audit, any documents to prove the zero-rated supply. Hence, Audit could not verify whether goods were exported or not.

This was brought to the notice of the department (January 2024) and the Government (August 2024). Reply is awaited (September 2024).

**Recommendation 6:**

**The department may initiate remedial action for all the compliance deviations brought out in this report and also recommended that department may verify the compliance deviations in the remaining cases also.**

## **2.4.9 Conclusion**

The Subject Specific Compliance Audit (SSCA) on ‘Department’s oversight on GST payments and Return filing’ was undertaken in the context of varying trend of return filing and continued data inconsistencies with an objective of assessing the adequacy of the system in monitoring return filing and tax payments, extent of compliance and other departmental oversight functions.

This SSCA was predominantly based on data analysis, which highlighted risk areas, red flags and in some cases, rule-based deviations and logical inconsistencies in GST returns filed. The SSCA entailed assessing the oversight functions of SGST circle offices at two levels – at the data level through global data queries and at the functional level with a deeper detailed audit both of the assessment Circles and of the GST returns, which involved accessing taxpayer records.

A review of the functioning of circles disclosed that the department incurred loss of revenue due to deviations from the provisions of the Act aggregating to ₹103.67 crore in 44 instances. Centralised Audit disclosed deviations from the provisions of the Act in 271 cases involving a short levy of tax of ₹683.50 crore in 229 cases and turnover mismatch in 42 cases constituting 72 *per cent* of the 374 inconsistencies/ mismatches in data, for which the department provided responses. Detailed Audit disclosed 174 compliance deviations involving deviations with tax effect of ₹858.39 crore.

### **2.4.10 Summary of recommendations**

Considering the significant number of compliance deficiencies, the department must initiate remedial measures. From a systemic perspective, the department needs to strengthen the quality of documentation and reinforce the institutional mechanism in the TPSCs to establish and maintain effective oversight on return

filing, taxpayer compliance, tax payments, cancellation of registrations and recovery of dues from defaulters.

The department may,

1. explore the possibility of introducing an automated system to match the data relating to ASMTs issued with follow up action.
2. issue instruction to Proper Officers to issue notices to non-filers and late filers of return within the stipulated time.
3. issue instruction to Proper Officers to take action on taxpayers who failed to file GSTR-10 return within the stipulated time limit.
4. urgently pursue the 329 inconsistencies and deviations pointed out by Audit, for which responses have not been provided and intimate the results to Audit.
5. instruct Proper Officers to complete the proceedings in a time bound manner on all the deviations pointed out by Audit.
6. initiate remedial action for all the compliance deviations brought out in this report and also recommended that department may verify the compliance deviations in the remaining cases also.

## **TAXES/ VAT ON SALES, TRADE ETC.**

The KVAT Act, 2003, authorises levy of tax on sale of goods in the State upto June 2017 and levy of tax on sale of petroleum products, foreign liquor and ganja is administered by Kerala General Sales Tax Act, 1963. The return filed by the assessee is a deemed assessment under Section 21 of KVAT Act and any escapement or under assessment noticed, the assessing authority may assess the tax due under Section 25(1), to the best of its judgement. According to Section 17 of Kerala General Sales Tax Act, 1963, the assessing officer shall assess the tax either based on the return, if it appears to be correct or it appears not correct, based on best of its judgement. Test check of the records relating to KVAT and KGST assessments and connected documents during 2022-23 showed under assessment of tax and other irregularities involving money value of ₹1.75 crore as given in succeeding paragraphs.

### **2.5 Short levy of tax due to omission to levy tax at the scheduled rate for sales to Special Economic Zone (SEZ)**

**Omission to levy at the scheduled rate for sales to Special Economic Zones resulted in short levy of tax and interest amounting to ₹58.03 lakh.**

As per Section 5(1) of the Kerala General Sales Tax Act, 1963, a dealer is liable to pay tax at scheduled rate<sup>32</sup> in respect of Foreign liquor, at the point of first sale in the State except where the sale is to the Kerala State Beverages (Manufacturing and Marketing) Corporation Limited. In addition, as per Section 5(2) of the Act, every dealer in Foreign liquor, shall pay turnover tax on the turnover of Foreign liquor at all points of sale in the State, namely (a) by a bar attached hotel, at the rate of ten *per cent*; and (b) by others at the rate of five *per cent*.

M/s SDF Industries Limited is an assessee on the rolls of the Office of the Deputy Commissioner, Tax Payer Services Division, Palakkad and is engaged in trading of IMFL. The assessee filed the annual return for the year 2018-19 (November 2020) conceding total sales turnover of ₹78.46 lakh and taxable turnover of ₹57.62 lakh, without output tax liability.

The Assessment of the assessee for the year 2018-19 was completed (October 2022) by the assessing officer after verifying the books of accounts; and fixed the taxable turnover as ₹57.56 crore by adding the detected omissions and suppressions. The assessing officer demanded an amount of ₹2.88 crore as turnover tax (as per Section 5(2) of the Act) at the rate of five *per cent* for the taxable turnover of ₹57.56 crore.

Audit noticed (May 2023) that the taxable turnover included ₹18.67 lakh, being sales to Special Economic Zone (SEZ) which was concluded by the assessing Officer as taxable sales. Audit observed that sales to SEZ attracts tax at

<sup>32</sup> Scheduled rate of IMFL with effect from 01 April 2018 is 210 *per cent*.

scheduled rate (at the rate of 210 *per cent*) under Section 5(1) of the Act. However, the assessing officer omitted to levy tax accordingly. Thus, the omission to levy tax on turnover in respect of sales to SEZ resulted in short levy of tax and interest amounting to ₹58.03 lakh as shown below in **Table – 2.3**.

**Table – 2.3: Details of short levy of tax and interest –  
M/s SDF Industries Limited**

Sl. No.	Particulars	Amount (₹ in lakh)
1	Turnover of Foreign liquor escaped from assessment under Section 5(1)	18.67
2	Tax at the rate of 210 <i>per cent</i>	39.21
3	Interest (at the rate of 12 <i>per cent per annum</i> for 48 months from May 2019 to April 2023)	18.82
	<b>Short levy</b>	<b>58.03</b>

Source: Based on data furnished by department.

The case was reported to Government (July 2023) and Government stated (November 2023) that the dealer's reply to its notice was that the movement of goods to SEZ unit was for export only and hence the sale is eligible for exemption. Government also stated that since the dealer did not produce statutory forms for a claim of ₹10.49 lakh a hearing notice was issued to the dealer and final report will be submitted soon. Further reply is awaited (November 2024).

*It is recommended that the Assessing Authorities shall conduct proper verification of records and ensure that scheduled rate of tax be levied on commodities and responsibility shall be fixed for undue benefits given to the assessee.*

## **2.6 Short levy of tax due to suppression of turnover**

**Failure of the Assessing authority to comply with the provisions of the KVAT Act, 2003, on assessing the suppressed turnover resulted in short levy of tax and interest amounting to ₹12.86 lakh.**

As per Section 25AA(4) of the KVAT Act, 2003 (inserted vide Section 11(2) of the Finance Act, 2019), the suppressed turnover<sup>33</sup> of works contractors who have opted for compounding scheme<sup>34</sup> under clause (a) of Section 8 shall be assessed at the applicable compounded rate by adding 25 *per cent* of the suppressed turnover and in such cases, the option of compounding shall not be cancelled.

<sup>33</sup> Taxable turnover not disclosed in the annual return.

<sup>34</sup> The compounding scheme allows a registered Taxpayer to pay tax at a fixed percentage of tax on the whole contract amount, instead of paying tax at scheduled rates on taxable turnover.

M/s Consolidated Construction Consortium Limited is a works contractor in the rolls of the Office of the Assistant Commissioner, Tax Payer Services Circle, Palakkad (East). The assessee filed (November 2016) Annual Return for the period 2015-16 conceding a turnover of ₹5.14 crore and paid ₹1.43 lakh as tax under Section 8(a) of the Act.

The assessment for the year 2015-16 was originally completed (May 2018) by State Tax Officer (Works Contract), Palakkad determining total contract receipts as ₹9.65 crore and demanded tax amounting to ₹67.57 lakh. Aggrieved by this, the assessee filed an appeal before the Deputy Commissioner (Appeals), Palakkad. The Appellate Authority set aside (December 2019) the original assessment order and remanded back to the assessing authority for fresh disposal after having scrutiny of the profit and loss account of the assessee.

In compliance with the directions of Appellate Authority, the assessing officer completed the assessment (October 2020) afresh under Section 25 (1) of the Act determining the turnover as ₹9.14 crore and demanded tax of ₹63.96 lakh.

Audit observed (May 2023) that the assessee had suppressed turnover amounting to ₹4.00 crore, being the difference between the amount declared by the assessee (₹5.14 crore) and actual contract receipts (₹9.14 crore). But while completing the assessment, this suppressed turnover was not assessed under Section 25AA of the Act by adding 25 *per cent* of the suppressed turnover. Failure of the assessing authority to comply with the provisions of the Act resulted in short levy of tax and interest amounting to ₹12.86 lakh as shown below in **Table – 2.4**.

**Table – 2.4: Details of short levy of Tax and interest- M/s Consolidated Construction Consortium Limited**

Sl No.	Particulars	Amount (₹ in lakh)
1	Total turnover as per the annual return	514.42
2	Total turnover as per the assessment order	913.88
3	Suppressed turnover (2) – (1)	399.46
4	25 <i>per cent</i> of the suppressed turnover	99.86
5	Tax at the rate of seven <i>per cent</i> of (4)	6.99
6	Interest at the rate of 12 <i>per cent per annum</i> for 84 months from May 2016 to April 2023	5.87
	<b>Short levy</b>	<b>12.86</b>

Source: Based on the data furnished by department.

On this being pointed out (July 2023), the assessing officer replied (July 2023) that a notice was issued to the dealer in order to rectify the defects pointed out by Audit.

The case was reported to Government (July 2023) and Government stated (August 2023) that notice was issued on 26 July 2023, which was returned with the tag ‘no such addressee’. The notice was then forwarded to the partners to

their residential address on 29 September 2023. Government also added that, upon enquiry it was found that the company has filed insolvency and as per National Company Law Tribunal Order a liquidator was appointed. Further details awaited (November 2024).

*It is recommended that the Assessing Authority ensure that the provisions of the Act are complied with. The responsibility may be fixed for giving undue benefit to the assessee.*

## **2.7 Short levy due to excess credit of Input Tax**

**Ineligible grant of input tax credit resulted in short levy of tax and interest amounting to ₹0.92 crore.**

As per Rule 12A of KVAT Rules, 2005, when taxable goods are used during a return period, partly in relation to taxable transaction and partly in relation to exempted or non-taxable transaction, the input tax paid during such return period shall be apportioned between the taxable and non-taxable transactions. This should be done on the basis of the ratio of taxable and non-taxable turnover of the return period. The portion of the input tax credit allocable to exempted sale or transaction shall be disallowed.

### **2.7.1 Undue benefit by allowing ineligible input tax credit**

M/s URC Construction (P) Limited is a works contractor on the rolls of Assistant Commissioner, Tax Payer Services Circle, Palakkad (East). The assessee filed (February 2019) Annual Return for the year 2016-17 conceding total contract receipt of ₹48.28 crore including exempted turnover of ₹27.82 crore and paid ₹0.18 crore as tax.

The assessing authority completed the assessment (September 2019) under section 25(1) of the KVAT Act by arriving total contract receipts as ₹48.73 crore and allowed exemption for the turnover of ₹26.44 crore<sup>35</sup> (54 per cent). Tax due for the taxable turnover of ₹22.29 crore (46 per cent) was ₹3.23 crore at the rate of 14.50 per cent. The assessee was allowed input tax credit (ITC) amounting to ₹0.91 crore for the total turnover of ₹48.73 crore.

Audit observed (May 2023) that while allowing ITC, the assessing officer failed to apportion the ITC with respect to taxable and non-taxable turnover by applying Rule 12A, instead allowed ITC in respect of the total turnover. The ITC should have been apportioned between taxable and non-taxable turnover in the ratio of 46:54. Thus the eligible ITC applicable to taxable turnover is ₹0.42 crore (46 per cent of ₹0.91 crore) only. However, the assessing officer admitted the ITC amounting to ₹0.91 crore (for the total turnover), resulting in allowing excess ITC of ₹0.49 crore, which resulted in short levy of tax and interest amounting to ₹0.84 crore as shown below in **Table – 2.5**.

<sup>35</sup> Sales to SEZ - ₹18.91 crore,  
Exemption under Section 10 at the rate of 25 per cent - ₹7.43 crore,  
Sub contract amount proved with Form 20H – ₹0.10 crore.

**Table – 2.5: Details of short levy of tax and interest - M/s URC Constructions (P) Ltd.**

Sl. No.	Particulars	Amount (₹ in crore)
1	Total turnover as per assessment order	48.73
2	Taxable turnover	22.29 (46 per cent)
3	Exempted turnover	26.44 (54 per cent)
4	Ratio of taxable and exempted turnover	46 : 54
5	Input tax claimed by the assessee and allowed by the assessing officer	0.91
6	Eligible ITC (46 per cent of 0.91)	0.42
7	ITC allocable to exempted sale (54 per cent of 0.91)	0.49
8	Interest (at the rate of 12 per cent per annum for 72 months from May 2017 to April 2023)	0.35
<b>Total short levy</b>		<b>0.84</b>

Source: Based on data furnished by department.

On this being pointed out (July 2023), Government stated (November 2024) that assessment has been completed incorporating the audit objection creating an additional demand of ₹0.97 crore. Collection particulars are awaited (November 2024).

### 2.7.2 Irregular grant of Input Tax Credit

M/s Parisons Foods (P) Limited is a dealer of coconut oil, edible oil, inedible oil, tea, wheat, milk products etc., in the rolls of State Tax Officer, Tax Payer Services Circle, Kozhikode City. The assessee filed Annual Return for the year 2017-18 (November 2020) conceding total local sales turnover of ₹95.20 crore and taxable local sales turnover of ₹81.42 crore. The output tax due was ₹4.28 crore and eligible ITC was ₹1.91 crore.

Assessing authority completed the assessment (March 2021) with total tax due as ₹4.78 crore and Input Tax Credit as ₹1.91 crore.

On scrutiny (June 2023) of the assessment records, figures in books of accounts furnished by Government (January 2024) etc., Audit observed that Assessing Officer allowed ITC without apportioning ITC among taxable and non-taxable turnover as envisaged in Rule 12A. This resulted in short levy of tax and interest of ₹0.08 crore as detailed below in **Table – 2.6**.

**Table – 2.6: Details of short levy of tax and interest - M/s Parisons Foods (P) Limited**

(₹ in lakh)

Particulars	Sunflower oil	Other edible oil	Total
Total Sales	1,936.87	6,160.80	8,097.67
Stock Transfer out	640.24	142.55	782.79
Percentage of Stock Transfer out	33.06	2.31	
ITC paid on local purchases	6.94	103.12	110.06
Ineligible ITC (proportionate)	2.29 (33.06 per cent of 6.94)	2.38 (2.31 per cent of 103.12)	4.67
Interest due at the rate of 70 per cent (from May 2018 to April 2024)			3.27
<b>Total Short Levy</b>			<b>7.94</b>

Source: Based on the data furnished by department.

Government replied (January 2024) that by applying exempted turnover proportion of sunflower oil (33.06 per cent) to its local purchase proportion (14.65 per cent), the ineligible ITC on sunflower oil comes to only 4.84 per cent of the ITC available on the local purchase of sunflower oil and the assessment is under process.

The reply is not acceptable, as the ineligible ITC on stock transfer of sunflower oil is not calculated as per provisions of Rule 12A, according to which, the apportionment of ITC between taxable and exempted transactions shall be made in ratio of taxable and exempted turnover of the return period.

*It is recommended that an adequate mechanism be put in place to cross check all the mandatory records before allowing input tax credit. Responsibility must be fixed for giving undue benefit to the assessee.*

## 2.8 Grant of excess exemption resulting in short levy of tax

### **Incorrect assessment of a works contractor resulted in short levy of tax and interest of ₹0.12 crore.**

As per Rule 10(2)(b) of KVAT Rules, 2005, where the actual turnover in relation to a works contract, in which the transfer of goods takes place not in the form of goods but in some other form, which is not ascertainable from the books of accounts of the dealer or where the dealer has not maintained any accounts, the total turnover in respect of such works contract shall be computed after deducting labour and other charges as given from the total amount of contract. As per the table below Rule 10(2)(b), in respect of 'structural contracts', allowable exemption is 30 per cent of the value of works contract.

M/s SU Square Projects and Infrastructure (P) Limited is a works contractor on the rolls of State Tax Officer, Tax Payer Services Circle, Chalappuram,

Kozhikode. The assessee filed annual return for the year 2016-17 (July 2018) conceding a total turnover of ₹8.84 crore where the entire contract was shown as structural contracts. The assessee claimed an exemption of ₹3.11 crore (35 per cent of total turnover) under Rule 10(2)(b) and taxable turnover was ₹5.73 crore.

The assessment of the assessee was completed under Section 25(1) of KVAT Act (October 2019) arriving at the total contract receipt as ₹8.55 crore and taxable turnover as ₹5.44 crore (after allowing exemption of ₹3.11 crore under Rule 10(2)(b)). Tax liability as per the assessment order was ₹0.78 crore. The assessee had eligible ITC and TDS amounting to ₹0.82 crore and excess credit of ₹0.04 crore was refunded (October 2020).

On scrutiny (June 2023) of the assessment records, Audit observed that eligible exemption allowable under Rule 10(2)(b) for structural contracts is 30 per cent. Being so, the exemption allowable to the assessee is ₹2.57 crore only, instead ₹3.11 crore (35 per cent) was allowed as exemption. Allowing inadmissible exemption amounting to ₹0.54 crore resulted in short levy of tax and interest of ₹0.12 crore as detailed below in **Table – 2.7**.

**Table – 2.7: Details of short levy of tax and interest -M/s SU Square Projects and Infrastructure (P) Limited**

Sl. No.	Particulars		Amount (₹ in lakh)
1	Total turnover as per the assessment order		855.40
2	Exemption allowed		311.16 (35 per cent)
3	Exemption eligible (30 per cent of Sl No.1)		256.62
4	Excess exemption allowed (2) – (3)		54.54
5	Tax due at the rate of 14.50 per cent of Sl No.4		7.91
6	Interest	On refund amount of ₹3,61,560 @ 12 per cent per annum for 31 months from November 2020 to May 2023	1.12
		On balance tax of ₹4,29,322 (7,90,882 - 3,61,560) at the rate of 12 per cent per annum for 73 months from May 2017 to May 2023)	3.13
7	Total interest due		4.25
8	<b>Total short levy (5) + (7)</b>		<b>12.16</b>
			<b>0.12 crore</b>

Source: Based on the data furnished by department.

On this being pointed out (September 2023), Government stated (November 2024) that while preparing books of accounts assessee had taken material element and labour element on actual basis. They had shown the percentage of material element and service element separately in the ratio 60:40 and 70:30 in their bills. Also, the assessee had done civil, electrical and service only contracts and hence the exemption rate was not fixed. Rule 10(2)(b) is applicable only

when deductions are not ascertainable from the books of accounts and here the assessee keeps separate accounts for material and labour. The assessing officer while granting exemption as per books, mistakenly quoted Rule 10(2)(b) instead of Rule 10(2)(a). Hence, exemption claimed and allowed is as per law.

The reply is not acceptable. Though the Government stated that the assessee keeps separate accounts for material and labour, the assessee had issued bills for material element and service element in two different ratios of 60:40 and 70:30. If they had taken material and service in actual basis, only the actual expenses should be taken into account in the bills issued and not on percentage basis. Moreover, the assessee himself had disclosed all his works as structural contracts, so Government's contention that the assessee had done civil, electrical and service only contracts is also not acceptable.

*It is recommended that the Assessing Authority ensure that the provisions of the Act are complied with. The responsibility may be fixed for giving undue benefit to the assessee.*

