

## PART - I

### CHAPTER II

#### SUBJECT SPECIFIC COMPLIANCE AUDITS

##### Finance Department

#### 2.1 Processing of refund claims under Goods and Services Tax

*Timely refund mechanism constitutes a crucial component of tax administration. Audit of refund cases under GST regime was conducted to assess the adequacy of the rules, notifications, etc., compliance of extant provisions by the tax authorities and to examine whether effective internal control mechanism exists to monitor the performance of the departmental officials.*

*The Audit noticed several instances of deficiencies and irregularities viz. not issuing acknowledgement within time, not sanctioning of refunds in time, allowance of irregular refund, excess refund, non-observance of principles of natural justice, etc.*

*During the audit of Internal Control and Monitoring Mechanism in the selected units, instances of double payment of refund amount and non-conduct of post-audit of refund claims were also noticed.*

##### 2.1.1 Introduction

Timely refund mechanism constitutes a crucial component of tax administration, as it facilitates trade through release of blocked funds for working capital, expansion, and modernisation of existing business. The provisions pertaining to refund contained in the GST laws aim to streamline and standardise the refund procedures under GST regime. As per CBIC circular no.125 dated 18 November 2019 and by State Tax Department on 21 November 2019, it was decided that the claim and sanctioning procedure would be completely online w.e.f. 26 September 2019.

In absence of electronic refund module on the common portal before 26 September 2019, a temporary mechanism was devised and implemented. Circular No. 17/17/2017-GST dated 15 November 2017 and Circular No. 24/24/2017-GST dated 21 December 2017 were issued by the Central Board of Excise and Customs (CBEC)<sup>1</sup> prescribing the detailed procedures. Based on these circulars, the State Tax Department (STD), Gujarat also issued circulars on 23 November 2017 and 3 January 2018 respectively prescribing the process of manual filing and processing of refund claims. In this electronic-cum-manual procedure, the applicants were required to file the refund applications in Form GST RFD-01A on the common portal, take a printout of the Form and submit it physically to the jurisdictional tax office, along with all supporting documents.

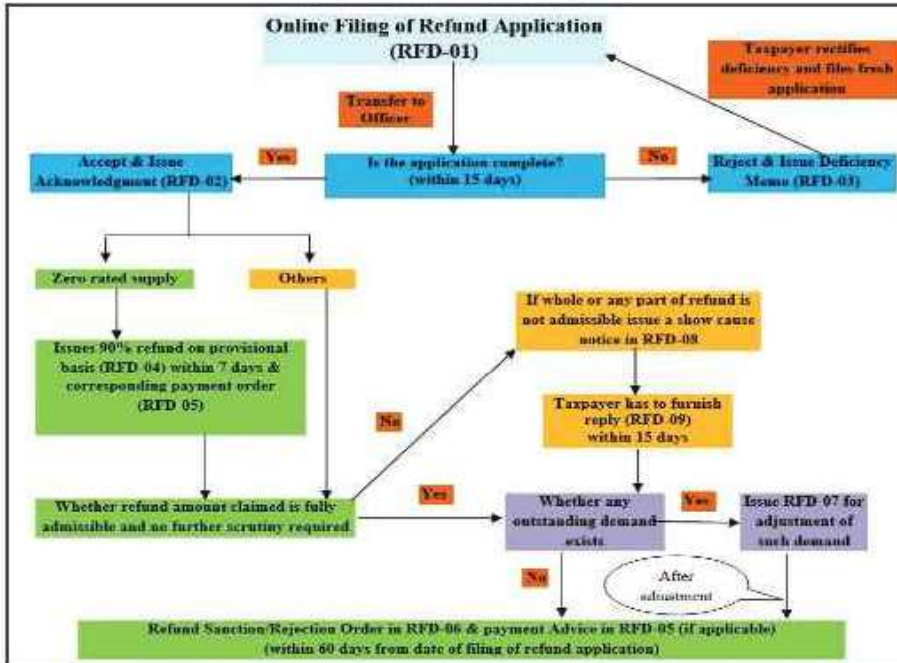
Further processing of those refund applications, i.e. issuance of acknowledgement, issuance of Deficiency Memo, passing of provisional/ final

<sup>1</sup> Renamed as Central Board of Indirect Taxes and Customs (CBIC) w.e.f. 29 March 2018.

refund orders, payment advice, etc. was being done manually. In order to make the process of submission of the refund application electronic, Circular No. 79/53/2018-GST dated 31 December 2018 was issued by the Central Board of Indirect Taxes and Customs (CBIC), wherein it was specified that the refund applications in Form GST RFD-01A, along with all supporting documents, had to be submitted electronically. However, various post submission stages of processing of the refund applications continued to be in manual mode.

The necessary capabilities for making the refund procedure fully electronic, wherein all the steps from submission of applications to processing thereof could be undertaken electronically, have been deployed on the common portal with effect from 26 September 2019 (also called Automation of Refund Process). Accordingly, the Circulars issued earlier, laying down the guidelines for manual submission and processing of refund claims, have either been superseded or modified. A fresh set of guidelines has been issued for electronic submission and processing of refund claims vide Master Circular No. 125/44/2019-GST dated 18 November 2019 (CBIC) and by STD, Gujarat on 21 November 2019. In order to ensure uniformity in implementation of the provisions of law across field formations, several earlier Circulars have been superseded vide paragraph 2 of the aforesaid Master Circular. However, the provisions of the said Circulars shall continue to apply for all refund applications filed on the common portal before 26 September 2019 and the said applications shall continue to be processed manually, as was done prior to deployment of the new system.

Chart 1: Flow Chart on processing of Refund application under GGST



### 2.1.2 Audit Objectives

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



- Adequacy of the Act, Rules, notifications, circulars, *etc.* issued in relation to grant of refund;
- Compliance of extant provisions by the tax authorities and the efficacy of the systems in place to ensure compliance by taxpayers; and
- Whether effective internal control mechanism exists to monitor the performance of the departmental officials in disposing the refund applications.

### 2.1.3 Scope of Audit and Sampling

The Audit was conducted between November 2020 and June 2021 during which 234 pre-automation and 1,028 post-automation refund cases processed under different categories between July 2017 and July 2020 were examined. The Department sanctioned State GST refund<sup>2</sup> of ₹ 3,961.11 crore and ₹ 1,960.63 crore for the pre-automation and post-automation period (up to July 2020) respectively.

The Goods and Services Tax Network (GSTN) had provided pan-India refund data from July 2017 till July 2020. Considering that the refund data available varied substantially on either side of 26 September 2019, refund risk parameters for these two stages were also different. Since limited data was available for period prior to 26 September 2019, the refund applications under each category were sorted in descending order of refund amount claimed by taxpayers. Thereafter, sorted refund applications were divided into four quartiles and sample was drawn. For selecting refund applications filed after 26 September 2019, a composite risk score was devised using risk parameters, such as refund amount claimed (60 per cent weightage), delay in sanctioning refund (15 per cent), refund sanctioned/ refund claimed ratio (10 per cent) and Deficiency Memo issued (15 per cent). Based on the above arrived risk score, refund applications were selected for period after 26 September 2019.

Based on the above, 804 cases of pre-automation period and 1,028 cases of post-automation period relating to 103 units falling under 23 Range Offices<sup>3</sup> (headed by Deputy Commissioner of State Tax (DCST)) of 11 Divisions<sup>4</sup> of STD, Gujarat were selected for audit. Out of these, all the 1,028 post-automation cases selected for audit were examined. But due to Covid-19 restrictions, out of selected 804 pre-automation cases pertaining to above 11 Divisions, only 234 cases<sup>5</sup> pertaining to Ahmedabad, Gandhinagar and Nadiad Range Offices were audited. The category-wise audit universe and cases selected for audit under each category are shown in **Appendix II**.

<sup>2</sup> 2017-18 (₹ 327.48 crore), 2018-19 (₹ 1,831.62 crore), 2019-20 (₹ 2,555.82 crore) and 2020-21 (₹ 1,206.82 crore (up to July 2020)).

<sup>3</sup> DCST-1 to 3 Ahmedabad (Division-1) and DCST-4 to 6 Ahmedabad (Division-2), DCST-7 Gandhinagar (Division-3), DCST-8 Mehsana (Division-4), DCST-10 to 12 Vadodara (Division-5), DCST-13 Nadiad and DCST-14 Bharuch (Division-6), DCST-15 to 16 Surat (Division-7), DCST-17 Surat and DCST-18 Valsad (Division-8), DCST-19 Bhavnagar (Division-9), DCST-22 to 23 Rajkot (Division-10), DCST-21 Junagadh, DCST-24 Jamnagar and DCST-25 Gandhidham (Division-11).

<sup>4</sup> Ahmedabad-1 and 2, Gandhinagar-3, Mehsana-4, Vadodara-5 and 6, Surat-7 and 8, Bhavnagar-9, Rajkot-10 and 11.

<sup>5</sup> These cases pertained to eight DCST offices viz. DCST-1, DCST-2, DCST-3 (Division-1), DCST-4, DCST-5, DCST-6 (Division-2), DCST-7 (Division-3) and DCST-13 (Division-6).

An Entry Meeting was held on 17 November 2020 with the Joint Commissioner of State Tax (Audit), Gujarat State, Ahmedabad and other officials of the Department, wherein Audit Scope, Objectives and Methodology were explained. An Exit Meeting was held on 29 November 2021 with the Joint Commissioner of State Tax (Audit), Gujarat State, Ahmedabad and other officials of the Department in which the Audit findings were discussed. The views expressed by the State Government during the Exit Meeting have been suitably incorporated in the relevant paragraphs.

### 2.1.3.1 Non-production of records

During audit of eight offices<sup>6</sup>, 250 pre-automation refund cases were called for test-check. However, despite follow-up, 16 refund cases<sup>7</sup> were not made available to Audit. In the absence of these records, Audit could not verify Department's performance in these cases.

One office<sup>8</sup> stated (June 2021) in two claims that the print copies of the applications were not submitted by the taxpayers to the field office. Hence, no action has been taken on these applications. One office<sup>9</sup> stated (April 2022) in one claim that the claimant had withdrawn the refund application on 28 June 2021 as it was not visible on the GSTN portal for further process.

In the remaining cases no response has been received (July 2024).

### 2.1.4 Audit Criteria

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

- Section 54 to 58 and Section 77, of Central Goods and Services Tax (CGST) Act, 2017 and Gujarat Goods and Services Tax (GGST) Act, 2017;
- Rule 89 to 97A of CGST Rules, 2017 and GGST Rules, 2017;
- Section 15, 16 and 19 of Integrated Goods and Services Tax (IGST) Act, 2017; and
- Circulars/ instructions of the Central/ State.

### 2.1.5 Audit Findings

**Table 2.1** brings out the extent of deficiencies noted during the Audit of refund cases, selected for detailed audit.

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<sup>6</sup> DCST-1 to 7 and DCST-13.

<sup>7</sup> DCST-1 (one), DCST-2 (two), DCST-3 (three), DCST-4 (three), DCST-6 (one), DCST-7 (five), DCST-13 (one).

<sup>8</sup> DCST-2.

<sup>9</sup> DCST-6.



Table 2.1 Extent of deficiencies noticed in audit of refund cases

(Amount: ₹ in lakh)

Nature of Audit Findings	Audit Sample (Test Checked cases)		Deficiencies noticed		Deficiencies as percentage of Sample
	Number	Amount	Number	Amount	
Acknowledgement not issued within time	1,262 <sup>§</sup>	1,38,349	570	Nil	45.00
Refunds not sanctioned in time	1,262 <sup>§</sup>	1,38,349	184	Nil	15.00
Deficiencies in refund of Zero-Rated supplies	308 <sup>*</sup>	66,903	30	119	10.00
Irregular allowance of refund on account of Inverted duty structure	814 <sup>#</sup>	63,899	15	133.26	2.00
Excess allowance of refunds	1,262 <sup>§</sup>	1,38,349	408	233.05	32.00
Refund of time barred claims	1,028	95,629	4	106.7	0.39
Non-observance of principles of natural justice before rejection of refund claim	1,262 <sup>§</sup>	1,38,349	198	Nil	16.00
Other irregularities in issuance of refund					
a. Irregular payment of refund under excess payment of tax category	5	77	1	2	20.00
b. Irregular refund under INTRVC category	1	2.25	1	Nil	100.00

Source: Information compiled during audit.

<sup>§</sup> Excluding 16 cases not produced to audit.<sup>\*</sup> Excluding three cases not produced to audit. Further, 308 cases include 73 pre-automation and 235 post-automation cases.<sup>#</sup> Excluding five cases not produced to audit.

As evident from the Table above, Audit noticed delay in issuance of acknowledgment in 45 per cent cases and in issuance of refund orders in 15 per cent cases. In sanction of Provisional Refunds in Zero-rated supplies, Audit noticed delay in eight per cent cases (26 out of 308 cases), whereas in four cases, provisional refund was granted even though these cases were not eligible for grant of provisional refund, as discussed in Paragraph 2.1.5.3 (b).

Further, Audit also noticed deviations from provisions of the Acts and Rules which resulted in irregular refunds in cases pertaining to Inverted Duty Structure, zero-rated and other than zero-rated supply. The deviations ranged from two per cent to 32 per cent of the audit sample.

Audit findings and the lapses identified based on these cases have been included in the subsequent paragraphs.

#### 2.1.5.1 Acknowledgment not issued within time

Rule 90 (1) and (2) of the Gujarat Goods and Service Tax (GGST) Rules, 2017, stipulates that where the application relates to claim for refund from the electronic cash ledger (ECL), an acknowledgement in Form GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period, i.e. 60 days, specified for processing of refund application shall be counted from the date of such filing. For the application related to refund other than ECL, the application shall be forwarded to the proper officer within a period of 15 days

of filing of the said application, who shall scrutinise the application for its completeness. An acknowledgment in Form GST RFD-02 shall be made available to the applicant within 15 days through the common portal. The acknowledgement shall clearly indicate the date of filing claim and the time period, *i.e.* 60 days, specified for processing of refund shall be counted from the date of such filing.

In the audited 11 Divisions, there were 33,083 pre-automation cases processed up to 25 September 2019 and 18,161 post-automation refund cases processed till July 2020. Out of these, 234 pre-automation and 1,028 post-automation refund cases were examined and it was noticed that in 146 pre-automation<sup>10</sup> (62 *per cent*) and 424 post-automation<sup>11</sup> refund cases (41 *per cent*), there were delays in issuing acknowledgement ranging from one to 385 days in pre-automation period, and one to 94 days in post-automation, with the average delay being 30 days in these cases. Of these, 550 cases were delayed by up to three months, 16 cases were delayed between three to six months and four cases were delayed by more than six months.

Further, it was observed that out of these 570 cases in which acknowledgement was issued with delay, in 156 cases (27 *per cent*) the refund was also sanctioned beyond the prescribed period of sixty days.

On this being pointed out in Audit (between January and June 2021), eight offices<sup>12</sup> in respect of 134 pre-automation cases and 20 offices<sup>13</sup> in respect of 390 post-automation cases accepted the audit observation (between February 2021 and June 2024) and attributed the delay to excessive workload, shortage of staff, system errors, Covid-19 pandemic situation, late submission of documents by the taxpayers and post-automation process being new to applicants as well as officials. Similarly, one office (DCST-14) in 22 post-automation cases accepted (December 2022) the audit observation and attributed the delay to regular power cut and poor GSWAN connectivity.

One office (DCST-7), in one post-automation case, did not accept the audit observation and stated (May 2023) that due to technical glitches in GSTN during initial stage of post-automation, RFD-03 was not generated online. Hence, RFD-03 was issued manually. The reply is not convincing as after issuing RFD-03, fresh application was required to be filed by the taxpayer.

Replies in respect of 23 cases pertaining to four Divisions<sup>14</sup> are awaited (July 2024). Also, in 123 pre-automation<sup>15</sup> cases, Forms GST RFD-02 were not available in the records provided to Audit, resulting in non-observance of the provisions of Rule 90 of the GGST Rules 2017. However, Audit worked out the delays by adopting the date of filing and date of acknowledgement as available in other documents provided to Audit.

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<sup>10</sup> ACST-3, DCST- 2 to 7 and 13.

<sup>11</sup> DCST-2 to 8, DCST-10 to 19, DCST-21 to 25, ACST-62 and ACST-64.

<sup>12</sup> DCST-2 to 7, DCST-13 and ACST-3.

<sup>13</sup> DCST-2 to 8, DCST-10 to 13, DCST-15, DCST-16 (ACST-62 and ACST-64), DCST-17, DCST-18, DCST-21 to 25.

<sup>14</sup> Division-1 (DCST-3), Division-2 (DCST-6), Division-3 (DCST-7), and Division-9 (DCST-19).

<sup>15</sup> DCST-4 to 7 and DCST-13.



On this being pointed out, four offices<sup>16</sup> in 112 pre-automation cases stated (between March 2022 and May 2023) that all the work of GST refund proceedings were done through GUVATIS system. So, in these cases Form RFD-02 was available on GUVATIS portal. One office (DCST-13) in 11 cases accepted the audit observation and stated (December 2022) that RFD-02 were not available in records as due to technical issues RFD-02 could not be printed.

### **Recommendation 2.1.1**

*The Department may ensure stricter compliance and monitor timely issuance of acknowledgement as stipulated in GGST Act/ Rules.*

#### **2.1.5.2 Refunds not sanctioned in time**

The provisions of Section 54 (5) and (7) of GGST Act, 2017 and Rule 92 of the GGST Rules, 2017 stipulate that upon submission of refund application, the officer shall carry out the examination process. If on examination the refund claim amount is due and payable, he shall make an order in Form GST RFD-06, sanctioning the amount of refund to which the applicant is entitled, within 60 days of receipt of application.

Further, Section 56 of GGST Act, 2017 provides that if any tax ordered to be refunded under sub-section (5) of Section 54 is not refunded within sixty days from the date of receipt of application, interest at the rate not exceeding six *per cent* shall be payable on such refund from the date immediately after the expiry of sixty days from the date of receipt of application, till the date of refund of such tax. The State Tax Department (STD) *vide* Circular 125 of 21 November 2019 clarified that any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the applicant.

Out of 234 pre-automation and 1,028 post-automation refund cases examined, Audit noticed that in 86 pre-automation<sup>17</sup> and 98 post-automation<sup>18</sup> refund claims there were delays in sanction of refunds, ranging from one to 347 days (pre-automation cases) and one to 135 days (post-automation cases). In 86 pre-automation cases, a total refund of ₹ 59.14 crore was sanctioned ranging between ₹ 2 lakh and ₹ 3.89 crore. Out of these pre-automation cases, in 50 cases the refund amount sanctioned was less *vis-a-vis* the amount claimed and in 36 cases the refund amount sanctioned was same as claimed. Further, in 98 post-automation cases, total refund of ₹ 84.79 crore was sanctioned ranging between ₹ 6.36 lakh and ₹ 17.02 crore. Out of these cases, in 48 cases the refund amount sanctioned was less *vis-a-vis* the amount claimed and in 50 cases the refund amount sanctioned was same as claimed. Out of these total 184 cases, both pre-automation and post-automation cases combined, 174 cases were delayed by up to three months, seven cases were delayed between three to six months and three cases were delayed by more than six months.

<sup>16</sup> DCST-4, DCST-5, DCST-6 and DCST-7.

<sup>17</sup> DCST-1 to 7 and 13; and ACST-9 to 11.

<sup>18</sup> DCST-3 to 6, DCST-7, DCST-8, DCST-10, DCST-12, DCST-13, DCST-16 to 18, DCST-21 to 25.

The delay in sanction of refund resulted in non-observance of the provisions of Section 54(7) of the GGST Act 2017, read with Rule 92 of the GGST Rules 2017. The Department was liable to pay interest of ₹ 21.03 lakh in 98 post-automation<sup>19</sup> cases to the taxpayers under Section 56 of GGST Act, 2017, for the delay beyond 60 days. However, no interest was paid to the taxpayers.

On this being pointed out in Audit (between February and June 2021), in respect of 27 pre-automation<sup>20</sup> cases and 85 post-automation<sup>21</sup> cases, the proper officers, while accepting the audit observations, stated (between March 2021 and June 2024) that the delays were due to delayed submission of the reconciliation statements by the taxpayers, time taken to verify the ITC claimed by them, other administrative works, short attendance of staff due to Covid-19 pandemic, online mode being new for applicants as well as officials, technical issues and late submission of supporting documents by applicants. Six offices<sup>22</sup> in respect of 51 pre-automation cases and four offices<sup>23</sup> in respect of 13 post-automation cases also cited the same reasons for the delay. Regarding payment of interest, they stated (between August 2021 and May 2024) that the taxpayers either did not claim any interest or consented for not claiming the interest.

One office (DCST-13), in one pre-automation case stated (December 2022) that the refund was sanctioned within 60 days from the date of submission of documents manually by the taxpayers.

As per extant rules, once the Department acknowledged the receipt of application on a particular date, the timeline of 60 days for the purpose of issue of RFD-06 commences from the date of receipt of application. In case of any deficiency in submission of document, the Department was expected to issue a Deficiency Memo in Form RFD-03.

The Department's reply was, however, silent on non-payment of interest to the taxpayers on account of delay in sanction of refunds.

Replies in respect of seven cases pertaining to one Division<sup>24</sup> are awaited (July 2024).

### 2.1.5.3 Refund of Zero-rated supplies

As per Section 16 of the IGST, Act 2017, Zero-rated Supply includes (a) export of goods or services or both, and (b) supply of goods or services or both to a Special Economic Zone Developer or a Special Economic Zone Unit. A registered person making zero-rated supply shall be eligible to claim refund in accordance with the provisions of Section 54 of the GGST Act or the rules made thereunder, as per the following options:

<sup>19</sup> As the date of credit of refund amount in taxpayer's account was not available in pre-automation cases, the interest could not be worked out. Further, in two post-automation cases (DCST-12) payment advice (RFD 05) was not issued hence interest has been worked out till 31 July 2021.

<sup>20</sup> DCST-2, DCST-6.

<sup>21</sup> DCST-3 to 6, DCST-8, DCST-10, DCST-16 to 18, DCST-21 to 24.

<sup>22</sup> DCST-1, DCST-3, DCST-4, DCST-5, DCST-7, DCST-13.

<sup>23</sup> DCST-7, DCST-12, DCST-13 and DCST-25.

<sup>24</sup> Division-1 (DCST-2, DCST-3).



(a) He may supply goods or services or both under Bond or Letter of Undertaking, without payment of integrated tax and claim refund of unutilised input tax credit; or

(b) He may supply goods or services or both, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied.

The deficiencies noticed in the sanction of refund in case of zero-rated supplies are discussed hereunder:

***a) Delay in sanction of provisional refund on account of zero-rated supply***

As per Section 54 (6), read with Rule 91, of GGST Rules, 2017, provisional refund on account of zero-rate supply shall be granted subject to the condition that the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds ₹ 2.5 crore. Thereafter, the proper officer<sup>25</sup> will scrutinise the application and the evidence submitted. On being *prima facie* satisfied, he shall make a provisional refund order in Form GST RFD-04 sanctioning ninety *per cent* of the amount of refund due to the said applicant on provisional basis within a period of seven days from the date of acknowledgement.

In the audited 11 Divisions, there were 13,458 pre-automation refund cases and 3,796 post-automation refund cases, processed on account of zero-rated supply of goods or services or both. Out of these, 73 pre-automation and 235 post-automation refund cases were examined, and it was noticed that in 16 pre-automation<sup>26</sup> cases (22 *per cent*) and 10 post-automation<sup>27</sup> refund cases (four *per cent*) there were delays in sanction of provisional refunds ranging from one to 42 days in pre-automation and four to 44 days in post-automation cases. In eight cases, there were delays of more than 15 days in sanction of provisional refunds. These resulted in non-observance of the provisions of Section 54(6) of the GGST Act, 2017 read with Rule 91 of the GGST Rules 2017.

On this being pointed out in Audit (between February and June 2021), two offices<sup>28</sup> in four pre-automation cases did not accept the audit observations and stated (June and August 2021) that there was no compulsion to pay the provisional refund within seven days from the date of issue of acknowledgement. The final refund was sanctioned before 60 days for payment. Two offices<sup>29</sup> in 12 pre-automation cases, while accepting (March 2022 and May 2024) the audit observation, attributed the delays to high volume of work, administrative reason, delay on part of the taxpayer and system error.

<sup>25</sup> As per Section 2 (91) of the GGST Act, 2017 proper officer in relation to any function to be performed under the Act, means the Commissioner or the officer of the State Tax who is assigned that function by the Commissioner.

<sup>26</sup> DCST-2 to 4 and DCST-6.

<sup>27</sup> DCST-6, DCST-8, DCST-14, DCST-16, DCST-23 and DCST-25.

<sup>28</sup> DCST-2, DCST-4.

<sup>29</sup> DCST-3, DCST-6.

Four offices<sup>30</sup> in eight post-automation cases, while accepting the audit observations, attributed (between March 2021 and June 2024) the delays to high-volume of work, Covid-19 pandemic, shortage of staff and system error, and stated that no interest has been claimed by the taxpayer. One office (DCST-14) in one case accepted the audit observation and stated (December 2022) that the delay was due to regular power cut and poor GSWAN connectivity. Further, one office<sup>31</sup> in one post-automation case did not accept the audit observation and stated (August 2021) that there is no compulsion to pay the provisional refund within seven days from the date of issue of acknowledgement. The final refund was sanctioned within 60 days. In both types of cases, replies are not convincing in view of Rule 91(2) read with Section 54(6) of the Act, wherein it is clearly stated that the proper officer shall make an order for provisional refund within seven days from the date of issue of acknowledgement.

### ***Recommendation 2.1.2***

***The Department needs to strengthen the monitoring mechanism to ensure timely payment of refunds including provisional refunds as per the provisions of the Act, Rules and instructions issued thereunder.***

#### ***b) Irregular grant of provisional refund in cases other than zero-rated supplies***

As per Section 54(6) of GGST Act, 2017, in case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, 90 per cent of refund claimed may be sanctioned on a provisional basis and thereafter an order be made under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant. The sanction of provisional refund is only admissible in case of zero-rated supply of goods and/ or services.

Out of 234 pre-automation cases in four Divisions, Audit noticed that in four cases<sup>32</sup>, the Department issued provisional refund of 90 per cent in cases other than zero-rated supply of goods or services. These cases pertained to excess payment of tax (one case), inverted duty structure (two cases) and deemed export (one case). Thus, there was an irregular grant of provisional refund of ₹ 1.19 crore.

On this being pointed out (between March and June 2021), one office<sup>33</sup> in two pre-automation cases did not accept the audit observation and stated (December 2022) that due to system error, RFD-06 was not generated. Hence, provisional refund was granted in RFD-04 and then final refund was granted in RFD-06.

The reply of the Department is not convincing as the sanction of provisional refund is only admissible in case of zero-rated supply of goods and /or services

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<sup>30</sup> DCST-25, DCST-23, DCST-16, DCST-8.

<sup>31</sup> DCST-6.

<sup>32</sup> DCST-3, DCST-13, ACST-6, ACST-53.

<sup>33</sup> DCST-13.



and the case pertains to the pre-automation period where the application was to be processed manually.

One office<sup>34</sup> in one case stated (May 2024) that refund application was processed unintentionally for provisional refund. There was no revenue loss to the Government. One office<sup>35</sup> in one case accepted (May 2024) that provisional refund was issued for other than zero rated supply. However, only the actual payable amount was paid during final payment.

#### **2.1.5.4 Irregular allowance of refund on account of Inverted duty structure**

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

During audit of 11 Divisions, there were 12,958 pre-automation and 9,202 post-automation refund cases on account of inverted duty structure processed till July 2020. Out of these, 127 pre-automation and 687 post-automation refund cases were examined, and the deficiencies noticed are highlighted in the succeeding Paragraphs.

##### ***a) Irregular allowance of refund due to consideration of ITC on services and capital goods***

As per Rule 89(5) of the GGST Rules 2017, Net ITC includes the input tax credit availed only on inputs (goods) during the relevant period and does not include credit availed on input services and capital goods.

Audit noticed that in three pre-automation<sup>36</sup> cases the taxpayers had irregularly claimed ITC on input services and capital goods of ₹ 7.18 lakh and ₹ 21.89 lakh respectively which was allowed by the proper officer. This resulted in excess refund of ₹ 23.83 lakh.

On this being pointed out (March 2021), the Department accepted the audit observation (September 2021) and recovered ₹ 33.58 lakh, including interest of ₹ 9.90 lakh.

Similarly, in three post-automation<sup>37</sup> refund cases, Audit noticed (between May and June 2021) that the taxpayer was allowed refund of ₹ 1.29 crore on account of inverted duty structure. Audit noticed (May 2021) from the GSTR-3B and

<sup>34</sup> DCST-2.

<sup>35</sup> DCST-3.

<sup>36</sup> DCST-5.

<sup>37</sup> DCST-14.

GSTR-1 available in the GSTN portal that the proper officer did not consider turnover of zero-rated supply for the purpose of Adjusted Total Turnover and allowed ITC on input services and capital goods. This resulted in excess grant of refund of ₹ 65.44 lakh.

On this being pointed out, the Department accepted (December 2022) the audit observation and recovered ₹ 65.44 lakh. However, the reply was silent on payment of interest for excess claim of refund.

In another three post-automation<sup>38</sup> refund cases, Audit noticed (between February and April 2021) that while granting refund, the proper officer considered ITC on input services (₹ 1,80,153)<sup>39</sup> and capital goods (₹ 19,866) and allowed the refund on Net ITC claimed by the taxpayer. The mistake resulted in irregular allowance of refund of ₹ 1.90 lakh.

On this being pointed out (March 2021), one office<sup>40</sup> in two post-automation case did not accept the audit observation and stated (May 2022) that the amount of capital goods and input services was not considered in Net ITC by the claimant while filing the refund application. Department had also considered Net ITC in refund calculation.

Reply is not convincing as in one case the refund was sanctioned considering Net ITC of ₹ 82,89,668. Ineligible ITC of ₹ 19,866 for capital goods and ₹ 49,250 for services as claimed in Annexure-B was not deducted from the Net ITC. Further, as per ITC summary uploaded by the taxpayer, the eligible ITC was ₹ 82,19,284. Thus, the uploaded ITC summary and Annexure-B were not cross-verified before sanctioning the refund. No show-cause notice was issued for discrepancy in Net ITC. In another case, the HSN code provided in Annexure-B was not considered and eight invoices pertaining to HSN<sup>41</sup>/ SAC<sup>42</sup> code 9985, 9987, 9988 and 9999 were considered as inputs, instead of input services, in Net ITC.

Reply in one case (DCST-5) is awaited (July 2024).

***b) Excess refund due to inclusion of turnover of export with payment of tax in turnover of inverted rated supply of goods and services and allowing excess ITC on inputs***

As per Section 54(3) of GGST, Act 2017, refund of unutilised ITC shall be allowed, only in cases of zero-rated supplies without payment of tax, and supply of goods or services or both under Inverted Duty Structure. No refund of unutilised ITC shall be allowed in cases where the goods are exported out of India and the supplier of goods or services or both claim refund of the integrated tax paid on such supplies.

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<sup>38</sup> DCST-5 and DCST-6.

<sup>39</sup> Input Services of ₹ 50,727, ₹ 80,176 and ₹ 49,250.

<sup>40</sup> DCST-6.

<sup>41</sup> HSN means Harmonised System of Nomenclature code used for classifying the goods under GST.

<sup>42</sup> SAC means Services Accounting Code under which services falling under GST are classified.



Audit observed that in two pre-automation<sup>43</sup> refund cases, the taxpayers making zero-rated supply (export of goods) with payment of tax, claimed refund of unutilised ITC under Inverted Duty Structure. The refund of IGST paid on such export was required to be claimed as per provision of Rule 96 of GGST, Rules 2017 and the refund of unutilised ITC was not admissible in such cases. However, the taxpayer claimed the refund of unutilised ITC of ₹ 60.20 lakh under inverted tax structure. The proper officer correctly disallowed ITC of ₹ 30.50 lakh on capital goods and services and sanctioned refund of ₹ 29.71 lakh, but irregularly considered the turnover of export of goods with payment of tax as turnover of inverted rated supply of goods and services, in contravention to the provisions of GGST Act, 2017. This resulted in irregular sanction of refund of ₹ 29.71 lakh.

On this being pointed out (March 2021), the proper officer did not accept the audit observation and stated (August 2021) that refund on account of inverted duty structure is neutral whether goods are cleared domestically or exported out of India.

Reply is not convincing as the exporter can claim refund under Rule 96 of the GGST Rule if IGST was paid on goods exported out of India. Further, the Department did not clarify if any refund of integrated tax paid on export was claimed by the taxpayer under the said Rule. Thus, double claim of refund could also not be ruled out.

Similarly, in one post-automation<sup>44</sup> case (March 2021) the Department allowed excess refund of ₹ 4.73 lakh to a supplier on the integrated tax paid by him by wrongly considering the turnover of Export with payment of tax as turnover of inverted rated supply of goods and services and considering excess ITC on inputs<sup>45</sup>.

On this being pointed out, the Department stated (June 2024) that the case falls under Central Jurisdiction and the authority concerned has informed that the recovery procedure is under progress.

In two pre-automation<sup>46</sup> refund cases, a taxpayer claimed (29 November 2018) and was sanctioned (09 January 2019) refund of ₹ 6.70 lakh on account of supplies to SEZ unit/ developer with payment of tax for the period July to September 2018. Audit noticed that the taxpayer, while claiming the refund under Inverted Duty Structure for August 2018 (16 January 2019) and September 2018 (06 July 2019), also claimed the refund for SEZ supplies which was already claimed by him while claiming the refund under SEZ category for the period July to September 2018. Thus, the taxpayer irregularly included turnover of ₹ 21.44 lakh (August 2018) and ₹ 28.68 lakh (September 2018) related to SEZ supplies in the turnover of inverted rated supply of ₹ 1.92 crore and ₹ 2.37 crore for August and September 2018 respectively and claimed

<sup>43</sup> DCST-13.

<sup>44</sup> DCST-15.

<sup>45</sup> As per Annexure-B submitted with RFD-01: ITC on inputs, capital goods and services was ₹ 2.30 crore, ₹ 2.72 crore and ₹ 0.95 crore respectively. The Department considered ITC on input as ₹ 2.32 crore.

<sup>46</sup> DCST-3, ACST-11.

refund of ITC of ₹ 86.44 lakh<sup>47</sup>. Further, the IGST of ₹ 2.57 lakh (August 2018) and ₹ 3.44 lakh (September 2018) was to be excluded in the tax payable on inverted rated supply. This resulted in irregular allowance of refund of ₹ 3.75 lakh.

On this being pointed out (June 2021), one office<sup>48</sup> did not accept the audit observation and stated (July 2021) that if we go through the formula of maximum refund that can be granted in the case of zero-rated supply of goods and/ or services without payment of tax or in the case of inverted duty structure, zero-rated supply is the common element in adjusted total turnover. If the common element is deducted from inverted duty structure, the same should be deducted from the adjusted total turnover to give the taxpayer justice of equity.

Reply of the Department is not convincing as the taxpayer had already separately claimed refund of turnover of SEZWP category. Further the adjusted total turnover is the same both in case of Inverted Duty Structure and zero-rated supplies without payment of tax as per Rule 89 (5) GGST Rule. Hence, the turnover of SEZWP category was required to be disallowed from the inverted rated turnover.

#### **2.1.5.5 Excess allowance of refund due to non-observance of instructions related to unutilised ITC**

As per Section 54(4) (a) of the GGST Act, 2017, the application of refund shall be accompanied by such documentary evidence as may be prescribed to establish that a refund is due to the applicant.

The STD, Gujarat *vide* Circular No. 59/2018 dated 26 October 2018, clarified that the refund claim shall be accompanied by a print-out of Form GSTR-2A for the relevant period for which the refund is claimed. The proper officer shall rely upon Form GSTR-2A as evidence of the accounts of the supply by the corresponding supplier in relation to which the ITC has been availed by the claimant. The proper officer may call for the hard copies of the invoices if he deems it necessary for the examination of the refund claim. Further, the claimant shall also submit the details of the invoices for which ITC had been availed in Annexure-A manually along with the application for refund claim and also declaring the eligibility or otherwise of the ITC availed against these invoices in the said Annexure.

The Department *vide* Circular No. 125/44/2019-GST dated 21 November 2019 prescribed that all steps of submission and processing of refund shall be undertaken electronically with effect from 26 September 2019. The applicant seeking refund shall file Form GST RFD-01 along with statements/ declarations/ undertakings which are part of Form GST RFD-01 and upload other documents/ invoices which shall be required to be provided by the applicant for processing of refund claim. Neither the refund application in Form GST RFD-01 nor any of the supporting documents shall be required to be physically submitted to the office of the jurisdictional proper officer.

<sup>47</sup> ₹ 46.85 lakh for August 2018 and ₹ 39.59 lakh for September 2018.

<sup>48</sup> ACST-11.



Paragraph 36 of the Circular specified that self-certified copies of invoices in relation to which the refund of ITC is being claimed, and which are declared as eligible for ITC in Annexure-B but which are not populated in Form GSTR-2A, shall be uploaded by the applicant along with the application in Form GST RFD-01.

Subsequently, STD, Gujarat *vide* Circular No. 135/05/2020-GST dated 01 April 2020 clarified that the refund of accumulated ITC shall be restricted to the ITC of those invoices which are uploaded by the supplier in Form GSTR-1 and are reflected in Form GSTR-2A of the applicant. Since HSN-wise details of goods and services were not available in Form GSTR-2A, it was difficult to distinguish ITC on capital goods and/or input services, out of total ITC for a relevant tax period. Hence, it was instructed in the above Circular that a column relating to HSN/ SAC Code should be added in the statement of invoices relating to inward supply as provided in Annexure-B, so as to easily identify the supplies of goods and services.

***a) Excess allowance of refund due to mismatch of invoices with GSTR-2A (Circular No.125)***

During audit of the 11 Divisions, there were 18,161 post-automation refund claims processed till July 2020. Out of these, 1,028 refund cases were examined and it was noticed that in 23 refund cases<sup>49</sup>, ITC aggregating ₹ 1.90 crore pertaining to 1,593 invoices/ Bill of Entry<sup>50</sup> was neither reflected in GSTR-2A nor the invoices were uploaded with the refund application. The proper officers did not issue any Deficiency Memo or show-cause notice to verify the claim and considered ₹ 34.97 crore as Net ITC. However, after excluding the mismatch of invoices which were neither available in GSTR-2A nor uploaded, Net ITC of ₹ 33.07 crore was eligible for claiming refund. The non-exclusion of ITC of ₹ 1.90 crore on ineligible invoices from Net ITC resulted in excess sanction of refund of ₹ 1.73 crore.

On this being pointed out (between February and June 2021), four offices<sup>51</sup> in six cases replied (between March 2021 and June 2024) that documents were submitted manually. Replies are not convincing in view of the STD, Gujarat Circular dated 21 November 2019 which explicitly mentioned that none of the supporting documents shall be required to be physically submitted and self-certified copies of invoices which are not populated in Form GSTR-2A, shall be uploaded by the applicant along with the application in Form GST RFD-01.

One office (DCST-6) in one post-automation case replied (April 2022) that GSTR-2A and Annexure-B were rechecked and it was found that some of the suppliers of the claimant have filed the returns on quarterly basis which have been considered by the proper officer while verifying the refund. So, there is no

<sup>49</sup> DCST-1 to 3, DCST-5, DCST-6, DCST-12, DCST-14 to 17 and DCST-24.

<sup>50</sup> This includes one case where the taxpayer mentioned the amount of import of goods but did not indicate details of invoices hence in the absence of number of invoices it is considered as single invoice. Further, as the refund claim being of inverted duty structure, ITC of ₹ 10.16 lakh on Reverse Charge Mechanism is also disallowed in Net ITC.

<sup>51</sup> DCST-15, DCST-16, ACST-63 Surat and DCST-17.

mismatch found between GSTR-2A and Annexure-B. One office (DCST-24) in one post-automation case stated (August 2022) that in Annexure-B, the invoices were not shown in GSTR-2A at the time of filing of refund application. But these entries were shown in GSTR-2A at the time of verification of refund. One office (DCST-17) in one post-automation case stated (June 2021 and June 2024) that some suppliers had filed returns on quarterly basis and in many cases GSTIN were wrongly mentioned which led to mismatch. The GST amount involved in three mismatched invoices was refused at the time of issuing sanction order. The copies of invoices were submitted manually by the taxpayer, hence no Deficiency Memo was issued.

The replies confirm that the mismatched invoices were neither reflected in GSTR-2A nor were the invoices uploaded with refund application. As per the circular *ibid*, the mismatched invoices were required to be uploaded along with RFD-01 and the refund was required to be restricted to the invoices reflected in GSTR-2A and invoices uploaded, or Deficiency Memo should be issued in case of discrepancy. Besides this, no supporting document was provided in these cases for availability of these invoices in GSTR-2A or uploaded at the time of sanction of refund. Further, the three mismatched invoices refused at the time of issuing sanction order were not considered by Audit.

One office (DCST-1) in one case replied (August 2023 and May 2024) that Net ITC as per refund application was ₹ 1.69 crore whereas ITC as per GSTR-2A was ₹ 1.56 crore. As per Annexure-B, the ITC was ₹ 1.74 crore out of which ITC of ₹ 19.93 lakh pertained to previous month but was claimed by the taxpayer in August 2019. In another case, the office stated (August 2023 and May 2024) that as per refund application Net ITC was ₹ 1.57 crore. However, the ITC as per GSTR-2A and Annexure-B was ₹ 1.79 crore and ₹ 1.68 crore respectively. One office (DCST-12) in one case replied (June 2023) that mismatch of invoices were physically verified under Section 16 of GGST Act 2017. Similarly, one office (DCST-3) in five cases replied (May 2024) that refund was issued after reconciliation of ITC as per GSTR-2A with ITC claimed in GSTR-3B and Annexure-B. Wherever, ITC was not available in GSTR-2A due record has been obtained as per Circular No. 125.

The replies are not convincing as the taxpayer was eligible for refund on those invoices which are declared as eligible in Annexure-B and these eligible invoices should have been either reflected in the copy of GSTR-2A or copy of mismatched invoices uploaded with the refund application. In the above eight cases, some of the invoices declared as eligible in Annexure-B were neither reflected in the copy of GSTR-2A nor copies of mismatched invoices uploaded with the refund application.

One office (DCST-14) recovered (September 2022) the excess refund amount (₹ 56,800) pointed out by Audit with interest (₹ 37,124).

Replies in respect of five cases pertaining to two Divisions<sup>52</sup> are awaited (July 2024).

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<sup>52</sup> Division-1 (DCST-2) and Division-2 (DCST-5).



**b) Excess allowance of refund due to mismatch of invoices with GSTR-2A (Circular No.135)**

Audit noticed (between February and June 2021) that in six cases<sup>53</sup> ITC aggregating to ₹ 1.24 crore pertaining to 240 invoices were not reflected in GSTR-2A. As per Paragraph 5.2 of the Circular No. 135 of 1 April 2020, the refund of accumulated ITC should be restricted to the ITC as per the invoices which were uploaded by the supplier in Form GSTR-1 and are reflected in the GSTR-2A of the applicant. However, the Department did not exclude the inadmissible ITC on invoices not available in GSTR-2A and considered ₹ 29.58 crore as Net ITC. After excluding the invoices not reflected in GSTR-2A, Net ITC of ₹ 28.34 crore only was eligible for claiming refund. The omission to exclude the ineligible ITC of ₹ 1.24 crore resulted in excess sanction of refund of ₹ 60.05 lakh.

One office (DCST-4) in a post-automation case replied (December 2022) that after verifying GSTR-2A, it was found that some of the suppliers of the taxpayer filed return on quarterly basis which was considered by the Department at the time of processing the refund claim. The ITC as per GSTR-2A (April 2019 to December 2019) and GSTR-3B was ₹ 6.92 crore and ₹ 6.87 crore respectively and the taxpayer claimed ITC of ₹ 5.95 crore. Reply is not convincing as the taxpayer was eligible for refund on eligible invoices declared in Annexure-B and reflected in copy of GSTR-2A uploaded with the refund application.

Replies in respect of five cases pertaining to two Divisions<sup>54</sup> are awaited (July 2024).

**c) Refund sanctioned in the absence of supporting documents/ complete information**

It was noticed that in 11 pre-automation<sup>55</sup> refund cases and 368 post-automation<sup>56</sup> refund cases, refund orders worth ₹ 487.25 crore have been sanctioned without the availability of supporting documents, i.e. GSTR-2A, Annexure-A or B, Bill of Entry, Bank Realisation Certificate (BRC)/ Foreign Inward Remittance Certificate (FIRC) and without the information on HSN/ SAC Code. The proper officers did not issue any Deficiency Memo for rectification and sanctioned the refund amount. Thus, the loss of Government revenue due to non-observance of instructions of the Department's circular could not be ruled out.

On this being pointed out (between February and June 2021), 22 offices<sup>57</sup> in 324 cases replied (between March 2021 and June 2024) that documents were submitted manually/ mail and during initial period of post-automation, there were technical glitches and insufficient space available in GSTN. The taxpayer could not upload the large documents. Hence, the applications were processed based on manual verification of documents. One office in other five claims<sup>58</sup>

<sup>53</sup> DCST-4, DCST-5 and DCST-12.

<sup>54</sup> Division-2 (DCST-5) and Division-5 (DCST-12).

<sup>55</sup> DCST-2.

<sup>56</sup> DCST-1 to 8, DCST-10 to 19 and DCST-21 to 25.

<sup>57</sup> DCST-1 to 8, DCST-10 to 16, DCST-18 & 19, DCST-21 to 25.

<sup>58</sup> DCST-16.

stated (June 2021) that the applications were submitted prior to November 2019 before the issue of Circular (21 November 2019) related to electronic processing of refund applications.

The fact remains that the instructions contained in the Circular were effective retrospectively from 26 September 2019. The proper officers did not issue any Deficiency Memo before processing the refund application. Thus, the objective of fully electronic processing of refund application was defeated. Moreover, in the absence of supporting documents in the GSTN portal, Audit could not ascertain the correctness of refund sanctioned.

Replies in respect of 50 cases pertaining to three Divisions<sup>59</sup> are awaited (July 2024).

#### 2.1.5.6 Refund of time barred claims

As per Section 54(1) of GGST Act, 2017, any person claiming refund of any tax and interest paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date. The relevant date<sup>60</sup> in case of goods exported out of India by sea or air, is the date on which the ship or the aircraft in which such goods are loaded, leaves India.

During audit of the 11 Divisions, there were 18,161 post-automation refund claims processed till July 2020. Out of these, 1,028 refund cases were examined, and it was noticed (between February and March 2021) in four refund cases<sup>61</sup> that the taxpayers irregularly claimed refund after expiry of two years from the relevant date. The proper officers also allowed the refund of such time barred claims. This resulted in irregular allowance of refund of ₹ 1.07 crore (Appendix III). One such case is illustrated below:

- The taxpayer made an application of unutilised ITC under export without payment of tax on 06 January 2020 for the tax period December 2017. Audit observed that in eight export invoices amounting to ₹ 1.19 crore, the date of Export General Manifest (EGM)<sup>62</sup> was mentioned between 09 December 2017 and 29 December 2017. Thus, these invoices for export of goods were time-barred for claiming refund as per GGST Act, 2017. Hence, non-observance of provisions of the Act by the proper officer resulted in irregular payment of refund of ₹ 16.83 lakh for time-barred export.

In one case (DCST-14) the Department replied (December 2022) that the taxpayer claimed refund on 26 September 2019 for the period January to March 2018 but Department issued RFD-03. However, due to technical issues in the portal, the taxpayer was not able to claim refund on invoices in the application, for which grievance was raised by the taxpayer. After resolution of the grievance, the taxpayer filed another refund application. As the first claim of refund was in relevant period, the second application was approved and

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<sup>59</sup> Division-1 (DCST-2 & 3), Division-6 (DCST-13 & 14) and Division-8 (DCST-17 & 18).

<sup>60</sup> Explanation 2 (a)(i) below sub-section 14 under Section 54 of GGST Act, 2017.

<sup>61</sup> DCST-2, DCST-12 (2 cases), DCST-14.

<sup>62</sup> As per Section 41 of Custom Act, 1962, EGM is issued before departure of the conveyance from a customs station.

refund was sanctioned. In another case (DCST-2) the Department replied (May 2024) that manual DRC-01A was issued to the taxpayer and the taxpayer paid (March 2020) ₹ 38,82,860 along with interest of ₹ 22,999.

In remaining two cases, reply of the Department is awaited (July 2024).

#### 2.1.5.7 Non-observance of principles of natural justice before rejection of refund claim

As per sub-rule 3 of Rule 92 of GGST Rule, 2017, where the proper officer is satisfied that the whole or any part of the amount claimed as refund is not admissible to the applicant, he shall issue a notice in Form GST RFD-08 to the applicant, requiring him to furnish a reply in Form GST RFD-09 within a period of fifteen days from the date of receipt of such notice. After considering the reply, the proper officer is to make an order in Form GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the refund claim. Further, no application for refund shall be rejected without giving the applicant an opportunity of being heard.

During audit of the 11 Divisions, there were 33,083 pre-automation cases processed and 18,161 post-automation refund cases processed till July 2020. Out of these, 234 pre-automation and 1,028 post-automation refund cases were examined, and it was noticed that in 65 pre-automation<sup>63</sup> refund cases and 133 post-automation<sup>64</sup> refund cases, no communication was sent to the taxpayers before rejection of their refund claims. Thus, the claimants were deprived of the opportunity to submit their response against rejection of their refund claim (RFD-09). This resulted in non-observance of the principles of natural justice before rejection of refund claim as provided in the Rule *ibid*.

On this being pointed out (between February and June 2021), four offices<sup>65</sup> in 65 pre-automation cases and 11 offices<sup>66</sup> in 93 post-automation cases replied (between May 2021 and June 2024) that due to lack of awareness of entire GSTN portal and for disposing the refund application within time limit, the RFD-8 was not issued but the case was finalised after giving an opportunity of personal hearing to the taxpayer and after obtaining his consent. No appeal was made by the taxpayers in these cases.

Nine offices<sup>67</sup> in 39 post-automation cases stated (between March 2021 and October 2023) that due to technical glitches in GSTN in initial stages of post-automation, RFD-8 were manually issued. Also, due to pandemic situation, the cases were disposed of without issuing RFD-08.

One office<sup>68</sup> in one post-automation case stated (August 2023) that ITC was wrongly taken and was disallowed.

<sup>63</sup> DCST-2 to 4 and 7.

<sup>64</sup> DCST-1 to 3, DCST-5 to 7, DCST-10 to 19, DCST-21, DCST-23 to 25.

<sup>65</sup> DCST-2 to 4 and 7.

<sup>66</sup> DCST-1 to 3, DCST-5 to 7, DCST-11, DCST-15, DCST-16, DCST-18, DCST-19.

<sup>67</sup> DCST-10, DCST-12 to 14, DCST-17, DCST-21, DCST-23, DCST-24, DCST-25.

<sup>68</sup> DCST-18.



The replies are not convincing as RFD-8 is to be issued in all cases before rejection of any refund claim and reply is to be obtained in RFD-9 as per provision of the Rule, which was not followed in these cases. As a matter of fact, there is no provision in the Rules to obtain the consent of the taxpayer in lieu of issue of RFD-08. No documentary evidence was provided to Audit for any such consent obtained from the taxpayers.

### **Recommendation 2.1.3**

*The Department must follow the procedure of issuing RFD-08 in letter and spirit and set up a monitoring mechanism for stopping personal hearing/ getting consent after issue of RFD-08 for proper implementation of the Act.*

#### **2.1.5.8 Other irregularities in issuance of refund**

Besides the above audit findings, there were other irregularities in issue of refund in two cases as shown in **Appendix IV**. These were pointed out in March 2021. The Department's reply is awaited (July 2024).

#### **2.1.5.9 Evaluation of Internal Control and Monitoring Mechanism**

Internal controls are activities and safeguards that are put in place to ensure that the standard procedure laid down is followed and the activities are proceeding as planned. An effective internal control mechanism is an integral process, providing reasonable assurance about effectiveness and adequacy of system and procedures.

Audit noticed the following shortcomings in monitoring and internal control while processing and sanctioning GST refunds.

##### ***a) Double payment of refund amount due to issuance of two payment advices for same Refund application (Post-Automation)***

Rule 92(4) of the GGST Rules, 2017 provides that where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (2) is payable to the applicant under sub-section (8) of Section 54 of GGST Act, 2017, he shall make an order in Form GST RFD-06 and issue a payment advice in Form GST RFD-05 for the amount of refund and the same shall be electronically credited to the bank account of the applicant.

Audit analysed the data of refund claims processed between September 2019 and July 2020 provided by the Department and noticed that in 12 refund cases<sup>69</sup>, the payment advice or sanction order were issued by the proper officer twice on the same refund application. Hence, a total refund amount of ₹ 2.17 crore was paid twice to the taxpayers in contravention of the GGST Rules, 2017. Though it remained unnoticed by the Department, the taxpayers voluntarily returned the excess amount from the electronic cash ledger through Form DRC-03.

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<sup>69</sup> DCST-2, DCST-10, DCST-12, DCST-15, DCST-22, ACST-3, ACST-9, ACST-32, ACST-56, ACST-63, ACST-73, ACST-90.

On this being pointed out (between March and May 2021), in 11 claims<sup>70</sup> it was stated (between May 2021 and June 2024) that double payment was made due to an error in the GSTN system. There were no validation checks available in GSTN to stop issuance of multiple payment advice. Out of these 11 cases, in three cases it was also stated that the tax was either recovered or the taxpayer had voluntarily paid the excess amount. One office<sup>71</sup> in one case replied (December 2022) that the amount was already recovered without stating any reason for double payment. Department's reply, however, is silent on the action taken by the Department to take up the matter with the GSTN for necessary checks/ validations in the GSTN in this regard.

**b) Non-conduct of post-audit of refund claims**

The STD, Gujarat Circular No 17/17/2017-GST dated 23 November 2017 elaborately laid down the procedure for manual processing of refunds of zero-rated supplies. The circular *inter alia* stipulated that the pre-audit of manually processed refund applications is not required till separate detailed guidelines are issued by Board, irrespective of amount involved. However, it was clarified that the post-audit of refund order shall be continued as per the extant guidelines.

During audit of the 11 Divisions, there were 33,083 pre-automation cases and 18,161 post-automation refund cases processed till July 2020. Out of these, in 234 pre-automation cases and 1,028 post-automation refund cases, Audit requested the Department to provide the details of refund cases which were sent for post-audit.

In response, three offices<sup>72</sup> in 96 pre-automation cases and two offices<sup>73</sup> in 106 post-automation cases stated (between September 2022 and August 2023) that the cases had been sent for post-audit. However, specific dates of sending these cases for post-audit were not provided to Audit. One office<sup>74</sup> in 11 pre-automation cases and 11 post-automation cases stated (December 2022) that post-audit would be conducted.

One office<sup>75</sup> in 28 pre-automation cases stated (May 2023) stated that no information was received regarding conducting of post-audit. It also stated that Circular No. 17/17/2017-GST was superseded by Circular No. 125/44/2019 dated 18 November 2019. The reply is not convincing as the Circular of 18 November 2019 clearly stated that the provision of Circular 17/17/2017-GST shall continue to apply for all refund applications filed before 26 September 2019.

One office (DCST-3) in 40 post-automation cases and 50 pre-automation cases stated (May 2024) that Review Cell has been formed recently to review the refund order passed by proper officer. Further, it is not mandated to get post-

<sup>70</sup> DCST-2, DCST-10, DCST-12, DCST-15, DCST-22, ACST-3, ACST-9, ACST-32, ACST-63, ACST-73, ACST-90.

<sup>71</sup> ACST-56.

<sup>72</sup> DCST-4, DCST-5 and DCST-6.

<sup>73</sup> DCST-5 and DCST-6.

<sup>74</sup> DCST-13.

<sup>75</sup> DCST-7.

audit or review. Another one office<sup>76</sup> in 28 pre-automation cases and eight offices<sup>77</sup> in 248 post-automation cases stated (between March 2021 and May 2024) that no circular/ guideline was issued to conduct post-audit and there was no system available to conduct post-audit in GST. Reply is not convincing as the Circular issued on 23 November 2017 by the Department clearly mentions conduct of post-audit. This, apart from resulting in non-adherence to Department's instructions, may also lead to loss of revenue to exchequer.

Three offices<sup>78</sup> in 306 post-automation cases replied (June 2024) that post-audit was not conducted due to Covid 19 pandemic as there was limited staff. One office<sup>79</sup> in 49 post-automation cases stated (June 2024) that the refund cases were sent for review to the Review Cell formed in October 2023. However, specific dates of sending these cases for post-audit were not provided to Audit. One office (DCST-1) in eight pre-automation cases and five post-automation cases stated (May 2024) that there was no provision for post-audit at the time of payment of refund. Hence, the cases were not sent for post-audit. Now, Review Cell was formed and after payment of refund the cases were sent for review.

Two offices<sup>80</sup> in 115 post-automation cases stated (October 2023) that para does not pertain to their jurisdiction. However, the correct jurisdiction was not mentioned in the reply.

Replies are awaited in remaining cases (July 2024).

### ***c) Issue of payment order prior to sanction order***

As per Rule 92(4), where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (2) is payable to the applicant under sub-section (8) of Section 54, he shall make an order in Form GST RFD-06 and issue a payment advice in Form GST RFD-05 for the amount of refund and the same shall be electronically credited to the bank account of the applicant. Thus, the payment order (RFD-5) is to be issued after issuance of sanction order (RFD-6). Out of the 234 pre-automation<sup>81</sup> refund cases examined, in 17 cases<sup>82</sup> it was observed that payment order (RFD-5) was issued one day to 10 days before the sanction order (RFD-6).

On this being pointed out (June 2021), one office<sup>83</sup> in four pre-automation cases, while accepting the audit observation, stated (August 2021) that the reason for issue of RFD-05 before RFD-06 may be due to technical error in the system. However, the refund claim of all these four cases had been made within 60 days as per Section 54(7). One office (DCST-3) in eight pre-automation cases stated (May 2024) that the refund sanction order was passed through GUVATIS system but refund payment order was issued manually. There was a clerical

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<sup>76</sup> DCST-2.

<sup>77</sup> DCST-2, DCST-8, DCST-10, DCST-11, DCST-12, DCST-14, DCST-21 and DCST-24.

<sup>78</sup> DCST-16, DCST-17 and DCST-25.

<sup>79</sup> DCST-15.

<sup>80</sup> DCST-22, DCST-23.

<sup>81</sup> DCST-1 to 7 and DCST-13.

<sup>82</sup> DCST-3, DCST-4.

<sup>83</sup> DCST-4.



mistake in putting date in the GUVATIS system or putting date in payment order. However, chronological order of sanction and then payment is followed.

#### 2.1.5.10 Conclusion

The provisions pertaining to refund contained in the GST laws aim to streamline and standardise the refund procedures under GST regime. The refund procedure was made fully electronic with effect from 26 September 2019. Before 26 September 2019, a temporary mechanism was devised and implemented.

Audit examined 234 pre-automation and 1,028 post-automation refund claims processed between July 2017 and July 2020 under different categories by the Department.

In the selected cases, Audit *inter alia* observed delays in issuance of acknowledgment in 45 *per cent* cases which ranged upto 385 days. There were delays in issuance of refund orders in 15 *per cent* cases, which ranged upto 347 days. There were delays upto 44 days in sanctioning of provisional refunds in zero-rated supplies.

The sanctioning of provisional refund is only admissible in case of zero-rated supply of goods and/ or services. However, in four cases, provisional refund of 90 *per cent* were issued in cases other than zero-rated supply of goods or services.

In refund cases related to inverted duty structure, irregular allowance of refund of ₹ 91.17 lakh was observed due to consideration of ITC on services and capital goods.

In 29 refund cases there was excess sanction of refund of ₹ 2.33 crore due to non-exclusion of ITC of ₹ 3.14 crore from Net ITC on invoices listed in Annexure-B mismatched with copy of GSTR-2A.

In four cases, refund was allowed in time-barred claims. In 65 pre-automation and 133 post-automation refund cases, principle of natural justice was not followed as no communication was sent to the taxpayers before rejection of their refund claims. In 12 cases, refund was issued twice on the same refund application. The post-audit of refund claims have not been conducted.

## 2.2 Department's oversight on GST payment and return filing

*Section 59 of the Gujarat Goods and Services Tax Act (GGST), 2017 envisages GST as a self-assessment-based tax, whereby the responsibility for calculating tax liability, discharging the computed tax liability and filing returns is vested in the taxpayer.*

*With a view to providing assurance on the adequacy and effectiveness of systems and procedures adopted by the Department with respect to tax compliance under GST regime. Audit of 'Department's oversight on GST Payments and Return filing' was taken up in three distinct parts with the objective of seeking 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 Units were adequate and effective?*

*Audit verified compliance verification mechanism of the Department and oversight on return filing.*

*The Audit analysed data under the State GST jurisdiction on 13 identified parameters and observed various deviations/inconsistencies against those parameters. Further, the audit also noticed findings related to returns, utilisation of Input Tax Credit and Undischarged Tax liability.*

### 2.2.1 Introduction

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 Gujarat Goods and Services Tax Act (GGST), 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 on 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 had no tax liability during a particular tax period, the taxpayer must file a nil return mandatorily. Further, Section 61 of the Act read with Rule 99 of GGST Rules 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 Gujarat State Tax Department in this new tax regime.



### 2.2.2 Audit Objectives

This audit was oriented towards providing assurance on the adequacy and effectiveness of systems and procedures adopted by the Department with respect to tax compliance under GST regime. Audit of 'Department's oversight on GST Payments and Return filing' was taken up with the following Audit Objectives to seek an assurance on:

- Whether the rules and procedures were designed to secure an effective check on tax compliance and were being duly observed by taxpayers? and
- Whether the scrutiny procedures, internal audit and other compliance functions of the Units were adequate and effective?

### 2.2.3 Audit Methodology and Sample

A data-driven approach was adopted for planning, as also to determine the nature and extent of the substantive audit. The sample for this SSCA comprised a set of deviations identified through data analysis for centralised audit that did not involve field visits, a sample of taxpayers for detailed audit that involved field visits and scrutiny of taxpayers' records at departmental premises, and a sample of Units for evaluating the compliance functions of the Units.

There were three distinct parts of this SSCA, as under:

#### (i) Part I - Audit of Units

For the purpose of evaluation of oversight functions for the period 2017-18 to 2020-21, 10 Units, with jurisdiction over more than one selected sample of cases for Detailed Audit, were considered as the sample of Units.

#### (ii) Part II - Centralised Audit

Audit analysed GST returns data pertaining to 2017-18 as made available by GSTN. Rule-based deviations and logical inconsistencies between GST returns filed by taxpayers were identified on a set of 13 parameters, such as mismatch of ITC availed between Annual Returns and Books of accounts, short payment of interest, ITC mis-matches, etc. Accordingly, 385 cases were selected through data analysis for centralised audit under this SSCA, based on high-value or high-risk deviations from rules and inconsistencies between returns, and for evaluation of the adequacy and effectiveness of the scrutiny procedure of the Department. The Audit Queries were issued to the respective assessment units without further scrutiny of taxpayers' records.

#### (iii) Part III - Detailed audit

Audit selected 50 taxpayers for detailed audit for the period 2017-18, using a risk-based approach which involved field visits for verification of records available with the assessment units. Taxpayers' records, like returns and related attachments and information, were accessed through units for evaluation of the extent of tax compliance by taxpayers. Audit utilised the Single Sign-on IDs



(SSOIDs) provided to the maximum extent feasible to examine data/ documents relating to taxpayers in the back-end system (*viz.* registration, tax payment, returns and other departmental functions). Efforts were made to access the relevant granular records, such as invoices, ledgers, *etc.* of the taxpayers through respective assessment units.

Entry Conference of this SSCA was held on 11 May 2022 with Principal Secretary, Finance Department, Government of Gujarat, in which the Audit Objectives, sample selection, Audit Scope and methodology were discussed. The Exit Conference was held on 16 April 2024 with Additional Chief Secretary, Finance Department, Government of Gujarat and other officials of the Department, 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.

#### **2.2.4 Audit Criteria**

The source of Audit Criteria comprised of the provisions contained in the GGST/ CGST Act, IGST Act and the Rules made thereunder. In addition, the notifications and circulars issued by the State Tax Department, Gujarat/ CBIC (Central Board of Indirect Taxes and Customs) relating to filing of returns, notifying the effective dates of filing of various returns, extending due dates for filing returns, rates of tax on goods and services, payment of tax, availing and utilizing ITC, scrutiny of returns and oversight of tax compliance and Standard Operating Procedures (SOP) containing instructions to departmental officers on various aspects such as non-filing of returns, cancellation of registrations, *etc.* also formed part of the Audit Criteria.

#### **Audit Findings**

#### **2.2.5 Compliance verification mechanism of the Department**

The role of the Units is to ensure compliance by taxpayers in respect of accuracy of the taxable value declared, calculation and payment of tax liabilities, filing of returns, *etc.* The Units have a broad set of functions to be exercised in this regard, which were assessed as a part of this SSCA.

Three potential audit areas were identified, *viz.* (i) effectiveness of scrutiny and assessment functions, (ii) action on late-filers and non-filers, and (iii) cancellation of registration. Accordingly, relevant records and information for the period 2017-18 to 2020-21 were requisitioned from the selected 10 Units.

#### **2.2.5.1 Oversight on returns filing**

A return is a statement of specified particulars relating to the business activity undertaken by taxpayers during a prescribed period. Every taxpayer is legally obligated to furnish a complete and correct return duly declaring the tax liability for a given period and taxes paid within the stipulated time. In a self-assessment

regime, the significance of monitoring return filing by taxpayers acquires greater significance as the returns are the first mode of information about taxpayers and their respective business activities.

Filing of returns is related to payment of tax as the due date for both the actions are the same, which implies risk of non-payment of tax/ penalty in the case of non-filers.

#### a. Inadequate monitoring mechanism on return filing

Where a registered person fails to furnish a return under Section 39 or Section 44 or Section 45<sup>84</sup>, a notice in Form GSTR 3A shall be issued electronically to return defaulter under Section 46 of the GGST Act, 2017, read with Rule 68 of GGST Rules, 2017, requiring him to furnish such return within fifteen days of the issue of notice. Standard Operating Procedure (SOP) to be followed in case of non-filers<sup>85</sup> clarified that 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, considering all the relevant material which is available or gathered and issue an assessment order in Form ASMT 13.

On the basis of information provided, Audit observed that in four<sup>86</sup> out of 10 selected<sup>87</sup> Unit offices, a total of 11,879 cases of non-filers were identified. Out of these 11,879 cases, appropriate returns were not filed in 9,358 cases<sup>88</sup> (79 per cent) even after issue of notices in Form GSTR 3A. However, the proper officers did not initiate any further action regarding assessment and cancellation of registration in these cases. The remaining six Units<sup>89</sup> informed that the returns were filed in all cases in pursuance of GSTR 3A issued to the taxpayers.

On this being pointed out (January 2023), ACST Unit-63, Surat replied (January 2023) that as per Section 46 read with Rule 68 of GGST Act, 2017, notices in GSTR 3A had been issued to the taxpayers and accordingly, they had filed returns. The taxpayers who had not filed returns for more than six months, their registrations were being cancelled after giving them seven days for hearing. However, no information in respect of issuance of ASMT 13 for tax liability in respect of these taxpayers and payment thereof was mentioned in the reply. In respect of two offices (Unit-93 and Unit-94), the Department stated (June 2024) that out of total 217 cases, the registrations of 207 taxpayers have been cancelled. In five cases it was stated that the procedure for cancellation of registration was under progress. In another one case, there was technical glitch

<sup>84</sup> GSTR 3B under Section 39, GSTR 9 under Section 44, GSTR 10 under Section 45.

<sup>85</sup> State Tax Department's circular No.129/48/2019 dated 13 January 2020.

<sup>86</sup> ACST Unit-9, Ahmedabad (11,413 cases), ACST Unit-63, Surat (249 cases) ACST Unit-93, Rajkot (132 cases) and ACST Unit-94, Gondal (85 cases).

<sup>87</sup> ACST Unit-01, ACST Unit-08, ACST Unit-09, ACST Unit-11, Ahmedabad, ACST Unit-55, Bharuch, ACST Unit-63, Surat, ACST Unit-64, Surat, ACST Unit-93, Rajkot, ACST Unit-94, Gondal, ACST Unit-103, Gandhidham.

<sup>88</sup> ACST Unit-9 Ahmedabad (8892 cases), ACST Unit-63 Surat (249 cases), ACST Unit-93 Rajkot (132 cases), ACST Unit-94 Gondal (85 cases).

<sup>89</sup> ACST Unit-01, ACST Unit-08, ACST Unit-11, Ahmedabad, ACST Unit-55, Bharuch, ACST Unit-64, Surat and ACST Unit-103, Gandhidham.



and action for resolving the issue was under progress. However, no reply was furnished for remaining four cases.

ACST Unit-9, Ahmedabad replied (October 2023) that as per provision of the Act, the proper officer may proceed for assessment under Section 62 of GGST Act. The word 'may' indicates that assessment under Section 62 is not mandatory. Further, the relevant information relating to purchase and supplies of the taxpayers were not available. In all cases, assessment under Section 62 was not conducted but in a few cases, action for provisional attachment of the property was initiated.

The reply of the proper officer is not acceptable in view of the fact that since the large number of taxpayers (79 per cent) had not filed appropriate returns even after issue of notice in Form GSTR 3A, the proper officer should monitor the defaulters and proceed to assess the tax liability in the interest of revenue as per procedure laid down in the SOP.

#### **b. Discrepancies in the information on *suo motu* cancellation available with the Department**

As per Section 29(2) of the GGST Act, 2017, GST, registration cannot be cancelled by the tax officer without giving the person an opportunity of being heard. Further, under Rule 22(1) of GGST Rules, 2017, where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under Section 29, he shall issue a notice to such person in Form GST REG 17, requiring him to show cause, within a period of seven working days from the date of service of such notice, as to why his registration shall not be cancelled.

As per the information provided to Audit (**Appendix V**), between 2017-18 and 2020-21, in 15,224 cases<sup>90</sup> under 10 selected Unit offices, action for cancellation were initiated on own motion by Unit Officers. The information provided has been detailed below:

- Against 15,224 cases initiated for cancellation, REG 17 was issued in 20,581 cases. Thus, there was excess issue of REG 17 in 5,357 cases.
- In two Units (ACST Unit-1 and 8), against 3,479 cases of *suo motu* cancellation no REG 17 was issued.
- In two Units (ACST Unit-9 and 63), it was informed that there was no case of *suo motu* cancellation. However, in 2,171 cases REG 17 was issued. The reasons for the discrepancy in the figures was not provided to Audit.
- In one Unit (ACST Unit-8), against 609 cases of *suo motu* cancellation, REG 17 was issued only in 29 cases.

<sup>90</sup> ACST Unit-1, Ahmedabad (2981 cases), ACST Unit-8, Ahmedabad (609 cases), ACST Unit-9, Ahmedabad (Nil case), ACST Unit-11, Ahmedabad (3344 cases), ACST Unit-55, Bharuch (2247 cases), ACST Unit-93, Rajkot (3513 cases), ACST Unit-94, Gondal (537 cases), ACST Unit-103, Gandhidham (1993 cases), ACST Unit-63, Surat (Nil case) and ACST Unit-64, Surat (not provided to audit).



- In three Units (ACST Unit-11, 93 and 94), against 7,394 cases of *suo motu* cancellation, REG 17 was issued in 16,134 cases.
- In one Unit (ACST Unit-103), against 1,993 cases of *suo motu* cancellation, the Unit stated that the information about issue of REG 17 was not available.
- In one Unit (ACST Unit-64), the Unit stated that the information on *suo motu* cancellation and issue of REG 17 both were not available.

As seen from the above, there were discrepancies in the information provided to Audit. On this being pointed out (July 2022 to February 2023), ACST Unit-94, Gondal replied that this issuance of more REG 17 against cases initiated on own motion, was a system glitch. ACST Unit-103, Gandhidham replied that the report for issue of REG 17 was not available in the GST Boweb MIS system. In respect of Unit-93, JCST Division-10 stated (June 2024) that if request for cancellation received from taxpayer requires more information from the taxpayer, Boweb system automatically navigates for issuing of REG-03 and REG-17 could not be issued by the proper officer. It was further stated that ticket for resolving this issue had been generated in May 2024.

The replies were awaited from remaining seven Units (July 2024).

### c. Inadequate follow-up on non-filing of final return (GSTR -10)

As per Section 45 of the GGST Act 2017, GSTR 10 (the final return) has to be filed by the taxpayer within three months of the date of cancellation or the date of order of cancellation, whichever is later. Further, as per Section 46 of the GGST Act read with Rule 68 of the GGST Rules, 2017 and as prescribed in SOP on non-filers<sup>91</sup>, GSTR 3A (notice) has to be issued to the taxpayer, where GSTR 10 has not been filed. If the taxpayer still fails to file the final return within 15 days of the receipt of notice, then an assessment order in Form ASMT 13 under Section 62 of the GGST Act, read with Rule 100 of the GGST Rules shall have to be issued to determine the liability of the taxpayer. If the taxpayer files the final return within 30 days of the date of service of the order ASMT 13, then the said order shall be deemed to have been withdrawn. However, the liability for payment of interest and late fee shall continue. If the said return remains unfurnished within the statutory period of 30 days from the issuance of order ASMT 13, then the proper officer may initiate proceedings under Section 78 and recovery under Section 79 of the GGST Act.

Audit observed that in 6,757 cases<sup>92</sup> in 10 selected Units, GSTR 10 was filed by the taxpayers against 29,735 cancellation orders (REG 19)<sup>93</sup> issued during the period 2017-18 to 2020-21. Out of these 29,735 cancellation orders, in

<sup>91</sup> Circular No. 129/48/2019-GST dated 13 January 2020.

<sup>92</sup> ACST Unit-01, Ahmedabad (19 cases), ACST Unit-11, Ahmedabad (727 cases), ACST Unit-55, Bharuch (247 cases), ACST Unit-63 (2072 cases) & Unit-64 (2184 cases) Surat, ACST Unit-93, Rajkot (1375 cases), ACST Unit-94, Gondal (133 cases).

<sup>93</sup> ACST Ahmedabad: Unit-01 (1530 cases), Unit-08 (647 cases), Unit-09 (173 cases), Unit-11 (5364 cases), ACST Unit-55, Bharuch (4507 cases), ACST Unit-63 (4718 cases) & Unit-64, Surat (3756 cases), ACST Unit-93, Rajkot (6130 cases), ACST Unit-94, Gondal (917 cases), ACST Unit- 103, Gandhidham (1993 cases).

22,978 cases (77 per cent) GSTR 10 was not filed by the taxpayers. However, no follow-up action was initiated by the tax officers in these cases.

On this being pointed out (July 2022 to February 2023), one Unit (Unit-9) stated (October 2023) that action could not be initiated as the list of non-filers of GSTR 10 was not available due to system glitches in Boweb portal. However, as the report is now available in the system, regular action would be taken against such non-filers. The JCST, Division-10 in respect of two offices (Unit-93 and Unit-94) stated (June 2024) that the taxpayers had been informed to file GSTR-10 and follow-up action was being taken on regular basis.

Replies of the remaining seven offices were still awaited (July 2024).

### 2.2.5.2 Inconsistencies in GST Returns- Centralised Audit

Audit analysed GST returns data pertaining to 2017-18 as made available by GSTN. Rule-based deviations and logical inconsistencies between GST returns filed by taxpayers were identified on a set of 13 parameters, which can be broadly categorized into two domains - ITC and Tax payments.

Out of the 13 prescribed GST returns<sup>94</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 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>94</sup> GSTR 1, GSTR 3B, GSTR 4 (taxpayers under the Composition scheme), GSTR 5 (non-resident taxable person), 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 10 (Final return), GSTR 11 (person having UIN and claiming a refund), CMP 08, and ITC 04 (Statement to be filed by principal about details of goods sent to/ received from a job-worker).



- GSTR 9C: Annual audit form for all taxpayers having a turnover above ₹ 2 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.

The data analysis pertaining to State jurisdiction on the 13 identified parameters and extent of deviations/ inconsistencies observed are summarized in **Table 2.2:**

**Table 2.2: Summary of data analysis**

S. No.	Parameter	Algorithm used	Number of deviations	Amount (₹ in crore)
<b>Domain: ITC</b>				
D1	ITC mismatch between GSTR 2A and GSTR 3B	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) considering the reversals in Table 4B(2) but including the ITC availed in the subsequent year 2018-19 in Table 8C of GSTR 9	50	692.92
D2	ITC availed under RCM vs payment of tax in GSTR 3B/ GSTR 9	RCM payments in GSTR 3B Table 3.1(d) was compared with ITC availed in GSTR 9 Table 6C, 6D and 6F. In cases where GSTR 9 was not available, the check was restricted within GSTR 3B - tax discharged in Table 3.1(d) vis-à-vis ITC availed Table 4A(2) and 4A(3)	50	93.47
D3	Short payment of tax under RCM vs ITC availed in GSTR 3B/ GSTR 9	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 Table 4(A)(2) and 4A(3). Greater of the difference in GSTR 9 and GSTR 3B was considered where both were available	18	7.17
D4	Incorrect availment of ISD credit	ISD transferred in GSTR 9 Table 6G or GSTR 3B Table 4(A)(4) was compared with the sum of Table 5A, 8A and Table 9A of GSTR 6 of respective GSTINs	25	33.99
D5	Incorrect ISD credit reversal	GSTR 9 Table 7B/ 7H of the recipients was compared with sum of Table 8A (negative figures only) and Table 9A (negative figures only) of their GSTR 6	1	0.0015
D6	Mismatch of ITC availed between Annual returns and Books of accounts	Positive figure in GSTR 9C Table 12F and examination of reasons provided in Table 13 for mismatch	25	379.75
D7	Reconciliation between ITC availed in Annual returns with expenses in	Positive figure in GSTR 9C Table 14T and examination of reasons provided in Table 15 for mismatch	25	2739.04



S. No.	Parameter	Algorithm used	Number of deviations	Amount (₹ in crore)
	financial statements			
<b>Domain: Tax payments</b>				
D8	Mismatch in turnover declared in GSTR 9C Table 5R	Negative figure in GSTR 9C Table 5R and examination of reasons provided in Table 6 for mismatch	50	12563.20
D9	Mismatch in taxable turnover declared in GSTR 9C Table 7G	Negative figure in GSTR 9C Table 7G and examination of reasons provided in Table 8 for mismatch	16	420.55
D10	Mismatch in tax paid between books of accounts and returns	Negative figure in GSTR 9C Table 9R and examination of reasons provided in Table 10 for mismatch	50	70.30
D11	Unsettled liabilities	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 in GSTR 9. In cases where GSTR 9 was not available, tax paid in GSTR 3B was compared with greater of tax liability between GSTR 1 and GSTR 3B. The amendments and advance adjustments declared in GSTR 1 and 9 were duly considered	25	335.25
D12	GSTR 3B was not filed but GSTR 1 is available	Taxpayers who have not filed GSTR 3B but have filed GSTR 1 or where GSTR 2A available, indicating taxpayers carrying on the business without discharging tax	25	21.47
D13	Short payment of interest	Interest calculated at the rate of 18 per cent on cash portion of tax payment on delayed filing of GSTR 3B vis-à-vis interest declared in GSTR 3B	25	25.26
<b>Total</b>			<b>385</b>	<b>17,382.37</b>

#### a. Response to Audit

Audit issued 385 audit enquires involving mismatch of ₹17,382.37 crore<sup>95</sup> amongst the top deviations/ inconsistencies in each of the 13 parameters for the year 2017-18. The audit queries were issued to the respective Divisions between February 2022 and April 2022 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 31 July 2024, for three inconsistencies<sup>96</sup> communicated to the Department, which involves mismatch of ₹ 3.88 crore.

Based on latest replies received, the details of tax recoveries or status of progress are given in subsequent paragraphs.

<sup>95</sup> This includes mismatch in turnover of ₹ 12,563.20 crore declared in Table 5R of GSTR 9C and mismatch in turnover of ₹ 420.55 crore declared Table 7G of GSTR 9C.

<sup>96</sup> Two cases of dimension ISD ITC Mismatch (D4) involving ₹ 2.02 crore and one case of dimension Interest short paid (D13) involving ₹ 1.86 crore.

### b. Results of Centralised Audit

Based on responses to the Audit Queries received from the Department, the extent to which each of the 13 parameters translated into compliance deviations is summarized below:

Table 2.3: Summary of deficiencies

(₹ in crore)

Audit Dimension	Cases where reply received		Department reply accepted by Audit		Issues under examination by the Department or under correspondence with taxpayer		Compliance deviations							
							Recovery made or SCN issued <sup>97</sup>		ASMT-10 <sup>98</sup> /Notice/DRC-01A <sup>99</sup> issued.		Department's reply not acceptable to Audit (Rebuttal)/reply not furnished with proper documentary evidence		Total	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
ITC mismatch between GSTR 2A and GSTR 3B (D1)	50	692.92	15	237.19	10	92.01	4	78.65	1	6.47	20	186.9	25	272.02
ITC availed under RCM versus payment of tax in GSTR 3B/ GSTR 9 (D2)	50	93.47	35	65.35	1	1.46	2	0.83 <sup>100</sup>	3	2.46	9	22.05	14	25.34
RCM ITC availed without payment (D3)	18	7.17	15	5.98	0	0	1	0.01	0	0	2	0.82	3	0.83
Incorrect availment of ISD credit (D4)	23	31.97	17	16.16	0	0	0	0	1	1.09	5	10.74	6	11.83
Incorrect ISD credit reversal (D5)	1	0	1	0	0	0	0	0	0	0	0	0	0	0
Mismatch of ITC availed between Annual returns and Books of accounts (D6)	25	379.75	21	326.32	0	0	0	0	1	9.53	3	43.91	4	53.44

<sup>97</sup> Recovery of ₹ 9.77 crore made in 15 cases and SCN issued for ₹ 47.37 crore against audit observation ₹ 94.26 crore in 22 cases.

<sup>98</sup> Notice to the taxpayer informing him of such discrepancy and seeking his explanation.

<sup>99</sup> Intimation of tax ascertained as being payable under Section 73(5)/ 74(5) of GGST Act, 2017.

<sup>100</sup> Against ₹ 1.32 crore pointed by Audit, in one case ₹ 5,522 was recovered and in another case SCN was issued.

Audit Dimension	Cases where reply received		Department reply accepted by Audit		Issues under examination by the Department or under correspondence with taxpayer		Compliance deviations							
	No.	Amount	No.	Amount	No.	Amount	Recovery made or SCN issued <sup>97</sup>		ASMI-10 <sup>98</sup> /Notice/ DRC-01A <sup>99</sup> issued		Department's reply not acceptable to Audit (Rebuttal)/ reply not furnished with proper documentary evidence		Total	
							No.	Amount	No.	Amount	No.	Amount	No.	Amount
Reconciliation between ITC availed in Annual returns with expenses in financial statements (D7)	25	2739.04	23	2495.57	2	243.46	0	0	0	0	0	0	0	0
Mismatch in turnover declared in GSTR 9C Table 5R (D8)	50	- <sup>101</sup>	27	-	1	-	0	-	0	-	22	-	22	-
Mismatch in taxable turnover declared in GSTR 9C Table 7G (D9)	16	- <sup>102</sup>	6	-	0	-	1	-	0	-	9	-	10	-
Mismatch in tax paid between books of accounts and returns (D10)	50	70.3	37	55.48	0	0	2	1.95	5	6.17	6	3.67	13	11.79
Unsettled liabilities (D11)	25	335.25	14	219.39	4	54.89	0	0	1	9.69	6	51.27	7	60.96
GSTR 3B was not filed but GSTR 1 is available (D12)	25	21.47	0	0	2	4.61	12	11.09	4	0.83	7	4.93	23	16.85
Short payment of interest (D13)	24	23.4	2	1.47	4	5.65	15	11.50	1	1.34	2	0.5	18	13.34
<b>Total</b>	<b>382</b>	<b>4394.74</b>	<b>213</b>	<b>3422.91</b>	<b>24</b>	<b>402.08<sup>103</sup></b>	<b>37</b>	<b>104.03</b>	<b>17</b>	<b>37.58</b>	<b>91</b>	<b>324.79</b>	<b>145</b>	<b>466.40<sup>104</sup></b>

<sup>101</sup> Total unreconciled turnover (TO) in Table 5R of GSTR 9C in the 50 cases is ₹ 12,563.20 crore, in 27 cases involving mismatched TO of ₹ 9555.68 crore valid explanations were provided by the Department and the compliance deviations in 22 cases involving mismatched TO of ₹ 2746.18 crore have been observed. In one case the issue is under examination by the Department.

<sup>102</sup> Total unreconciled taxable turnover (TTO) in Table 7G of GSTR 9C in the 16 cases is ₹ 420.55 crore. In six cases involving mismatched TO of ₹ 113.95 crore Department's reply was accepted by audit and the compliance deviations in the remaining 10 cases involving mismatched TTO of ₹ 306.60 crore have been observed.

<sup>103</sup> In two cases the department accepted audit observation of ₹ 4.80 crore against ₹ 20.15 crore pointed out by audit.

<sup>104</sup> In 12 cases the department accepted audit observation of ₹ 11.61 crore against ₹ 95.47 crore pointed out by audit.



Audit noticed deviations from the provisions of the Act in 145 cases involving an amount of ₹ 466.40 crore, constituting 38 per cent of the 382 cases of inconsistencies/ mismatches for which the Department provided responses. Out of this, Department has accepted the audit observations or initiated action in 54 cases. Department recovered ₹ 9.77 crore in 15 cases and issued SCN for ₹ 47.37 crore against audit observation ₹ 94.26 crore in 22 cases. Form ASMT 10<sup>105</sup>/DRC 01A<sup>106</sup>/DRC 13<sup>107</sup> was issued in 17 cases for ₹ 37.58 crore. In 91 cases, the reply of the Department was not acceptable to Audit, which also includes 55 cases where reply was not supported with proper evidence.

In 213 cases, constituting 56 per cent of replies received, Department's reply was acceptable to Audit. Out of these, data entry errors by taxpayers comprised 107 cases (50 per cent), the Department had proactively taken action in eight cases (four per cent) and in 98 cases (46 per cent) Department had other valid explanations.

In remaining 24 cases, the Department was yet to examine the observation or was under correspondence with taxpayers.

Details of the above may be seen in Appendix VI.

Table 2.4: Top deviation for each dimension of Centralised Audit

S. No.	Dimension	GSTIN (Name of the taxpayer)	Division	Mismatch (₹ in crore)
1	ITC mismatch between GSTR 2A and GSTR 3B	24AAACL0140P7ZJ (M/s Larsen and Toubro Ltd.)	Division-01	63.73
2	ITC availed under RCM vs payment of tax in GSTR 3B/ GSTR 9	24AACCR8653D1ZG (M/s Rama Cylinders Pvt. Ltd.)	Division-12	11.05
3	Short payment of tax under RCM vs ITC availed in GSTR 3B/ GSTR 9	24AAFCS7694L1ZO (M/s Sahajanand Medical Technologies Ltd.)	Division-08	0.44
4	ISD credit incorrectly availed by recipients	24AAACH1004N1ZO (M/s Hindustan Unilever Ltd.)	Division-02	7.73
5	Mismatch of ITC availed between Annual returns and Books of accounts	24AAACW0744L2ZB (M/s Welspun Corporation Limited),	Division-06	18.03
6	Reconciliation between ITC availed in Annual returns with expenses in financial statements	24AAUCS5797D2ZP (M/s Suzuki Motor Gujarat Private Limited)	Division-01	1357.83
7	Mismatch in turnover declared in GSTR 9C Table 5R	24AABCE4851F1ZY (M/s Essar Steel Jharkhand Limited)	Division-07	669.96
8	Mismatch in taxable turnover declared in GSTR 9C Table 7G	24AAACU7353H1ZC (M/s Unitech Fibres Pvt. Ltd.)	Division-08	130.12
9	Mismatch in taxpaid between books of accounts and returns	24AAACL0084E1Z1 (M/s Linde Engineering India Private Limited)	Division-05	1.93

<sup>105</sup> Notice issued by the proper officer to the taxpayer for informing discrepancy noticed during scrutiny.

<sup>106</sup> Intimation of tax ascertained as being payable under section 73(5)/ 74(5).

<sup>107</sup> Notice to a third person under Section 79(1)(c).

S. No.	Dimension	GSTIN (Name of the taxpayer)	Division	Mismatch (₹ in crore)
10	Unsettled liabilities	24AAACT4059M1Z5 (M/s TATA Chemicals Limited)	Division-11	24.26
11	GSTR 3B was not filed but GSTR 1 is available	24AAICS5496D1Z6 (M/s Sterling Lam Ltd.)	Division-03	4.25
12	Short payment of interest	24AAACR5055K1ZD (M/s Reliance Industries Ltd)	Division-11	3.93

Top Case from each of the audit dimensions (main 12 dimensions) are discussed below:

*(i) Dimension - Mismatch in ITC availed*

GSTR 2A is a purchase related dynamic details of auto drafted supplies 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 analyse the veracity of ITC utilization, relevant data were extracted from GSTR 3B and GSTR 2A for the year 2017-18, and the ITC paid as per suppliers' details was matched with the ITC credit availed by the taxpayer. The methodology adopted was to compare the ITC available as per GSTR 2A with all its amendments and the ITC availed in GSTR 3B in Table 4A(5)<sup>108</sup> considering the reversals in Table 4B(2)<sup>109</sup> but including the ITC availed in the subsequent year 2018-19 from Table 8C of GSTR 9.

Audit observed that in case of M/s Larsen and Toubro Ltd. (24AAACL0140P7ZJ) under ACST Unit-6, Ahmedabad, ITC available as per GSTR 2A was ₹ 403.63 crore. The ITC availed in Table 4A(5) of GSTR 3B and in the subsequent year (2018-19) from Table 8C of GSTR 9 was ₹ 416.36 crore and ₹ 51 crore respectively, aggregating to ₹ 467.36 crore. This resulted in mismatch of ITC availed, amounting to ₹ 63.73 crore which was communicated to the Department (February 2022). In response, JCST replied (June 2024) that DRC 07 has been issued for ₹ 3.61 crore.

*(ii) Dimension - Excess availment of ITC on RCM*

In Reverse Charge Mechanism, the liability to pay tax is fixed on the recipient of supply of goods or services instead of the supplier or provider in respect of certain categories of goods or services or both under Section 9(3) or Section 9(4) of the GGST Act, 2017 and under sub-section (3) or sub-section (4) of Section 5 of the IGST Act, 2017.

GSTR 9 is an annual return to be filed once for each financial year, by the registered taxpayers who were regular taxpayers, including SEZ units and SEZ developers. The taxpayers are required to furnish details of purchases, sales, input tax credit or refund claimed or demand created etc.

<sup>108</sup> All other eligible ITC.

<sup>109</sup> Other ITC reversed.



To analyse the veracity of ITC availed on tax paid under Reverse Charge Mechanism (RCM) for the year 2017-18, the datasets pertaining to GSTR 3B and annual return GSTR 9 were compared to check whether the ITC availed on RCM was restricted to the extent of tax paid. The methodology adopted was to compare the taxable supplies in Table 3.1(d)<sup>110</sup> of GSTR 3B with ITC availed in GSTR 9 Table 6C<sup>111</sup>, 6D<sup>112</sup> and 6F<sup>113</sup>.

Audit observed that in case of M/s Rama Cylinders Pvt. Ltd. (24AACCR8653D1ZG) under ACST Unit-103, Gandhidham, taxable inward supplies under reverse charge in Table 3.1(d) of GSTR 3B was ₹ 0.15 crore. However, the ITC availed in Table 6C, 6D and 6F of GSTR 9 was ₹ 11.20 crore, resulting in mismatch of ITC availed amounting to ₹ 11.05 crore which was communicated to the Department (February 2022). In response, the JCST Division-12 Gandhidham replied (May 2022) that the inconsistency arose since the taxpayer has shown ITC of import of services (excluding inward supplies from SEZ) as RCM liability.

The reply is not convincing as the amount shown under import of services (excluding inward supplies from SEZ) is also liable for GST under RCM.

**(iii) Dimension - Excess availment of ITC on RCM without payment of tax**

The extent of availing of ITC under RCM for the year 2017-18 without discharging equivalent tax liability or, in other words, short payment of tax under RCM 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 supplies liable to RCM in Table 4G<sup>114</sup> was compared with ITC availed in Table 6C, 6D and 6F.

Audit noticed that in case of M/s Sahajanand Medical Technologies Ltd. (24AAFCS7694L1ZO) under ACST Unit-65, Surat, the inward supplies liable to reverse charge in Table 4G of GSTR 9 was ₹ 1.08 crore and the ITC availed in Table (6C+6D+6F) of GSTR 9 was ₹ 1.52 crore. This resulted in availment of ITC on RCM without payment of tax amounting to ₹ 0.44 crore, which was communicated to the Department (February 2022). In response, JCST replied (June 2024) that taxpayer had paid ₹ 1.08 crore for RCM and claimed RCM credit of ₹ 0.98 crore through GSTR 3B. The taxpayer in GSTR-9, showed wrong credit due to the clerical mistake which was corrected while filing GSTR-9C. However, the reply was silent on the specific details of the clerical mistake. Further, the Department did not provide any supporting documents. Thus, Audit could not ascertain the correctness of the same.

<sup>110</sup> Inward supplies (liable to reverse charge).

<sup>111</sup> Inward supplies received from unregistered persons liable to reverse charge.

<sup>112</sup> Inward supplies received from registered persons liable to reverse charge.

<sup>113</sup> Import of services.

<sup>114</sup> Inward supplies on which tax is to be paid on reverse charge basis.



***(iv) Dimension - ISD credit incorrectly availed by the recipients***

In order to analyse whether the ITC availed by the taxpayer is not in excess of that transferred by the ISD, the ITC availed as declared in the returns of the taxpayer is compared with the ITC transferred by ISD in their GSTR 6. The methodology adopted was to compare GSTR 9 Table 6G or GSTR 3B Table 4(A)(4) with the sum of Table 5A, Table 8A and Table 9A of GSTR 6 for respective GSTINs.

In case of M/s Hindustan Unilever Ltd. (24AAACH1004N1Z0) under ACST 21, Ahmedabad, as per Table 6G of GSTR 9, ITC received from ISD was ₹ 37.81 crore and the ITC transferred by ISD, sum of Table 5A, 8A and 9A of GSTR 6<sup>115</sup>, was ₹ 30.08 crore. This resulted in mismatch of ISD credit of ₹ 7.73 crore which was communicated to the Department (February 2022). In response, JCST stated (May 2024) that the reply would be furnished after the adjudication in the matter relating to Tran 1/2 and after considering response of the taxpayer to DRC 07.

***(v) Dimension - Unreconciled ITC in Table 12F of GSTR 9C***

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. Table 12F deals with unreconciled ITC.

The certified reconciliation statement submitted by the taxpayer as required under Rule 80(3) of GGST Rules in GSTR 9C for the year 2017-18 was analysed at data level to review the extent of identified mismatch in ITC declared in the Annual Return with the Financial Statements.

In case of a taxpayer, M/s Welspun Corporation Limited (24AAACW0744L2ZB), under ACST Unit-55, Bharuch, Audit noticed that ITC claimed in annual return was ₹ 120.31 crore as per Table 12E of GSTR 9C and ITC claimed as per audited financial statement declared in Table 12D of GSTR 9C was ₹ 102.28 crore. As such, unreconciled ITC of ₹ 18.03 crore was declared in Table 12F of GSTR 9C which was communicated to the Department (February 2022).

In response, the proper officer (December 2022) provided the explanation for unreconciled amount in Table 14T of GSTR 9C. The reply was not convincing as the audit enquiry was related to Table 12F of GSTR 9C and not on Table 14T of GSTR 9C.

***(vi) Dimension - Unreconciled ITC in Table 14T of GSTR 9C***

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. Table 14T deals with unreconciled ITC.

The certified reconciliation statement submitted by the taxpayer as required under Rule 80(3) of GGST Rules in GSTR 9C for the year 2017-18 was

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<sup>115</sup> Return for input service distributor.

analysed at data level to review the extent of identified mismatch in ITC declared in the Annual Return with the expenses reported in the Financial Statements.

In case of a taxpayer, M/s Suzuki Motor Gujarat Private Limited (24AAUCS5797D2ZP), under ACST Unit-12, Viramgam, ITC of ₹ 1489.20 crore was claimed in annual return as per Table 14S of GSTR 9C and ITC of ₹ 1357.83 crore was available as per expenses reported in the financial statement declared in Table 14R of GSTR 9C. As such, unreconciled ITC of ₹ 131.37 crore was declared in Table 14T of GSTR 9C which was communicated to the Department (February 2022). In response, the proper officer replied (November 2022) that as the case was selected for audit by DCST-Corporate, Mehsana, reply would be obtained and intimated to audit. Further reply in this regard was awaited (July 2024).

***(vii) Dimension - Unreconciled turnover in Table 5R of GSTR 9C***

Table 5 of GSTR 9 C is the reconciliation of turnover declared in audited annual financial statement with turnover declared in annual return (GSTR 9). Table 5R captures the unreconciled 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 as required under Rule 80(3) of GGST Rules in Form GSTR 9C for the year 2017-18 was analysed at data level to review the extent of identified mismatch in turnover reported in the Annual Return *vis-à-vis* the Financial Statements. The unreconciled amount in cases where the turnover declared in GSTR 9 is less than the financial statement indicates non-reporting, under-reporting, short-reporting, omission, error in reporting of supplies leading to evasion or short payment of tax. It could also be a case of non-reporting of both taxable and exempted supplies.

In case of M/s Essar Steel Jharkhand Limited (24AABCE4851F1ZY) under ACST Unit-57, Surat, Audit noticed that turnover of ₹ 6.25 crore was declared in annual return as per Table 5Q of GSTR 9C and annual turnover after adjustment as per financial statement declared in Table 5P of GSTR 9C was ₹ 676.22 crore. As such, unreconciled turnover of ₹ 669.97 crore was noticed in Table 5R of GSTR 9C, which was communicated to the Department (February 2022). In response JCST replied (March 2024) that unreconciled turnover in Table 5R of GSTR 9C was due to non-GST supply, such as interest income, profit on sale of investment and sundry credit balance written off which is mentioned in 6A of GSTR 9C. However, the reply was not supported with proper documentary evidence such as financial statement, profit and loss account and balance sheet for verification.

In this regard, it is also pertinent to mention that the reconciliation statement in Form GSTR-9C should be prepared and duly signed by the auditor and other statements, as applicable, including financial statement, profit and loss account and balance sheet *etc.* must be uploaded with GSTR-9C. However, these records were not properly uploaded with the GSTR-9C.

**(viii) Dimension - Unreconciled taxable turnover in Table 7G of GSTR 9C**

The certified reconciliation statement submitted by the taxpayer as required under Rule 80(3) of CGST/SGST Rules in Form GSTR 9C for the year 2017-18 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. Table 7G of the Form 9C 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 unreconciled amount in cases where the taxable 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 case of M/s Unitec Fibres Pvt. Ltd. (24AAACU7353H1ZC) under ACST Unit-73, Vapi, Audit noticed that the taxable turnover as per liability declared in Annual Return (GSTR 9) in Table 7F of GSTR 9C was ₹ 2.21 crore and taxable turnover as per financial statement as declared in Table 7E of GSTR 9C was ₹ 132.32 crore. As such, mismatch of taxable turnover of ₹ 130.11 crore was noticed in Table 7G of GSTR 9C, which was communicated to the Department (February 2022).

On this being pointed out, JCST replied (June 2024) that the reason for mismatch was due to inclusion of turnover of Maharashtra and Silvassa branches. Further, it also included Value Added Tax turnover of period from April-June 2017 and furnished reconciliation. However, the reply was not supported with proper documentary evidence, i.e. copy of GSTR 9 and GSTR 9C of Maharashtra and Silvassa branches for verification. In absence of these records, Audit could not ascertain the correctness of the Department's reply.

**(ix) Dimension - Unreconciled tax liability in Table 9R of GSTR 9C**

The certified reconciliation statement submitted by the taxpayer as required under Rule 80(3) of GGST Rules in Form GSTR 9C for the year 2017-18 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 the Form 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 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 the 2017-18 transactions carried out in the subsequent year from April to September 2018. Consequential interest payments - both short payments and payments under incorrect heads - also need to be examined in this regard.

In case of M/s Linde Engineering India Private Limited (24AAACL0084E1Z1) under ACST Unit-39, Vadodara, total amount paid as declared in Annual Return (GSTR 9) in Table 9Q of GSTR 9C was ₹ 11.46 crore and total amount to be paid in the books of accounts as per Tables 9P of GSTR 9C was ₹ 13.39 crore. Hence there was unreconciled payment of tax of ₹ 1.93 crore, which was



communicated to the Department (February 2022). In response, the proper officer replied (April 2022) that ASMT 10 was issued in April 2022 to the taxpayer.

**(x) Dimension - Short declaration of tax liability**

To analyse the undischarged tax liability, relevant data were extracted from GSTR 1 and GSTR 9 for the year 2017-18 and the tax payable in these returns was compared with the tax paid as declared in GSTR 9. The amendments and advance adjustments declared in GSTR 1 and 9 were also considered for this purpose.

Audit observed that in case of M/s TATA Chemicals Limited (24AAACT4059M1Z5) under ACST Unit-101, Jam-Khambhalia, the tax payable in GSTR 9 was ₹ 297.62 crore. However, the tax paid as declared in GSTR 9 (Table 9 and 14) was ₹ 273.36 crore. This resulted in mismatch of tax liability of ₹ 24.26 crore which was communicated to the Department (February 2022). In response, the proper officer replied (April 2022) that the permission for scrutiny under Section 61 would be obtained and intimated accordingly. Further reply was still awaited (July 2024).

**(xi) Dimension - Cases where GSTR 3B not filed but GSTR 1 or GSTR 2A available**

The very availability of GSTR 1 and 2A and non-filing of GSTR 3B indicates that the taxpayers had undertaken/ carried on the business during the period but have not discharged their tax liability. It may also include cases of irregular passing on of ITC. All these cases, therefore, warrant investigation. At the data level, it was attempted to identify those taxpayers who have not filed GSTR 3B (monthly return) but have filed GSTR 1 (monthly outward supply return) or whose GSTR 2A (ITC received statement) was available. GSTR 3B return is the only instrument through which the liability is offset, and ITC is availed.

Audit observed that in case of M/s Sterling Lam Ltd. (24AAICS5496D1Z6) under ACST Unit-29, Prantij the tax payable in GSTR 1 was ₹ 4.25 crore. The taxpayer had not filed GSTR 3B (involving tax liability of ₹ 4.25 crore) for the period July 2017 to March 2018. The proper officer accepted the audit observation and replied (January 2023) that DRC 07 was issued to the taxpayer in February 2019 and demand of ₹ 2.31 crore (tax of ₹ 1.07 crore, interest of ₹ 0.17 crore and penalty of ₹ 1.07 crore) was raised. However, the reply was silent on remaining tax amount of ₹ 3.18 crore. Department further replied (March 2023) that the case is now pending at NCLT Ahmedabad and proper officer had filed claim for the raised dues. Further progress in this regard was still awaited (July 2024).

**(xii) Dimension - Short-payment of interest**

Section 50 of the Act 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 non/ short payment of interest on account of delayed remittance of tax during 2017-18 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 M/s Reliance Industries Ltd. (24AAACR5055K1ZD) under ACST Unit-100, Jamnagar wherein the returns (GSTR 3B) for the months August 2017 and October 2017 were filed with delay ranging between one day and 29 days on 21 September 2017 and 19 December 2017 respectively. In response, the proper officer while accepting the delay replied (April 2022 and January 2023) that against the liability of interest of ₹ 3.93 crore, the taxpayer paid interest of ₹ 11,044 in October 2017. However, the taxpayer was liable to pay remaining interest of ₹ 3.93 crore. Further progress in the case was still awaited (July 2024).

### **c. Analysis of causative factors**

Considering the Department's response to 382 cases out of the sample of 385 data deviations/ inconsistencies, the factors that caused the data deviations/ inconsistencies are as follows:

#### **a) Deviations from GST law and rules**

Out of the 145 mismatches summarized in **Appendix VI**, the Department accepted the audit observations and initiated action in 54 cases with tax effect of ₹ 141.61 crore. Out of these cases, the Department recovered ₹ 9.77 crore in 15 cases, issued SCN in 22 cases for ₹ 47.37 crore against audit observation of ₹ 94.26 crore and issued notice conveying discrepancies to the taxpayer in Form ASMT 10/ DRC 01A/ DRC 13 in 17 cases for ₹ 37.58 crore.

Top five cases where the Department had accepted the audit observation or initiated action amounted to ₹ 98.07 crore.

A few illustrative cases are discussed below:

#### **Unreconciled tax liability in Table 9R of GSTR 9C**

(i) In case of M/s Aaman Traders (24ARDPS5053P1ZB) under ACST Unit- 74, Vapi the total amount paid as declared in Annual Return (GSTR 9) as per Table 9Q of GSTR 9C was ₹ 12.71 crore and total amount to be paid as per books of accounts as per Tables 9P of GSTR 9C was ₹ 13.64 crore. Hence there was unreconciled payment of tax of ₹ 0.93 crore, which was communicated to the Department (February 2022). On this being pointed out (February 2022), the JCST replied (April 2024) that DRC 01 had been issued (April 2024). Further progress in this regard was still awaited (July 2024).

### ***Short declaration of tax liability***

(ii) In case of M/s Om Enterprise (24AAEFO7835K1ZY) under ACST Unit- 18, Ahmedabad, the tax payable in GSTR 1 was ₹ 11.07 crore and tax paid in GSTR 3B was ₹ 1.37 crore. This resulted in mismatch of tax liability of ₹ 9.70 crore which was communicated to the Department (February 2022). In response, the proper officer replied (March 2022) that ASMT 10 was issued in March 2022 to the taxpayer. Further, ACST replied (September 2023) that the case has been transferred to Enforcement Division, as taxpayer was involved in bogus business activities. Further progress in this regard was awaited (July 2024).

### ***Unreconciled ITC in Table 12F of GSTR 9C***

(iii) In case of M/s Schneider Electric India Pvt. Ltd (24AABCS1624G1ZT) under ACST Unit-45, Vadodara, Audit noticed that the ITC claimed in annual return was ₹ 26.14 crore as per Table 12E of GSTR 9C and ITC claimed as per audited financial statement declared in Table 12D of GSTR 9C was ₹ 16.61 crore. As such, unreconciled ITC of ₹ 9.53 crore was declared in Table 12F of GSTR 9C which was communicated to the Department (February 2022). The proper officer replied (March 2022) that ASMT 10 was issued to taxpayer for further clarification. Further progress in this regard was awaited (July 2024).

### ***Excess ITC availed***

(iv) Audit observed that in case of M/s JSW Steel Ltd. (24AAACJ4323N1ZM) under ACST Unit-5, Ahmedabad, the ITC available as per GSTR 2A was ₹ 49.64 crore. However, the ITC availed in Table 4A(5) of GSTR 3B was ₹ 54.04 crore and ITC of ₹ 2.07 crore was availed in the subsequent year (2018-19) in Table 8C of GSTR 9. This resulted in mismatch of ITC availed of ₹ 6.47 crore which was communicated to the Department (February 2022). In response, the proper officer replied (June 2022) that ASMT 10 was issued (May 2022). Further progress in this regard was awaited (July 2024).

### ***Cases where Department's reply not accepted but rebutted by Audit***

Out of the 382 cases where the replies were received, Department's reply was not acceptable in 91 cases<sup>116</sup> amounting to ₹ 324.79 crore. In these cases, the Department has either forwarded explanations of the taxpayers without explicitly commenting on the audit observations or the replies were not found satisfactory.

Top five cases where Department's reply was not acceptable to Audit amounted ₹ 117.17 crore.

A few illustrative cases are featured below:

- In case of M/s Bharat Sanchar Nigam Ltd. (24AABCB5576G1ZR) under ACST Unit-8, Ahmedabad ITC available as per GSTR 2A was ₹ 53.63 crore.

<sup>116</sup> This includes 55 cases where the replies were not supported with proper documentary evidence.



However, ITC availed in Table 4A(5) of GSTR 3B was ₹ 72.85 crore, other reversal of ITC was ₹ 0.63 crore and the ITC availed in the subsequent year (2018-19) in Table 8C of GSTR 9 was ₹ 5.90 crore. Thus, there was mismatch of ITC availed amounting to ₹ 24.49 crore which was communicated to the Department (February 2022). In response, the proper officer did not accept the audit query and replied (June 2022) that during 2017-18, the taxpayer has availed ITC of ₹ 96.13 crore. While filing GSTR 3B, ITC on import was shown as ITC on normal goods and services by mistake. While filing GSTR 9 this omission was corrected and entered in right head.

The reply is partially acceptable to the extent of typographical error attributed to the mismatch of ITC of ₹ 23.88 crore that was arrived on aggregating of ITC of ₹ 19.19 crore pertaining to import from SEZ and ITC of ₹ 4.69 crore under RCM that was incorrectly reported in all other ITC in GSTR 3B. However, no explanation was provided for excess availment of ITC of ₹ 0.61 crore (ITC of ₹ 54.24 crore as per GSTR 3B - ITC of ₹ 53.63 crore as per GSTR 2A) that was accepted by the taxpayer in its reconciliation statement, mentioning that it was not material as it worked out to only 1.12 *per cent*. Further reply in this regard was still awaited (July 2024).

- Unreconciled turnover of ₹ 87.66 crore declared in Table 5R of GSTR 9C in case of M/s Richa World Travels (24AAFFR9066G1Z0) under ACST Unit- 08, Ahmedabad was communicated to the Department (February 2022). In response, the proper officer did not accept the audit observation and stated (June 2022) that the dealer is an IATA (International Air Transport Association) approved travel agent and their core service is International and domestic air ticketing, International and domestic hotel booking and railway ticket booking. They use accounting software in which the purchases are booked based on ticket purchased from related Airlines/ Railway. They do not receive ITC for such ticket purchase because the purchase has been actually booked in the name of end client and ITC also passed on directly to the end client. However, while accounting the purchases have been made for the full amount of Air Ticket and on the other side the sales have been booked after considering the discount/ commission/ service charge and so directly the figures of purchase and sales does not tally in profit and loss account. Further, Department stated that the taxpayer is liable to pay GST on Commission/ Service Charge earned by him and has paid 18 *per cent* GST on such commission earned from airlines.

Rule 32(3) of the GGST Rules, 2017 provides that the value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent shall be deemed to be an amount calculated at the rate of five *per cent* of the basic fare in the case of domestic bookings, and at the rate of ten *per cent* of the basic fare in the case of international bookings of passage for travel by air. So, GST for air ticket booking should have been paid on relevant portion of basic fare on which commission has been paid, not on the commission from air ticket booking. Further reply in this regard was awaited (July 2024).

**b) Data entry errors by taxpayers**

The data entry errors constituted 28 *per cent* (107 cases) of the total responses received and 50 *per cent* of cases where the Department's responses were accepted by Audit. Most of the data entry errors relate to mismatch in ITC, RCM, unreconciled ITC, unreconciled turnover, unreconciled taxable turnover and unreconciled tax paid (provided in GSTR 9C). An illustrative case is brought out below:

A deviation of ₹ 31.70 crore was identified as tax liability mismatch between GSTR 1 and GSTR 9 of the taxpayer, M/s Earum Pharmaceuticals Ltd. (24AADCE1163C1ZB) under ACST Unit-11, Ahmedabad and communicated to the Department (February 2022). The proper officer replied (November 2022) that the deviation was due to a typographical error made by the taxpayer by showing wrong CGST and SGST amount of ₹ 17,64,43,846 instead of ₹ 1,76,43,846 in Table 4 of GSTR 9.

Another deviation of ₹ 6.31 crore was identified as tax liability mismatch between GSTR 1 and GSTR 9 of the taxpayer, M/s Parimal Modi (24AHSPM6728L1ZN) under ACST Unit-10, Ahmedabad and communicated to the Department (February 2022). The proper officer replied (June 2024) that the taxpayer while filing GSTR 1 erroneously computed tax at the rate of 1800 *per cent* instead of 18 *per cent* in respect of three invoices leading to the mismatch.

The system allowed for such data entry errors, which could have been avoided with proper validation controls.

The CAG's Report No. 5 of 2022 on Union Government Department of Revenue (Indirect Taxes-Goods and Services Tax) had also highlighted data quality issues and significant inconsistencies in the GST data due to which Audit could not establish reliability of data for finding audit insights and trends. The Report had recommended that the Union Ministry should consider introducing appropriate validation controls (controls to prevent unreasonable data entries and/or alert the taxpayer to unreasonable data) supplemented by *post facto* data analytics in respect of important data elements.

**Recommendation 2.2.1**

*The Department may take up the issue before GSTN to introduce validation controls in GST Returns to curb data entry errors, enhance taxpayer compliance and facilitate better scrutiny.*

**2.2.5.3 Detailed audit of GST returns**

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. With finite level of resources, for an effective tax administration, to ensure compliance with law and collection of revenue, an efficient governance mechanism is essential. 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. Thus, apart from identifying inconsistencies/ deviations in GST returns through data analysis, a detailed audit of GST returns was also conducted as a part of this review. A risk-based sample of 50 taxpayers was selected for this part of the review. 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 State Tax Offices 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.

### **Scope limitation (Non-production of records)**

In spite of requisitions and follow up, the Department did not produce the granular records such as financial statements and related ledgers, invoices for selected months, Auditor's Report, debit and credit notes, *etc.* in 49 of the audit sample of 50 cases. Thus, in 98 per cent of the sample, Audit could not examine the mismatches observed through data analysis, which constituted a significant scope limitation.

The jurisdiction wise non-production of records is summarised in **Appendix VII**.

As a result of non-production of records, mismatches/ deviations noticed through data analysis, amounting ₹ 319.92 crore, could not be examined in audit.

Details of top 10 cases relating to non-production of records are given in **Appendix VIII**.

### **Recommendation 2.2.2**

*The Department may work towards making statutory provisions to ensure timely and complete production of records to Audit.*

## **I. Detailed audit of GST returns –Audit findings**

### **A. Audit findings related to returns**

#### **a. Non-payment of interest by taxpayers**

Audit observed in 25 cases, constituting 50 per cent of the 50 sampled cases, that taxpayers had filed their returns GSTR 3B belatedly ranging from one to 372 days, but the interest payments amounting to ₹ 1.87 crore<sup>117</sup> were not discharged. On this being pointed out (July 2022 to February 2023),

<sup>117</sup> Interest calculated at the rate of 18 per cent per annum.



12 offices<sup>118</sup> in 12 cases accepted the audit observation and reported recovery of ₹ 6.26 lakh in eight cases pertaining to eight offices<sup>119</sup>.

In one case<sup>120</sup> the proper officer did not accept the audit observation and stated (December 2023) that there was no interest due in view of Notification No. 69/2018 as due date for GSTR 3B was extended upto 31 March 2019. The reply is not convincing in view of the fact that the Notification No. 69/2018<sup>121</sup> applies to those taxpayers who were newly migrated. Department may ascertain whether the taxpayer had migrated to the GSTN as per the procedures laid down in Notification No. 31/2018.

One office<sup>122</sup> while not accepting the audit observation replied (June 2024) that due date for filling GSTR 3B for July 2017 was 28 August 2017. The taxpayer had paid tax through cash on 17 August 2017 and 19 August 2017. Hence, not liable for payment for interest. Reply is not convincing as the taxpayer filed GSTR 3B for July 2017 on 31 August 2017.

In remaining 11 cases the Department stated that detailed reply would be furnished after verification of record.

The top three irregularities noticed in this category amounted to ₹ 1.65 crore.

An illustrative case is featured below:

i. M/s Exxaro Tiles Limited, (24AADCR8355H1Z8) under Unit-29-Prantij, belatedly filed the GSTR 3B returns of July 2017 to March 2018 with delay ranging from 98 to 272 days and paid the tax of ₹ 15.17 crores in these returns by debiting the Cash Ledger. However, interest of ₹ 1.40 crore was not paid. In response, the State Tax Officer, replied (October 2022) that the audit of the taxpayer for the period 2017-18 was ongoing under DCST Range-7, Gandhinagar. After completion of the audit, detailed reply would be furnished. Further reply was awaited (July 2024).

#### **b. Data entry errors**

Audit observed data entry errors in the returns of four taxpayers under four Unit offices involving ₹ 11.58 crore. The details are given in **(Appendix IX)**. The errors were mainly in declaration of ITC, tax liability and turnover in GSTR 3B, and GSTR 9.

<sup>118</sup> ACST-1, Ahmedabad (24ANKPS9251N1Z8), ACST-8, Ahmedabad (24AABCP1545K1ZJ), ACST-49, Nadiad (24ACOPL4690F1ZE), ACST-12, Viramgam (24AAACH17467D1ZQ), ACST-57, Surat (24AAKFB2820P1ZC) & 58 Surat (24ACUFS2333J1ZT), ACST-72, Navsari (24AABCD0223G1ZF), ACST-73, Vapi (24AAACU7353H1ZC), ACST Unit-89, Rajkot (24AAHFS4506J1Z7), ACST Unit-98, Jamnagar (24ABLFS2660L1ZU), ACST-93, Rajkot (24AADCV5343B1ZQ) and ACST Unit-103, Gandhidham (24ACMP9782G1ZZ).

<sup>119</sup> ACST-8, Ahmedabad (24AABCP1545K1ZJ), ACST-49, Nadiad (24ACOPL4690F1ZE), Unit-57, Surat (24AAKFB2820P1ZC) & 58 Surat (24ACUFS2333J1ZT), ACST-72, Navsari (24AABCD0223G1ZF), ACST-73, Vapi (24AAACU7353H1ZC), ACST Unit-89, Rajkot (24AAHFS4506J1Z7), and ACST Unit-98, Jamnagar (24ABLFS2660L1ZU).

<sup>120</sup> ACST-18, Ahmedabad (24AAKCM1651L1ZC).

<sup>121</sup> Notification No. 69/2018 states that Notification No. 35/2017 was further amended vide Notification No. 46/2018-Central Tax which extends the due date for filing GSTR 3B for those registered person who had obtained GSTN by migration in terms of Notification No. 31/2018 (06 August 2018).

<sup>122</sup> Unit-5, Ahmedabad (24AAACB2894G1ZT).

One of these cases is featured below:

i. M/s Kapadia Textile (24AGNPP8281D1Z4) pertaining to Unit-64 Surat, had shown turnover of ₹ 11,38,09,71,38,097 in GSTR 3B of August 2017 which apparently seem to be data entry error. Reply of the Department is still awaited (July 2024).

**c. Non-filing of returns**

As per Section 44 (2) of GGST Act, 2017 read with sub-rule (3) of Rule 80 of the GGST Rules, 2017, every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of Section 35 and shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in GSTR 9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

Finance Department, Government of Gujarat vide their Notification No. 47/2019 (10 October 2019) clarified that for the taxpayer having total turnover not exceeding ₹ two crore, it is optional to file GSTR 9.

As per Section 29(2) of GGST Act 2017, the proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where any registered person has not furnished returns for a continuous period of six months.

Audit observed that in two cases<sup>123</sup>, constituting four *per cent* of the 50 sampled cases, the taxpayers had not filed one or more returns (GSTR 9/ GSTR 9C).

On this being pointed out (December 2022), Department in one case stated (March 2023) that the taxpayer had filed GSTR 9 on 23 February 2023. Reply is not acceptable in view of the fact that as per CBIC Notification No. 06/2020 the taxpayer was required to file GSTR 9 on or before 05 February 2020. Therefore, it is evident that the Department has not identified the taxpayer as non-filer till the audit query was issued. Further, reply was silent for imposing the late fee for delay of 1,114 days. In another case reply was awaited (July 2024).

**d. Late fee for delay in filing of returns**

As per Section 47 of the GGST Act, 2017, any registered person who fails to furnish the details of outward or inward supplies required under Section 37 or Section 38 or returns required under Section 39 or Section 45 by the due date shall pay a late fee of one hundred rupees<sup>124</sup> for every day during which such failure continues subject to a maximum amount of five thousand rupees. As per Section 47(2) any registered person who fails to furnish the return required under Section 44 by the due date shall be liable to pay a late fee of one hundred

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<sup>123</sup> M/s Shree Enterprise (24ACOP4690F1ZE) under Unit-49 Nadiad and M/s Balaji Marketing (24AHCPD7764R1ZU) under Unit-64, Surat.

<sup>124</sup> ₹ 25 vide State Notification No.64/2017-State Tax dated 15 November 2017.



rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter *per cent* of his turnover in the State.

Audit observed late filing of returns (annual return and monthly return) in 10 cases, out of 50 sampled cases where late fee of ₹ 1.97 lakh remained unpaid. In two cases GSTR 9 was filed belatedly with delay of 371 and 413 days. However, it was noticed in GSTR 9 of 2017-18 that late fee of ₹ 1,56,800 was not paid for late filing of GSTR 9.

In eight cases, GSTR 3Bs for various months were filed belatedly with delay ranging from one day to 300 days. It was noticed in GSTR 3B/ GSTR 9 of these cases, late fee ₹ 27,540 was paid against ₹ 68,050. Hence, late fee of ₹ 40,510 remained unpaid.

Five offices<sup>125</sup> in five cases accepted (October 2023 and July 2024) the delay and recovered the late fee of ₹ 0.95 lakh.

#### e. Systemic issue

Section 37 of GGST Act 2017 provides that every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of Section 10 or Section 51 or Section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed.

Rule 59 of the GGST Rules, 2017 related to 'Form and manner of furnishing details of outward supplies' provides that every registered person, other than a person referred to in Section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) is required to furnish the details of outward supplies of goods or services or both under Section 37 in Form GSTR 1.

Audit observed that on back-end Boweb portal of GSTN available for the Department, proper officers were not able to access the row wise information of various columns of GSTR 1 as detailed below:-

- Row wise detail of Table 4A (Supplies other than those attractive reverse charge and supplies made through e-commerce operator)
- Row wise detail of Table 4B (supplies attracting tax on reverse charge basis)
- Row wise detail of Table 4C (supplies made through e-commerce operator attracting TCS: operator wise, rate wise)
- Row wise detail of Table 5A (Outward supplies other than supplies made through e-commerce operator, rate wise)
- Row wise details of Table 6A (Exports)

<sup>125</sup> ACST-11, Ahmedabad (24AAACG3938J1ZM), ACST-64, Surat (24CKQPP9629G1ZI), ACST-65 Surat (24AADFL8645H1Z7), ACST-72 Navsari (24AABCD0223G1ZF) and ACST-94 Gondal (24AABPD4400A1ZI).



- Row wise details of Table 6B (Supplies made to SEZ unit or SEZ developer)
- Row wise details of Table 6C (Deemed exports)
- Row wise details of Table 12 (HSN-wise summary of outward supplies)
- Row wise details of Table 13 (Documents issued during the tax period)

The proper officer scrutinizes the return for its correctness based on the information available on the system in various forms and statements filed by the registered taxpayers. In the absence of required information row wise for each column could hinder the process of scrutiny by Department as per its SOP. Further, in the absence of the desired details Audit could not ascertain the category/ classification of supplies and levy of proper tax.

On this being pointed out (July 2022 to February 2023), Unit offices stated that this being a systemic issue, it will be intimated to competent authority for necessary action. Further five Unit offices<sup>126</sup> confirmed (November 2022 to December 2022) that the prescribed details were not visible. Four offices<sup>127</sup> stated (June 2024) that matter had been informed to the higher authority.

Audit is of view that the Department promptly pursue the matter with Government/ GSTN to ensure that all the data/ information made visible to the proper officer in the back end for smoothening scrutiny of returns.

### **Recommendation 2.2.3**

***The Department may consider taking necessary action for making available all the information/ particulars of GSTR 1 row-wise separately to the proper officer at the back-end portal of Department.***

#### ***Duplicate Generation of GSTR 3B of particular month***

As per Section 39(1) every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of Section 10 or Section 51 or Section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.

Audit noticed two taxpayers<sup>128</sup> out of 50 sampled cases under two Units that the taxpayers had filed GSTR 3B of same month two times in GST portal by generating two different ARN Number and was allowed by the system. In respect of Unit-8, Ahmedabad, JCST replied (July 2024) that duplicate generation of 3B was due to system error. However, there was no double

<sup>126</sup> ACST-1, Ahmedabad, ACST-12 Viramgam, ACST-89, 92 and 93 Rajkot.

<sup>127</sup> ACST-26, Himatnagar, ACST-65, Surat, ACST-68, Surat and ACST-89, Rajkot.

<sup>128</sup> (24AABCPT1545K1ZJ) ACST Unit-8, Ahmedabad, (24AAKCM4747R1ZP) ACST Unit-78, Mahuva.

effect on tax liability or electronic ledger of the taxpayer. The reply of ACST Unit-78, Mahuva was awaited (July 2024).

## B. Utilisation of Input Tax Credit

Input Tax Credit (ITC) means the Goods and Services Tax (GST) paid by a taxable person on purchase 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 GGST Act prescribe the eligibility and conditions to avail ITC. Credit of CGST cannot be used for payment of SGST/ UTGST and credit of SGST/ UTGST cannot be utilised for payment of CGST. Rule 36 to 45 of the GGST Rules prescribes the procedures for availing and reversal of ITC.

### a. Non reversal of ITC on damaged goods & supply of free samples

Section 17(5) (h) of GGST Act, 2017 stipulates that notwithstanding anything contained in sub-section (1) of Section 16 and in sub-section (1) of Section 18 ITC shall not be available in respect of the goods lost, stolen, destroyed, written off or disposed of by way of gift and free sample.

In case of M/s Exxaro Tiles Limited (GSTN 24AADCR8355H1Z8) under Unit-29, Prantij Audit observed that the taxpayer had received insurance claim of ₹ 68.68 lakh for damage of finished goods.

Further, there was exported sample sale of ₹ 2.09 crore. As the taxpayer exported sample goods free of cost and no foreign currency was realized in such sale, ITC for purchase of goods supplied as free sample should not be availed. On verification of GSTR 9, it was noticed that the taxpayer had not reversed any ITC under Rule 17(5) of GGST Rule. However, in the absence of ledger and stock register (July 2017 to March 2018) Audit could not quantify the ITC availed by the taxpayer for purchase of inputs used in production of such goods supplied as free samples and insurance claim for damaged goods.

### b. Non reversal of ITC

Section 17(2) of the Act read with Rule 42 and 43<sup>129</sup> of the GGST Rules 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.

<sup>129</sup> ITC in respect of capital goods which attracts the provisions of sub-section (1) and (2) of Section 17, being partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be restricted to so much of the input tax as is attributable to said taxable supplies including zero-rated supplies.



Audit observed in five cases, out of 50 sampled cases falling under five Units<sup>130</sup>, nil/ exempted turnover was ₹ 108.79 crore. However, these taxpayers had not reported any reversal of ITC in GSTR 3B or GSTR 9 under Rule 42 of GGST Rules 2017. In the absence of granular records such as ledgers for the period July 2017 to March 2018 and details of calculation of common credit, Audit could not quantify the amount of ITC to be reversed as per Rule 42.

On this being pointed out (July 2022 to February 2023), two offices<sup>131</sup> in two cases accepted the audit observation. Out of these two cases, in one case the Unit office<sup>132</sup> replied (June 2024) that DRC-07 had been issued to the taxpayer.

In one case, ACST Unit-98, Jamnagar replied (May 2023) that the taxpayer had exempted/ Nil rated supplies of ₹ 11.03 crore which includes freight income of ₹ 10.58 crore and sale of old vehicle of ₹ 0.45 crore for which taxpayer had not claimed ITC on inputs. However, no documentary evidence was provided to ascertain if the service recipient paid GST on RCM basis. One office, (ACST-57, Surat) replied (June 2024) that exempted supply pertains to High Sea sale<sup>133</sup> and no ITC was claimed by the taxpayer under this transaction. The proper officer furnished copy of tax invoices only. However, in the absence of copy of high sea sale agreement, bill of entry Audit could not verify the fact.

An illustrative case is featured below:

i. In case of M/s Globe Ecologistics Private Limited (24AAACG3938J1ZM) under Unit-11, Ahmedabad the taxpayer had exempted/ Nil rated supply of ₹ 34.83 crore and taxable turnover of ₹ 140.22 crore in GSTR 9. The taxpayer had ITC of ₹ 6.84 crore on input goods and input services as per GSTR 9. Similarly, it was observed that the taxpayer had also availed ITC on capital goods of ₹ 2.10 crore. However, the taxpayer did not reverse any ITC as required under Rule 42 and Rule 43 of the GGST Rules, 2017.

Due to non-production of requisitioned records by the Department such as ledgers of taxpayer's sales and purchase Audit could not quantify the ITC amount to be reversed by the taxpayer.

On this being pointed out (November 2022), the Department replied (July 2024) that the audit observation was included in GST audit conducted by the Department. The Audit Report revealed that the taxpayer had availed ineligible ITC which was required to be reversed and was agreed to be paid by the taxpayer (July 2024).

<sup>130</sup> ACST-11, 21 Ahmedabad, ACST-57 Surat, ACST-98 Jamnagar, ACST-103 Gandhidham.

<sup>131</sup> ACST-11, Ahmedabad and ACST-103, Gandhidham.

<sup>132</sup> ACST-103, Gandhidham.

<sup>133</sup> High sea sale is a practice where the original importer of goods sells the goods to another person before the goods pass through custom clearance in the destination country.



### c. Mismatch in claim of ITC as noticed from returns

When Audit analysed the GSTR 2A data of selected taxpayers along with GSTR 3B, GSTR 9 and GSTR 9C filed by the taxpayers, there were instances of mismatches of ITC among various returns and tables which are tabulated below. These mismatches could not be examined in detail by Audit since relevant records were not produced by Department. However, in some cases the Department has replied to the mismatches pointed out by Audit which are detailed in Appendix X.

Table 2.5: Mismatch in claim of ITC as noticed between returns

Parameter	No. of cases	No. of Unit offices	Amount of mismatches (₹ in crore)
ITC mismatch between GSTR 2A and GSTR 9. ITC amounting to ₹ 253.15 crore was declared in GSTR 9 (Table 6B + 8C – 7H) but ITC as per GSTR 2A was ₹ 219.99 crore.	25	21	33.16
ITC mismatch between GSTR 2A and GSTR 3B. ITC amounting to ₹ 413.29 crore was declared in GSTR 3B (Table 4A(5) + 8C of GSTR9 – 4b(2) of GSTR3B) but ITC as per GSTR 2A was ₹ 241.65 crore.	10	10	171.64
Mismatch in ITC availed under RCM. Table 3.1(d) of GSTR 3B which contains the details of Inward supplies that are liable to reverse charge was compared with RCM ITC shown in Table 6C, 6D and 6F of GSTR 9.	2	2	0.0047

## C. Undischarged tax liability

### a. Non-payment of tax due to finished goods not received back from job workers within prescribed time

Section 143 (1)(a) of GGST Act specifies that the inputs or capital goods, other than moulds and dies, jigs and fixtures, or tools, sent out for job work should be received back after completion of job work or otherwise within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax. Further, as per Section 143(3), where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.

Audit noticed that two taxpayers pertaining to two Unit offices<sup>134</sup> sent goods worth ₹ 10.50 crore for job work, as reported in GST ITC 04 during July 2017 to March 2018. As per the *ibid* Act taxpayers were required to furnish details of the return of goods from the job worker in GST ITC 04. However, no such

<sup>134</sup> Unit-93 Rajkot, Unit-29 Prantij.

detail of return of the goods was mentioned in the GST ITC 04 of the concerned taxpayers which indicates that the goods sent to the job workers had not been returned within the prescribed time limit. Therefore, the taxpayers were liable to pay tax of ₹ 1.89 crore<sup>135</sup> along with interest and penalty thereon.

An illustrative case is featured below:

i. M/s Vishal Manufacturer Private Limited, (24AADCV5343B1ZQ) under Unit-93, Rajkot sent goods/ capital goods of taxable value of ₹ 10.42 crore during 2017-18<sup>136</sup>. The taxpayer filed ITC 04 upto March 2019. Thereafter, no ITC 04 was available on GSTN portal (December 2022). Further, Table 5A (Details of inputs/ capital goods received back from job worker or sent out from business place of job work) of ITC 04 of three quarterly return for the period 2017-18 indicates that no goods/ capital goods were received back from job worker.

As per the provision 143(3) of GGST Act, 2017 such goods/ capital goods, which were sent to the job worker but not returned in stipulated time, shall be deemed to have been supplied by the principal to job worker. Therefore, there was an under declaration of taxable supply of ₹10.42 crore on which GST payable was ₹ 1.87 crore.

On this being pointed out (December 2022), the jurisdictional JCST replied (April 2024) that due to technical glitch Table 5 could not be filed by the taxpayer. However, after verifying the invoices and ledgers provided by the taxpayer, it was noticed that the goods sent for job work were received back within the stipulated time. Audit could not verify the fact as the copy of invoices and related ledgers were not provided with the reply.

**b. Non-payment of tax due under Reverse Charge Mechanism**

Section 9(3) of GGST Act 2017 provides that 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.

Notification No 13/2017 Central Tax (rate) dated 28 June 2017, provides that GST would be payable by the recipient under RCM for services supplied by a director of a company or a body corporate to the said company or the body corporate, services supplied by an individual advocate including a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to a business entity.

<sup>135</sup> Tax was calculated at the rate of 18 per cent.

<sup>136</sup> (July-September-2017, October-December-2017 and January-March-2018).



Audit noticed (July 2022 to February 2023) that in three cases, under three Units<sup>137</sup>, the taxpayers had shown payment of ₹1.56 crore against Director Remuneration, Professional fees and Legal fees in the Profit and Loss Accounts for the year 2017-18. The taxpayers were liable to pay GST under RCM on this amount, as *ibid*. However, the taxpayers had not disclosed any liability under RCM in their returns (monthly as well as annual returns).

Due to non-production of necessary details (such as payments made by the taxpayers during July 2017 to March 2018) by the Department, actual amount of undischarged tax liability could not be ascertained by Audit.

On this being pointed out (July 2022 to February 2023), one office (ACST, Unit-93, Rajkot) accepted the audit observation and stated (April 2024) that letter has been issued to the taxpayer for payment of tax under RCM on legal fees.

In one case<sup>138</sup> Department replied (July 2024) that the amount shown as Director Remuneration was a salary amount for which TDS under income tax act was deducted. Hence, no RCM was leviable on it. The reply is not convincing as the taxpayer had classified this amount under Administrative and other expenses and not under salary head in financial statements uploaded with GSTR 9C. Further, no supporting evidence *i.e.* service agreement for considering Director's Remuneration as salary was available with reply.

One illustrative case is featured below:

i. M/s P C Sneh Construction Private Limited (GSTN 24AAJCP2964L1Z0) under Unit-8, Ahmedabad, had paid Director Remuneration of ₹ 6.75 lakh under Employee Benefit Expenses, professional fees of ₹ 43.22 lakh, professional agent fee of ₹ 5.04 lakh and consultancy expenditure of ₹ 85.01 lakh. As per the provisions *ibid*, GST should have been paid by the taxpayer on reverse charge basis. However, in Table 4G of GSTR 9, inward supplies on which tax is to be paid on reverse charge basis was shown as Nil.

On this being pointed out (July 2022), the Department replied (July 2024) that the scrutiny of the records was under progress (July 2024).

## 2.4 Conclusion

This Subject Specific Compliance Audit (SSCA) was undertaken in the context of 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.

The 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 for 2017-18. The SSCA entailed assessing the oversight functions of State jurisdictional formation at two levels – at the

<sup>137</sup> ACST-8 and 9 Ahmedabad and ACST-93 Rajkot.

<sup>138</sup> ACST Unit-9, Ahmedabad (24AABCJ8999H1Z0).



data level through global data queries and at the functional level with a deeper detailed audit of both the Units and the GST returns, which involved accessing taxpayer records. The audit sample, therefore, comprised 10 Units, 385 high value mismatches/ inconsistencies across 13 parameters selected through data analysis, and 50 taxpayers selected on the basis of risk assessment for detailed audit of GST returns.

Audit observed that the information regarding MIS reports related to *suo motu* cancellation and issuance of REG-17, provided to Audit by the Department, was discrepant.

Further, out of the 385 high value data inconsistencies identified by Audit, the Department responded to 382 cases. Of these, 145 cases (constituting 38 per cent) turned out to be compliance deficiencies, with a revenue implication of ₹ 466.40 crore. A relatively higher rate of deficiencies was noticed in short/ non-payment of interest, ITC mismatch, excess RCM ITC availed, incorrect turnover declarations and short payment of tax. While data entry errors caused the inconsistencies in 28 per cent of the 382 cases, in eight cases the Department had already taken proactive action. The Department has not responded to three cases of inconsistencies/ mismatches of ₹ 3.88 crore.

At the outset, in 49 cases out of a sample of 50 taxpayers, the granular records of the taxpayers were not forthcoming, which constituted a significant scope limitation. These cases represent a potential risk exposure of ₹ 319.92 crore towards identified mismatches in ITC availment and tax payments.

## 2.3 Transitional Credit under Goods and Services Tax

*The Goods and Services Tax Act provided for 'Transitional Arrangement for Input Tax' from the prevalent laws into GST.*

*A compliance audit on "Transition from VAT to GST" had featured in the Revenue Sector Audit Report for the year ended 31 March 2018 of the Government of Gujarat (Report No. 3 of 2019). During 2021-22, a follow-up audit of Transitional Credits was conducted to assure whether the Department had taken suitable measures to address the issues highlighted earlier by Audit, and to examine whether the mechanism envisaged by the Department for verification of transitional credit claims was adequate and effective. It also examined whether the transitional credits carried over by the taxpayers into GST regime were valid and admissible.*

*Audit noticed instances of systemic issues, viz. inadequate verification of transitional credit claims and compliance issues, viz. excess carry-forward of input tax credit, claim of credit on ineligible taxes, double availment of credit and non-levy of interest on irregular utilization of Tran credit.*

### 2.3.1 Introduction

The Goods and Services Tax (GST) replaced multiple taxes levied and collected by the Centre and States. GST is a destination-based tax on supply of goods or services or both, which is levied at multiple-stages wherein the taxes will move along with supply. The tax is levied simultaneously by the Centre and States on a common tax base and tax will accrue to the tax authority having jurisdiction

over the place of supply. Central GST (CGST) and State GST (SGST)/ Union Territory GST (UTGST) are levied on intra state supplies, whereas Integrated GST (IGST) is levied on inter-state supplies. Availability of input tax credit of taxes paid on inputs, input services and capital goods for set off against the output tax liability is one of the key features of GST. This avoids cascading effect of taxes and ensures uninterrupted flow of credit from the seller to buyer. To ensure a seamless flow of input tax from the existing laws<sup>139</sup> into the GST regime, 'Transitional arrangements for input tax' were included in the GST Act to provide for the entitlement and manner of claiming input tax in respect of appropriate taxes paid under the existing laws.

A compliance audit on "Transition from VAT to GST" had featured earlier in the Revenue Sector Audit Report for the year ended 31 March 2018 of the Government of Gujarat (Report No. 3 of 2019). Audit observed deviation from the provisions of the Acts/ Rules in 53 cases with money value of ₹ 27.90 crore. Audit highlighted irregularities in the claim of transitional credit and *inter alia* recommended to the Department to ensure that the amounts carried forward to the GST regime are not allowed as refunds under the VAT regime, timely scrutiny of Tran 1 forms and pursuance with GSTN to ensure that data is transferred from GSTN in a time-bound manner and all the modules under GSTN are functional. The report is pending for discussion by the Public Accounts Committee (PAC) (July 2024).

During 2021-22, Audit conducted a follow-up audit of Transitional Credits in order to assure whether the Department had taken suitable measures to address the issues highlighted earlier by Audit.

### 2.3.2 Transitional arrangements for input tax (Legal provisions)

Section 140 of the Gujarat Goods and Services Tax (GGST) Act, 2017 enables the taxpayers to carry forward the Input Tax Credit (ITC) earned under the existing laws to the GST regime. The Section read with Rule 117 of Gujarat GST Rules, 2017 prescribes elaborate procedures in this regard. Under transitional arrangements for ITC, the ITC of various taxes paid under the existing laws such as Value Added Tax (VAT) and Entry Tax (ET) are eligible to be carried forward into GST under the relevant sub-sections of Section 140 of the Act. The claims are to be preferred under appropriate tables mentioned below, in two forms *viz.* Tran 1 and Tran 2.

**Table 2.6: Forms and Tables prescribed for claiming transitional credit**

Form	Table No.	Transitional credit component
Tran 1	5(c)	Amount of tax credit carried forward from last legacy returns.
Tran 1	6(b)	Un-availed tax credit on capital goods
Tran 1	7(b)	Eligible duties and taxes/ VAT/ ET in respect of inputs or input services.
Tran 1	7(c)	Credit of VAT and Entry Tax paid on inputs supported by invoices/ documentary evidence

<sup>139</sup> Gujarat Value Added Tax (GVAT) and Entry Tax.



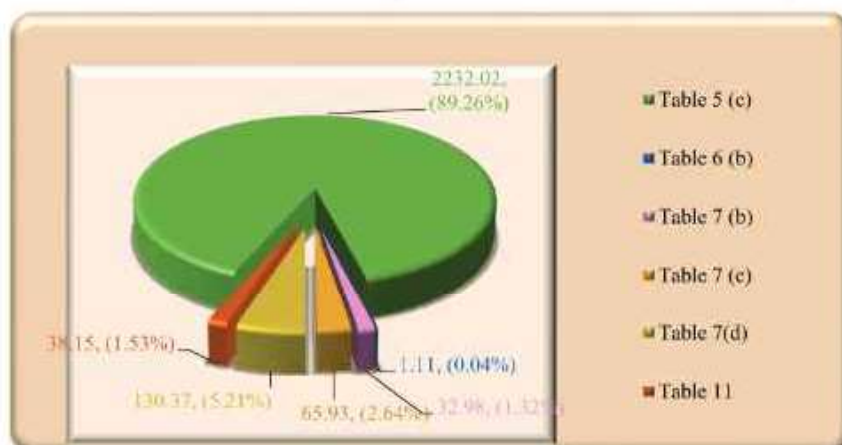
Tran 1	7(d)	Stock of goods not supported by invoice/ documents evidencing payment of tax.
Tran 1	11	Credit in respect of tax paid before the appointed day (01 July 2017) and supply made after the appointed day.
Tran 2	5	Credit of tax on stocks claimed without invoices

All registered taxpayers, except those opting for payment of tax under composition scheme (under Section 10 of the Act) are eligible to claim transitional credit by filing Tran 1 return within 90 days from the appointed day. The time limit for filing Tran 1 return was extended initially till 27 December 2017. However, considering that many taxpayers could not file the return within the due date due to technical difficulties, sub-rule 1A was inserted under Rule 117 of GGST Rules<sup>140</sup> to accommodate such taxpayers. The due date of filing Tran 1 was further extended to 31 March 2020<sup>141</sup> for those taxpayers who could not file Tran 1 due to technical difficulties and those cases recommended by the GST Council.

### 2.3.3 Trends and perspectives

The transitional credit being a one-time flow of input tax credit from the legacy regime into the GST regime, can be availed both by the taxpayers migrating from the previous regime as well as new registrants under GST. In Gujarat, a total of 1.14 lakh<sup>142</sup> taxpayers claimed the benefit of transitional credit of ₹ 2500.56 crore under the Act. The Department selected and verified 1204 cases where taxpayers had claimed benefit of transitional credit of ₹ 366.55 crore. The Table wise break of transitional credit claims is as shown in **Chart 2**.

**Chart 2: Table-wise break up of transitional credit claim (₹ in crore)**



**Source:** Data extracted from GSTN

The transitional credit claims broadly flow from two sources viz., Legacy Returns and Books of Account. A significant majority of 89 per cent of claims

<sup>140</sup> Notification 48/2018-State Tax dated 10 September 2018.

<sup>141</sup> Notification No. 2/2020-State Tax dated 06 January 2020.

<sup>142</sup> As per data extracted from GSTN, 91,281 taxpayers are registered under State Tax authority/ State Commercial Tax Department and 23,183 taxpayers are registered under Central Tax authority/ CBIC.



represented by claims in Tables 5(c) and 6(b) flowed through the legacy returns as they signify claims declared as per legacy rules and the remaining 11 per cent represented by claims in other tables flowed from the books of accounts as they denote fresh declarations while transitioning into the GST regime.

### Impact of transitional credit claims on State GST collection

Transitional credit being the input tax credit carried forward from the legacy tax regime, would get set off against the tax liability under GST. The data on GST revenue collection provides a broad perspective of the impact of transitional credit claimed vis-à-vis the GST revenue, especially during the transition period. **Chart 3** on monthly GST revenue<sup>143</sup> collection suggests that transitional credit had potentially been utilized for the bulk of the payment of tax for the month of July 2017 itself.

Chart 3: State GST Revenue Snapshot for the year 2017-18



Source: Information provided by the Department.

### 2.3.4 Audit Objectives

Transitional credit claims have a direct impact on GST revenue as the credit is eligible for set off against the output tax liability of taxpayers. Thus, the audit of transitional credit was taken up with the following audit objectives seeking assurance on:

- Whether the mechanism envisaged by the Department for verification of transitional credit claims was adequate and effective? and
- Whether the transitional credits carried over by the taxpayers into GST regime were valid and admissible?

### 2.3.5 Audit Scope and Sample

The audit scope comprised review of SGST component of transitional credit claims filed by the taxpayers under Section 140 of the Gujarat GST Act, 2017 from the appointed date<sup>144</sup> to the end of March 2020. Based on the broad analysis of relevant data elements that reflect various dimensions of risk,

<sup>143</sup> Gujarat GST revenue collection consists of SGST and State portion of IGST.

<sup>144</sup> The date on which the provisions of this Act came into force, i.e. 01 July 2017.

86 sample cases of transitional credits having money value of more than ₹ one crore for Ahmedabad and in excess of ₹ two crores for places at Vadodara, Surat and Gandhidham were selected. These 86 taxpayers had claimed the benefit of transitional credit of ₹ 278.91 crore.

The details of claims examined are as under:

Name of Division	Number of cases
Division-1, Ahmedabad	41
Division-2, Ahmedabad	22
Division-5, Vadodara	09
Division-7, Surat	05
Division-8, Surat	01
Division-12, Gandhidham	08
<b>Total</b>	<b>86<sup>145</sup></b>

### 2.3.6 Audit Methodology

The methodology for audit of transitional credit claims involved data analysis for determining samples, nature and extent of audit of underlying records to be conducted. The substantive audit involved the examination of the records pertaining to Tran returns maintained in the field formations, process adopted for implementation of cross-jurisdictional functions regarding transitional credit, transitional claim verification process adopted by the Department and follow up action taken on the deviations detected. It also involved an independent examination of selected transitional credit claims for compliance assurance. The verification of Tran returns was carried out at the Unit (*Ghatak*) offices under the jurisdictional Divisions.

### 2.3.7 Audit Criteria

Section 140 of the GGST Act, 2017 governs the transition of VAT and Entry Tax credit from the legacy VAT and Entry Tax provisions. The Section read with Rule 117 of the GGST Rules 2017, and relevant notification/Circulars issued by the CBIC/ State Tax Department constitute the criteria for this audit.

### 2.3.8 Scope limitation

The audit of transitional credits was primarily dependent upon the extent of verification records maintained by the Department and accessing the underlying records maintained by the taxpayer. Though the Department provided assessment records in respect of assessments finalised of the selected samples in six divisions but did not furnish the reports/ records in respect of verification of transitional credit claim of taxpayers carried out by the Department.

### 2.3.9 Entry and Exit meeting

An Entry Meeting was held on 13 December 2021 with the Joint Commissioner of State Tax (Audit), Gujarat State, Ahmedabad wherein the Audit Scope,

<sup>145</sup> Out of the selected sample of 86 cases, Audit noticed that in 83 cases, assessments had been finalized by the Department (February 2022).



Objectives and Methodology of the audit were explained. The findings observed during the course of this audit were reported to the Department between February 2022 and March 2022. An Exit meeting was held on 26 December 2022. In respect of 11 cases, the replies received from the jurisdictional JCST/ Assessing authority have been included in the relevant paragraphs of the Report. Replies in respect of the remaining eight cases were awaited (July 2024).

### 2.3.10 Audit Findings

The audit findings are broadly categorised into systemic and compliance issues based on the objectives of audit. While the systemic issues address the adequacy and effectiveness of the envisaged verification mechanism, the compliance issues address the deviations from the provisions of the Act/ Rules. The outcome of detailed audit of the transitional credit cases produced to Audit has been included in the subsequent paragraphs.

#### 2.3.10.1 Systemic issues

The systemic issues comprised a review of the provisions applicable for dual control, the verification mechanism envisaged by the Department and efficiency of recovery process. Apart from the statutory requirements prescribed under both legacy as well as GST laws, the State Tax Department (STD) identified the cases where the input tax credit claim was more than rupees one crore. Further, the STD issued directions<sup>146</sup> for verification to the field formations.

The Department selected and verified 1,204 cases where taxpayers had claimed benefit of transitional credit of ₹ 366.55 crore. However, the Department or the selected divisions, despite the repeated requests, neither furnished the list of these 1,204 cases nor the reports/ records in respect of verification carried out in these cases. Thus, Audit could not ascertain the effectiveness of the verification carried out by the Department.

#### Inadequate verification of transitional credit claims

According to Rule 117(2)(a), a registered person claiming transitional credit under Section 140(2) of the GGST Act is required to specify separately particulars in respect of every item of capital goods as on the appointed day *viz.* amount of tax or duty availed or utilized by way of ITC, amount of tax or duty yet to be availed or utilized by way of ITC. Rule 117(2)(c) specifies the submission of the details, for claim under Section 140(5) *viz.* name of supplier, serial no. and date of issue of the invoice by the supplier, description and value of goods or services, quantity of goods, amount of eligible taxes and duties and the date on which the receipt of goods or services is entered in the books of accounts of the recipient.

<sup>146</sup> STD letter No. STC/VVT-1/GST Tran 1 ITC/2017-18/2547 dated 28.09.2017 and letter No. STC/VVT 1/ File No.50/GST Tran 1 ITC/2017-18/4225/35 dated 30.01.2018.



Out of the audit sample of 86 claims of transitional credit, in 19 cases, transitional credit was claimed under Table 7(b) of Tran 1. Audit noticed that one taxpayer<sup>147</sup> credited in its electronic credit ledger transitional credit of ₹ 294.76 lakh under Section 140(5) of the Act. However, against the claim the taxpayers did not furnish the details/ particulars as prescribed under Rule 117(2) with the Tran Return. Further the Department also did not provide any records indicating verification of these claims. Since the Department did not produce any records related to verification, Audit could not comment on the efficacy of the verification mechanism of the Department. Department may ensure that those transitional credit claims which are not supported by any details/ particulars which are mandatory under the GST Act/ Rules are adequately verified. Department may also ensure that verification reports of the Transitional Credits are properly maintained.

### 2.3.10.2 Compliance issues

The compliance issues pertain to the validity and admissibility of the transitional credits carried over by the taxpayers into GST regime. Taxpayers were required to claim transitional credits in the various specified Tables of Tran 1 and Tran 2 forms as applicable. Broadly, these tables provide for credit in respect of VAT/ Entry Tax carried over from the legacy returns, unavailed input tax credit in respect of capital goods and VAT/ ET credit in respect of inputs contained in semi-finished goods/ finished goods held in stock. The sample identified for audit represented claims under each of these tables.

Audit review disclosed significant irregularities in the transitional credit claims of taxpayers across various categories regulated by the sub-sections of Section 140, as well as Section 50(1) of the GGST Act 2017 pertaining to payment of interest. The summary of the nature and extent of compliance deviations noticed in the audited sample is given in **Table 2.7**.

**Table 2.7: Summary of nature of observations and deviation rates**

Nature of observations	Sample audited		Deficiencies noticed		Deficiencies as percentage of audited sample	
	Number	Amount (₹ in crore)	Number	Amount (₹ in crore)	Number	Amount
Excess carry forward of input tax credit Table 5 (c)	81	254.46	10	34.92	12.35	13.72
Claim of credit on ineligible taxes Table 7(b)	19	12.47	3	0.05	15.79	0.40
Non-levy of interest on irregular utilization of Tran credit	12	38.1	5	0.52	5.81	0.19
<b>Total</b>	-----	-----	<b>18<sup>148</sup></b>	<b>35.49</b>	-----	-----

The nature and extent of compliance deviations have been elaborated in the subsequent paragraphs:

<sup>147</sup> Division-1, Ahmedabad.

<sup>148</sup> Out of these 18 cases, in 17 cases VAT assessment were already finalised by the Department.

### a. Excess carry forward of input tax credit

As per Section 140(1) of the GGST Act, 2017, a registered person, other than a person opting to pay tax under Section 10 (Composition Levy), is entitled to take, in his Electronic Credit Ledger (ECL), credit of the amount of VAT and Entry Tax carried forward in the return relating to the period up to 30 June 2017, furnished under the existing law. The registered person shall not be allowed to take the credit unless the said credit was admissible as VAT credit under the existing law (VAT Tax and Entry Tax Act) and is also admissible as ITC under GGST Act, 2017.

Audit examined 86 cases of transitional credit claims and observed that in 83 cases assessment orders were passed under Gujarat VAT Act. Audit noticed that in eight cases pertaining to four Divisions<sup>149</sup>, the taxpayers claimed transitional credit under Table 5c of Tran Return amounting to ₹ 43.87 crore. However, the assessing officers determined the carry forward of credit of ₹ 6.14 crore in the assessment orders for the period April 2017 to June 2017 finalized under GVAT Act, 2003. Thus, there was an excess carry forward of transitional credit of ₹ 34.90 crore<sup>150</sup>. However, no action was initiated by the Department to recover the excess carry forward of credit.

On this being pointed out, in four cases the assessing officers<sup>151</sup> while accepting the audit observations stated (between February 2022 and January 2023) that the excess availed transitional credit of ₹ 1.42 crore, in two cases, was recovered in January 2022 and July 2022, respectively. In other two cases, demand of ₹ 84.27 crore along with applicable interest and penalty was issued *vide* DRC 07 after adjudicating the case. In one case the assessing authority stated (December 2022) that action for rectification had been initiated. In the remaining cases, detailed replies were awaited (July 2024).

An illustrative case is featured below:

A taxpayer falling under Division-12, Gandhidham had claimed transitional credit of VAT on inputs carried forward in the legacy return furnished for the period June 2017 amounting to ₹ 24.35 crore in Tran 1 Return. However, in the assessment under GVAT, finalised on 23 March 2021, no input tax credit was allowed to be carried forward. This resulted in availment of ineligible credit of ₹ 24.35 crore. However, the Department failed to recover excess carry forward of ITC, consequent to the subsequent finalisation of assessment orders under the legacy tax regime.

On this being pointed out, the Department while accepting the audit observation stated (January 2023) that the demand of ₹ 80.83 crore along with applicable interest and penalty has been issued *vide* DRC 07 after adjudicating the case.

<sup>149</sup> Division-1, Ahmedabad (3 cases), Division-2, Ahmedabad (3 cases), Division-7, Surat (1 case), Division 12, Gandhidham (1 case).

<sup>150</sup> In one case, ITC of ₹ 2.83 crore was blocked by debiting the ECL on 16 April 2019.

<sup>151</sup> Division-1 & 2 Ahmedabad, Division 7 Surat and Division 12 Gandhidham.



In two other cases<sup>152</sup>, excess transitional credit claim of ₹ 3.22 lakh was availed due to computation mistake in the assessment orders passed by the Department. In one case the jurisdictional JCST stated (October 2022) that the amount pointed out by audit has been deposited by the taxpayer and in other case the assessing authority stated (December 2022) that action for rectification has been initiated.

#### **b. Claim of credit on ineligible taxes**

Section 140(5) of GGST Act provides that a taxpayer shall be entitled to take credit of VAT and Entry Tax, if any, in respect of inputs received on or after the appointed day but the tax in respect of which has been paid by the supplier under existing law. The credit was admissible subject to the condition that the invoice or any other tax paying document of the same was recorded in the books of account of such person within a period of 30 days from the appointed day or within such further extended 30 days period as permitted by the Commissioner.

Out of selected sample of 86 cases, there were 19 cases where transitional credit was claimed under Table 7(b). Audit noticed that out of these 19 cases, in two cases<sup>153</sup> the transitional credit of ₹ 0.38 lakh claimed under Table 7(b) was availed on taxes (Central Sales tax) not eligible for credit and on invoices issued by the taxpayer not belonging to Gujarat.

On this being pointed out, in one case the assessing officer accepted (June 2022) the audit observation and reduced credit of ₹ 0.09 lakh from the total credit while finalising the assessment. Reply in another case was awaited (July 2024).

#### **c. Double availment of credit**

Section 140(1) entitles taxpayer to credit in his electronic credit ledger the Value Added Tax or Entry Tax credit carry forwarded in the legacy return. Section 140(5) entitles taxpayer to credit in his electronic credit ledger the Value Added Tax or Entry Tax credit in respect of inputs received on or after appointed day but tax was paid under existing law subject to specified condition.

As a general principle, the input tax credit cannot be availed twice on the same documents. Double credits may happen in situations such as the credit taken invoices/ documents under legacy returns are considered again under any of the sub-sections, other than sub-section (1), prescribed under Section 140 of the Act.

In one case under Division-1, Ahmedabad, the taxpayer availed transitional credit of ₹ 4.90 lakh under Section 140(5) of GGST Act. Verification of the details of invoices revealed that credit of ₹ 4.70 lakh on the same set of invoices was also availed under Section 140(1) of the Act. This resulted in double availment of credit of ₹ 4.70 lakh.

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<sup>152</sup> Division-1, Ahmedabad.

<sup>153</sup> Division 1, Ahmedabad and Division 5, Vadodara.



On this being pointed out, the assessing officer stated (January 2022) that detailed reply would be furnished after verification. Detailed reply was awaited (July 2024).

#### **d. Non-levy of interest on utilisation of ineligible transitional credit**

As per Rule 121 of the GGST Rules 2017, any amount credited under sub-rule (3) of Rule 117 may be verified and proceedings under Section 73 or Section 74 shall be initiated in respect of any credit wrongly availed. The proceeding under Section 73 or 74 shall require the taxpayer to pay the credit along with interest payable thereon under Section 50 of the Act.

Section 50(1) of the Act provides, 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 18 *per cent*.

Out of sample of 86 cases, in five cases the Department had detected the instances of ineligible transitional credit of ₹ 8.86 crore which was blocked in ECL or adjusted in assessment and in seven cases transitional credit of ₹ 29.24 crore was reversed by the taxpayers. Out of these 12 cases, Audit noticed that in five cases transitional credit of ₹ 11.18 crore was irregularly claimed and utilized by the taxpayers. Thus, the taxpayers were liable for payment of interest amounting to ₹ 51.94 lakh on the inadmissible utilized amount. However, no action was taken by the assessing officers for levy of interest on irregularly utilised credit.

On this being pointed out, in two cases the assessing officers accepted (November 2022 and January 2023) the audit observation and demand for interest amounting to ₹ 78.54 lakh was raised.

In another case the assessing officer (December 2022) while accepting audit observation stated that the registration of the taxpayer under VAT was cancelled on 16 March 2021 effective from 05 March 2016. The GST registration number was also cancelled on 16 March 2021 effective from 01 July 2017. As the registration of the taxpayer under VAT/ GST has been *ab initio* cancelled there was no requirement for levy of interest.

Reply is not acceptable as the taxpayer has irregularly utilized the ineligible transitional credit, interest was leviable under Section 50(1) of GST Act notwithstanding the cancellation of registration.

The replies in remaining cases were awaited (July 2024).

One illustrative case is featured below:

A taxpayer falling under the jurisdiction of Division-12, Gandhidham had claimed transitional credit amounting to ₹ 2.60 crore which was credited to ECL on 23 November 2017. During assessment, finalised on 23 March 2021 under GVAT Act, input tax credit carried forwarded was ₹ 1.49 crore, resulting in

carried forward of excess credit of ₹ 1.11 crore. The taxpayer had paid the excess availed transitional credit of ₹ 1.11 crore on 23 March 2021. Audit noticed that the taxpayer has utilised irregular credit of ₹ 1.11 crore for payment of SGST during the period September 2018 to February 2021. Hence, the irregular credit availed was utilised by the taxpayer and therefore, attracted interest liability under Section 50(1) of the Act. However, no interest was paid by the taxpayer. The non-payment of interest worked out to ₹ 0.28 crore.

On being pointed out, the jurisdictional JCST while accepting the audit observation stated (January 2023) that the demand for interest of ₹ 47.84 lakh was raised.

### **2.3.10.3 Conclusion**

The GST Act provided for transitional arrangements for seamless flow of input tax from the existing laws into the GST regime. Despite repeated requests, the Department did not provide the reports/ records in respect of verification carried out by the Department in 1,204 cases identified for verification. Thus, Audit could not ascertain the effectiveness of the verification carried out by the Department.

Further, Audit examined a sample of 86 cases in six Divisions and noticed instances of non-compliance of the Acts/ Rules in 18 cases (20.93 per cent). The compliance deviations pertained to excess carry-forward of input tax credits under Table 5 (c) of Tran 1, claim of credit on ineligible taxes under Table 7(b) of Tran 1 and non-levy of interest on irregular utilization of Tran credit. These 18 instances of compliance deviations amounted to ₹ 35.49 crore, constituting a deviation rate of 20.93 per cent. Out of these 18 cases, in 17 cases, constituting 94 per cent, VAT assessments were already finalised by the Department. The deviation rate suggested that the verification process carried out by the Department suffered from inadequacies.