

CHAPTER – IX

Verification of deduction claims in the Offices of the Controllers of Communications Accounts

9.1 Introduction

Offices of the Controllers of Communications Accounts (CsCA) are the interface between DoT and the PSPs licensed to provide service in a Licensed Service Area (LSA). Besides the Statutory¹ and Administrative² functions, CsCA revenue functions included collection of LF and SUC from all licensees of various telecom services which is being paid by the PSPs on their self - assessed revenue, scrutiny and verification of documents submitted by the licensees in support of their claims for deduction.

Verification of deductions claimed by PSPs was delegated to CsCA from 2006-07 and on completion of the verification exercise, the CsCA convey their findings through 'verification reports' to the LF Wing of DoT.

Verification of proof of payment with respect to the deduction claims and determination of actual AGR is an important pre-requisite for the accurate computation/assessment of revenue share due from a PSP. Timely completion of the process of verification was to be ensured to facilitate final assessment in DoT.

Records maintained by 21 CsCA out of 25 CsCA were test checked by audit to ensure that LF and SUC due was collected from PSPs and the verification of their claims for deduction from AGR was supported by due documents. The test check was conducted for the period 2006-07 to 2009-10 in respect of six operators viz BAL, Vodafone, RCL/RTL, ICL, Aircel and TTSL/TTML. Audit observations emanating from the scrutiny of records and the process of verification are as under:

9.2 Audit Observations

9.2.1 Deductions allowed in absence of required proof

From time to time, DoT issued clarifications regarding verification procedure for deductions claimed by Telecom Service Providers. As per the issue no.7 of the clarification issued by DoT on 05 July 2007, proof of payment included vouchers/bank statements/receipts etc. Subsequently, DoT in November 2011, emphasized that submission of details including payable invoices along with proof of payment/receipt was a pre-requisite for claiming deductions by the licensees.

Test check of records in CsCA office revealed that CsCA had allowed claims for deduction in respect of PSTN/roaming charges paid to other operators without proof of document as

1 Statutory function includes budgeting of pension expenditure, authorization of retirement benefits on CDA and IDA pay scale, maintenance of GPF, recover contribution for NPS and remit to trustee bank, PAO and other DDO functions.

2 Other administrative functions as Head of the Department including handling of court cases

prescribed by DoT. To an audit observation in this regard while 11 CsCA³ accepted the lapse and replied that operators are being addressed to submit the required documents, other CsCA replied that the deductions were allowed based on the instructions of DoT prevailing during the relevant year.

DoT, in June 2013 and November 2014, provided detailed clarification on deduction verification based on queries raised by CsCA. Prior to those clarifications from DoT, there was no uniformity among CsCA as well as operators with regards to nature of documents to be submitted as proof for deduction. This resulted in different CsCA adopting different standards regarding documents to be submitted in support of deduction claims.

9.2.2 Ineligible deductions allowed from GR

As per the conditions of UASL agreement, for the purpose of arriving at the AGR of the licensee, the following three items of charges paid by the PSP were only permitted to be excluded from the GR.:-

- i) PSTN related call charges (Access Charges) actually paid to eligible/entitled Telecom Service Providers within India.
- ii) Roaming revenues actually passed on to other eligible/entitled telecom service providers.
- iii) Service Tax/Sales Tax paid to Government, if the same had been included in the Gross Revenue.

Scrutiny of documents submitted as proof against claims for deduction and verification reports issued by CsCA for the period 2006-07 to 2009-10 revealed that, PSPs had claimed deductions for expenses incurred under Interest on delayed payment and leased line charges. CsCAs erroneously allowed these deductions from GR resulting in understating AGR in four LSAs as detailed below:

Table 9.1

(₹ in lakh)

SI No.	PSP	LSA	Year	Amount	Payment type
1	Vodafone	Gujarat	2006-07 to 2009-10	10.58	Fixed Charges, Interest on delayed payments
		Rajasthan	2006-07 to 2009-10	13.69	
		Maharashtra	2007-08	958.93	Deduction allowed including ST
		Andhra Pradesh	2007-08	300.64	Excess deduction on account of typographical error
2	TTSL	Karnataka and Odisha	2007-08 to 2008-09	2.65	Interest for delayed payment of Interconnect Usage Charges (IUC)

3 Jharkhand, Karnataka, Odisha, Punjab, Rajasthan, Kerala, Kolkata, Delhi, Bhopal, Haryana and Mumbai

On this being pointed out, CCA Karnataka replied that there was no clear cut indication on non-admissibility of interest towards delayed payment, while CCA Odisha and CCA Gujarat replied that the matter was being rechecked. Response from CCA Rajasthan is awaited.

This lacuna in the verification process adopted by the CsCA and non-adherence to the conditions in the licence agreement and instructions issued by DoT resulted in allowing ineligible deductions from the GR of the PSPs. As the DoT does the assessment based on the verification reports sent by the CsCA, the impact of discrepancies, if any, in allowing deduction would result in short realization of revenue share.

9.2.3 Inadmissible deduction on account of Service Tax

In terms of provisions in UASL agreement and as per clarifications issued in July 2007 by DoT, if the GR includes Service Tax/ Sales Tax, then actual payments made by the licensee to the Government during the Financial Year qualifies for deduction for that year.

It was observed that as per notes to audited AGR statements of BAL, Vodafone and ICL, GR shown in the audited AGR does not include Service Tax component. However, on a test check of records it was noticed that BAL, Vodafone and ICL had claimed deduction including service tax component in four LSAs which was allowed by the respective CsCA as below:

Table 9.2

(₹ in crore)

Name of the PSP	LSA	Year	Gross Invoice	ST component
Bharti Airtel Ltd	Odisha	2007-08	21.32	2.35
Idea Cellular Ltd	Andhra Pradesh	2007-08	16.42	1.81
Idea Cellular (Spice Communications Ltd)	Karnataka	2008-09	55.48	6.08
Vodafone	Karnataka	2006-07 to 2009-10	41.17	4.52
Vodafone	Maharashtra	2007-08 to 2009-10	87.40	9.59
TOTAL				24.35

On this being pointed out by Audit, while CCA Bhubaneswar accepted the audit comments and the Pr. CCA, Andhra Pradesh replied that claim of ICL would be reviewed. CCA Karnataka has stated that the claim on inclusion of Service Tax in roaming related deductions have been checked randomly and agreed with Audit. However, confirmation of the observation raised by Audit on all the items is required to be done after thorough verification.

Thus allowing deduction including service tax component in violation of DoT's instruction led to excessive deduction of ₹ 24.35 crore resulting in short payment of revenue share.

9.2.4 Allowing deduction twice on same claim

As per conditions of licence agreement, operators shall submit claims for deduction towards PSTN charges along with required proof as communicated by DoT from time to time. Test check of records of CsCA revealed that in six LSAs, CsCA had allowed deduction twice for invoice/voucher amounting to ₹ 11 crore in respect of three PSPs as detailed below.

Table 9.3

Name of the Pr. CCA/CCA	Operator (Service Area)	Year of claim	Deduction Claim on First occasion		Year of claim	Claim on Second occasion		
			Amount claimed	Amount allowed by CCA		Amount claimed	Amount allowed by CCA	
			₹ in crore		₹ in crore			
Raipur	BAL (MP)	2007-08 (Q-4)	2.28	2.21	2008-09 (Q-1)	2.28	2.21	
Lucknow	BAL (UP(E))	2007-08 (Q-4)	1.71	1.71	2008-09 (Q-1)	1.71	1.71	
Mumbai	BAL (Mumbai)	2006-07 (Q-1)	2.09	2.09	2006-07 (Q-2)	2.09	2.09	
Rajasthan	BAL (Rajasthan)	2008-09 (Q-2)	0.94	0.94	2008-09 (Q-3)	0.92	0.92	
Guwahati	Vodafone (Assam)	2008-09 (Q-3)	2.35	2.65	2008-09 (Q-4)	2.35	2.35	
Lucknow	Vodafone (UP(E))	2007-08	1.61	1.61	2007-08	1.61	1.61	
Bangalore	Aircel (Karnataka)	2009-10 (Q-1)	0.10	0.10	2009-10 (Q-2)	0.10	0.10	
Bangalore	Aircel (Karnataka)	2009-10 (Q-2)	0.01	0.01	2009-10 (Q-3)	0.01	0.01	
TOTAL							11.00	

On this being pointed out by Audit, three CsCA (Raipur, Lucknow and Bangalore) accepted the audit observation and stated that the revision of verification would be carried out in consultation with DoT as the assessment for the above period has already been completed. Replies from remaining three CsCA (Mumbai, Assam and Rajasthan) are awaited.

9.2.5 Excess deduction allowed by Pr.CCA Andhra Pradesh while restricting deduction claims not supported by proof documents for TDS

In case of IUC payable to other operators, service tax is levied and TDS is also deducted from the amount payable. However, only the IUC actually paid is eligible for deduction from GR to arrive at AGR. In case of IUC deductions claimed by the PSP, proof documents for amount paid (net of TDS) as well as proof for TDS deposited are required to be submitted by the PSP at the office of the CsCA as per DoT's instructions (July 2007 and January 2012).

Audit scrutiny of records of Pr. CCA Andhra Pradesh revealed that BAL, RCL and TTSL had not submitted the proof documents for TDS amount and hence the Pr. CCA office disallowed TDS amount after recalculating the amount to be disallowed. While recalculating the TDS related deduction, Pr. CCA allowed the deductible TDS amount including service tax component, instead of limiting it to IUC alone. This resulted in allowing of excess deductions amounting to ₹ 75.41 crore by the Pr. CCA Andhra Pradesh thereby reducing AGR to that extent as detailed below:

Table 9.4

(₹ in crore)

Year	Excess deduction allowed			Total
	BAL	RCL	TTSL	
2008-09	5.22	5.32	7.60	18.14
	11.12	9.34	10.67	31.13
	10.71	6.37	9.06	26.14
Total	27.05	21.03	27.33	75.41

On this being pointed out by Audit, Pr. CCA, Andhra Pradesh replied that TDS amount would be disallowed during revision of deduction verification.

Further, response from the DoT was received (January 2016) wherein it was stated that in respect of Reliance, revised report was received by DoT from Pr. CCA Andhra Pradesh. However, in respect of Airtel, it was stated that reply from Pr. CCA Andhra Pradesh was awaited. No reply has since been furnished by DoT regarding TTSL.

9.2.6 Allowance of deduction on account of TDS despite non-submission of TDS certificate

As per the clarification for issue No.8 in their DoT letter No.1-28/2006/LF dated 5 July 2007, in case of adjustment of PSTN/Roaming charges between two PSPs the payment of only net amount due is effected. However, the respective licensee can claim the deduction

of the full amount. The licensee should however support this through proof of payment and adjustment. The nature of proof of payment includes vouchers/bank statement/receipts.

While allowing the deduction claims submitted by the operators, for the portion of TDS amount paid, CCA shall allow such portion of claim on the basis of submission of document by the operator such as Form 16A duly attested/certified by the statutory auditor or TDS certificate issued by tax deducting authority. If any of the said documents were not submitted by the operator, the amount of TDS should be disallowed on the ground of non-submission of proof documents for TDS amount.

Scrutiny of deduction claims of PSPs for the years 2006-07 to 2009-10, revealed that in many CsCA, the deduction claims were allowed without production of proof documents for TDS payments. DoT issued clarifications regarding the proof of documents to be accepted for the TDS deductions and their admissibility during November 2014 wherein it was stated that cases where deduction verification has been finalised may not be reopened by the CsCA.

As most of the CsCA have completed the verification of deduction for the years 2006-07 to 2011-12, the short payment of licence fee on inadmissible deduction on account of nonsubmission of proof for the TDS would not be recovered resulting in loss of LF to the DoT to the extent of allowance of such claim.

On above issue, response from the DoT was received (January 2016) wherein it was stated that in respect of CCA Chattisgarh, RCL/RTL had submitted the additional documents to substantiate the TDS amount and the documents submitted were verified and revised report sent to DoT. However CsCA Kolkata, Chennai, Bihar and Karnataka stated that verification of deduction claimed was completed on the basis of guidelines issued by DoT HQ applicable at that time and there was no provision/instruction to separately confirm payment of TDS when verification was conducted. In respect of Vodafone, too, it was stated by the CsCA that the verification was carried out as per the DoT's instruction prevailing at that time and there was no provision/instruction to separately confirm payment of TDS when verification was conducted. In respect of Airtel, it was stated that reply from CsCA was awaited.

Audit is of the view that there was lack of uniformity amongst CsCA in allowing deductions on non-submission of proof documents for TDS.

9.2.7 Claims disallowed despite submission of proof documents

DoT clarified in July 2007 (Issue No.7) that proof of payment includes vouchers/bank statements/receipts etc. and reiterated in November 2011 that submission of details including payable invoices along with proof of payment/receipt is a pre-requisite for claiming deductions by the licensees.

On verification of deduction claimed by the licensee, it was noticed that in respect of five PSPs (BAL, Vodafone, RCL, Idea and TTSL/TTML) in several LSAs despite availability of proof of payment, various deduction claim of the PSPs like deduction on PSTN charges and IUC were disallowed by CCA (**Annexure - 9.01**).

On this being pointed out by Audit, CCA Kolkata replied that regarding RCL the amount was inadvertently disallowed by arithmetical mistake. The other CsCA also accepted the audit observation and replied that the matter would be considered on request of the licensee and the facts shall be intimated to DoT for further instructions. Further in its reply, DoT stated that the claims were not rejected merely on technical grounds and it is also clear that the verifications in most cases have been done as per DoT instructions.

9.2.8 CsCA permitted irregular deductions on inter-divisional adjustments of ₹ 432.64 crore.

DoT in July 2007 while clarifying admissibility of inter-divisional adjustments of PSTN charges, specified that audited proof of adjustments certified by the statutory auditor was required. In June 2013, DoT further clarified that proof of adjustment could be the extract of ledger statement of adjustment on quarterly basis duly signed by the authorized signatory of the licensee and at the end of the year account statement duly certified by the Statutory Auditor of the licensee.

Audit scrutiny of records of ICL in five CsCA (Bhubaneswar, Lucknow, Meerut, Ahmedabad and Ambala) revealed that CsCA allowed inter-divisional adjustments amounting to ₹ 432.64 crore for year 2007-08 to 2009-10 without obtaining prescribed proof of adjustments from the licensee as detailed below:

Table 9.5

(₹ in crore)				
Sl. No.	Name of CCA	Name of LSA	Year	Amount
1	Ahmedabad	Gujarat	2008-09	25.43
			2009-10	128.76
2	Bhubaneswar	Odisha	2009-10	5.97
3	Lucknow	UP (East)	2007-08	13.67
4	Meerut	UP (West)	2007-08 to 2009-10	188.92
5	Ambala	Haryana	2006-07 to 2008-09	69.89
Total				432.64

On this being pointed out by Audit, CCA Bhubaneswar stated that the operator would be directed to submit detailed operator-wise statement before re-verification is carried out, while other CsCA replied that verification of deduction was done on the basis of DoT's clarification issued in July 2007.

The reply is not tenable as DoT vide its letters dated 5 July 2007 and 10 January 2012 had clarified that the licensed company was to furnish documents duly certified by the Statutory Auditor at the end of the year to avail benefit of deduction on account of inter-division payments/adjustments.

9.2.9 Miscellaneous Observations

9.2.9 (a) Excess allowance of deduction claim ₹ 3.87 crore to Dishnet Wireless Ltd. (Aircel Group of companies) of Assam LSA.

Scrutiny of the statement of revenue and licence fee for the year 2009-10 in respect of DWL (Aircel) in Assam LSA revealed that CCA had erroneously allowed ₹ 3.91 crore being the payment made to BSNL against the invoice amount of ₹ 0.04 crore which had resulted in excess allowance of deduction to the tune of ₹ 3.87 crore.

CCA replied that factual position would be furnished after verification of the records.

9.2.9 (b) Verification on the basis of Unaudited AGR and Estimated AGR

DoT instructed that verification of deduction based on quarterly documents submitted by the PSPs shall be done after submission of annual audited accounts. Scrutiny of the verification reports of Vodafone and TTSL alongwith audited and estimated AGRs revealed that verification of deduction claimed for the period from 2006-07 to 2008-09 in Rajasthan, Kerala and Madhya Pradesh service areas was conducted on the basis of unaudited AGR while verification of deduction claimed for the year 2006-07 in Odisha service area was conducted on the basis of estimated AGR.

On this being pointed out by Audit, CCA, Madhya Pradesh replied that facts and figures would be confirmed; whereas CCA Odisha replied that verification was now being done on the basis of Audited AGR.

In the absence of verification of deduction based on audited AGR, the authenticity of deductions claimed by PSPs could not be verified.

9.2.9 (c) Improper permitting of claim of deduction

Test check of records of two CsCA (Andhra Pradesh and Bhubaneswar) revealed that

- (i) In respect of claim for deduction for the year 2008-09 submitted by BAL, Pr. CCA Andhra Pradesh allowed an amount of ₹ 0.18 crore without any adjustment details by the operator.
- (ii) CCA Bhubaneswar allowed claim of ₹ 4.86 crore of deduction for the year 2008-09 out of which an amount of ₹ 3.94 crore was passed without any claim of the same by the operator and an amount of ₹ 0.92 crore already disallowed by the CCA was wrongfully included as allowed amount in the verification report submitted to DoT.

On being pointed out, Pr. CCA Andhra Pradesh accepted the audit observation and informed that the same will be addressed in the verification report. CCA Bhubaneswar accepted the audit observation relating to ₹ 0.92 crore of wrongly allowed claim and reply was still awaited in respect of the balance ₹ 3.94 crore.

9.2.9 (d) Deductions claimed in advance

As per conditions of licence, claims on deduction of PSTN charges should be allowed on actual basis. On a test check of the PSTN charges claimed as deduction by Vodafone and Tata Group of Companies for the period from 2006-07 to 2009-10 along with the respective verification reports of the CsCA, it was noticed that four⁴ CsCA had allowed deduction of PSTN charges in advance of the year in which the payment was actually made.

On being pointed out,

- CCA Chennai replied that as per issue no. 5 of clarification dated 5 July 2007 of DoT, date of receipt of cheques by receiving licensee, was to be taken as date of payment and accordingly the claims were allowed.
- CCA Madhya Pradesh carried out re-verification of deductions claimed by the PSP and replied that a detailed report thereon was submitted to DoT HQ
- CCA Odisha replied that in view of audit observation and issue of new instructions, re-verification of the claim was under process.
- CCA Kolkata replied that the licensee shall be addressed in this regard and outcome shall be intimated

The reply furnished by CsCA Chennai was not acceptable as the cheques were issued in the year 2006-07 whereas the date of actual payment was in the next financial year i.e. in 2007-08. This could result in double deduction as there was possibility of deduction claims being allowed again in the following year. With disclosure to this effect not being made by statutory auditors, the eventuality needs further verification.

9.2.9 (e) Non-submission of operator-wise details of revenue receivable and actual payments made.

As per condition 20.4 of the licence agreement, the licensees were required to furnish to the licensor in their statement of revenue and licence fee (Appendix-II to Annexure-II of License Agreement), operator-wise details of pass through revenue receivable in their GR and operator-wise details of actual payments made against deductions claimed, for arriving at the AGR. This information from the operators is an important input for final assessment by DoT, since it facilitates cross examination of the claims made by PSPs.

⁴ Chennai, MP, Odisha, Kolkata

Review of financial statements submitted by Vodafone for the period 2006-07 to 2009-10 revealed that operator-wise details of revenue receivable were not disclosed by the company. Operator-wise pass through charges payable were also not furnished by Vodafone from 2008-09 onwards. In absence of this information, which serves to cross check claims of operator-wise revenue receivables/ payables, the possibility of PSPs erroneously including revenue in GR after set-off (netting off receivable-payable) and then claiming deductions in full with proof of actual payment cannot be ruled out.

Thus, the operator failed to submit correct and authentic documents containing prescribed details relating to pass through revenue to the CsCA/DoT and as a result the pass through revenue receivable and deductions based on actual payment of pass through charges paid to other operators cannot be verified by the CsCA/DoT.

9.2.9 (f) Delay in submission of proof documents by service providers and delay in process of verification/re-verification

The licence conditions stipulate time frame for payment of LF and submission of proof documents by licensee. Reiterating Clause 22.3 (a) of UASL agreement which confers right on licensor or TRAI to call for any book of accounts which the licensee maintains, DoT directed (August 2010) all PSPs to submit details of payments made to other service providers and service/sales tax paid along with necessary documents in support of deductions in AGR statement.

In the light of verdict of Hon'ble Supreme Court of India (October 2011) setting aside TDSAT order on claiming deductions on accrual basis, DoT granted extension of time upto December 2011 to the operators to submit all requisite documents to support deductions claimed from 2007-08 onwards. However, scrutiny of data (test checked for Vodafone) available in CsCA revealed inordinate delays in submission of required proof documents in various LSAs during 2007-08 to 2009-10. Documents were also submitted in staggered manner affecting the timely completion of verification process.

Further CsCA also failed to adhere to the time frame stipulated by DoT for completion of verification of deductions and submission of report on verification to LF Branch. Test check in case of Vodafone revealed that none of the CsCA submitted verification reports within time frame and delay in completion of verification of deductions claimed by Vodafone ranged from 3 to 68 months (**Annexure - 9.02**).

Audit also observed delay in completion of re-verification based on SC judgment dated 11 October 2011 (**Annexure - 9.02**). Thus, delays in submission of required proof documents by the operator and the inability of DoT to force the issue with the operator has led to a situation where the Government could not correctly assess the actual revenue share.

9.3 DoT's response

DoT's response in relation to verification process of deductions claimed by the three operators (BAL, Vodafone and Reliance) at the offices of CsCA was received in January 2016. Reply specific to excess deduction allowed by Pr. CCA Andhra Pradesh and allowance of deductions on account of TDS has been included in para 9.2.5 and 9.2.6 respectively.

In general, DoT stated that the verification work decentralized to CsCA's had initial teething troubles. One issue which directly impacted the process of deduction verification was the disagreement between DoT and PSPs on whether deductions will be allowed on paid basis or accrual basis. The licence agreement provides for deduction on paid basis while the PSPs insisted on submitting documents to CsCA on accrual basis. The PSPs often taking the shelter of litigation either did not provide the documents or provided them in un-acceptable formats. The Department got judgment from Hon'ble Supreme Court in 2011 and only after this did the PSPs started submitting documents which were also not complete. The PSPs had to be provided with extra time in respect of production of documents which had to be obtained from other parties like bank (for payment proof)/Government Departments (TDS proof etc.).

Further, DoT stated that after the deduction verification work was decentralized to the CsCA offices, there were several operational issues including interpretation of DoT instructions on deduction verifications. Clarifications were sought from DoT by the CsCA offices regarding various issues related to deductions claimed like international roaming charges, lease line charges, Access charges etc and the documents mandatorily required for submission. However, the process of submission of documents and verification in the recent years has become relatively more timely and regular.

Audit is of the view that the issues highlighted by DoT are in its administrative domain and DoT should take proactive action to streamline the process of verification of deductions claimed by the operators. The licence agreement include penal provisions for violation of licence terms and conditions. However, these provisions have not been used by DoT to enforce the agreements.

As brought out in the earlier paragraphs, verification of deduction claims at CsCA level was not done uniformly and CsCA have taken different approach in allowing/disallowing deduction claims submitted by the PSPs. During the course of audit of records maintained by CsCA for verification of deduction claims, discrepancies on various issues were noticed among different CsCA. Also within the same CsCA, different yard sticks were adopted for different operators due to lack of co-ordination within the CsCA. The main reason for these discrepancies was the lack of proper monitoring of CsCA by DoT.