Chapter IV : Compliance Audit of GST

The instances mentioned in this Report are those which came to notice in the course of test audit conducted during the period 2018-19. The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

4.1 Lack of access to data

GST is envisaged as a highly IT-intensive system of tax administration with a single interface for taxpayers across the country for their GST compliance functions. With all the steps in tax collection right from challan generation to accounting of receipts and from registration to return filing / scrutiny being automated, it provides a good opportunity for the first time ever to the Government and the Parliament to have a full assurance[29] from the CAG on the correct implementation of tax laws. In a manual system, audits were done on "test checks" and there were limitations in providing assurance. Unhindered and full access to pan-India data is crucial for meaningful audit and to draw assurances, otherwise certifying the revenue receipts may become difficult. In this background, and in view of the need for data analysis in audit of GST, the office of the CAG took up the matter of access to Pan-India GST data with DoR as far back as 2016 itself. DoR's offer of providing data based on CAG's queries is not workable, as without the full data, it is neither possible to formulate queries, nor run the required algorithms on the data. The CAG had sought data through the Application Programme Interface (APIs) already designed by GSTN. It need hardly be stated that providing such data as CAG may require is a constitutional and legal requirement.

After much pursuance, CBIC has shared only the MIS reports which give aggregate statistics at Commissionerate level (for Central data) and State level (for State data). Audit, therefore, was hampered in the detailed analysis of pan–India transactions.

In the absence of access to GST data, the conclusions in this chapter on compliance audit were perforce based on limited audits carried out in the field. However, the gamut of issues brought out even in this limited audit point to serious systemic deficiencies that need to be addressed by the department.

[29] 'expressing a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria '

4.2 Audit examination

The GST return mechanism has been undergoing major changes since implementation of GST. The due date for filing annual return for 2017-18 by December 2018 originally was subsequently extended to August 2019. Hence, during the year 2018-19, we focused mainly on audit of transitional credits, registrations and refunds.

The findings on each of the identified areas are given below in three parts : -

Part A : Transitional credit

4.3 Introduction

With the introduction and implementation of GST, which subsumed multiple indirect taxes, there was also a need to clearly spell out provisions and arrangements to ensure smooth transition from the old tax regime to GST. This was needed especially to provide for carry forward of ITCs, relating to pre-GST taxes that were available with the taxpayers on the day of roll out of GST, into GST regime (*herein after referred to as transitional credits*).

Transitional credit provisions are important for both the Government and business. For business, these credits should be carried forward properly to give them benefit of taxes they had already paid on inputs or input services in the pre-GST regime. From the view point of the Government, the amount of admissible transitional credits will determine the extent of cash flow of GST revenue and hence in the interest of revenue, only admissible and eligible transitional credits should be carried forward into GST.

4.4 Provisions for transitional credit

4.4.1 Conditions for availing transitional credits

Section 140 of the GST Act contains elaborate provisions relating to transitional arrangements for ITC. This section provides for a registered person, other than composition taxpayer, to carry forward closing balance of input tax credit under Central Excise and Service Tax Act as CGST and input credit under State VAT Acts as SGST, subject to specified conditions. The important conditions are discussed below : -

a) Credit can be carried forward as given in the last return filed under pre-GST statutes

b) Such credit should be admissible as ITC under GST Act and pre-GST Acts

c) Returns for at least previous six months before roll out of GST should have been furnished.

A registered person, not liable to be registered under the pre-GST law, or who was dealing with exempted goods / services or a first / second stage dealer or a registered importer or a depot of a manufacturer, is also entitled to carry forward credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock. The important conditions prescribed for this are that the said registered person should be in possession of invoice or other prescribed documents, evidencing payment of duty under the existing law in respect of such inputs, which were issued not earlier than twelve months immediately preceding the appointed day (viz. 1 July 2017).

Similarly, provisions were made to facilitate taxpayers to carry forward ITC in respect of capital goods, Input Service Distributors (ISD) and Centralised Registrations.

CGST Act has been amended (August 2018) in order to clarify, with retrospective effect from 1st July 2017, that the cesses shall not be a part of the transitional ITC under GST.

4.4.2 Timelines for transitional credit returns

Rule 117 of the CGST Rule, 2017, provides that every registered person entitled to transitional credit, has to file a declaration electronically in FORM GST Tran-1, on the GST portal within 90 days of roll out of GST. This rule also provides for extension of this ninety day period by a further period not exceeding ninety days by the Commissioner, on recommendation of the GST Council. Thus, the *CGST Rules initially provided for a maximum of 6 months to file Tran-1*. However, to facilitate those taxpayers who could not file Tran-1 by the due date on account of technical difficulties on GST portal, a provision was inserted[30] in this rule for extension of date for Tran-1 by a further period not beyond 31 March 2019, on the recommendations of the Council.

4.4.3 Due date(s) for filing Tran-1

The due date for filing or revising Tran-1, which *originally was 28 September 2017* has been extended from time to time with final deadline extended to 31 March 2019 as detailed below : -

Date of Order	Extended due date	Reason for extension
18 and 21 Sep 2017	31 Oct 2017	The due date for submission of Tran-1 return was extended to facilitate revision of Tran-1.
28 Oct 2017	30 Nov 2017	No specific reason was found for extension but the GST Council discussed about the delay

[30] Vide Notification no. 48/2018-CT dated 10 September 2018.

Date of Order	Extended due date	Reason for extension
		in development of the functionality for revision of Tran-1.
15 Nov 2017	27 Dec 2017	Based on deadlines provided by GSTN and discussions with GSTN, the due date for submission extended.
17 Sep 2018	Up to 31 Jan 2019 in certain cases	Owing to technical difficulties on common portal, extension recommended by the GST Council, for the class of registered persons who could not submit Tran-1 by the due date on account of technical difficulties on GST portal.
31 Jan 2019	Up to 31 March 2019 in certain cases	

CBIC also set up (April 2018) an IT grievance redressal for taxpayers' grievances due to technical glitches on GST portal vide circular dated 3 April 2018. It was mentioned in this circular that a large number of taxpayers could not complete the process of Tran-1 filing either at the stage of original or revised filing as they could not digitally authenticate the Tran-1s due to IT related glitches. As a result, a large number of such Tran-1s were stuck in the system. GSTN was asked to identify such taxpayers who could not file Tran-1 on the basis of electronic audit trail. It has been decided that all such taxpayers, who tried but were not able to complete Tran-1 procedure (original or revised) of filing them on or before 27 December 2017 due to IT-glitches, shall be provided the facility to complete Tran-1 filing.

The technical glitches and delays in making Tran-1 available on GST Portal has led to repeated extension of due date for filing the return Tran-1.

4.5 CBIC instructions for verification of transitional credits

CBIC issued instructions from time to time during September 2017 to March 2018 regarding verification of transitional credits by its field formations as detailed below : -

i. In September 2017, CBIC informed its field formations that the registered persons had claimed over ₹ 65,000 crore as CGST transitional credit till then. ***(It is worthwhile to mention here that CGST collected during July and August 2017 was ₹ 29,296 crore)***. CBIC flagged the possibility of registered persons claiming ineligible credit due to mistake or confusion. It asked its field formations to

verify claims of ITC of more than ₹ One crore by matching the credit claimed in transitional returns with the closing balance in returns filed under earlier laws and checking eligibility of credit under GST regime.

ii. Through instructions dated 1 December 2017, field formations were directed to verify cases of transitional credit over ₹ One crore with special care and thereafter to undertake verification in descending order of credit availed.

iii. The circular issued (March 2018) by CBIC indicated that Central Tax Offices would verify transitional credit claims in respect of CGST in case of all taxpayers irrespective of whether the taxpayer was allotted to Central or State Tax Office. CBIC also shared the list of identified 50,000 cases of CGST credits along with datasets with Central Tax Offices and asked them to complete verification of 1/3rd of cases assigned in each quarter starting from March-June 2018 and ending in Jan-Mar 2019.

4.6 Leveraging IT for verification of transitional credit claims

Prior to introduction of GST portal, the department has been using the IT application "Automation of Central Excise and Service Tax" (ACES) through which filing of returns, payment of duty/tax and processing of returns relating to Central Excise and Service Tax were carried out. Hence, the department had a database relating to returns filed by taxpayers in respect of goods manufactured / services provided and the details of Cenvat credit closing balance and other details available from the returns as on 30 June 2017.

In the initial instruction issued in September 2017, CBIC asked field formations to match transitional credit claims with Cenvat credit balances. However, in March 2018, CBIC shared data sets of top 50,000 transitional credit claims on their intranet portal "ANTARANG" to assist field formations in verification of transitional credits.

As informed by CBIC,

- Tran-1 data is received from GST portal on the CBIC backend system. This data has been integrated with appropriate validation to enable automated verification of correctness of credit carried forward to Tran-1 by the taxpayers.
- This validation ensures that the details of Tran-1 are cross checked with (i) pre-GST registration, (ii) status of returns filed under pre-GST laws and (iii) Cenvat credit balance available in the last return filed by the taxpayers.

- Where the validation is successful, a green tick would be shown on dashboard of departmental officer viewing Tran-1 and a red tick would appear in case the validation failed.

4.7 Audit of transitional credits

Given the importance of transitional credits, being a one-time activity during transition to GST and its impact on revenue inflows in GST regime, we focussed on verification of transitional credit cases by CBIC field formations during our field audit in 2018-19.

To conduct data analysis and identify areas of focus and to select units / cases for audit, we requested (April 2018 and June 2018) CBIC to provide data relating to transitional credits and sought (December 2018) transitional credit data of selected fields. **The requisitioned data has not been provided by CBIC and even the readily available data sets relating to the 50,000 cases identified by CBIC have not been made available to us.**

In absence of data, we carried out a limited audit of transitional credit claims in the units which we selected for audit based on other risk parameters. The individual cases noticed and the system lapses identified based on these cases are included in this report.

Some of the audit findings indicate that data / red flags available in ACES have not been efficiently leveraged to identify and reject inadmissible credits and corrective action was taken only after being pointed out by us. CBIC also did not devise any methodology through which the inadmissible claims can be addressed at the central level with the aid of information technology.

Ministry, in its reply stated (March 2019) that all possible steps have been taken at Board level for denial of ineligible credit to be transitioned in GST regime. They also said that the decision to allow or disallow ITC is of quasi-judicial nature to be taken by proper officers in terms of provisions of the Act in each such case individually. They further held that this cannot be done at central level as the same would be ultravires the provisions of the Act.

Audit found inadmissible claims in cases already verified by the department and where the data validation results should be available with the department and the tax officer. This showed that despite CBIC taking steps of issuing circulars and providing data sets and validations to assist tax officers to verify transitional credits, all available details have not been fully utilised for validation and even the available leads have not been effectively

used by the tax officers or monitored by CBIC. Audit's suggestion of leveraging IT to identify inadmissible credits and address the same at central level through automated system is more from the point of view of Business Process
Re-Engineering to effectively assist tax officers to discharge their statutory functions.

4.7.1 Overview of audit of transitional credits

We focused on verification of transitional credit cases by the department during our audit of selected ranges in 47 Central GST Commissionerates. We verified 2,119 cases and found 309 instances (15 per cent) of omissions in verification of transitional credits amounting to ₹ 392.91 crore, which were issued as observations to the CBIC field formations. As already mentioned in paragraph 4.7, in the absence of data, we carried out limited audit of transitional credits.

In the absence of data, we carried out a limited field audit of transitional credits. Despite the limited audit, we found deviations in a significant 15 per cent of cases test checked. This points to the likelihood of a large number of errors/omissions in the overall population of transitional credits claimed by the taxpayers.

Forty two significant observations relating to 39 taxpayers in 13 Commissionerates have been issued to the Ministry (***Appendix-VI***) and included in this report, involving a money value of ₹ 107.39 crore as detailed below : -

(₹ in crore)

Issue noticed	Commissionerates involved	No. of cases	Amount of audit objection
Carry forward of excess Cenvat balance	6	6	2.58
Irregular availing of transitional credit	4	4	2.02
No systemic check to prevent double availing of credit	1	1	0.00
Irregular Availing of Cess credit not detected	6	21	9.74
Non-restriction of utilization of disputed credit	2	2	78.49
Non-payment of interest on reversal of transitional credit	4	8	14.56
Total		**42**	**107.39**

Out of these 42 cases, Ministry accepted the observation in 33 cases involving an amount of ₹ 14.58 crore and intimated recovery of ₹ 3.72 crore in 18 cases.

4.7.2 Carry forward of Excess Cenvat Credit

As per Section 140 of the CGST Act, 2017, a registered person, other than a Composition taxpayer, is entitled to take, in his Electronic Credit Ledger, the amount of Cenvat credit 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 Cenvat Credit under the existing law (Central Excise Act, 1944 and Finance Act, 1994) and is also admissible as ITC under CGST Act, 2017.

Section 140(3) of CGST, Act, 2017 facilitates transit of tax credit on stock into the GST regime. One of the conditions for allowing the transitional credit under section 140 (3) is that the invoice should not be before 1 July 2016 i.e. not more than one year old.

We noticed ***six cases*** of excess availing of transitional credit amounting to ₹ 2.58 crore in six Commissionerates[31] ***(Appendix-VI)*** in violation of provisions quoted above. The excess carry forward of transitional credits in all these cases was not detected during transitional credit verification process. This resulted in the excess carried forward transitional credit of ₹ 2.58 crore remaining undetected until pointed out by us.

Of these, ***four cases*** in four Commissionerates, pertained to incorrect claim of transitional credit on account of excess availing, incorrect computation of reversal of Cenvat credit on common inputs and services, short payment of excise duty and incorrect credit based on invoices which were more than one year old.

When we pointed this out (between May 2018 and February 2019), the Ministry, while admitting the observation in three cases, intimated (between May and June 2019) recovery of ₹ 1.16 crore including interest. In one case, while not admitting the failure of department in verifying transitional credit claims, the Ministry stated (June 2019) that there was a partial default in payment of duty by the taxpayer in June 2017 and that separate action would be initiated under the existing law (i.e. Central Excise). The reply of the Ministry was not acceptable since the department did not identify this lapse though the claim of transitional credit in this case was already verified.

The remaining ***two cases*** have been narrated below : -

[31] Chennai North, Chennai South, Coimbatore, Dehradun, Pune-I, and Delhi East.

(a) Omission in detection of wrong carry forward of credit despite being red flagged by ACES

Scrutiny of the Tran-1 of a taxpayer in Delhi East Commissionerate, revealed that the taxpayer had claimed credit of ₹ 2.33 crore. Audit noticed that in the ST-3 return of the taxpayer for the period April to June 2017, the opening balance of Cenvat credit of Service Tax was ₹ 1.38 crore. This was pointed out as 'an error' in the return by ACES as the taxpayer had 'Nil' closing balance in the previous return (i.e. for the period October 2016 to March 2017). Thus, the transitional credit to the tune of ₹ 1.38 crore was inadmissible.

The Department had verified this case but this irregular credit, though red flagged by the ACES System in the return for the quarter April – June 2017, was not noticed by the department. Further, this audit finding points towards non-utilisation of information available in ACES to ensure automated verification of correctness of transactional credits.

When we pointed this out (May 2018), the Ministry while admitting the objection intimated (April 2019) the deposit of ₹ 1.38 crore by the taxpayer under protest. Further, it stated that although the return was marked with the Error detected, the return was not marked for Review & Correction by the System. Hence, Audit's contention that data/information available in ACES were not utilised for automated verification was not fully correct.

Reply of the Ministry could not be accepted as the details of the previous credits availed by the taxpayer were available in the ACES system. It would be pertinent to mention that though the issue was flagged by the ACES system, the same was not used even during the verification of credits undertaken by the department. This and other observations on verification of transitional credits included in this report have shown that electronic information available in ACES has not been fully utilised during the verification process.

(b) Credit involving multiple units

We noticed that a taxpayer in Pune I GST Commissionerate, claimed transitional credit of ₹ 214.58 crore as ITC of all their registered/unregistered units under existing law. The above said Tran-1 form was verified by the department as per the Board instructions issued from time to time and reported (July 2018) to Pune Zone.

On scrutiny of Central Excise Return ER-1 (Excise Return-1) of one of the units, say Unit 'X' for the month of June 2017, it was found that the closing balance of eligible credit was ₹ 15.04 crore, however, the taxpayer had claimed transitional credit amounting to ₹ 17.32 crore in Tran-1 of that unit.

Further, verification of ER-1 returns of all other existing units for the month of June 2017, revealed that the transitional credit in respect of two other units, say Units 'Y' and 'Z' having Cenvat closing balance of ₹ 0.03 crore and ₹ 2.24 crore (including cess) respectively, was not claimed in Tran-1 of units Y and Z. However, the total amount of credit of ₹ 2.27 crore of the said two existing units was carried forward under unit X.

On verification of the GST registration certificate (form GST REG-06), it was found that the above units Y and Z were neither registered as principal place of business nor additional place of business under GST. Hence, the Cenvat balance of these units was not eligible for carry forward through Tran-1. Thus, the claim of transitional credit of ₹ 2.27 crore was required to be recovered.

When we pointed this out (February 2019) the Ministry, while not accepting the observation, stated (May 2019) that the assessee tried to add the above two units as additional place of businesses before filing TRAN-1, but GSTN portal was not allowing to add additional places of business. However, an SCN for ₹ 2.27 crore had been issued to the taxpayer.

The argument put forth by the Ministry appeared flawed on account of the following reasons : -

- The functionality to apply for amendment to Registration was made available on the GST portal in September 2017.
- Instead of issuing SCN for recovery of the amount, Ministry should have instructed the field formation to facilitate taxpayer to correct the registration details and thereby regularise the TRAN-1 which appeared as an irregular availment due to the initial technical glitches.

The Ministry should verify all similar cases where difficulty was faced by the taxpayer due to technical glitch on the GST portal and ensure corrective action.

4.7.3 Irregular availing of transitional credit

As per Section 140 of the CGST Act, 2017, the taxpayers should have furnished all the returns required under the existing law to avail transitional credit.

CBIC has clarified vide instructions dated 14 March 2018 that balance in Personal Ledger Account would not be under transition to GST and that on completion of the pending assessment, the same could be claimed as refund under Central Excise/ Service Tax provisions.

Transitional credit can be availed in respect of inputs or input services received on or after 1 July 2017, the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day (1 July 2017). The CBIC clarified in its letter dated 14 March 2018 that the provisions of this Section did not apply to capital goods.

It has been judicially held that the terms "inputs" and "capital goods" are distinctly defined in the Act and thus, in the absence of matching provisions pertaining to capital goods in section 140(5), there would be no possibility of availing credit on such tax under the GST regime.

In respect of four cases in four Commissionerates[32], Audit noticed irregular availment of transitional credit involving revenue of ₹ 2.85 crore **(Appendix VI)** without adhering to provisions quoted above.

The Ministry accepted the observation in two cases and intimated issuance of Show Cause Notice (SCN).

In another case issued to department in November 2018, Ministry, while not admitting the observation, stated (May 2019) that the lapse was procedural in nature and that the mismatch was because of wrong filing of ER1 return by the concerned unit and that the mistake was suo moto intimated by the taxpayer to the department. It was also stated that the department's verification was in progress and as abundant precaution, SCN was issued (May 2019) to the taxpayer. The reply of the Ministry was not acceptable as there was no provision for transfer of credit which has not been claimed by the taxpayer through original or revised return. Hence taxpayer directly availing ITC, which was not available in the return, was irregular.

Reply was awaited (June 2019) in one case.

Instances involving incorrect availing of Cenvat credit on capital goods and availing credit without filing ST returns have been narrated below : -

(a) Non-detection of incorrect availing of Cenvat credit on capital goods

We noticed that a taxpayer in Coimbatore Executive Commissionerates, had carried forward Cenvat credit on capital goods or parts of capital goods, as transitional credit which was not in order. This excess carry forward of transitional credit of ₹ 22.74 lakh was not pointed out by the department during verification of transitional credit. This excess credit of ₹ 22.74 lakh has to be recovered.

[32] Coimbatore, Chennai South, Gandhidham, Pune I.

When we pointed this out (January 2019) the Ministry, admitted the objection and informed (June 2019) that SCN would be issued.

(b) Cenvat credit allowed without filing returns of service tax

Audit observed that a taxpayer in Gandhidham Commissionerate had claimed ITC of service tax amounting to ₹ 73.51 lakh in its Tran-1 form without filing the last service tax return – ST-3 (for the period up to June 2017). This lapse was not observed by the department despite conducting verification (Jan – Mar 2018) of the Tran-1 of the taxpayer.

When we pointed this out (July 2018), the Ministry while admitting the observation intimated (April 2019), the issue of SCN to the taxpayer.

4.7.4 No systemic check to prevent double availing of credit

We noticed that a taxpayer having two registration numbers in Belapur GST Commissionerate, had filed Tran-1 for both GST registrations in the month of November 2017 and claimed transitional credit of ₹ 25.51 crore and ₹ 4.27 crore. The same were reflected as ITC in the respective credit ledgers on 13 December 2017. The taxpayer had again filed revised Tran-1 in the month of December 2017 and claimed transitional credit of ₹ 4.27 crore under the other registration number and the same was reflected in the ECL on 27 December 2017.

On verification, the department noticed that the taxpayer had carried forward same transitional credit of ₹ 4.27 crore under both GST registrations. The department had pointed out incorrect transition of ITC amounting to ₹ 4.27 crore as credited in ECL and the same was debited by the taxpayer from his credit ledger on 29 June 2018. ***This indicated that the taxpayer had rectified the double credit only when it was pointed out by the department during verification and there was no systemic check to prevent double credit.***

While examining the above, it appeared that the CBIC- GST system could not detect such irregularity of same credit being carried forward through form Tran-1 for more than one GST registrations. It was evident that in the above mentioned case, such irregularity was detected only when both the Tran-1 forms were verified by the Commissionerate. This limitation of CBIC-GST system might be a serious concern and the scope of such double credits in other cases could not be ruled out.

Further, it could also be concluded that CBIC-GST system did not have adequate checks to identify availing of multiple credits by a taxpayer having multiple registrations.

When we pointed this out (September 2018), the Ministry while admitting the observation re-iterated the guidance note issued by CBIC. They also stated that the decision to allow or disallow ITC is of quasi-judicial nature to be taken by the proper officer in terms of the provisions of the Act in each such case individually.

The reply of the Ministry was silent on non-detection of such credits by the CBIC-GST system.

4.7.5 Irregular Availing of cess credit not detected

Through the Taxation Law Amendment Act, 2017, the Education Cess (EC), Secondary and Higher Education Cess (SHEC), Swachh Bharat Cess (SBC), Krishi Kalyan Cess (KKC), were abolished with effect from 1 July 2017 and had, thus, become ineligible to be carried forward to GST regime as input tax credit (ITC). This was also clarified by the directions of the CBIC in March 2018.

We noticed in 21 cases in six[33] Commissionerates that the taxpayer had availed input tax credit of the above mentioned cesses in Tran-1 amounting to ₹ 9.74 crore **(*Appendix-VI*)**, which was inadmissible.

In one case relating to Delhi-East Commissionerate, the department had verified the case but failed to point out ineligible Cenvat credit availed by the taxpayer, the details of which were available in ST-3 return.

In two cases relating to Gandhidham Commissionerate, the department had not conducted any scrutiny of Tran-I of these taxpayers although total ITC claimed by these taxpayers amounted to ₹ 16.18 crore and transitional credit in one case was above ₹ one crore . Hence, the instructions of Board to verify cases above ₹ 1 crore first and then in descending order were not complied with, resulting in non-detection of incorrectly availed ITC. Further, the details of verification of transitional returns by the department were not provided in the remaining 18 cases. Hence, audit could not comment on whether these cases were already scrutinised by the department or not.

Though the details of cesses were available in ACES, the same were not effectively used to disallow ineligible transitional credit on cesses.

When we pointed this out (between March 2018 and February 2019), the Ministry, while admitting the objection in all the cases intimated (between April and May 2019) recovery of ₹ 1.19 crore in 14 cases and issue of SCN for ₹ 28.08 lakh in two cases. Further, it stated that the decision to allow or disallow ITC is of quasi-judicial nature to be taken by the proper officer in terms of the provisions of the Act in each such case individually. It was also

[33] Bengaluru East, Bengaluru South, Daman, Dehradun, Delhi-East and Gandhidham.

stated that this could not be done at central level as the same would be *ultra vires* the provisions of the Act.

The reply of the Ministry regarding IT system was not relevant since the audit comment was about non-utilisation of information available in ACES.

4.7.6 Non-restriction of utilization of disputed credit

Board's circular dated 23 February 2018 dealt with cases where an SCN issued for recovery of Cenvat credit or erroneously refunded has been adjudicated and in the last adjudication order or the last order-in-appeal, as it existed on 1 July 2017, it was held that such Cenvat credit was not admissible. The circular stipulated that such Cenvat credit (herein and after referred to as "disputed credit"), credited to the electronic credit ledger as transitional credit, should not be utilised by a registered taxable person to discharge his tax liability under the CGST Act or under the IGST Act 2017, till the order-in-original or the last order-in-appeal, holding that disputed credit as inadmissible, would be in existence. During such period, if the said disputed credit is utilised, it shall be recovered from the taxpayer, with interest and penalty as per the provisions of the Act.

We noticed that disputed credits amounting to ₹ 78.49 crore were claimed and utilised as transitional credit by two taxpayers in Chennai South and Outer Commissionerates, which was irregular. Even though the details of claims of such disputed credits were available with the department, the IAD in their verification reports failed to point out both (i) utilisation of the disputed credits and (ii) the non-compliance as to the submission of required undertaking as prescribed in the circular. The concerned Range Offices also did not initiate any action in this regard. The inadequate verification process resulted in irregular utilisation of disputed credits amounting to ₹ 78.49 crore, which should be recovered along with interest amounting to ₹ 15.17 crore.

When we pointed this out (September 2018) the Ministry, while not admitting the observation, stated that there was no field in Tran-1 form to show the disputed credit separately. There was no facility for the taxpayer to maintain any credit equivalent to the disputed in the ECL till February 2018 as GSTN used to automatically debit the entire credit available in ECL against the tax liability of the taxpayer. Further, in respect of all the disputed matters, the taxpayers preferred an appeal on payment of mandatory pre-deposit. Thus, the matter being sub-judice in an appellate forum, no recovery action could be initiated as an automatic stay operated against any recovery action.

The Ministry's reply in bringing out functional difficulties with regard to monitoring of disputed credit included as part of transitional credit and its

subsequent utilisation thereof, has pointed to the systemic inadequacies in relation to transitional credits. As regards operation of automatic stay when an appeal is filed by the taxpayer, the provisions of circular dated 23 February 2018 issued by the CBIC as detailed below indicated the need for clarification.

Para 2.1 of the circular prescribed that so long as the Order-In-Original[34] (OIO) or the last Order-In-Appeal (OIA), as it ***existed*** on 1 July 2017, holding the Cenvat credit as inadmissible is in ***existence***, such Cenvat credit should be treated as disputed credit and shall not be utilised.

Para 2.2 said that so long as such OIO or OIA holding that disputed credit as inadmissible is in ***operation***, if the said disputed credit is utilised, it shall be recovered from the taxpayer.

Thus, two words 'existence' and 'operation', which have different meanings were used in the circular, as an existing OIO or OIA would cease to be in operation, once stayed. It can be inferred that disputed credit cannot be utilised during the existence of such OIO or OIA but such disputed credit, if utilised, shall be recovered only if such OIO or OIA is in operation.

Ministry may like to eliminate this ambiguity by issuing suitable clarification in order to avoid litigation and to protect the interest of revenue.

4.7.7 Non-payment of interest on reversal of transitional credit

Section 50(3) of CGST Act, 2017, provides that a taxable person, shall pay interest on such undue or excess claim at such rate as notified. The current notified rate of interest is 24 per cent. Eight observations noticed on non-payment of interest on reversal have been detailed below:

(a) During audit of Audit I & II Chennai and Coimbatore Commissionerates we noticed that ineligible credits on cesses claimed earlier were reversed by 7 taxpayers[35]. It was observed that interest liability on reversal of ineligible credits was neither pointed out by the department, nor any action was initiated by the concerned Range Offices to levy and collect applicable interest. This resulted in non-levy of interest of ₹ 1.91 crore.

(b) The Board in their guidelines indicated that Cenvat credit cannot be availed as transitional credit twice. The double availment could happen in situations such as, availing Cenvat credit as transitional credit through Tran-1 and also through return in form GSTR-3B or availing same credit twice through two different tables of Form Tran-1. As per Section 50 of CGST Act, 2017, a taxpayer is liable to pay interest on excess claim of ITC.

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[34] An order issued by adjudicating authority disposing off the SCN.

[35] Falling under jurisdictional executive Commissionerates - Chennai South, Chennai Outer, Coimbatore and Salem

In Chennai South Commissionerate, it was noticed from the ECL of a taxpayer that he had claimed transitional credit of ₹ 57.08 crore twice, as ITC accrued through inputs in GSTR-3B return (on 18 August 2017) and once as transitional credit brought forward through Tran-1 (on 23 August 2017). The taxpayer rectified the same by reversing transitional credit claim made in GSTR-3B in July 2018.

While the taxpayer has reversed the wrongly availed dual credit on his own in this case, this also indicated that the system had no check to deter or at least to red flag availment of same Cenvat credit more than once by the taxpayers, though this was identified as a risk by CBIC. This coupled with existence of a functionality[36] till February 2018, wherein GSTN used to automatically debit the entire credit available in ECL against the tax liability of the taxpayer, indicated the risk of utilisation of such irregular credits by the taxpayers.

Even though the taxpayer reversed the excess claim after a lapse of 11 months, no interest liability was pointed out by IAD during their verification. The liability of taxpayer to pay interest on excess availed credit amounting to ₹ 12.65 crore should be examined.

When we pointed out these eight cases (between December 2018 and January 2019), the Ministry admitted the objection (June 2019) in four cases, while reply was awaited (June 2019) in the remaining four cases .

Part B : - Registration

We examined records of 80,874 registrations in selected ten Commissionerates and we noticed deficiencies/lacunae in 12,912 cases (16 per cent), which were issued as observations to the CBIC field formations. Three significant observations involving 5,496 registrations relating to composition scheme and mapping of registered taxpayers to jurisdictional officers, issued to Ministry, have been narrated below : -

4.8 Irregular registration in composition scheme

Section 10 of the CGST Act, 2017, stipulates that a registered person cannot opt for Composition scheme if he is engaged in the supply of works contract services. As taxpayers have to apply for GST registration centrally on GST portal, the portal should have proper validation to ensure that only the eligible taxpayers opt for Composition scheme. As per Rule 9 of CGST Rules, 2017, a registration is treated as deemed approved if no objection is raised by tax officer within three days. Hence, in case of inadequacies in key validations of Registration Module on GST portal and non-verification of the

[36] As per reply given by the Ministry to paragraph 4.7.6.

registration application within three days by jurisdictional tax officers, the irregular registrations stand approved.

During the audit of Siliguri and Kolkata North GST Commissionerates, it was observed that ten taxpayers opted for 'composition levy' though they provided works contract services.

The lack of key validations noticed during IT audit of Registration Module were brought out in ***Part-A of Chapter III*** of this report. Thus, while there was no proper validation in the system to debar those dealing in works contract services from registering as composition taxpayers, the field formations have also failed to verify the details of registration. As the tax rates and compliance requirements are completely different for composition taxpayers, the department should take effective action to ensure that these and other such ineligible taxpayers are registered under the correct category. Any returns already filed by such wrongly registered taxpayers need to be reviewed and corrective action taken.

When we pointed this out (between April and June 2018), the Ministry, while admitting the objection, intimated (April 2019) that out of ten, seven taxpayers had already opted out of the scheme, one mentioned works contract service by mistake while they actually dealt in hosiery and leather and action had been initiated against the remaining two taxpayers. Regarding filing of returns by nine of these taxpayers who deal in works contract service, Ministry informed that four taxpayers filed nil returns and hence there was no revenue impact, while one taxpayer filed revised returns paying differential tax and action has been initiated against four taxpayers.

Ministry further stated that composition scheme being an optional scheme, it was not feasible to put built in system check to prevent ineligible taxpayers from opting for the scheme.

The reply of the Ministry as regards built in system check is not tenable as though the scheme is optional, the terms and conditions prescribed for opting for the scheme are mandatory, which should be taken care of by the system. It is very much possible to deter taxpayers from opting for composition levy by mistake or out of ignorance by designing suitable validations on GST Portal.

4.9 Allocation and mapping of taxpayers to jurisdictional tax officers

The allocation of taxpayers between Central and State tax departments is based on turnover as already mentioned in ***paragraph 1.4.3 of Chapter I***. Notification issued (June 2017) by the appointed Central tax officers decided the jurisdiction up to the Commissionerate level and Trade Notices issued by

the Zonal Chief Commissioners further demarcated the jurisdiction of each officer up to the Range level. Based on this allocation, the mapping of registered taxpayers to the jurisdiction was to be carried out on GST portal.

4.9.1 Non allocation of registrations of taxpayers to their proper jurisdiction

During the audit (June 2018) of Divisions IV and VI of Thane GST Commissionerate, it was observed that 734 number of existing taxpayers were still "unallocated" to their proper jurisdiction. Even after a lapse of nearly one year at the time of audit (June 2018) after implementation of GST (w.e.f. 1 July 2017), the assesse allocation to proper jurisdiction was not completed.

The Division replied (June 2018) that as the allocation of taxpayers was handled by the GST portal, division office had no role in this regard.

The reply could not be accepted as the department should take up the matter with appropriate authority for allocation of proper jurisdiction to the taxpayers in the interest of revenue and to mitigate the taxpayers' difficulties.

While bringing this to the notice of Ministry (April 2019), we requested Ministry to comment on the reasons for taxpayers remaining unallocated and the current status of allocation of these taxpayers. Further, the total number of unallocated taxpayers under the entire jurisdiction of CBIC as on date and reason for the same along with action plan to mitigate the same have also been sought.

The Ministry informed (May 2019) that a total of 42,428 GSTINs were yet to be allocated under the entire jurisdiction of CBIC for want of distribution orders from the jurisdictional authorities and that the department has been regularly following up with the GST Zones for bifurcation of the pending taxpayers. In respect of Thane Commissionerate, while not admitting the objection, the Ministry stated (May 2019) that the as per their details, a total of 114 assessees remained unallocated in the divisions IV and VI and that details of 734 GSTINs were not available with them for providing any current status.

Even two years after roll out of GST, the allocation of assessees, which is the basis for administration of GST by tax departments, remained incomplete. Ministry neither gave any reasons regarding why the distribution orders regarding assesse allocation could not be finalised nor indicated any timelines / action plan for resolving the same.

As regards variation in number of pending allocations of 114 as per the CBIC and as pointed out in observation as 734, the numbers quoted by Audit were as per the MIS reports of the concerned Commissionerate, which can be obtained by the Ministry from the concerned Commissionerate..

4.9.2 Incorrect mapping of taxpayers

During audit (August 2018) of seventeen ranges under Bengaluru East Commissionerate, we noticed that 3,161 taxpayers, out of a total of 16,352 taxpayers mapped to 17 Ranges by the system, did not belong to these Ranges as per the Notification and Trade Notice. Thus, ***19.33 per cent of the taxpayers mapped to these Ranges were incorrectly mapped***. The number of incorrectly mapped taxpayers in the individual Ranges varied from 2 per cent to 58 per cent of the total number of taxpayers under the respective Ranges. Although the Range Officer reported these discrepancies to the Public Relation Officer (PRO) in the respective Commissionerate, proper mapping was yet to be done in these cases as of August 2018.

It was further noticed that 1,612 taxpayers (10 per cent) belonging to these 17 Ranges as per the Trade Notice were wrongly mapped to other Ranges within the same Commissionerate. However, this issue was not considered by the Range offices while taking up the issue of mapping of taxpayers with the PRO.

> Wrong mapping carried the risk of the returns filed/non-filing of returns by the wrongly mapped taxpayers not being subject to any kind of scrutiny by the jurisdictional officer or taxpayer grievances remaining unaddressed as tax officers access to information was based on the mapping.

When we pointed this out (August 2018), the Ministry while not admitting the observation stated (May 2019) that action had already been initiated for correct mapping by Range Officer by sending a request to PRO.

The reply of the Ministry is not acceptable as in spite of being aware and bringing it to the notice of PRO, wrong mapping of taxpayers persisted in the system at the time of audit (after nearly one year of implementation of GST). This para also indicated that there was no mechanism in CBIC-GST system to address this issue on Pan-India basis and in this highly IT intensive environment also, Range Offices had to physically take up problems created by an IT system for resolution.

Part C : Refunds

4.10 Overview of audit of Refund claims

We examined the records relating to Refunds of 543 out of 727 claims in selected five Commissionerates[37]. We noticed non-adherence to extant provisions in processing of refunds in 28 claims (5 per cent) involving an

[37] Aurangabad, Bhiwandi, Daman, Mumbai East and Surat

amount of ₹ 2.72 crore. In 27 cases involving ₹ 2.40 crore, Ministry accepted the audit observations.

It is pertinent to mention here that the Central tax officers were cross empowered to process refund of both SGST and CGST in respect of GST taxpayers allotted to them. Hence irregularities in refunds would impact both Consolidated Fund of India as well as the States.

Out of the total objection amount of ₹ 2.72 crore on Refunds, an amount of ₹ 42.71 lakh involving three claims pertains to SGST refunds impacting the revenue of Gujarat, while two claims involving ₹ 20.79 lakh pertain to Maharashtra SGST.

All these 28 cases were issued to Ministry ***(Appendix-VII)*** and seven significant cases have been narrated below : -

4.11 Non-adherence of provisions of Refund

Section 54 of the CGST Act, 2017, provides that any person claiming refund of any duty and interest, may make an application for refund to the department before the expiry of two years from the relevant date in the prescribed form. The refund application should be accompanied by such documentary or other evidence as the applicant may furnish to establish that the amount in relation to which refund is claimed was collected from him or paid by him and the incidence of such duty/interest had not been passed on by him to any other person. Further, the proper officer has to issue the order sanctioning the refund after due verification and examination of claim within sixty days from the date of receipt of application.

In accordance with section 54 (3) of the CGST 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 CGST Rules, 2017, prescribes the formula for maximum refund of unutilised ITC on account of inverted duty structure. As per the rule ibid, net ITC means the ITC availed only on inputs during the relevant period. Thus, credit availed on input services is not to be considered for net ITC.

As per Para 3.1 of the circular dated 4 September 2018, regarding the provisions in case of refund of unutilised ITC, the refundable amount is calculated as the least of the following amounts:

(a) The maximum refund amount as per the formula laid down in Rule 89(4) or Rule 89(5) of the CGST Rules, 2017;

(b) The balance in the electronic credit ledger of the claimant at the end of the tax period for which the refund claim is being filed after the return for the said period has been filed; and

(c) The balance in the electronic credit ledger of the claimant at the time of filing the refund application.

4.11.1 Excess allowance of refund

(a) A taxpayer falling under Mumbai East GST Commissionerate claimed refund of ₹ 27.18 lakh on account of inverted duty structure for the month of March 2018 and the same was allowed as claimed. Scrutiny of the documents available on record revealed that the Net ITC of ₹ 41.74 lakh considered for computation of the maximum amount of refund also included credit availed on input services of ₹ 38.77 lakh. Thus, the admissible Net ITC as per Rule 89(5) of the CGST Rules, 2017 would be input credit of ₹ 2.98 lakh only. Hence, after taking ₹ 2.98 lakh as Net ITC into consideration, the maximum amount of refund as per prescribed formula works out to nil. Thus, there was an irregular grant of refund of ₹ 27.18 lakh by the department, which is required to be recovered.

When we pointed this out (February 2019), the Ministry, while accepting the observation (May 2019) reported issuance of SCN to the taxpayer.

(b) A taxpayer under Mumbai East GST Commissionerate claimed refund of ₹ 76.42 lakh on account of zero-rated supply of goods for the month of July 2017 and the same was allowed by the department. Scrutiny of the documents available on record revealed that the balance in the electronic credit ledger of the claimant at the end of the tax period after the return for the said period has been filed was ₹ 44.72 lakh only. This being the least, the claimant was entitled to allowance of refund of ₹ 44.72 lakh. This has resulted in excess allowance of refund of ₹ 31.70 lakh.

When we pointed this out (February 2019), the Ministry, while not accepting the observation, stated (May 2019) that the formula to be used for calculating the refund pertained to the period prior to issue of circular dated 4 September 2018.

The reply of the Ministry could not be accepted as the circular quoted was clarificatory in nature and hence the Act provisions clarified by the circular would apply to period prior to the circular as well. The reply of the Ministry indicated the need to review all cases processed prior to the issue of the circular.

(c) The Board vide Circular dated 4 September 2018 clarified that after determination of amount refundable, the equivalent amount is to be debited to electronic credit ledger by the taxpayer in the following order: First against Integrated Tax to the extent of balance available and thereafter to Central tax

and State/Union territory tax equally to the extent of balance available and in the event of shortfall in the balance available in a particular electronic credit ledger, the differential amount is to be debited from the other electronic credit ledger. Further this procedure was to be followed for all refund application filed after the date of issue of aforesaid circular.

A taxpayer falling under Mumbai East GST Commissionerate filed refund application (GST RFD-01A) on the GST portal on 18 September 2018 and filed a copy of the application with the department on 1 October 2018. It was observed from GST RFD-01A that at the time of filing of refund application, the taxpayer's electronic credit ledger had a balance of IGST of ₹ 28.45 lakh, CGST of ₹ 17.49 lakh and SGST of ₹ 17.49 lakh. Further, the taxpayer had claimed refund of IGST of ₹ 12.37 lakh, CGST of ₹ 12.87 lakh and SGST of ₹ 12.87 lakh. After scrutiny, the department rejected claim of ₹ 5,456 and sanctioned refund of IGST of ₹ 12.37 lakh, CGST of ₹ 12.84 lakh and SGST of ₹ 12.84 lakh. Thus, it was observed that the department had not followed the order of debiting the refund amount to electronic credit ledger as envisaged in the above referred circular. The error resulted in excess allowance of refund from CGST and SGST aggregating to ₹ 16.08 lakh (₹ 28.45 lakh- ₹ 12.37 lakh), which further resulted in excess credit balance in IGST electronic credit ledger to that extent.

When we pointed this out (February 2019), the Ministry while admitting the objection (May 2019) intimated the issuance of SCN.

4.11.2 Irregular grant of provisional refund

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

(i) During the examination of records relating to refunds in division IV of Bhivandi GST Commissionerate, we noticed that the department had issued the provisional refund of 90 per cent pertaining to refund on account of excess cash balance in electronic ledger in case of two taxpayers and on account of inverted duty structure in case of one taxpayer which are other than the cases of zero rated supply of goods or services. Thus, the provisional grant of refund in these cases resulted in irregular grant of refund of ₹ 34.86 lakh.

(ii) Similarly, while examining records relating to refund in Division-V under Surat Commissionerate, we observed that the department had issued

the provisional refund of 90 per cent on account of inverted duty structure amounting to ₹ 1.39 crore to a taxpayer. The refund claim was sent to jurisdictional Range office for verification, which had opined that the provisional refund clause would apply only in cases of zero rated supply of goods/services. However, the Division office had already sanctioned and disbursed the refund on provisional basis even before receipt of negative verification report from Range office. This resulted in incorrect grant of provisional refund of ₹ 1.39 crore against ineligible category of refund.

When we pointed this out (between June and September 2018), the Ministry partially admitting the observations, stated (May 2019) that it was a procedural lapse and refund was anyway admissible to taxpayer. Further they intimated that at the instance of the CBIC, the jurisdictional Commissionerates have issued instructions to the field formations to follow the correct procedure.

The Ministry, vested with the responsibility of ensuring compliance with the provisions of the CGST Act, holding non-compliance with the provisions of the Act as only a procedural lapse, is highly unacceptable. Ministry should identify all similar cases and seek assurance from field formations about proper verification of all the refund claims which were sanctioned provisionally, in contravention of the Provisions of the Act.

4.12 Conclusion

- Unhindered and full access to pan-India data is crucial for meaningful audit and to draw required assurances needed, otherwise certifying revenue receipts may become difficult. DoR's offer of providing data based on CAG's queries is not workable, as without the full data, it is neither possible to formulate queries, nor run the required algorithms on the data. The CAG sought data through the Application Programme Interface (APIs) already designed by GSTN. It need hardly be stated that providing such data as CAG may require is a constitutional and legal requirement.
- In the absence of access to GST data, the conclusions in this chapter on compliance audit were based on limited audits carried out in the field. However, the gamut of issues brought out even in this limited audit point to serious systemic deficiencies that need to be addressed by the department.
- The technical glitches and delays in making Tran-1 available on GST Portal has led to repeated extensions of due date for filing the Tran-1 returns.

- Some of the audit findings on transitional credits indicated that data / red flags available in ACES have not been efficiently leveraged to identify and reject inadmissible credits and corrective action was taken only after being pointed out by us.
- Non-allocation or wrong mapping of registered taxpayers carried the risk of the returns filed/non-filing of returns in such cases not being subject to any kind of scrutiny by the jurisdictional officer. Further, the Ministry's reply that Range Offices initiated corrective action by writing to the PRO indicated that there was no mechanism in CBIC-GST system to address this issue on pan-India basis and in this highly IT intensive environment also, Range Offices had to physically take up problems created by an IT system for resolution.
- The instances of non-adherence to the provisions relating to refunds, pointed towards the need for expediting automation of refund processing with proper checks and validations besides improving the system for monitoring manual processing of refunds, till automation is completed.

New Delhi **(HIMABINDU MUDUMBAI)**
Dated: 12 July 2019 **Principal Director (Goods and Services Tax-I)**

Countersigned

New Delhi **(RAJIV MEHRISHI)**
Dated: 12 July 2019 **Comptroller and Auditor General of India**