

**CHAPTER – II**  
**TAXATION DEPARTMENT**



## CHAPTER-II TAXATION DEPARTMENT

### 2.1 Tax Administration

The Taxation Department is responsible for the administration of taxes on sales, trade, etc., in the State. The collection of tax is governed by the provisions of the Meghalaya Value Added Tax (MVAT) Act, 2003; the MVAT Rules, 2005; the Central Sales Tax (CST) Act, 1956; the CST Rules, 1957; the Meghalaya Sales of Petroleum and Petroleum Products (including Motor Spirit) and Lubricants Taxation (MSL) Act, etc. With the introduction of Goods & Services Tax (GST) on 01 July 2017, CST Act and MVAT Act have been repealed.

The Principal Secretary/ Commissioner and Secretary to the Government of Meghalaya, Excise, Registration, Taxation and Stamps (ERTS) Department holds the overall charge of the Taxation Department at the Government level. The Commissioner of Taxes (CoT) is the Head of the Department and is responsible for administration of all taxation measures, for general control and supervision over the zonal offices, unit offices and over the staff engaged in collection of taxes, and also to guard against evasion of taxes. He is also the authority for disposing off revision petitions under all taxation acts and laws besides providing clarifications under the MVAT Act, 2003. He is assisted by Joint Commissioner of Taxes (JCT), Assistant Commissioners of Taxes (ACTs), Superintendents of Taxes (SsT), Inspectors of Taxes both at the Headquarters and zonal/unit levels. At the district level, 17 Superintendents of Taxes (SsT) have been entrusted with the work of registration, scrutiny of returns, collection of taxes, levy of interest and penalty, issue of road permits/declaration forms, enforcement and supervision.

### 2.2 Results of Audit

Test check of records of 21 units (out of 23 units relating to VAT) during 2019-20 revealed under-assessment of tax and other irregularities in 240 cases involving ₹ 459.04 crore, which fall under the following categories:

**Table 2.2.1**

(₹ in crore)

Sl. No.	Category	Number of cases	Amount
1.	Loss of revenue	04	1.08
2.	Evasion/Non-payment of tax	62	64.94
3.	Concealment	26	18.57
4.	Non-levy/ Short levy of tax	23	24.25
5.	Other irregularities	125	350.20
<b>Total</b>		<b>240</b>	<b>459.04</b>

During the year 2019-20, the Department accepted under assessment and other deficiencies to the tune of ₹ 138.83 crore in 183 cases. They did not furnish replies in 57 cases. Recovery at the instance of audit was ₹ 2.01 crore in 18 cases during the year.

Two Subject Specific Compliance Audits on “Refund Claims under GST” and “Arrears of Assessment and Revenue under VAT Regime post GST roll out” as well as select cases bearing financial impact of ₹ 2.36 crore, in terms of under-assessment/short levy/non-levy of tax and other provisions of the Acts are discussed in paragraphs 2.3 to 2.6.

## **2.3 Subject Specific Compliance Audit on Refund Claims under GST for the period from 01 July 2017 to 31 July 2020**

### **2.3.1 Introduction**

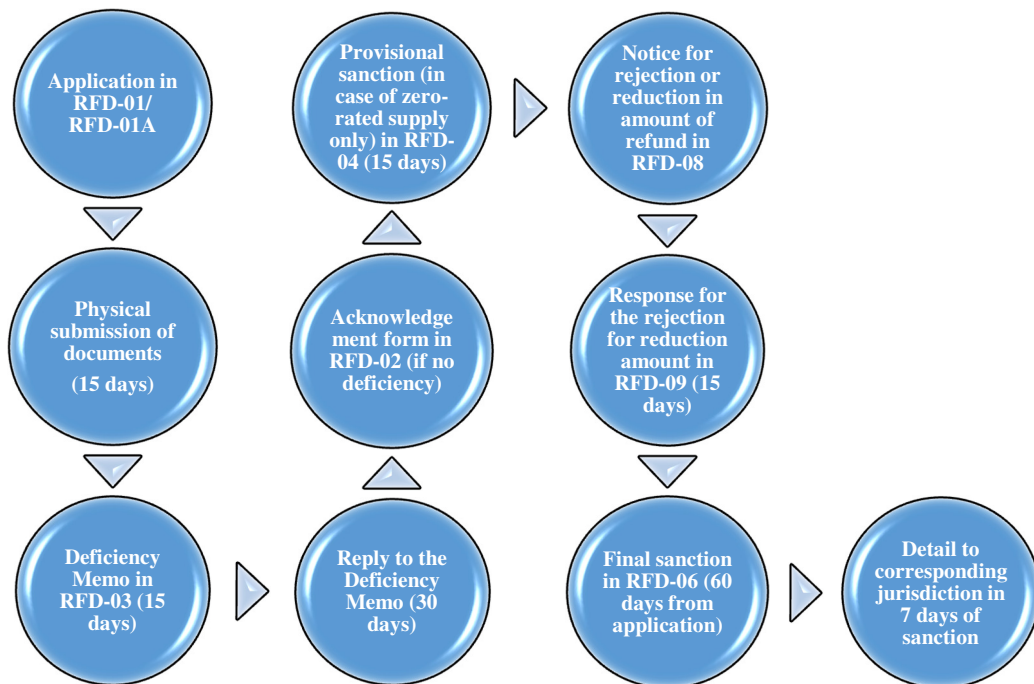
A timely refund mechanism constitutes a crucial component of tax administration, as it facilitates the release of blocked funds for working capital requirements, expansion and modernization of existing businesses. The provisions pertaining to refund contained in the GST laws aim to streamline and standardize the refund procedure online under the GST regime. Processing of refund applications, *i.e.* issuance of acknowledgement, deficiency memo, passing of provisional/final refund orders, payment advice *etc.*, was being done manually upto 25 September, 2019. This process of refund has been made fully electronic with effect from 26 September 2019 (also called Automation of Refund Process) through a circular<sup>1</sup> issued by the Central Board of Indirect Taxes and Customs (CBIC) in this regard. The organisational set-up of the Goods and Services Tax Department, Government of Meghalaya is given at **Appendix – 2.3.1**.

The Refund process is depicted in the chart given below:

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<sup>1</sup> Circular No. 125/44/2019-GST dated 18 November 2019. However, the same has not yet been endorsed by the Taxation Department, Government of Meghalaya.

Chart 2.3.1



### 2.3.2 Provisions governing Refunds under GST

Refunds under GST can be claimed by taxpayers as per Sections 54, 55 and 77 of the MGST<sup>2</sup> Act, 2017, Section 15 of the IGST<sup>3</sup> Act, 2017, Rule 89 and 98 of the MGST<sup>4</sup> Rules, 2017 and Rule 51 of the CGST<sup>5</sup> Rules, 2017, refunds under GST can be claimed by registered dealers on the following grounds:

- (i) Refund of balance in electronic cash ledger.
- (ii) Excess GST payment;
- (iii) Export of goods or services;
- (iv) Refund of accumulated Input Tax Credit of GST on account of inverted duty structure/Reverse Charge cases.
- (v) Refund arising on account of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court;
- (vi) Supplies to SEZs units and developers;
- (vii) Refund of CGST & SGST paid by treating the supply as intra-state supply which is subsequently held as inter-state supply and *vice versa*.
- (viii) Deemed exports;
- (ix) Refund of taxes on purchase made by UN or embassies *etc.*;
- (x) Finalization of provisional assessment;
- (xi) Refund of pre-deposit;

<sup>2</sup> Meghalaya Goods and Services Tax Act, 2017.

<sup>3</sup> Integrated Goods and Services Tax Act, 2017.

<sup>4</sup> Meghalaya Goods and Services Tax Rules, 2017.

<sup>5</sup> Central Goods and Services Tax Rules, 2017.

- (xii) Refunds to International tourists of GST paid on goods in India and carried abroad at the time of their departure from India;
- (xiii) Refund on account of issuance of refund vouchers for taxes paid on advances against which, goods or services have not been supplied;

During the period under audit (01 July 2017 to 31 July 2020) a total number of 239 refund applications involving ₹ 28.73 crore were received by the Department as shown in the table below:

**Table 2.3.1: Number of cases of refund claimed and processed**

(₹ in crore)

Period	Refund claimed		Refund sanctioned	
	No. of cases filed	Amount claimed	No. of cases sanctioned (%)	Amount sanctioned (%)
<b>(A) Manual phase (pre- automation)</b>				
01 July 2017 to 31 March 2018	65	1.43	4 (6)	0.87 (61)
01 April 2018 to 31 March 2019	53	0.65	38 (72)	0.49 (75)
01 April 2019 to 25 September 2019	20	21.65	17 (70)	0.38 (2)
<b>Sub-total of A</b>	<b>138</b>	<b>23.73</b>	<b>59 (43)</b>	<b>1.74 (7)</b>
<b>(B) Online phase (post-automation)</b>				
26 September 2019 to 31 March 2020	61	3.99	30 (49)	0.12 (3)
01 April 2020 to 31 July 2020	40	1.01	64 (160)	2.55 (252)
<b>Sub-total of B</b>	<b>101</b>	<b>5.00</b>	<b>94 (93)</b>	<b>2.67 (53)</b>
<b>Total (A+B)</b>	<b>239</b>	<b>28.73</b>	<b>153 (64)</b>	<b>4.41 (15)</b>

Source: Office of the Commissioner of Taxes, Meghalaya, Shillong, Government of Meghalaya.

From 01 July 2017 to 25 September 2019, 138 refund applications were filed manually, of which 43 per cent of the cases, involving ₹ 1.74 crore was sanctioned for refund. Online system of filing for refund applications was introduced from 26 September 2019, and 101 applications had been filed online upto 31 July 2020, and of which, 93 per cent of the cases involving ₹ 2.67 crore was sanctioned for refund. Thus, as of March 2021, the Department had sanctioned 153 (64 per cent) out of 239 applications of refunds amounting to ₹ 4.41<sup>6</sup> crore (15 per cent) of the total amount of ₹ 28.73 crore claimed. The head-wise break up of numbers of applications for refund vis-a-vis refund sanctioned under manual and online system is given in the table below:

**Table 2.3.2: Table showing head-wise break up of numbers of applications for refund vis-à-vis refund sanctioned under manual and online system**

(₹ in crore)

Sl. No.	Heads	No of Cases (Refund applications)				Total	
		Manual	Amount	Online	Amount	No. of cases	Amount
1	Excess balance in cash ledger (EXBCL)	123 (52)	2.47 (1.57)	82 (82)	1.46 (1.46)	205 (134)	3.93 (3.03)
2	Excess payment of tax (XSPAY)	0 (0)	0 (0)	13 (7)	1.87 (1.19)	13 (7)	1.87 (1.19)
3	Refund of ITC on Export of goods and services without payment of tax (EXPWOP)	2 (0)	17.79 (0)	0 (0)	0 (0)	2 (0)	17.79 (0)
4	Export of service with payment of tax (EXPWP)	1 (0)	0.003 (0)	1 (1)	0.0002 (0.002)	2 (1)	0.0032 (0.002)

<sup>6</sup> ₹ 1,74,16,300 sanctioned for refund claims filed manually + ₹ 2,66,33,869 sanctioned for refund claims filed online = ₹ 4,40,50,169 total refund sanctioned.

Sl. No.	Heads	No of Cases (Refund applications)				Total	
		Manual	Amount	Online	Amount	No. of cases	Amount
5	Refund on account of ITC accumulated due to Inverted Tax Structure (INVITC)	11 (7)	0.24 (0.17)	0 (0)	0 (0)	11 (7)	0.24 (0.17)
6	Any other (ANYOTH)	1 (0)	3.23 (0)	5 (4)	1.67 (0.02)	6 (4)	4.90 (0.02)
<b>Total</b>		<b>138</b> <b>(59)</b>	<b>23.73</b> <b>(1.74)</b>	<b>101</b> <b>(94)</b>	<b>5.00</b> <b>(2.67)</b>	<b>239</b> <b>(153)</b>	<b>28.73</b> <b>(4.41)</b>

### 2.3.3 Audit objectives

Audit of Refund cases under GST was conducted to assess:

- (i) The adequacy of acts, rules, notifications, circulars *etc.*, issued in relation to grant of GST refund.
- (ii) The compliance of extant provisions by the tax authorities and the efficacy of the systems in place to ensure compliance by taxpayers.
- (iii) Whether an effective internal control mechanism exists to check the performance of officials in settling refund applications.

### 2.3.4 Audit scope and sample

The field work for the Subject Specific Compliance Audit (SSCA) was conducted between January 2021 and March 2021 and covered the period between 01 July 2017 to 31 July 2020. A sample of 136 refund cases involving an amount of ₹ 24.70 crore was selected from the GST Network for verification by Audit. Out of these 136 cases, 79 cases pertained to the period prior to 26 September 2019 (Pre-automation era where cases were processed manually) and the remaining 57 cases pertained to the period following full automation of the refund process (where cases were processed online).

### 2.3.5 Audit criteria

The following Acts/Rules were used as sources of audit criteria during the Audit:

- (i) Meghalaya GST Act 2017 (MGST Act, 2017);
- (ii) Meghalaya GST Rules 2017 (MGST Rules, 2017);
- (iii) Guidelines issued by Central/State Government and GST Council from time to time.

### 2.3.6 Non-production of records

Audit had selected a sample of 136 refund cases from the GST Network for verification. Out of these 136 cases, 79 cases pertained to the pre-automation period and were processed manually and the remaining 57 cases pertained to the post-automation period where claims were processed online. During the pre-automation period, the applicant was required to file the refund claim online in Form RFD-01A and submit the printout of the application in hard copy along with requisite documents

to the jurisdictional tax officer. From the list of 79 refund cases filed during the pre-automation period, the State GST Commissionerate could only produce records of 23 cases, which is only 29.11 *per cent* of the total sample of 136 refund cases. Despite active pursuance, the records of the 56 Refund cases (**Appendix – 2.3.2**) were not made available even until the completion of audit. Thus, the audit sample is limited to 80 cases out of the sample of 136 cases (total money value of ₹ 24.70 crore) selected for audit. The total monetary value of 56 refund cases not produced to Audit was ₹ 4.93 crore *i.e.* 20 *per cent* of money value of total sampled cases.

On this being pointed out (February 2021) the Department stated (March 2021) that these cases were unavailable because the taxpayer had not submitted the hard copies of their applications and other documents. Department further stated that in some instances the tax payer may have filed the refund application in RFD-01A but never furnished the hard copies of the supporting documents. The Department referred the matter to NIC, Shillong seeking details after being pointed out by Audit. The reply of the Department is not backed by any evidence that systematic exercise was carried out to examine these cases and maintain adequate documentation. **Audit also observed that the Commissionerate did not have any mechanism to trace and close such cases.**

The audit scope is therefore limited to the extent of records actually produced by the Department and cannot vouchsafe for the 56 cases not produced to Audit.

## **2.3.7 AUDIT FINDINGS – SYSTEMIC**

### **2.3.7.1 Delay/Absence of post-audit of refund claims**

For centrally administered tax payers, CBIC has put in place a system of post-audit of refund orders. It was noticed during audit that no refund case was sent for post-audit in the State.

Audit observed (March 2021) that the Commissioner of Taxes, Meghalaya is yet to develop a mechanism for post-audit of refund claims. During the period covered by audit, 239 refund cases were processed without a system of post-audit of refund claims.

Audit recommends that a mechanism for post-audit of refund claims may be put in place at the earliest.



### 2.3.8 AUDIT FINDINGS – COMPLIANCE

The summary table of deviations depicting the extent of deficiencies noticed is as below:

**Table 2.3.3: Statement showing extent of deficiencies noticed in audit**

Nature of Audit findings (indicative only)	Audit sample		Number of deficiencies noticed		Deficiencies as percentage of sample
	Number	Amount	Number	Amount	
Delay in issue of refund orders	80	19.77	40	170	50
Delay in communicating refund orders to counterpart tax authority	80	19.77	5	50	6.25
Delay/ non-conducting of post audit of refund claims	80	19.77	136	2470	100
Refund issued despite deficiencies in refund application	80	19.77	5	5.69	6.25
Non-payment of interest of delayed processing of funds	80	19.77	40	3.68	50
Delay in issue of deficiency memo	80	19.77	2	1780	2.5

Audit findings are included in the subsequent paragraphs.

#### 2.3.8.1 Refund processed without requisite documents

The MGST Act, 2017, MGST Rules, 2017, the CBIC Circular No. 125/44/2019 – GST dated 18 November 2019 and the Taxation Department's Notification No. ERTS(T) 79/2017/471 dated Shillong 29<sup>th</sup> December, 2017 makes the submission of certain documents<sup>7</sup> mandatory for claiming of GST refunds. However, the CBIC Circular has not been endorsed by the Taxation Department of the State of Meghalaya.

Out of the 80 cases of refund involving amount of ₹ 19.77 crore examined in Audit, the following irregularities were noticed in three cases, as described below:

##### **A. Declaration not submitted and sanction of a time barred claim**

According to Rule 89(2)(1) of the MGST Rules, 2017, in cases of refund claims not exceeding two lakh rupees, the dealer has to submit a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person. Again, according to section 54(1) of MGST Act, 2017, any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the

<sup>7</sup> Including (i) various self-declarations relating to drawback availed by supplier, grant of Input Tax Credit to the supplier, incidence of tax, and non-prosecution of the claimant under the GST or any existing law for an amount above ₹ 250 lakhs (ii) statements on relevant invoices and Bank Realisation Certificate/Foreign Inward Remittance Certificate (BRC/FIRC) (iii) copy of GSTR-2A return for the relevant period containing details of inward supplies vis-à-vis Input Tax Credit, etc.

relevant date in such form and manner as may be prescribed. Further, according to Rule 54 (8) (e) of the Rules *ibid*, the refundable amount, if the applicant had not passed the incidence of tax or interest to another person, shall be paid to the applicant. Under this provision, refund claims for excess payment of tax can also be sanctioned to the applicant.

Scrutiny of records revealed that M/s G.T.L. Infrastructure Ltd<sup>8</sup> and M/s S.B Industries<sup>9</sup> claimed refund of ₹ 0.78 lakh and ₹ 0.54 lakh respectively towards excess payment of tax for the period February 2018 and August 2019 without uploading the self-declaration on the GST Portal as required by the Rule. Audit noticed that the refunds were processed and sanctioned by the Commissionerate in February and July 2020 even though the required declaration was not submitted by the applicants. Moreover, it was also noticed that M/s GTL Infrastructure Ltd filed the refund application in May 2020 after a lapse of more than two years from the relevant date, which is two years after the date of payment of tax, as per Rule 89 (2) (1) of the MGST Rules, 2017. As per extant provisions, this claim has already become time-barred. Yet the claims were processed by the Commissionerate in contravention of the relevant rules.

The matter was reported to the Department (February 2021). The Department accepted (March 2021) that the refunds were processed without requisite documents and assured Audit that letters would be issued to the two claimants asking them to furnish the declaration as per Rules.

### ***B. Inadequacy in deficiency memo***

According to Rule 89(2)(1) of the MGST Rules, 2017 a Certificate in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees.

M/s Bharti Airtel Ltd. submitted (April 2019) a refund claim of ₹ 4.32 lakh on account of excess balance in the Electronic Cash Ledger on the GST portal. Audit observed that the Commissionerate issued a deficiency memo to the company (July 2019) citing the reason that the requisite self-declaration was not furnished by the company. However, Audit noticed that the same had already been furnished by the company in June 2019 as per Rule 89(2)(1) of MGST Rule, 2017. It was also noticed that even though the refund claim was above ₹ 2 lakhs, the Commissionerate did not ask for a Chartered Accountant's certificate which was required as per extant provisions but merely insisted for self-declaration which the company has already furnished. The Commissionerate did not apply due diligence and sanctioned (26 September 2019) the refund claimed.

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<sup>8</sup> GST Number-17AACCG2107K1ZU, ARN Number-AA1705200002324.

<sup>9</sup> GST Number-17AAEHA9941E2ZC, ARN Number-AA1702200000861.

The matter was reported to the Department (February 2021). The Department accepted (March 2021) the audit observation and assured Audit that the requisite documents would be obtained from the taxpayer. Audit observes that such instances indicate that the procedures to ensure compliance with the law are not in place.

### **2.3.8.2 Inordinate delay in processing as well as sanctioning of refund claims**

Section 54 (7) of the MGST Act, 2017 read with Rule 90 of the MGST Rules, 2017 provides that the refund application needs to be processed within a maximum period of 60 days from the date of receipt of application complete in all respects, and if any deficiencies<sup>10</sup> are observed in the refund application, the same should be communicated to the dealer within a period of 15 days of filing the application. Further, Section 56 of the MGST Act states that, if any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest is liable to be paid at such rate not exceeding six *per cent*.

Audit noticed persistent delays in processing of the refund claims as well as delays in communicating the sanction orders of refund to the Treasury or the Pay & Accounts Office. The details of these cases are brought out in the succeeding paragraphs.

#### **A. Delay in processing of refund claim**

Scrutiny of records revealed that in **40<sup>11</sup> out of 80 cases** examined by Audit, ₹ 1.70 crore out of total sanctioned amount of ₹ 4.41 crore was sanctioned towards refund with delays ranging between 5 days to 471 days. The period of delay in months and number of cases involved is given in the table below:

**Table 2.3.4: Table showing range of delay:**

Sl. No.	Range of delay	No of cases
1.	Upto 3 months	25
2.	3-6 months	10
3.	More than 6 months	05
<b>Total</b>		<b>40</b>

Delay in processing of the refund claims test checked by Audit suggests not only a lackadaisical approach of the Department in processing the claims but also the absence of adequate monitoring by the administrative Department to ensure timely processing of such cases.

When Audit pointed this out (February 2021) the Department accepted (March 2021) that there were delays in processing of refund claims and though there was a liability of the Department to pay interest, however, so far, no taxpayers have claimed interest. The reply is untenable since the Department was required to pay interest on all cases of delayed payment.

<sup>10</sup> Deficiencies such as incomplete/improper application or supporting documents not filed.

<sup>11</sup> 13 cases were pre-automation and 27 were post-automation.

**Refund case of M/s Lafarge Umiam Private Ltd.**

On 13 June 2019, M/s Lafarge Umiam Private Ltd. filed two separate applications for refund of Input Tax Credit (ITC) of ₹ 4.74 crore and ₹ 13.06 crore respectively on account of export of goods and services without payment of tax for the financial year 2018-19.

Audit observed (February 2021) that the Commissionerate issued deficiency memos after significant delays on 27 November 2020 and on 20 January 2021 for claims of ₹ 4.74 crore and ₹ 13.06 crore respectively on the ground that the Company did not submit the CA certificate. These memos were issued after a delay of 17 months and 19 months respectively, thus violating the provisions of the MGST Act and Rules. The issue raised in the deficiency memos was also incorrect, since the CA's certificate is not required in the case of 'zero-rated' supply. As a result, the GST refunds of the taxpayer were unnecessarily delayed. Further, till the date of audit, M/s Lafarge Umiam Pvt. Ltd. has neither replied to the deficiency memos nor has the Commissionerate sanctioned the refunds.

The Department stated (March 2021) that there was a delay in processing of refund and added that the case is under examination and the Department will take appropriate action in due course.

**B. Delay in communicating sanction of refund claims to Treasury/PAO**

During the period between 1 July 2017 to 25 September 2019 (in the pre-automated phase of processing), seven MGST refund cases were sent to the Treasury and five cases were sent to PAO for payment to claimants after prolonged delays as shown in Tables 2.3.5 and 2.3.6 below:

**Table 2.3.5: Statement showing inordinate delay in forwarding of refund cases to Treasury**

Sl. No.	Taxpayer	Refund application date	Date of refund sanctioned	Delay in sanction (col 4 – col 3 - 60 days)	Date of forwarding of payment advice to Treasury	Delay in forwarding payment advice to Treasury (in days)	Actual date of credit by Treasury	Total delay (col 5 – col 3 - 60 days)	Amount of claim (₹) (MGST)
1	2	3	4	5	6	7	8	9	10
1	OML Entertainment Private Limited	15/05/2019	17/02/2020	218	12/11/2020	269	16/11/2020	491	2,50,000
2	Shri Phrangngi Shylla	16/11/2018	14/01/2019	-	06/03/2019	51	15/03/2019	59	2,050
3	M/S Anabond Limited	10/11/2018	18/03/2019	68	24/06/2019	98	28/06/2019	170	1,72,394
4	Balawanhun Kharkongor	07/02/2019	18/03/2019	-	24/06/2019	98	28/06/2019	81	3,190
5	M/S Laxmi Caterer	19/08/2019	26/11/2019	-	06/11/2019	-	15/11/2019	No delay	1,18,642
6	M/S B.K.Marak	12/09/2019	18/11/2019	7	09/03/2020	112	20/03/2020	130	62,440
7	M/S Godrej Consumer Products Ltd.	16/07/2019	22/11/2019	69	12/03/2020	111	19/03/2020	187	5,154
<b>Total</b>									<b>6,13,870</b>

**Table 2.3.6: Statement showing inordinate delay in forwarding of refund cases to Pay and Accounts Officer**

Sl. No.	Refund application date	Refund application date	Sanction date	Delay in sanction (col 4 – (col 3 - 60 days))	Forwarding of payment advice to PAO	Delay in forwarding payment advice to PAO (in days)	Actual date of credit by PAO	Total delay (col 5– (col 3 - 60 days))	Amount of claim (CGST /IGST) (₹)
1	2	3	4	5	6	7	8	9	10
1	M/S Reliance Jio Infocomm Ltd	13/03/2019	26/09/2019	137	14/10/2019	18	01/11/2019	173	3,372
2	M/S Bharti Airtel Limited	25/04/2019	26/09/2019	94	14/10/2019	18	01/11/2019	130	4,31,938
3	M/S Godrej Consumer Products Ltd.	16/07/2019	22/11/2019	69	26/11/2019	4	15/02/2020	154	37,51,992
4	North East Power Line Industries	27/12/2018	21/06/2019	116	01/07/2019	10	15/02/2020	355	7,01,006
5	North East Power Line Industries	08/04/2019	21/06/2019	14	01/07/2019	10	07/09/2019	92	1,34,092
<b>Total</b>									<b>1,96,780</b>

It can be seen from **Tables 2.3.5** and **2.3.6** above that out of the above 12 cases, the Commissionerate sanctioned nine cases after delays ranging from 07 to 218 days. The payment advice to the Treasury/PAO was further delayed in 11 cases by 51 to 269 days. Payment to the claimants was finally made with overall delay ranging from 59 to 491 days.

The matter was reported to the Department (February 2021). The Department stated (March 2021) that the delay can be partially attributed to the Department in processing of the refund claims. It stated further that the applicants may also be responsible for delays in complying with the deficiencies noted in RFD-03. The reply of the Department is deficient at many levels. To start with, the Department has failed to explain the reasons for delay in processing the sanction of refund applications. Further, though the Department has attributed the delay partly to late submission of compliance by the applicants to the deficiency memos, it did not provide any documentary evidence in support of its contention. Finally, the Department has not been able to explain the reason of delays in communication of sanction orders to the respective Treasury or the PAO, which is actually the responsibility of the tax authority as the applicant has no role whatsoever at this stage.

Audit is of the view that the Department has failed to set up an appropriate and effective monitoring and internal control mechanism for timely disposal of refund cases.

### **C. Non-payment of interest on delayed refunds**

Section 56 of the MGST Act states that if any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section(1) of that section, interest is liable to be paid at such rate not exceeding six *per cent*.

As discussed in the preceding paragraphs 2.3.8.2 (A) and 2.3.8.2 (B), Audit observed (February 2021) that there was a delay in processing of refund claims against 40 cases ranging between 05 to 491 days and final payment made to 11 claimants after a delay period ranging from 59 to 491 days. These refunds were, however, sanctioned without payment of interest in violation of the Act. The Department did not pay interest of ₹ 3.68 lakh on delayed refunds (**Appendix-2.3.3 A & B**).

The Department while accepting the Audit observations stated (March 2021) that so far there have been no interest claims by the taxpayers. The Department however, assured Audit that the reasons for the delay would be examined. Further, communication in this regard is still awaited from the Department (December 2021). The Department's response that no taxpayer has claimed interest on delayed payment is untenable because the Department is liable to suo moto pay interest on delayed payment refund under section 56 of MGST Act, 2017.

Audit recommends that the Department should put in place a monitoring mechanism to track refund applications so as to ensure timely disposal of refund claims in order to avoid interest liability.

### **2.3.9 Conclusion**

The audit on processing of GST refund claims revealed the following shortcomings attributable to the Department:

- Maintenance and availability of records was not adequate since the record of 56 refund applications could not be produced to Audit.
- There is no mechanism for post-audit of refund claims.
- Refund claims were sanctioned with inadequate documentation.
- Inordinate delays were observed in sanctioning of refunds and issue of deficiency memo. Interest was not paid in cases of delayed refund.
- There were inordinate delays in communicating/forwarding the refund orders to the Treasury/PAO resulting in delays in crediting the refund amount to the taxpayers' account. All the above indicates absence of monitoring mechanism in the Department.

### **2.3.10 Recommendations**

- Audit recommends that Taxation Department may put in place a well-designed and functional system for maintenance of complete documentation of refund cases. These documents should be easily retrievable in order to maintain transparency and accountability in the system.
- Audit recommends that the Department may put in place a mechanism to ensure that refunds granted comply with the extant provisions of the MGST Act, 2017 and are processed timely.
- Audit recommends that a mechanism for post-audit of refund claims may be put in place at the earliest.

- Audit also recommends that the Department should put in place a monitoring mechanism to track refund applications so as to ensure timely disposal of refund claims and also avoid interest liability on such delays.

## **2.4 Subject Specific Compliance Audit on Arrears of Assessment and Revenue under VAT Regime post GST roll out**

### **2.4.1 Introduction**

Prior to the roll-out of the Goods and Services Tax (GST) Act, 2017, the Taxation Department was responsible for the administration of taxes on trade and commerce. The collection of tax in the State of Meghalaya was governed by the provisions of Acts and Rules which are no longer in force after the roll-out of GST, such as the Central Sales Tax (CST) Act, 1956; the CST Rules, 1957; the Meghalaya Value Added Tax (MVAT) Act, 2003 and the MVAT Rules, 2005; erstwhile repealed Acts such as the Meghalaya Sales Tax (MST) Act, the Meghalaya Finance Sales Tax (MFST) Act and the Meghalaya Purchase Tax (MPT) Act. Several other Acts<sup>12</sup> which were not subsumed under GST are still in vogue in the State of Meghalaya.

With the introduction of the GST Act on 01 July 2017, the CST Act and the MVAT Act are no longer in operation. However, a number of cases pertaining to tax returns filed under the subsumed Acts continue to remain outstanding.

The Subject Specific Compliance Audit (SSCA) on “Arrears of Assessment and Revenue under VAT regime post GST roll out” was conducted with a view to assess the assessment pending and the resultant arrears of revenue and efforts made by the Department in assessing the pending cases and to recover the arrears of revenue. Audit was conducted during October 2020 to December 2020. Statistical information on arrears in assessment and recoveries of arrears of VAT was obtained from all the 17 Taxation Circles<sup>13</sup> in the State. Audit test checked records at the offices of the Commissioner of Taxes, the Superintendent of Taxes (ST) Enforcement Branch cum *Bakijai* Officer, Shillong and at nine Taxation Circles<sup>14</sup> within East Khasi Hills District. For the purpose of the CA, the period covered by Audit (i.e. 01 April 2015 to 30 September 2020) has been divided into two phases; viz (i) the Pre-GST period covering 01 April 2015 to 31 March 2018<sup>15</sup> and (ii) the Post-GST period covering the period from 01 April 2018 to 30 September 2020.

<sup>12</sup> Such as the Meghalaya Cement Cess Act 2010, the Assam Professions, Trades and Callings and Employments Taxation Act, 1947 (as adapted by Meghalaya), the Meghalaya Sales of Petroleum and Petroleum Products (including Motor Spirit) and Lubricant Taxation (MSL) Act, 1955 and the Meghalaya Regulation of the Game of Arrow and the Sales of Teer Tickets Act, 2018.

<sup>13</sup> Sixteen Taxation Circles and one Enforcement Branch cum *Bakijai* Officer.

<sup>14</sup> Circle – I, Circle – II, Circle – III, Circle – IV, Circle – V, Circle – VI, Circle – VII, Circle – VIII and Circle – XIII (Non- Resident Circle).

<sup>15</sup> Since the break-up of arrear for the period from 01 April 2017 to 30 June 2017 and from 01 July 2017 to 31 March 2018 was not available, taking a conservative view, the whole period of 2017-18 has been considered under Pre-GST period and comments on position of arrears under Post-GST period was taken from 01 April 2018 to 30 September 2020.

## 2.4.2 Audit findings

Audit findings were benchmarked with the provisions of MVAT Act, 2003, which stipulated that:

- Each and every return furnished by a registered dealer for any tax period shall be subject to scrutiny by the assessing authority (Section 39);
- If the dealer furnishes incorrect returns or fails to furnish any returns, then the Superintendent of Taxes (ST) can assess him to the best of his judgement (Section 45)
- If a dealer has filed returns for any tax period within the prescribed time and these returns are found to be in order, this shall be accepted as self-assessment (Section 53);
- The Assessing Officer (AO) is empowered to conduct provisional assessment and audit assessments of a dealer (Section 54, 55 and 56);
- No assessment shall be made after the expiry of five years from the end of the tax period to which the assessment relates (Section 57).

Returns that have undergone scrutiny by the Assessing Officer under the above provisions of the Act are treated as disposed assessments. Any returns for which scrutiny has not been completed under these provisions are treated as pending assessments. A comprehensive picture of the position of completed/disposed assessments *vis-à-vis* pending assessments for the pre-GST period and the post-GST period is given below.

### 2.4.2.1 Status of assessment during Pre-GST Period (01 April 2015 to 31 March 2018)

The periodical tax returns filed by the dealers under Meghalaya Value Added Tax Act, 2003, are subject to assessment by the Taxation Authorities to verify and ascertain their correctness and completeness. Taxation Authorities may take recourse to best judgement assessment in case returns are not furnished by a registered dealer within the prescribed time limit. Section 57 of the MVAT Act, 2003 states that no assessment under Section 55 or 56 shall be made after the expiry of five years from the end of the tax period to which the assessment relates.

During the pre-GST period (April 2015 to March 2018), the Taxation Authorities of the State had completed assessment of 1,71,905 cases against the total due for assessment of 4,72,444<sup>16</sup> cases, which represent an assessment rate of 36 *per cent* only. The number of pending assessments, new additions, completed assessments *vis-à-vis* number of cases likely to be time barred pertaining to the period from 01 April 2015 to 31 March 2018 (Pre-GST period) is given in the **Table** below:

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<sup>16</sup> Opening balance 266565cases + new addition 205879 cases.



**Table 2.4.1: Details of assessments in the Pre-GST period**

Year	Opening balance of outstanding assessments	Additions during the year	Total number of assessments due	Assessments completed during the year (%)	Closing balance	No. of cases likely to be time barred <sup>17</sup>
2015-16	266565	70491	337056	31251 (9)	305805	NA
2016-17	305805	100240	406045	62811 (15)	343234	27390
2017-18	343234	35148	378382	77843 (21)	300539	<b>33702</b>
<b>Total</b>		<b>205879</b>		<b>171905</b>		

Sources: Information furnished by the SsT.

It is seen from the above table that the rate of completed assessments had slowly picked up from 9 per cent in 2015-16 to 21 per cent in 2017-18. The number of cases likely to be time barred has increased to 33,702 cases in March 2018 from 27,390 cases in 2016-17. Even at the end of 2017-18, eight months after the roll out of GST, efforts to expedite the disposal of cases pending for assessment was absent.

Thus, as the Taxation Department failed to complete the assessments, the revenue implication on both the pending cases and cases likely to be time barred remained unassessed.

#### **2.4.2.2 Status of Assessment during Post-GST Period (01 April 2018 to 30 September 2020)**

The number of pending assessments, new additions, completed assessments as well as cases likely to be time barred during Post-GST period is shown in the **Table** below:

**Table 2.4.2: Details of assessments in the Post-GST period**

Year	Opening balance of outstanding assessments	Additions during the year	Total number of assessments due	Assessments completed during the year (%)	Closing balance	No. of cases likely to be time barred
2018-19	300539	455 <sup>18</sup>	300994	177151 (59)	123843	39637
2019-20	123843	377	124220	33537 (27)	90683	46802
2020-21 (upto September 2020)	90683	125	90808	16307 (18)	74501	51134
<b>Total</b>		<b>957</b>		<b>226995</b>		

Sources: Information furnished by the SsT.

It is seen from the table above that during the post-GST period 957 cases were added, and assessment of 2,26,995 cases (i.e. 75.29 per cent) was completed against the total due of 3,01,496 cases. Although there was an improvement on the overall assessment rate (75.29 per cent) in comparison to the Pre-GST period (36.39 per cent), the assessment rate has sharply declined from 59 per cent in 2018-19 to 18 per cent in

<sup>17</sup> Returns remaining unassessed for five years or more from the end of the tax period to which the assessment relates were counted as time barred. For example, unassessed cases pending from the year 2005 onwards upto 31 March 2013 have been taken as time barred for the tax year of 2016-17.

<sup>18</sup> From 01 July 2017 onwards no new returns were required to be filed under MVAT, 2003. However, the SsT of Circle-V, Circle-VII, Circle-VIII (Shillong) and the SsT of Khliehriat and Nongpoh continued to report new additions of assessment under these Acts during the year. Audit has called for clarification in this regard, but no reply has been received so far (March 2022).

2020-21. On the contrary, the number of cases likely to be time barred had increased to 51,134 cases as on 30 September 2020 from 39,637 cases in 2018-19.

Audit observed that one of the main reasons for the high number of cases of pending assessments was that the Taxation Department had not fixed any target for assessment and disposal of pending cases by the Assessing Officers. It was only after a departmental meeting held on 13 February 2020 that a target of six months was fixed to complete all pending assessments. Nevertheless, it was seen that the SsT failed to meet the target for disposal of cases and no tangible reasons for this failure could be stated to Audit.

Thus, due to pending assessments under MVAT Act, the revenue implication against the unassessed cases could not be quantified by the Department and the potential loss of revenue to the Government owing to time barred cases which are pending for more than five years, could not be ruled out.

### 2.4.3 Position of accumulation of revenue arrears

#### 2.4.3.1 Pre-GST Period (01 April 2015 to 31 March 2018):

Rule 38 (4) of the MVAT Rules, 2005 states that where any amount is payable by a dealer in respect of any period on account of tax assessed, interest or penalty is found due from him in an order of assessment, re-assessment *etc.*, the appropriate assessing authority shall serve a notice of demand in Form 10 in the manner specified in the notice therein. Further Section 107 of the MVAT Act, 2003 prescribes that where the amount of tax, interest, penalty or other sum payable under sub-section (1) of Section 48 remains unpaid, it may be recovered as an arrear of land revenue under the Meghalaya Land and Revenue Regulation (Assam Land and Revenue Regulation, 1886 as adopted) for the purpose of recovering the sums.

Arrears of tax accumulate from assessed cases when the dealers fail to respond to the demand notices issued to them and pay the amount demanded therein. Based on the information received from the 17<sup>19</sup> Taxation Circles, the monetary value of arrears, new additions as well as recovered arrears for the pre-GST period are shown in the

Table below:

**Table 2.4.3: Position of arrears in the Pre-GST period (₹ in crore)**

Year	Opening Balance	Addition	Total arrears due	Recovery made during the year (%)	Closing Balance
2015-16	58.31	7.10	65.41	8.04 (12)	57.37
2016-17	57.37	5.92	63.29	10.60 (17)	52.69
2017-18	52.69	87.25	139.94	30.72 (22)	109.22
<b>Total</b>		<b>100.27</b>		<b>49.36</b>	

Sources: Information furnished by the SsT

It is seen from the above table that total recoverable amount at the beginning of 2015-16 was ₹ 58.31 crore and an amount of ₹ 100.27 crore was added during

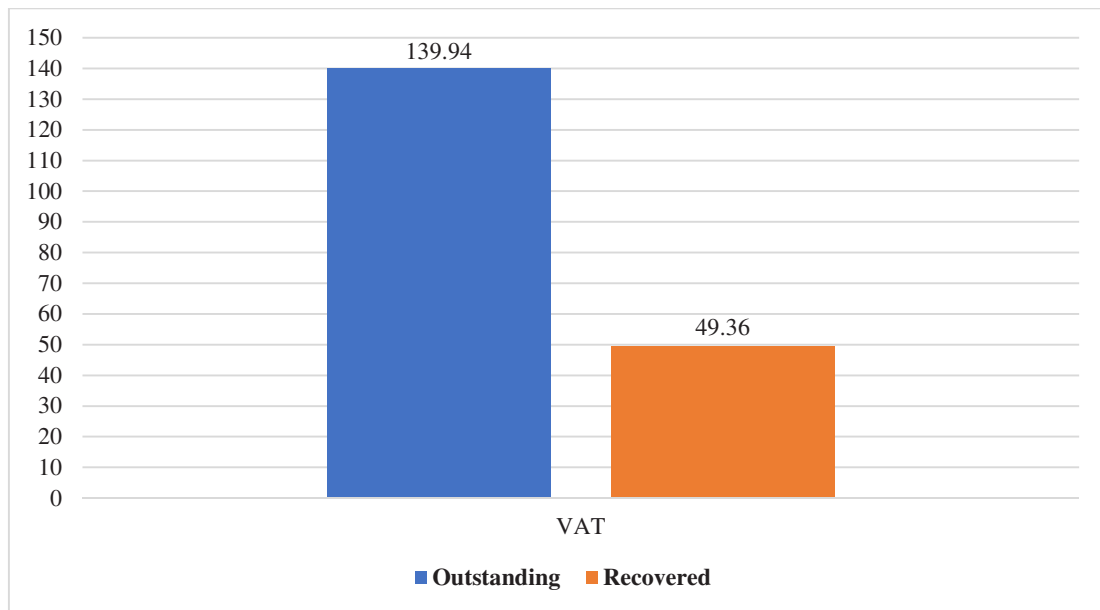
<sup>19</sup> Sixteen Taxation Circles under Assessing Officers and one Taxation Circle under Tax Recovery Officer.

2015-16 to 2017-18. Out of this an amount of ₹ 49.36 crore was recovered leaving a balance of ₹ 109.22 crore at the end of 2017-18 as unrecovered.

A graphical representation of the position of arrear recovery based on the data furnished by the Taxation Circles is given in the **Chart** below:

**Chart 2.4.1: Outstanding arrear amount and recovered amount**

(₹ in crore)



#### 2.4.3.2 Post-GST Period (01 April 2018 to 30 September 2020):

**Table 2.4.4** below shows the position of the monetary value of arrears, new additions as well as recovered arrears for the post-GST period:

**Table 2.4.4: Position of arrears in the Post-GST period**

(₹ in crore)

Year	Opening Balance	Addition	Total arrears due	Recovery made during the year (%)	Closing Balance
2018-19	109.22	20.84	130.06	11.65 (9)	118.41
2019-20	118.41	72.27	190.68	4.00 (2)	186.68
2020-21 (upto Sept 2020)	186.68	5.87	192.55	0.42 (0.2)	192.13
<b>Total</b>		<b>98.98</b>		<b>16.07</b>	

Sources: Information furnished by the SsT.

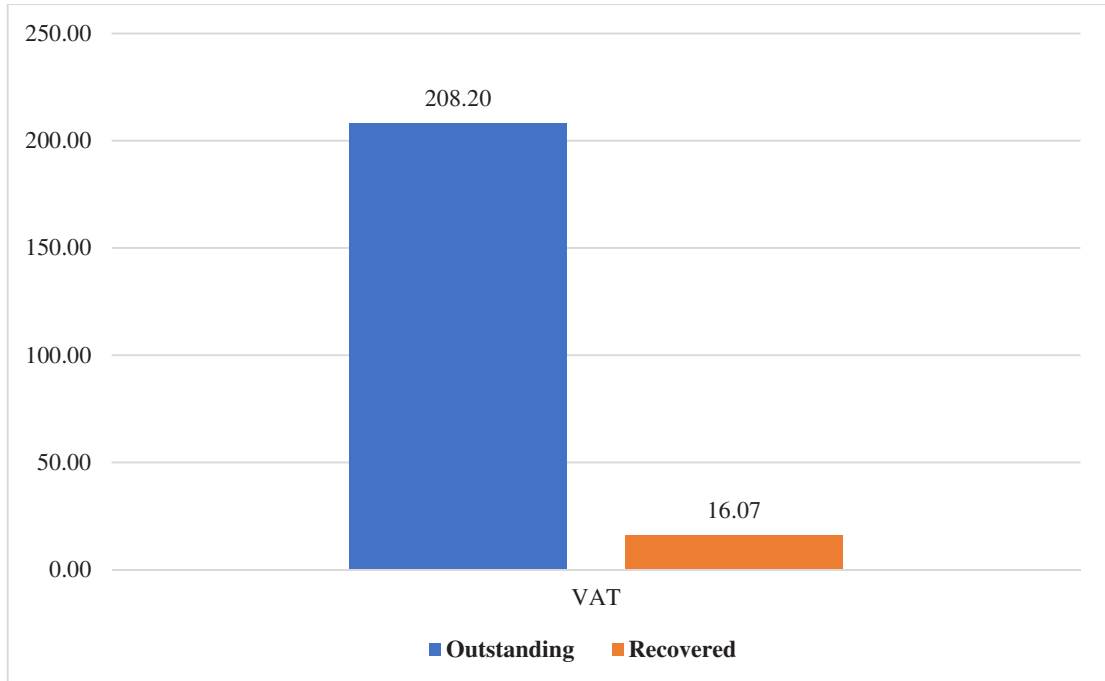
From the table above, it is seen that during 2018-19 to 2020-21, the Taxation Department had recovered ₹ 16.07 crore against the total assessed arrear of VAT of ₹ 208.20<sup>20</sup> crore i.e. with the overall recovery rate of only 8 per cent. It can also be seen that the recovery rate of assessed arrears of VAT has been declining from nine per cent in 2018-19 to 0.2 per cent in 2020-21. This clearly indicates weakening of efforts towards recovery of assessed arrears of VAT.

<sup>20</sup> Opening balance of ₹ 109.22 crore + ₹ 98.98 crore new addition during the period.

A graphical representation of the position of arrear recovery based on the data furnished by the Taxation Circles is given in the **Chart** below:

**Chart 2.4.2: Outstanding arrear amount and recovered amount**

(₹ in crore)



Both the slow pace of assessment of MVAT cases and declining percentage of recovery of arrears from assessed cases in the post-GST period indicates that the Taxation Department has not accorded high priority towards collection of Government revenue recoverable under the erstwhile MVAT. Audit observed that the Department had taken routine steps like issue of demand notices/reminders instead of targeted measures like fixing the last date for payment of the tax. In the event of failure of the assessee to pay the taxes, the Department could have fast-tracked the adjudication process for recovery of arrears.

Since the amount of unrecovered VAT revenue is substantial, the Department should put in all efforts to ensure recovery of the assessed arrears of VAT without further delay.

#### **2.4.4 Disputed and Undisputed Arrears**

Section 65 (1) of the MVAT Act, 2003 states that any dealer may appeal to the prescribed authority against any assessment within forty-five days or such further period as may be allowed by the said authority for cause shown to his satisfaction from the receipt of a notice of demand in respect thereof. However, no appeal shall be entertained by the prescribed authority unless he is satisfied that the amount of tax, penalty or interest, as the dealer may admit to be due from him, and such percentage of the disputed tax, as may be prescribed, has been paid.

Therefore, when an assessed dealer files an appeal or review to the Assessing Authority against the assessment made by the Assessing Officer, the arrears due from the dealer are known as **disputed** arrears. However, when the assessee neither complies to the demand issued by the Assessing Officer for rectification of any discrepancy noticed during assessment yet files no appeal or review against the assessment, the arrears emerging thereof is known as **undisputed** arrears.

Data furnished by the Taxation Circles in Meghalaya revealed that out of the total amount of ₹192.13 crore pending for recovery, an amount of ₹ 22.21 crore (11.56 per cent) was disputed revenue. The break-up of disputed arrear pending under VAT and under other Acts are given in the **Table** below:

**Table 2.4.5: Pendency of arrears** (₹ in crore)

Pendency of Arrears	Disputed arrears	Undisputed arrears	Total
Pending with AOs	3.11	64.63	67.74
Pending with TRO	19.10	105.29	124.39
<b>Total</b>	<b>22.21</b>	<b>169.92</b>	<b>192.13</b>

Source: Information furnished by the SsT.

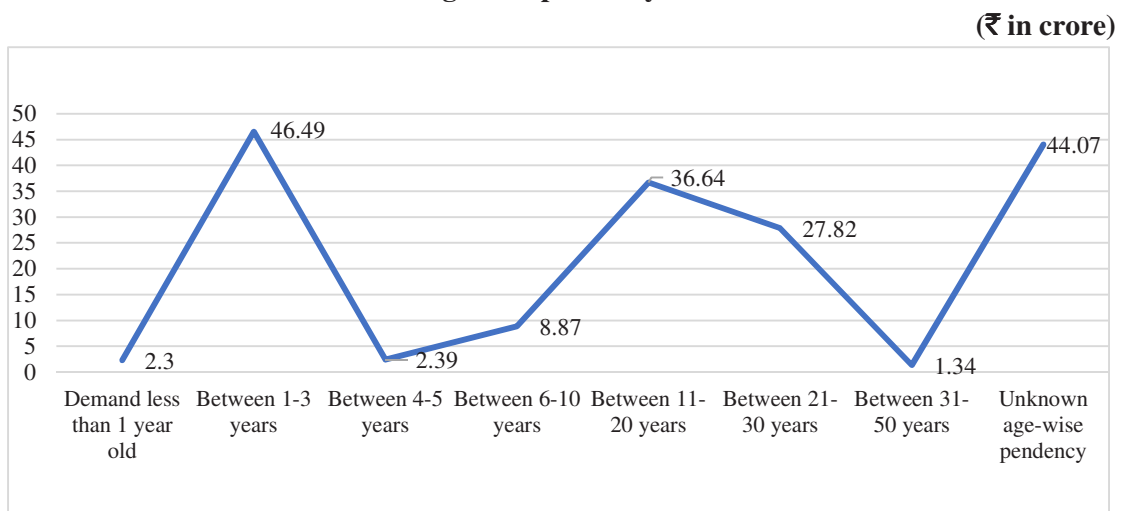
Audit examination of the information furnished by the Taxation Circles revealed that as on 30 September 2020, a total of 87 cases of disputed arrears with revenue implication of ₹ 22.21 crore were pending with the Appellate Authority/Revision Authority/Appellate Tribunal/ Court.

It is clear from the above table that the percentage of disputed revenue of the total revenue is only 11.56 per cent indicating that the major portion of revenue (88.44 per cent) is undisputed.

#### 2.4.4.1 Age-wise pendency of undisputed arrears

Audit observed that out of the undisputed arrears of ₹ 169.92 crore pending under VAT, ₹ 65.80 crore had been outstanding for a period of more than 10 years. The age-wise pendency of the total assessed arrears of VAT is given in the **Chart** below:

**Chart 2.4.3: Age-wise pendency of VAT arrears**



Sources: Based on information furnished by the SsT.

Audit noticed that the SsT had reported the outstanding arrears during internal review meetings. However, no proactive steps had been taken against tax defaulters as provided for under Section 60 (1) of the MVAT Act, 2003, which prescribes the issuance of notice to banks/individuals who hold money for or on account of any defaulting dealer, in order for them to pay into Government Treasury such of the money as is sufficient to recover the arrear revenue. No reasons were furnished to Audit by the AOs/TRO for long pendency of arrears.

In view of the above, Audit observed that with such lengthy delays in taking further action to follow up the cases, the possibility of recovering the arrear revenue from such cases is very minimal and almost nonexistent as the dealers may have closed down business many years since and would be untraceable.

#### **2.4.4.2 Arrears pending with the Assessing Officers**

Rule 38 (4) of the MVAT Rules, 2005 provides that where any amount payable by a dealer or a person in respect of any period on account of tax assessed, interest or penalty is found due from him in an order of assessment, re-assessment, re-determination, appeal, revision or review, as the case may be, the assessing authority shall serve a notice of demand in Form 10 in the manner specified in the notice therein.

Further, Section 107 of the MVAT Act prescribes that where the amount of tax, interest, penalty and other sum payable remains unpaid, it may be recovered as an arrear of land revenue. The State Government may empower the Commissioner of Taxes or any person appointed to assist him to exercise the power under the Meghalaya Land and Revenue Regulation Act, 1972,<sup>21</sup> for the purpose of recovering the sums.

In Meghalaya, the ST, Enforcement Branch-cum- Bakijai Officer functions as the Tax Recovery Officer (TRO) under this Act. Any arrears pending and unrecoverable by the AOs are forwarded to the TRO to issue notice to the tax defaulters under the Bengal Public Demand Recovery Act, 1913.

As on 30 September 2020, it was observed that total undisputed arrears under VAT amounting to ₹ 64.63 crore were pending with the Assessing Officers. Test check of records of selected nine Assessing Officers by Audit revealed the following:

- None of the nine selected Taxation Circles maintained systematic records or registers either manually or electronically to track the position of recovery of arrear tax from defaulting dealers.
- In 34 cases involving arrear revenue of ₹ 6.83 crore, first demand notices were issued with delays ranging from 25 to 643 days from the date of assessment,

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<sup>21</sup> Adapted by Meghalaya from the Assam Land and Revenue Regulation, 1886.

of which 12<sup>22</sup> cases involving ₹ 5.41 crore (79.21 per cent) falls under ST Circle-III (**Appendix-2.4.1**).

- 104 dealers with arrear revenue amounting to ₹ 12.94 crore had not been issued with reminders for payment of assessed tax, even after a lapse ranging between 2 months and 13 years from the date of issue of the first demand notice. Out of these, 23 cases involving ₹ 5.46 crore (42.19 per cent) falls under ST Circle-III (**Appendix-2.4.2**).
- In 10 cases involving arrear revenue of ₹ 2.50 crore, the AOs failed to recover the arrears for five years and more but did not refer these cases to the TRO for recovery, of which 2 cases involving ₹ 2.36 crore (94.40 per cent) pertained to ST Circle-XIII (**Appendix-2.4.3**).

Thus, delay in taking timely action like issue of demand notices and reminders and failure to refer the cases to the Tax Recovery Officer (TRO) has resulted in loss of government revenue amounting to ₹ 64.63 crore.

#### **2.4.4.3 Arrear pending with the Tax Recovery Officer (Bakijai Officer)**

In Meghalaya, the ST, Enforcement Branch-cum- Bakijai Officer functions as the Tax Recovery Officer (TRO) under Section 107 of MVAT Act. Any arrears yet pending and unrecoverable are forwarded to the Bakijai Officer under the Deputy Commissioner (DC) to recover them as arrears of land revenue. The Bakijai Officer under the DC issues notice to the tax defaulters under the Bengal Public Demand Recovery Act, 1913.

Audit examination of the records of the defaulting dealers revealed the following irregularities:

- The Taxation Department issues legal notices through the Government Pleader for recovery of outstanding dues. It was observed that in March 2015, 41 legal notices issued by the Department involving arrears of ₹ 9.32 crore under VAT and older, repealed Acts<sup>23</sup> were returned as the tax defaulters could not be traced, resulting in loss of Government revenue to that extent.
- In 65 cases involving arrears of ₹ 76.16 crore, no demand notices had been issued by the TRO. Absence of specific timeframe instructing the TRO to issue demand notices to defaulters within a specified period of time has resulted in laxity in the pace of issuance of notices, resulting in non-recovery and loss of Government revenue to that extent.
- Even in cases where demand notices had been issued to defaulters, these demand notices had been issued with delays ranging from one year to 25 years from the date of receipt of information from the AOs.

<sup>22</sup> Several persistent, large defaulters are (1) Shri Hardeodas Jagannath Pvt. Ltd (₹ 49.72 lakh) – Circle III (2) M/s Syrpai Automotive (₹ 2.15 crore) – Circle III (3) M/s J.P. Enterprise (₹ 18.20 lakh) – Circle VI (4) M/s R.P. Motors (₹ 2.57 crore) – Circle III

<sup>23</sup> Including the Meghalaya Finance Sales Tax (MFST), the Meghalaya Sales Tax (MST) and the Meghalaya Purchase Tax (MPT) Acts.

#### 2.4.5 Monitoring and Supervision

Section 19 of the Legal Services Authorities Act, 1987 states that every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee may organize Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit. A Lok Adalat has the jurisdiction to determine and arrive at a compromise or settlement between the parties to a dispute.

Audit observed the following:

- In six cases of disputed arrears, the parties agreed to settle the arrears pending under the TRO for an amount of ₹ 25.64 lakh at the National Lok Adalat held on 6 December 2014. However, it was observed that even as on 30 September 2020, four parties had failed to clear all the dues thereof, even though the deadline for payment had been fixed at 31 March 2015. The TRO had, despite seeking instruction on the matter from the ACT/CoT, not been advised to initiate any further action.
- 114 cases with arrear revenue amounting to ₹ 8.57 crore were forwarded by the Commissioner of Taxes to the Deputy Commissioner<sup>24</sup> (DC), East Khasi Hills, Shillong in January 2013 for recovery of unpaid tax as arrears of land revenue. However, no follow-up action was taken by the Taxation Department with regard to the recovery of revenue under these cases and no records thereof could be produced to audit.
- No records or registers pertaining to court cases and arrear pending with the Appellate Authority/ Revision Authority were found to have been maintained by the Taxation Department, which is a contravention of the Government instruction<sup>25</sup> dated 22 September 2004.

#### 2.4.6 Conclusion

- The Department failed to complete assessments in respect of 74501 cases pertaining to assessments under VAT.
- There was an addition of VAT arrear amounting to ₹ 98.98 crore between 01 April 2018 and 30 September 2020 after the roll-out of GST.
- The number of pending assessment of cases was 74501 as on September 2020 which included likely time barred cases of 51134.
- In 65 cases involving arrears of ₹ 76.16 crore, no demand notices had been issued by the TRO resulting in loss of revenue to that extent.

<sup>24</sup> The Bakijai Officers under the Taxation Department derived their powers under the Assam Land and Revenue Regulation, whereas the Bakijai Officers under the Deputy Commissioner (DC) derived their powers under the provisions of the Bengal Public Demand Recovery Act. Since the MVAT Acts do not contain stringent provisions for penalizing defaulters, arrear cases are handed over to the Bakijai Officers under the DC for recovery of the tax as arrears of land revenue.

<sup>25</sup> Vide Letter No. PER (AR) 84/96/Vol. II/112 dated 22 September 2004.



- The Department has not instituted a system to monitor arrears in assessment and recovery of arrear revenue and year-wise target of completion of assessment was also not fixed by the Department.

#### **2.4.7 Recommendations**

- The Department may review old cases pending for more than ten years in order to determine recoverable and irrecoverable revenue, and to initiate action for write-off of irrecoverable arrears.
- Assessment of all the pending cases under VAT regime may be initiated without delay. Target for completion of the cases may also be fixed for each Assessing Officer.
- The Department may take action to recover outstanding dues of tax defaulters who had migrated to GST as arrears of tax as per provision of Section 7 (a) of the MGST Act, 2017.
- The Department may consider prescribing a timeframe for disposal of the appealed cases by the Appellate Authority.

## 2.5 Evasion of tax on sale of Motor Spirits and High Speed Diesel

**Superintendent of Taxes, Circle – III, Shillong failed to assess the case records of the dealers which resulted in concealment of turnover on motor spirits/high speed diesel and consequent evasion/short payment of tax to the tune of ₹ 0.89 crore.**

Section 11 (4) of the Assam (Sales of Petroleum *etc.*) Taxation Act, 1955 (as adapted by Meghalaya) states that if the Superintendent of Taxes (ST) is not satisfied with the correctness of returns furnished by a dealer, then the ST can assess to the best of his judgement the amount of tax due from the dealer. Further, Section 16 (1) (c) of the Act *ibid* stipulates that if the dealer has concealed particulars of his turnover, then the dealer is liable to pay as penalty, in addition to the tax payable, a sum not exceeding one and half times the tax payable. In addition, interest on tax payable is leviable under Section 20A of the Act *ibid* as shown in the table below:

<b>For the first 60 days from the due date<sup>26</sup></b>	<b>12 per cent per annum</b>
<b>Beyond 60 days from the due date</b>	<b>24 per cent per annum</b>

Scrutiny (June 2020) of records of the ST, Circle III, Shillong revealed that a total of 17 Motor Spirits (MS)/Petrol and High Speed Diesel (HSD) dealers were registered under the jurisdiction of ST, Circle III, Shillong as on 31 March 2020. As per the rates of tax applicable under the Act *ibid*, MS is taxable at 22 per cent of sales value during March 2016 to March 2020 and HSD at 13.5 per cent. Further scrutiny of records of all the 17 registered dealers revealed that between March 2016 and March 2020, a dealer namely M/s Arkiwan Service Station, Sohiong Umsaw Dombhoi, East Khasi Hills disclosed sales of MS and HSD valued at ₹ 10.63 crore<sup>27</sup> for which the dealer had paid tax amounting to ₹ 1.12 crore<sup>28</sup>. However, on cross examination of utilisation of Form ‘C’<sup>29</sup> submitted by the dealer, it was seen that during the same period the dealer actually purchased MS/HSD worth ₹ 15.40 crore. This indicates that the ST, Circle – III, Shillong did not assess the case records of the dealers.

Thus, failure of the ST to assess the case records of the dealers had enabled the dealer to conceal stock of MS/HSD worth ₹ 4.77 crore which resulted in minimum evasion of tax amounting to ₹ 0.65 crore<sup>30</sup>.

Further, as per the revised rates of tax applicable under the Act *ibid*, MS was taxable at 22 per cent of sales w.e.f. 15 March 2016 and HSD at 13.5 per cent w.e.f. 18 March 2015. During the period from March 2016 to March 2020, the dealer disclosed sales of MS and HSD valued at ₹ 10.63 crore. However, the dealer had paid ₹ 1.12 crore only as tax against the payable amount of ₹ 1.36 crore. This resulted in short payment of tax to the tune of ₹ 0.24 crore (**Appendix – 2.5.1**). Reasons for the

<sup>26</sup> Due date is the end of the month following the quarter.

<sup>27</sup> MS (₹ 3.09 crore) and HSD (₹ 7.54 crore)

<sup>28</sup> The dealer did not disclose closing balance in his returns.

<sup>29</sup> Form ‘C’ is issued by the Taxation Department to registered dealers who make inter-state purchases.

<sup>30</sup> ₹ 4,80,40,088 x 13.5 %.

short payment of tax by the dealer was neither found on record nor stated by the ST, Circle – III, Shillong. However, Audit noticed that the rate of tax on sales of MS was calculated @ 20 per cent instead of the prescribed rate of 22 per cent on sales figures of 4 (four) quarters ending June 2016, September 2016, June 2017 and September 2017. Besides, the ST, Circle – III, Shillong had not assessed the case records even after four years.

The ST, Circle – III, Shillong, while accepting the Audit observations stated (January 2022) that (i) assessment under Section 11 (3) of the Assam (Sale of Petroleum, etc.) Taxation Act, 1955 (as adapted by Meghalaya) was made in August 2020 and (ii) demand notice for ₹ 1.28 crore<sup>31</sup> had been issued (August 2020), of which the dealer had already paid ₹ 0.65<sup>32</sup> crore between October 2020 and September 2021. The ST further stated that the dealer had requested to pay the balance amount of ₹ 0.63 crore<sup>33</sup> on instalment basis. However, till date (March 2022) the ST was yet to recover the balance amount from the dealer.

Fact remains that due to the delay in carrying out assessment of case records of M/s Arkiwan Service Station, Sohiong by the ST, Circle – III, Shillong, that too only after being pointed out by Audit, has not only resulted in belated realisation of tax amounting to ₹ 0.65 crore but also non-realisation of ₹ 0.63 crore despite lapse of more than four years.

The matter was reported to the Government (November 2021); reply is awaited (March 2022).

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<sup>31</sup> ₹ 85,17,231 (tax) + ₹ 4,13,375 (surcharge) + ₹ 38,32,315 (interest) + ₹ 20,000 (penalty) = ₹ 1,27,82,921.

<sup>32</sup> ₹ 42,07,253 (tax) + ₹ 1,71,246 (surcharge) + ₹ 21,99,581 (interest) = ₹ 65,78,080.

<sup>33</sup> ₹ 43,09,978 (tax) + ₹ 2,42,129 (surcharge) + ₹ 16,32,734 (interest) + ₹ 20000 (penalty) = ₹ 62,04,841.

## 2.6 Loss of revenue

**Superintendents of Taxes, Circle IV and VI, Shillong failed to initiate action against two dealers who had suspended their businesses and stopped furnishing their tax returns resulting in loss of ₹ 28.78 lakh and non-realisation of assessed revenue amounting to ₹ 84.81 lakh.**

Under Section 11 of the MVAT Act, Input Tax Credit (ITC) is allowed to a registered dealer in respect of his purchase of taxable goods from another registered dealer for resale in the State. Further under Section 45 (5) of the MVAT Act, if a dealer closes his business, then the Superintendent of Tax (ST) shall assess the tax on goods that remain in stock at the time of closure of business on which ITC has already been given. As per Rule 28 of MVAT Rules 2005, in the event of failure to furnish returns on intra-state purchases, the certificate of registration of a dealer shall be suspended. Further, if a dealer fails to pay the full amount of tax payable by due date, simple interest at the rate of two *per cent* per month from the first day of the quarter following the due date is leviable under Section 40 of the MVAT Act. In addition, for non-payment of tax, penalty not exceeding twice the amount of tax involved is also leviable under Section 90 read with Section 96 of the Act *ibid*.

Under the MVAT Act, 1569 dealers were registered under the jurisdiction of the SsT, Circle IV and VI, Shillong as on 30 June 2017. Out of the total registered dealers, audit test checked the records of 53 dealers (3 *per cent*) and noticed that two<sup>34</sup> dealers disclosed purchase of goods from within and outside the State amounting to ₹ 6.77 crore during the period from April 2014 to March 2017 and had also claimed ITC amounting to ₹ 25.26 lakh on such purchases. During the same period, the dealers disclosed sales of ₹ 5.44 crore on which tax amounting to ₹ 55 lakh was payable. However, the dealers paid tax amounting to ₹ 30.02 lakh after adjusting the ITC available to them.

Audit noticed that one dealer<sup>35</sup> had stopped furnishing any returns after June 2014. Verification of utilisation of 'C' forms revealed that the dealer continued to import goods valued at ₹ 2.18 crore from July 2014 to January 2015. As of January 2015, goods worth ₹ 3.25 crore remained with the dealer. The other dealer<sup>36</sup> had stopped furnishing returns after March 2017. As of March 2017, goods worth ₹ 1.19 crore remained with the dealer. Together, goods worth ₹ 4.44 crore<sup>37</sup> remained with both these dealers.

Despite failure to furnish tax returns for such a long period, the SsT did not initiate the process to suspend the dealers' registrations and failed to assess the tax payable on the closing stock of the dealers. The failure of the SsT to make timely assessments

<sup>34</sup> M/s KBS Motors and M/s Mohan Trading.

<sup>35</sup> M/s KBS Motors.

<sup>36</sup> M/s Mohan Trading.

<sup>37</sup> M/s KBS Motor (Opening stock ₹ 0.92 crore + purchase ₹ 3.94 crore – sales ₹ 1.61 crore = closing stock ₹ 3.25 crore) and M/s Mohan Trading (Purchase ₹ 5.02 crore – sales ₹ 3.83 crore = closing stock ₹ 1.19 crore) = ₹ 4.44 crore.

resulted in non-realisation of VAT amounting to ₹ 64.42 lakh. Additionally, penalty not exceeding ₹ 1.29 crore and interest of ₹ 74.70 lakh were also leviable (**Appendix - 2.6.1**).

The cases were referred to the Taxation Department, Government of Meghalaya in February 2020. The ST, Circle IV, Shillong while accepting the audit observations, stated (April 2020) that in respect of M/s Mohan Trading, despite an inquiry and notices issued, the whereabouts of the dealer is currently not known but assured that assessment of the dealer would be carried out. However, the outcome of the action taken by the Department or assessment made is yet to be intimated (February 2022). With regard to M/s KBS Motors, on this being pointed in Audit, the ST, Circle VI, Shillong stated (January 2022) that assessment for the years 2012-13 to 2014-15 had been carried out on 26 October 2021 and demand notices amounting to ₹ 84.81 lakh (Tax: ₹ 73.38 lakh and interest: ₹ 11.44 lakh) had been served to the dealer (November 2021). However, no amount had been recovered till date (February 2022).

Thus, failure of the SsT to initiate timely action against the two dealers who had either suspended their businesses or stopped furnishing their tax returns had resulted in loss of ₹ 28.78 lakh and non-realisation of assessed revenue amounting to ₹ 84.81 lakh.

The matter was reported to the Government (November 2021); reply is awaited.

**Recommendation: The State Government should fix responsibility on the ST concerned who failed to initiate timely action to suspend the dealer's registration who stopped furnishing the tax returns and in failing to carry out timely assessment of the defaulting dealers.**

