
Finance Department**Chapter 3: Goods & Services Tax****3.1 Processing of Refunds under GST****3.1.1 Introduction**

Timely refund mechanism constitutes a crucial component of tax administration, as it facilitates trade through release of blocked funds for working capital, expansion and modernisation of existing business. The provisions pertaining to refunds contained in the GST laws aim to streamline and standardise the refund procedures under the GST regime.

Some of the aspects related to the refund mechanism, which are vital from the perspective of compliance and adequacy of internal controls include the following:

- Refund application was filed within a period of two years from the relevant date.
- Acknowledgements were issued within fifteen days.
- Refund application had all the supporting documents attached with it.
- Refund of unutilised Input Tax Credit (ITC) has been allowed in case of supply of services.
- Tax officer has performed all the checks before sanctioning the refund claim.
- Refund claim was disposed off within the time limit of 60 days.
- Interest has been paid due to belated disposal of refund claim and the reasons for delay were recorded.

All the processes from submission of applications to processing thereof have been implemented electronically on the GST portal with effect from 26 September 2019 (Automation of Refund Process). Prior to this date, off-line processing of refund applications had been carried out.

Accordingly, the circulars issued earlier laying down the guidelines for manual submission and processing of refund claims have either been superseded or modified. A fresh set of guidelines have been issued for electronic submission and processing of refund claims vide Master Circular No.125/44/2019-GST dated 18 November 2019.

3.1.2 Audit Objectives

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

- (i) Provisions of the Acts, Rules, Notifications, Circulars, *etc.* issued in relation to grant of refund have been complied with.
- (ii) Systems and processes adopted to ensure compliance by taxpayers are effective.

- (iii) Internal controls adopted to measure the performance of Departmental officials in disposing the refund applications are adequate.

3.1.3 Audit Scope

Audit test checked and examined selected Refund records for the period from July 2017 to July 2020, under Section 16 of C&AG's DPC Act, 1971.

The Office of the CAG of India obtained pan-India refund data from GSTN and a sample of refund cases for State GST in Odisha was selected, for detailed examination by the Office of the AG (Audit I), Odisha.

Accordingly, Audit examined the selected sample of 268 cases covering 34 Circles¹ under the Commissionerate of CT & GST, Odisha, Cuttack.

3.1.4 Audit Criteria

The audit criteria adopted were:

- Relevant provisions of the Act for SGST/ IGST.
- Notifications/ Circulars issued by the Commissioner of CT & GST, Odisha.
- Judgements of Hon'ble Supreme Court/ High Court/ Tribunal.

3.1.5 Audit Methodology

The methodology adopted for this audit assignment was as follows:

- Entry Conference held with CT & GST Commissioner.
- Scrutiny of Refund records, *i.e.* both hard copies and soft copies and analysis of extracted data.
- Analysis of Refunds under GST through the backend system of GST Portal.
- Cross check of export data with ICE-GATE data.
- Study and application of press clippings/ internal audit reports/ vigilance reports/ public complaints, if any.
- Interaction with GST Departmental officials.
- Issue of Audit Requisitions and Audit Queries, discussion of Audit Observations with Heads of Offices.

Audit findings

3.1.6 Irregularities in processing of refunds

During scrutiny of records following irregularities were noticed:

¹ Angul, Balasore, Bargarh, Bhadrak, Bhanjanagar, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III, Bhubaneswar-IV, Boudh, Cuttack-I-City, Cuttack-I-East, Cuttack-I-West, Cuttack-I-Central, Cuttack-II, Dhenkanal, Ganjam-I, Ganjam-II, Jagatsinghpur, Jajpur, Jatni, Jharsuguda, Kalahandi, Kantabanji, Kendrapara, Keonjhar, Koraput, Mayurbhanj, Nayagarh, Nuapara, Puri, Sambalpur-I, Sambalpur-II and Sundargarh Circle

3.1.6.1 Acknowledgements not issued within time

Rule 90 (1) and (2) of Odisha Goods and Services Tax (OGST) Rules, 2017 stipulates that where the application relates to a claim of refund from the Electronics Cash Ledger (ECL), an acknowledgement in Form GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period *i.e.* 60 days specified for processing of refund application. For the application related to refund other than ECL, the application shall be forwarded to the proper officer within a period of 15 days of filling of the said application. An acknowledgement in Form GST RFD-02 shall be made available to the applicant within 15 days through the common portal. The acknowledgement shall clearly indicate the date of filling claim and the time period *i.e.* 60 days specified for processing the refund.

Out of the 268 refund cases examined, it was noticed that in 50 refund cases there were delays in issue of acknowledgement ranging from 1 to 333 days (**Appendix 3.1.1**). This resulted in non-observance of the provisions of Rule 90 of OGST Rules, 2017.

On this being pointed out, the Commissioners of the concerned GST Circles stated that the delays in issue of acknowledgement were due to submission of incomplete set of supporting documents by the applicants, lack of familiarity on the part of the Departmental personnel with the portal and the COVID-19 outbreak (from March 2020 onwards). Response to these Audit Observations from the Office of the GST Commissioner, Odisha is awaited.

As evident from the reply, the Departmental personnel were not fully familiar with the portal and therefore, they need to be trained as soon as possible.

3.1.6.2 Refund orders not sanctioned in time

Rule 92 of the OGST Rules, 2017 stipulate that upon submission of refund application, the officer shall carry out the examination process. He shall examine if the refund claim amount is due and payable to the applicant and then he shall make an order in Form GST RFD-06 sanctioning the amount of refund to which the applicant is entitled, within 60 days of receipt of application. He should also mention therein the amount, if any, refunded to him on a provisional basis in case of zero-rated supply.

Out of the 268 refund cases examined, it was noticed that in 18 refund cases there were delays in sanction of refunds ranging from 10 to 115 days (**Appendix 3.1.2**). This resulted in non-observance of the provisions of Rule 92 of OGST Rules, 2017.

On this being pointed out, the Commissioners of the concerned GST Circles stated that the delays in sanction of refund orders were due to submission of incomplete set of supporting documents by the applicants and the COVID-19 outbreak (from March 2020 onwards). Response to these Audit Observations from the Office of the GST Commissioner, Odisha is awaited.

Audit also verified that the delay was not attributable to the Department.

3.1.6.3 Provisional refund on account of zero-rated supply not sanctioned within time

Rule 91(1) & (2) of OGST Rules, 2017 provide that provisional refund on account of zero rate supply shall be granted, subject to the condition that the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds ₹ 2.5 crore.

The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being *prima facie* satisfied that the amount claimed as refund under Sub-Rule (1) is due to the applicant in accordance with the provisions of sub-section (6) of Section 54, shall make an order in FORM GST RFD-04, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days from the date of acknowledgement under sub rule (1) or sub rule (2) of Rule 90.

Out of the 84 refund cases examined (on account of zero-rated supply of goods or services or both till July 2020), it was noticed that in seven refund cases, there were delays in sanction of provisional refunds ranging from 3 to 50 days (**Appendix 3.1.3**). This resulted in non-observance of the provisions of Rule 91(2) of OGST Rules 2017.

On this being pointed out, the Commissioners of concerned GST Circles stated that the delays in sanction of provisional refund orders were due to submission of incomplete set of supporting documents by the applicants, lack of familiarity on the part of the Departmental personnel with the portal and the COVID-19 outbreak (from March 2020 onwards). Response to these Audit Observations from the Office of the GST Commissioner, Odisha is awaited.

As evident from the reply, the Departmental personnel were not fully familiar with the portal and therefore, they need to be trained as soon as possible.

3.1.6.4 Irregular allowance of refund due to inverted duty structure

As per section 54 (3) of the OGST 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 OGST Rules 2017 prescribes the formula for maximum refund of unutilised ITC on account of inverted duty structure. As per the Rule, net ITC includes the input tax credit availed only on inputs during the relevant period and does not include credit availed on input services.

Out of the 25 refund cases examined (on account of inverted duty structure), it was noticed that in one refund case, while granting refund the Department had considered ITC availed on input services. This was irregular and resulted in inadmissible allowance of refund to the tune of ₹ 11,976 (**Appendix 3.1.4**).

On this being pointed out, the Commissioner of CT & GST stated that as a result of audit, the taxpayer had paid back ₹ 11,976 on 01 July 2021 and the copy of DRC 03 had been submitted in support.

3.1.6.5 Delay/ non-conduct of post audit of refund claims

The CBEC circular No 17/17/2017-GST dated 15/11/2017 elaborately laid down the procedure for manual processing of refunds of zero rated supplies. The circular *inter alia*, stipulated that the pre-audit of manually processed refund applications is not required till separate detailed guidelines are issued by Board, irrespective of the amount involved. However, it was clarified that the post audit of refund order shall be continued as per the extant guidelines.

Out of the 268 refund cases examined, no post audit had been conducted (**Appendix 3.1.5**).

On this being pointed out, the concerned head of the GST Circles stated that the Commissioner of CT & GST, Odisha is the competent authority to take a decision on this issue. Reply/ response from Commissioner CT&GST was not received.

The post audit of refund order is an important tool of internal control and is required to be conducted in compliance of the above mentioned circular.

3.1.7 Status of compliance on other matters

During scrutiny of records the following ‘Good Practices’ also were noticed:

- 3.1.7.1** Out of 108 refund sanction orders communicated to Central Tax Authority by the CT & GST State Circle Authorities, pertaining to the financial year 2017-18 (till September 2019), it was noticed that in all 108 cases, the Department had adhered to the timeline of seven working days (Section 54 and Rule 91 of CGST Act and Rules, respectively) for issuing a communication to the concerned counterpart tax authority for the purpose of payment of the relevant sanctioned amount of Refund (**Appendix 3.1.6**).
- 3.1.7.2** Out of the 84 refund cases (on account of zero rated supply of goods or services) examined, it was noticed that in all the 84 refund cases (**Appendix 3.1.7**), the Department had allowed refunds with reference to balances in electronic credit ledger at the time of filing of application, in compliance with the Provisions of Section 54 (3) of the CGST Act, 2017 and Rule 89 (3) and 89 (4) of the CGST Rules, 2017.
- 3.1.7.3** Out of the 84 refund cases (on account of zero rated supply of goods or services) examined, it was noticed that there were no irregularities in processing of IGST and CGST refunds (**Appendix 3.1.8**), when drawback had been allowed at a higher rate.
- 3.1.7.4** Out of 49 refund cases (on account of zero rated supply of goods or services or both processed till 25 September 2019) examined, it was noticed that in all the 49 refund cases (**Appendix 3.1.9**), the turnover of zero rated supply of services did not include any invoices that had been issued prior to the appointed date. The non-inclusion was in compliance with Section 142 (4) of the CGST Act, 2017 and Rule 89 (4) of the CGST Rules, 2017.
- 3.1.7.5** Out of the 84 refund cases (on account of zero rated supply of goods or services) examined, it was noticed that in all 84 cases the refund

amount did not include ITC on Capital goods (*Appendix 3.1.10*). The non-inclusion was in accordance with Section 54 of the CGST Act, 2017 and Rule 89 (4) of the CGST Rules, 2017.

- 3.1.7.6** Out of the 84 refund cases (on account of zero rated supply of goods or services) examined, it was noticed that in all 84 refund cases (*Appendix 3.1.11*), there was no excess allowance of refund due to omission to exclude debit notes. The exclusion of debit notes from calculation of total refund was in accordance with Section 54 (3) of the CGST Act, 2017 and Rule 89 (4) of the CGST Rules, 2017.
- 3.1.7.7** Out of the 84 refund cases (on account of zero rated supply of goods or services) examined, it was noticed that in all these 84 cases (*Appendix 3.1.12*), the Department had sanctioned refunds for zero-rated supplies as per Shipping bill (FOB) value of the supplies, in compliance with the clarification at Paragraph 9.1 of the Circular No. 37/11/2018-GST dated 15 March 2018.
- 3.1.7.8** Out of the 84 refund cases (on account of zero rated supply of goods or services) examined, it was noticed that in all the 84 refund cases (*Appendix 3.1.13*), the Department had correctly sanctioned provisional refunds on account of zero rated supply of goods and/or services and not in other categories.

3.2 Transitional Credits under GST

3.2.1 Introduction

Introduction of Goods and Services Tax (GST) was a significant reform in the indirect tax sector in our country, which replaced multiple taxes levied and collected by the Centre and States. Allowance of credit of taxes paid on inputs, input services and capital goods for set-off against the output tax liability is one of the key features of GST. This will avoid the cascading effect of taxes and ensure uninterrupted flow of credit from the seller to buyer. To ensure the flow of input tax from the existing laws into the GST regime, “Transitional Provisions for input tax” were included in the GST Act to provide for entitlement and manner of claiming input tax in respect of appropriate taxes or duties paid under existing laws.

3.2.1.1 *Transitional provision for Input Tax*

Section 140 of Odisha Goods and Service Tax (OGST) Act, 2017 enables the taxpayers to carry forward the Input Tax Credit (ITC) available under Odisha Value Added Tax (OVAT) Act, 2004 to the GST regime. This Section read with Rule 117 of OGST Rules, 2017 prescribes elaborate procedures in this regard. Under the transitional arrangement, the closing balance of VAT credit available in the returns filed under the OVAT Act for the month/ quarter immediately preceding the appointed day, can be taken as credit in the electronic credit ledger by filling a declaration in TRAN-1. The registered taxpayer shall be eligible to take credit under the following circumstances, namely:

- i) The said amount of credit is admissible as input tax credit under the existing Act.
- ii) The taxpayer must have furnished all the returns required under the existing Act for the period of six months immediately preceding the appointed date.

It is also provided in the Act that credit as is attributable to any claim related to Section 3, Sub section (3) of Section 5, Section 6, Section 6A or Sub section (8) of Section 8 of the Central Sales Tax Act, 1956 which is not substantiated in the manner and within the period, prescribed in the Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 shall not be eligible to be credited to the electronics credit ledger.

3.2.1.2 *Audit Objectives*

The Audit of Transitional Credit was taken up with the following objectives seeking assurance on:

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

3.2.1.3 Audit Scope

The audit scope comprised test check and cross verification of transitional credits carried forward through TRAN-1 filed by the taxpayers from 01 July 2017 to 31 March 2020 with the returns filed under OVAT Act and CST Act uploaded into the VAT Information System (VATIS) for the period from October 2016 to June 2017 and assessment records under OVAT and CST Act for the relevant period on sample basis for the period from July 2017 to March 2020, under Section 16 of C&AG's DPC Act, 1971.

3.2.1.4 Audit Criteria

The audit criteria adopted for the audit were:

- Section 140 of OGST Act, 2017 read with Rule 117 of OGST Rules,
- Notifications/ Circulars/ Instructions issued by the Commissioner of CT & GST, Odisha.

3.2.1.5 Audit Methodology

Audit has been conducted in accordance with the applicable auditing standards of C&AG. The following methodology was adopted for attaining audit objectives with reference to audit criteria:

- Scrutiny and analysis of TRAN-1 data through the backend system of GST Portal and cross verification with returns under OVAT/ CST Act uploaded into the VATIS.
- Scrutiny of assessment records under OVAT/ CST Act from October 2016 to June 2017.
- Interaction with auditee officials.
- Issue of Audit Memos and discussion of audit findings with Head of Office.

3.2.1.6 Sample and Coverage

A total of 697 cases across 44 CT & GST Circles in Odisha were selected for verification, based on the following risk parameters:

- i) Taxpayers who have claimed excess transitional credit under Table 5C/7B *i.e.*, more than the balance available in the return filed for the period immediately preceding the appointed day,
- ii) Taxpayers whose input tax credit shows a growth of more than 25 *per cent* in the last nine months immediately preceding the appointed day,
- iii) Taxpayers who have carried forward the transitional credit without filing returns under the existing Act for the last six months immediately preceding the appointed day.

The Circle wise list of data is given in **Appendix 3.2.1**.

3.2.2 Audit Observations

The audit findings are categorised into two broad areas - systemic issues and compliance issues, based on the objectives of audit. While systemic issues address the adequacy and effectiveness of the verification mechanism, the compliance issues address the deviations from the provisions of the Act/ Rules in individual cases. The audit of transitional credits was primarily carried out from the verification of records maintained by the jurisdictional Circles and accessing the return data uploaded into the VATIS.

3.2.3 Systemic issues

The systemic issues incorporate a review of the applicable provisions for the verification mechanism envisaged by the department and an examination of the efficiency of the recovery process.

3.2.3.1 *Verification mechanism envisaged by the Department*

Besides the statutory requirements prescribed under both Legacy as well as GST laws, the Commissioner of Commercial Tax & GST, Odisha had specified a dealer-wise work sheet to be used by the verifying team constituted to check the admissibility of the transitional credit and excess SGST claim carried forward. Further, the Commissioner had issued a guidance circular providing general directions to be observed by the verifying team during the verification of the transitional credit claims. The Commissioner on the basis of the report submitted by its Economic Intelligence Wing, had identified 3,510 cases in 45 CT & GST Circles, where transitional credit claims were in excess of ₹ 1,000 and excess SGST claims were in excess of ₹ 50,000. The verification process was to be completed by 31 May 2018 and a compiled report was to be submitted to the Commissionerate.

Audit noticed that in 44 CT & GST Circles, transitional credit claims of 2,177 cases (62 per cent) had been verified out of the total 3,510 cases identified by the Commissioner of CT & GST. Out of these 2,177 cases which had been verified, recovery cases amounted to ₹ 72.43 crore. Recovery measures had been initiated in 171 cases, amounting to ₹ 9.28 crore.

3.2.3.2 *Follow up measures to recover ineligible claims*

As per Rule 121 of OGST Rules 2017, transitional credit wrongly availed and credited to the Electronics Credit Ledger may be recovered under Section 73 or Section 74 of the OGST Act, as the case may be. Further, the adequacy of the mechanism is determined by the outcome of the examination, continued follow up and initiation of recovery measures against the deviations detected to follow up the interest of revenue. Inordinate delays in initiation of recovery measures may potentially hamper the realisation of revenue due to the Government.

Although the Central Board of Indirect Taxes and Customs had issued guidance that Officers have to verify the SGST credit of the taxpayers allotted to Central jurisdictions, the Commercial Tax Department, Government of Odisha had not issued any enabling Notification as required under Section 6(1) of the GST Act, specifying the proper officers to undertake this

verification process of transitional credit, as has been done in the case of refunds.

Audit noted that taxpayers have migrated to central jurisdiction after availing transitional credit claims in excess of the closing balance in the last legacy return. The State GST Circle authorities expressed their inability to recover such excess credit claims, since such taxpayers were no longer accessible in the system. Therefore, Audit recommended that the matter be brought to the notice of the concerned Central Tax Authorities to verify the transitional credit claims and to initiate action for recovery, if found necessary, for recovery of the excess credit claims.

3.2.4 Compliance issues

The compliance issues pertain to the validity and admissibility of the transitional credits carried over by taxpayers into the GST regime.

Audit observed deficiencies across various categories in the transitional credits carried forward by the taxpayers under Section-140 of OGST Act 2017. These deficiencies were in the nature of:

1. Excess credit carried forward, compared to the balance in the legacy returns
2. Ineligible credit carried forward without filing returns for the previous six months
3. Credits accumulated and carried over without having output tax
4. Arithmetically incorrect credit carried over
5. Credits claimed without submission of the statutory declaration forms under CST Act
6. Interest to be levied on excess transitional credit carried forward.

Audit observed a total of 183 instances of non-compliance, out of the 697 cases audited, which constituted an error rate of *26 per cent*. These instances of non-compliance are detailed in the following paragraphs.

3.2.4.1 Excess Transitional Credit carried forward, compared to the closing balance in the last return

As per Section 140(1) of OGST Act, 2017 on transitional provisions, a registered person, other than a person opting to pay tax under Section 10, shall be entitled to take, in his electronic credit ledger, credit of the amount of Value Added Tax (VAT) carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed.

Provided that the registered person shall not be allowed to take credit in the following circumstances:

- i) Where the said amount is not admissible as ITC under this Act,

- ii) Where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date.

Audit verified data related to 697 cases in 44 Circles and noticed that in 129 cases across 31 CT & GST Circles, taxpayers had carried forward excess transitional credits of ₹ 86.36 crore under Table-5C/7B of TRAN-1, compared to Nil/ lower closing balance in the legacy return.

The Circle wise details are listed in *Appendix 3.2.2* and *3.2.2 (A)*.

3.2.4.2 Ineligible transitional credit claimed without filing the legacy returns

As per Section 140(1) of OGST Act, 2017 on transitional provisions, a registered person, other than a person opting to pay tax under Section 10 shall be entitled to take, in his electronic credit ledger, credit of the amount of VAT carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed.

Provided that the registered person shall not be allowed to take credit in the following circumstances:

- i) Where the said amount is not admissible as ITC under this Act,
- ii) Where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date.

Transitional credits from the legacy returns are permissible only when the taxpayer has filed all relevant returns for the period of six months immediately preceding the appointed day.

Audit verified data related to 697 cases in 44 Circles and noticed that taxpayers in 15 cases across 11 CT & GST Circles had claimed transitional credits of ₹ 8.98 crore even when the returns required under the previously existing laws, had not been filed for the previous six months preceding the appointed day.

The Circle wise details are listed in *Appendix 3.2.3* and *3.2.3 (A)*.

3.2.4.3 Input tax credit carried forward without having output tax – lack of purchase invoices and verification thereof by tax authorities

As per Section 20 (3) of the OVAT Act, 2004, ITC shall be allowed for purchases made within the State from a registered dealer holding valid certificate of registration in respect of goods intended for the purpose of:

- i) Sale or resale by him in the State,
- ii) Use as inputs or as capital goods in the manufacturing of goods within the State,
- iii) Sale of goods subject to levy of tax at zero rate under Section 18,

- iv) For use as containers or materials for packing of goods, other than those exempt from tax under this Act, for sale or resale,
- v) Transfer of stock of taxable goods other than by way of sale to any place outside the State.

The above provisions of the Act clearly state that input tax credit on purchases of inputs would be admissible where there is a sale or resale of the inputs, or finished products manufactured by utilising the inputs, or sale in course of execution of works contract.

Audit verified data related to 697 cases in 44 Circles and noticed that in 15 cases across five CT & GST Circles, taxpayers had carried forward excess transitional credits of ₹ 4.41 crore in TRAN-1 even though there were no sales transactions and output tax during the previous nine months *i.e.*, from October 2016 to June 2017. If tax credit is carried forward in the absence of output tax, the purchase invoices would need to be verified by the jurisdictional authorities. If upon such demand by the jurisdictional authorities, the taxpayer is unable to produce the purchase invoices before the tax authority for verification, the credit carried in the TRAN-1 should be treated as irregular and should be disallowed.

The Circle wise details are listed in *Appendix 3.2.4* and *3.2.4 (A)*.

3.2.4.4 Incorrect transitional credit carried forward

As per Section 140(1) of OGST Act 2017 on transitional provisions, a registered person, other than a person opting to pay tax under Section 10 shall be entitled to take, in his electronic credit ledger, credit of the amount of VAT carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed.

Provided that the registered person shall not be allowed to take credit in the following circumstances:

- i) Where the said amount is not admissible as ITC under this Act,
- ii) Where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date.

Audit verified data related to 697 cases in 44 Circles and noticed that seven taxpayers in two CT & GST Circles had carried forward incorrect ITC of ₹ 38.83 lakh, due to erroneous calculation of Opening and Closing Balances.

The Circle wise details are listed in *Appendix 3.2.5* and *3.2.5 (A)*.

3.2.4.5 Ineligible credit availed without submission of statutory declaration forms

As per Section 140(1) of OGST Act, 2017, on transitional provisions, a registered person, other than a person opting to pay tax under Section 10 shall be entitled to take, in his electronic credit ledger, credit of the amount of VAT carried forward in the return relating to the period ending with the day

immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed.

Provided that the registered person shall not be allowed to take credit in the following circumstances:

- i) Where the said amount is not admissible as ITC under this Act,
- ii) Where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date.

Provided further that so much of the said credit as is attributable to any claim related to Section 3, Sub section (3) of Section 5, Section 6, Section 6A or Sub section (8) of Section 8 of Central Sales Tax (CST) Act, 1956 which is not substantiated in the manner and within the period prescribed in Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 shall not be eligible to be credited to the electronics credit ledger.

Provided also that an amount equivalent to the credit specified in the second proviso shall be refunded under existing law when the said claims are substantiated in the manner prescribed in Rule 12 of Central Sales Tax (Registration and Turnover) Rules, 1957.

Audit verified data related to 697 cases and their returns in 44 Circles to derive assurance that declaration forms in Form-C, Form-F and Form-H had been submitted in support of the sales transactions effected under CST Act, and noticed that 10 taxpayers had neither submitted the declarations in support of the concession availed nor had they been subject to assessment under the CST Act. As per the transitional provisions under OGST Act, in case of non-submission of declaration forms, the amount of concession availed on the sales transactions would be reduced from the transitional credit or demanded from the taxpayers. Therefore, the non-submission of declaration forms has resulted in ineligible transitional credit of ₹ 1.08 crore.

The Circle wise details are listed in **Appendix 3.2.6** and **3.2.6 (A)**.

3.2.4.6 Interest to be levied on irregular/ excess carried forward transitional credits

As per Section 50(3) of OGST Act, 2017, a taxable person who makes undue or excess claim of input tax credit under Sub Section (10) of Section 43 shall pay interest on such undue or excess claim, or such undue or excess reduction, as the case may be, at such rate not exceeding 24 *per cent*, as may be notified by the Government on the recommendation of the Council.

As per Rule 121 of OGST Rules, 2017, the amount credited under Sub Rule (3) of Rule 117 may be verified and proceedings under Section 73 or, as the case may be, initiated in respect of any credit wrongly availed, either wholly or partly.

Further, as per Notification No.11557 dated 04 August 2018, the Commissioner of CT & GST, Odisha strictly directed that any inadmissible/ excess transitional credit amount taken in TRAN-1 should be recovered with interest at the rate of 24 *per cent* as per Section 50 (3) of OGST Act.

Audit verified returns of 697 cases in 44 Circles and noticed that in respect of 116 cases in 28 CT & GST Circles involving irregular/ excess transitional credit of ₹ 68.28 crore, interest had not been levied on taxpayers, on account of due reversal or due payment of irregular credit claimed by them. The interest liability in these cases worked out to ₹ 60.69 crore.

At the instance of Audit, the assessee in the Malkangiri Circle returned the excess amount of Transitional Credit with interest.

The Circle wise details are listed in *Appendix 3.2.7* and *3.2.7 (A)*.

3.2.4.7 Growth in Input Tax Credit by more than 25 per cent during the last nine months

Audit verified data related to 83 cases in 26 Circles on the basis of a risk parameter, which was defined as follows:

“that the input tax credit grew more than 25 per cent in the return filed for the month of October 2016, compared to the input tax credit in the return filed during the last month/ quarter, prior to the appointed day for GST”.

Audit verified the returns in these 83 cases for the two months ending October 2016 and June 2017 along with the purchase invoices generated from VATIS. The Assessment Orders for taxpayers (those who had been assessed under Odisha VAT Act) were also verified. Audit was able to derive assurance on the claimed growth of input tax credit in case of 53 taxpayers. In case of the remaining 30 taxpayers, Audit referred these cases to the concerned Circle Tax Authorities for detailed verification.

The Circle wise details are listed in *Appendix 3.2.8* and *3.2.8 (A)*.

Recommendation: Verification of these 30 cases may be carried out and in case any impermissible purchases are detected, the corresponding input tax credit and transitional credit may be disallowed and demanded from the taxpayers.

3.2.5 Conclusion

The transitional credit is a one-time flow of input tax credit from the legacy regime into the GST regime and can be availed by the taxpayers migrating from the previous regime (TRAN-1) as well as newly registered taxpayers (TRAN-2) under GST. Audit verified a sample of 697 cases of transitional credit claims in 44 Circles, with a view to assess the adequacy of the verification mechanism adopted by the Department.

From a systemic perspective, Audit observed that though the Department identified 3,510 cases (in 45 Circles) for verification on priority basis in the year 2018-19, the exercise had not yet been completed (November 2021), with only 62 per cent cases (2177) verified as on date of Audit. Although the Central Board of Indirect Taxes and Customs had issued guidance that Officers have to verify the SGST credit of the taxpayers allotted to Central jurisdictions, the Commercial Tax Department had not issued any enabling Notification as required under Section 6(1) of the GST Act, specifying the proper officers to undertake this verification process of transitional credit, as has been done in case of refunds.

From the compliance perspective, Audit observed 183 instances of non-compliance out of the 697 cases selected for examination, constituting an error rate of 26 *per cent*. These non-compliance issues were related to the aspects such as carry forward of excess credit compared to the balance in the legacy returns, carry forward of ineligible credit without filing returns for the previous six months, carry forward of credit without having output tax, carry forward of credit with arithmetical errors, carry forward of credit without submission of statutory declaration forms and interest due on excess transitional credit carried forward.

After the receipt of Audit Observations, the concerned Circle Heads have provided assurance that they would verify/examine the instances of non-compliance and communicate the resulting outcomes. Formal responses to the Circle-wise Audit Observations from the concerned Circles, and to this consolidated Report from the Office of the CT & GST Commissioner, Odisha are awaited.