

# Chapter II

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## **Value Added Tax, Central Sales Tax and Goods & Services Tax**

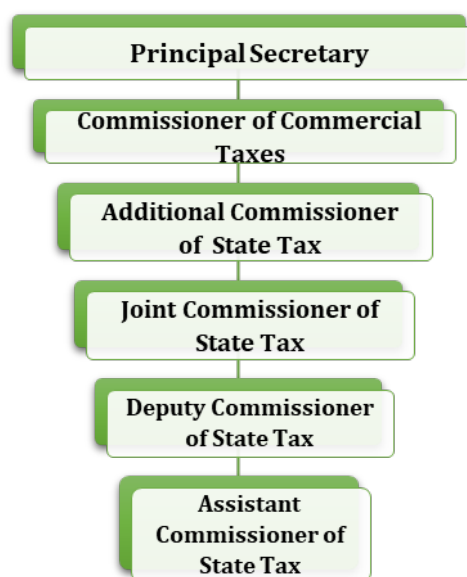
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## 2.1 Tax Administration

Commercial Taxes Department is one of the key revenue earning departments in the Government of Telangana. The Department administers and collects revenue on goods and services under The Telangana Value Added Tax Act, 2005 (VAT Act), The Central Sales Tax Act, 1956 (CST Act), The Telangana Entertainment Tax Act, 1939, The Telangana Tax on Professions, Trades, Callings and Employment Act, 1987 apart from other minor Acts. After introduction of Goods and Services Tax with effect from 1 July 2017, the Commercial Taxes Department has been administering and collecting revenue on goods and services under The Telangana Goods & Services Tax Act, 2017 (GST Act).

**Figure-2.1: Organogram**



## 2.2 Trend of receipts

Actual receipts from State Tax Revenue (VAT, CST and GST) during the years 2016-17 to 2020-21 along with the total tax receipts during the same period is shown in **Table 2.1** below:

**Table 2.1: Receipts from State Tax Revenue**

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+) / shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual VAT / SGST receipts vis-a-vis total tax receipts
2016-17	42,073.53	34,234.69	(-) 7,838.84	(-) 18.63	48,407.73	70.72
2017-18	46,500.00 <sup>#</sup>	38,179.39	(-) 8,320.61	(-) 17.89	56,519.81	67.55
2018-19	51,982.00	44,130.68	(-) 7,851.32	(-) 15.10	64,674.06	68.24
2019-20	47,789.00	44,191.12	(-) 3,617.88	(-) 7.57	67,597.49	65.37
2020-21	54,000.00	43,094.24	(-) 10,905.76	(-) 20.20	66,650.37	64.66

Source: Finance Accounts

<sup>#</sup>GST implemented from 1 July 2017 and, hence the budget estimates pertained to only Taxes on sales under VAT&CST. However, the actual receipts include both Taxes on sales under VAT&CST and GST

As seen from the above, VAT, CST and GST revenue contributes to more than two-thirds of the total tax revenue of the State. The percentage of these taxes to total tax receipts has ranged from 71 per cent to 65 per cent during the period 2016-21.

## 2.3 Cost of collection

The figures of gross collection of Commercial Taxes Department, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years from 2016-17 to 2020-21 are given below:

**Table 2.2: Cost of collection**

(₹in crore)

Head of revenue	Year	Gross collection	Expenditure on collection of revenue	Percentage of cost of collection to gross collection
VAT, CST and GST	2016-17	34,234.69	228.34	0.67
	2017-18	38,179.39	217.47	0.57
	2018-19	44,130.68	196.21	0.44
	2019-20	44,191.12	208.16	0.47
	2020-21	43,094.24	216.15	0.50

## 2.4 Impact of Audit

During the last five years, we pointed out non / short levy, non / short realisation, underassessment / loss of revenue, incorrect exemption, concealment / suppression of turnover, application of incorrect rate of tax, incorrect computation *etc.*, with a revenue implication of ₹2,776.01 crore in 4,352 cases. Of these, the Department / Government accepted Audit observations in 1,437 cases involving ₹344.65 crore and had since recovered ₹2.36 crore. The details are shown in the following Table:

**Table 2.3: Impact of Audit**

(₹in crore)

Year	No. of units audited	Objected		Accepted		Recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2016-17	80	1,055	1,100.30	775	126.77	39	0.71
2017-18	81	1,227	776.75	281	125.15	37	0.45
2018-19	73	1,084	538.93	278	75.02	28	0.37
2019-20	68	934	357.05	54	10.95	29	0.38
2020-21	8	52	2.98	49	6.76	24	0.45
<b>Total</b>	<b>310</b>	<b>4,352</b>	<b>2,776.01</b>	<b>1,437</b>	<b>344.65</b>	<b>157</b>	<b>2.36</b>

The meagre recovery of ₹2.36 crore (0.68 *per cent*) as against the money value of ₹344.65 crore relating to the accepted cases during the period 2016-17 to 2020-21 highlights the inadequacy of the Government / Department machinery to act promptly to recover the Government dues even in respect of the cases accepted by them.

## 2.5 Working of Internal Audit wing

Internal Audit is an important part of internal control mechanism for ensuring proper and effective functioning of a system for detection and prevention of control weaknesses. The orders issued by the Government of Telangana from time to time stipulate, among others, that it is the responsibility of the Accounts branch of the Head of the Department to conduct internal Audit of the Regional Offices, District Offices, Unit Offices *etc.*, periodically (at least once in a year) and furnish reports to the Head of the Department.

The Department did not have an Internal Audit wing.

## 2.6 Results of Audit

Test-check of the records of 75 offices of the Commercial Taxes Department during 2019-20 and 2020-21 relating to VAT, CST and GST revealed under assessments of tax and other irregularities involving ₹446.89 crore falling under the following categories.

**Table 2.4: Category of Audit Observations on Revenue Receipts**

(₹in crore)

Sl.No.	Categories	No. of audit observations	Amount
1	Short levy of Tax on works contracts	37	60.42
2	Non-levy or short levy of interest and penalty	172	31.38
3	Excess claim or allowance of Input Tax Credit	125	14.60
4	Non-levy or short levy of Tax under VAT Act	196	54.28
5	Non-levy or short levy of Tax under Central Sales Tax (CST) Act	197	43.72
6	Sales Tax deferment	9	0.84
7	Other irregularities	181	66.80
8	Observations under Goods and Services Tax Act	69	87.99
9	Subject Specific Compliance Audit on 'Refunds under GST'	1	31.06
10	Subject Specific Compliance Audit on 'Transitional Credits'	1	55.80
	<b>Total</b>	<b>988</b>	<b>446.89</b>

During 2019-21, the Department accepted underassessments and other deficiencies of ₹17.71 crore in 103 cases, of which 15 cases involving ₹14.38 lakh were pointed out in Audit during 2019-21 and the rest in earlier years. An amount of ₹87.98<sup>1</sup> lakh was realised in 59 cases during the period 2019-21.

Significant cases involving non-compliance with the provisions of the Acts and Rules by the Assessing Authorities that resulted in Non-levy / Short levy of tax, penalty and interest to the extent of ₹82.77 crore in 1,067 cases are discussed in the subsequent paragraphs. Further the excess / incorrect payments amounting to ₹86.86 crore as part of Subject Specific Compliance Audits on 'Refunds under GST' and 'Transitional Credits' are also discussed.

<sup>1</sup> Including ₹5 lakh in six cases received after issue of Draft Paragraphs.

## 2.7 Input Tax Credit

### 2.7.1 Excess claim of ITC due to incorrect restriction

#### **Incorrect method of restriction of Input Tax Credit resulted in excess allowance of Input Tax Credit amounting to ₹3.88 crore**

According to VAT Act<sup>2</sup>, 2005, Input Tax Credit<sup>3</sup> (ITC) is allowed to a VAT dealer for the Tax charged in respect of all Taxable goods purchased if such goods are for use in the business of the dealer. ITC is not allowed<sup>4</sup> on purchase of Taxable goods corresponding to sale of exempt goods and exempted sales. Further, in respect of consignment sales and branch transfer of goods, ITC is allowed on percentage basis depending on tax rate at which inputs were purchased and where common inputs are utilised for taxable sale and exempt sales, ITC is restricted proportionately by applying formula<sup>5</sup>.

We test checked (between April 2018 and January 2021) VAT assessments and VAT records for the period 2011-12 to 2017-18. In 43 cases pertaining to four Divisions and 23 Circles<sup>6</sup>, ITC was not restricted correctly in respect of Special Economic Zone (SEZ) sales, exempt sales and branch transfers / consignment sales. This resulted in excess allowance of ITC of ₹3.88 crore.

In reply, eight Assessing Authorities (AAs)<sup>7</sup> stated (between August 2020 and August 2021) that the files were submitted to Joint Commissioner (JC) / State Taxes (ST) for further revision. JC(ST), Warangal division in one case stated (April 2018) that the file would be submitted for revision. The remaining 21 AAs<sup>8</sup> assured that the matter would be examined.

The matter was referred to the Government (November 2021); Reminders were issued in January 2022 and April 2022; replies have not been received.

<sup>2</sup>Section 13 (1) of VAT Act, 2005.

<sup>3</sup>ITC is the Tax that a business pays on a purchase and that it can be used to reduce its Tax liability when it makes a sale. In other words, businesses can reduce their Tax liability by claiming credit to the extent of VAT/GST paid on purchases.

<sup>4</sup>Section 13(5) of VAT Act read with Rule 20(7) of VAT Rules.

<sup>5</sup> $A*B/C$ , where A is the input tax for common inputs for each Tax rate, B is the Taxable turnover and C is the total turnover.

<sup>6</sup>JCs (ST)-Punjagutta, Saroornagar, Secunderabad, Warangal, ACs (ST)-Abids, Afzalgunj-Maharajgunj, Agapura, Basheerbagh-I, Gowliguda-Osmangunj, Hydernagar-I, Jadcherla, Jubilee Hills-I, Kothagudem-I, Madhapur-I, MG Road-SD Road, Mahankali Street, Musheerabad, Nacharam-II, Punjagutta, Rajendranagar - I, Sanathnagar, Sangareddy-I, Saroornagar-I, Somajiguda-Khairtabad, Tarnaka, Vengalraonagar and Vidyanagar.

<sup>7</sup>ACs (ST)- Basheerbagh-I, Gowliguda-Osmangunj, Jadcherla, Madhapur - I, Punjagutta, Sanathnagar, Somajiguda-Khairtabad and Vengalraonagar (12 cases).

<sup>8</sup>JCs (ST)-Punjagutta, Saroornagar, Secunderabad, Warangal, ACs (ST)-Abids, Afzalgunj-Maharajgunj, Agapura, Hydernagar - I, Jubilee Hills - I, Kothagudem-I, Madhapur-I, Mahankali Street, MG Road-SD Road, Musheerabad, Nacharam - II, Rajendranagar - I, Sangareddy-I, Saroornagar, Somajiguda-Khairtabad, Tarnaka and Vidyanagar (30 cases).

### 2.7.2 Excess allowance of input tax credit due to incorrect determination of purchase turnover

#### **Incorrect determination of purchase turnover resulted in excess allowance of ITC amounting to ₹75.94 lakh**

According to VAT Act<sup>9</sup>, 2005, Input Tax Credit (ITC) is allowed to a VAT dealer for the Tax charged in respect of Taxable goods purchased by that dealer if such goods are used in furtherance of business.

Rule 25(10) of the VAT Rules stipulates VAT dealers to furnish every financial year to the prescribed Authority, the statements of Manufacturing / Trading, Profit and Loss (P&L) accounts, Balance Sheet and Annual Report duly certified by a Chartered Accountant on or before 31 December subsequent to the financial year to which the statements relate. The Assessing Authority must reconcile the figures filed by the dealer in VAT returns with certified annual accounts, while finalising the Assessments.

We test checked (between June 2017 and November 2019) the VAT assessments and VAT records for the period from 2012-13 to 2016-17 and observed that in the case of 14 dealers pertaining to 14 circles<sup>10</sup>, purchase turnover reported in VAT returns was in excess of that shown in Profit and Loss Accounts of the respective years. The AAs did not consider the variations in purchase turnover while finalising assessments, resulting in excess allowance of ITC of ₹75.94 lakh.

In reply, AAs of six circles<sup>11</sup> replied that assessment files were sent to the respective JCs (ST) for revision, while the AAs of remaining eight circles<sup>12</sup> assured that the matter would be examined.

The matter was referred to the Government (July 2021); Reminders were issued in January 2022 and April 2022; replies have not been received.

### 2.7.3 Allowance of Input Tax credit on ineligible items

#### **Input Tax Credit amounting to ₹45.80 lakh was allowed to hoteliers and on spoiled stock**

According to VAT Act<sup>13</sup>, 2005, Input Tax Credit<sup>14</sup> (ITC) is allowed to a VAT dealer for the Tax charged in respect of all Taxable goods purchased if such goods are for use in the business of the dealer.

Further, VAT Rules provide that a hotel dealer having a status of less than three Star and whose annual total turnover is less than ₹1.50 crore on sale or supply of goods, being food or any other article for human consumption or drink served in restaurants, sweet-stalls, clubs, *etc.*, are not eligible to take ITC<sup>15</sup>.

<sup>9</sup>Section 13 (1) of VAT Act, 2005.

<sup>10</sup>ACs (ST)- Afzalgunj, Begum Bazar, Bodhan, Ferozguda, Gadwal, Gandhinagar (Secunderabad), Jadcherla, Jangaon, Madhapur, Nizamabad-III, Sangareddy, Vanasthalipuram, Vidyanagar and Warangal Urban-III.

<sup>11</sup>ACs (ST) - Afzalgunj, Begum Bazar, Ferozguda, Jadcherla, Sangareddy and Vanasthalipuram.

<sup>12</sup>ACs (ST) - Bodhan, Gadwal, Gandhinagar (Secunderabad), Jangaon, Madhapur, Nizamabad-III, Vidyanagar and Warangal Urban-III.

<sup>13</sup>Section 13 (1) of VAT Act, 2005.

<sup>14</sup>ITC is the Tax that a business pays on a purchase and that it can be used to reduce its Tax liability when it makes a sale. In other words, businesses can reduce their Tax liability by claiming credit to the extent of VAT/GST paid on purchases.

<sup>15</sup>Section 4(9)(d) of VAT Act, 2005.

We test checked (between September 2017 and January 2021) the VAT assessments and VAT records for the period from 2012-13 to 2017-18 (up to June 2017) in one Division and five Circles<sup>16</sup> and noticed that ITC claimed by four dealers, who were involved in operating hotels (less than three-star status) / restaurants, *etc.*, was not restricted during assessment. Further, in respect of two dealers, ITC was not restricted on damaged goods / spoiled stock, which do not form part of sales. This resulted in incorrect allowance of ITC of ₹45.80 lakh.

In reply, Assistant Commissioner (AC) / (ST), Warangal Urban II replied that the file has been submitted to JC(ST) for revision and five AAs<sup>17</sup> stated that the matter would be examined.

The matter was referred to the Government (July 2021 and November 2021); Reminders were issued in January 2022 and April 2022; replies have not been received.

#### **2.7.4 Allowance of Input Tax Credit without proper tax invoices**

##### **Input Tax Credit amounting to ₹14.62 lakh was allowed without proper tax invoices**

According to VAT Act<sup>18</sup>, 2005, ITC shall be allowed to a VAT dealer for tax charged in respect of all purchases of taxable goods, made from a registered VAT dealer during the tax period if such goods are for use in his business and if he is in possession of valid tax invoices. Further as per Telangana VAT Rules, 2005<sup>19</sup>, tax invoice should have printed or computer-generated serial numbers.

We test checked (between November 2017 and February 2018) VAT assessments and VAT records for the period 2011-12 to 2015-16 pertaining to Punjagutta Division and three Circles<sup>20</sup>. It was noticed that in three cases, ITC was allowed without proper tax invoices. Further in one case, ITC was allowed more than that admissible as per purchase details. This resulted in excess / incorrect allowance of input tax credit of ₹14.62 lakh.

In reply, two AAs<sup>21</sup> stated that the revision show-cause notice was issued to the dealers, while one AA<sup>22</sup> stated that the file was submitted to JC(ST) for revision. The other AA<sup>23</sup> stated that the matter would be examined.

The matter was referred to the Government (July 2021); Reminders were issued in January 2022 and April 2022; replies have not been received.

#### **2.8 Short or Non-levy of Value Added Tax**

##### **2.8.1 Non / Short levy of Tax due to adoption of incorrect rate of Tax**

##### **Application of incorrect rates resulted in short levy of Tax aggregating ₹ 26.91 crore**

According to VAT Act<sup>24</sup>, 2005, every dealer shall pay tax on sale of taxable goods at the respective rates specified in Schedules III, IV and VI of the Act. Goods which are not covered under these Schedules fall under Schedule V and are liable to be taxed at the rate

<sup>16</sup>JC(ST)- Saroornagar & ACs (ST)-Hydernagar-I, Hyderguda-Ashoknagar, Tarnaka, Suryapet and Warangal Urban-II.

<sup>17</sup>JC(ST), Saroornagar and ACs (ST)- Hydernagar-I, Hyderguda-Ashoknagar, Suryapet and Tarnaka.

<sup>18</sup>Sections 13(1) and 13(3)(a) of VAT Act, 2005.

<sup>19</sup>Rule 27(1)(d) of VAT Rules.

<sup>20</sup>ACs (ST)- Agapura, Hissamgunj and Special Commodities Circle of Saroornagar Division.

<sup>21</sup>JC (ST), Punjagutta, AC (ST), Agapura.

<sup>22</sup>AC (ST), Hissamgunj.

<sup>23</sup>AC (ST), Special Commodities Circle, Saroornagar Division.

<sup>24</sup>Section 4(3) of VAT Act, 2005.



of 14.5 *per cent*. Further, every hotel dealer whose annual turnover is ₹1.50 crore and above in respect of sale or supply of goods, being food and drinks served in restaurants, sweet-stalls, clubs, eating houses or by caterers *etc.*, shall pay tax at the rate specified for Schedule-V<sup>25</sup>.

We test checked (between September 2017 and February 2020) VAT assessments and VAT records of 20 dealers in one Division and 14 Circles<sup>26</sup> for the period from 2011-12 to 2017-18 and noticed short levy of tax as stated below:

- i. 16 dealers cleared commodities, *viz.*, AAC Blocks, RMC Ammonium Nitrate, Fabricated structures of Iron and steel, Foam and Foam products, Soaps and washing powder, empty gas cylinders, Mosquito repellents, Tyres and Tubes (Rubber scrap), *etc.*, at the rate of five *per cent* tax although they attracted higher rate of tax of 14.5 *per cent*.
- ii. Two hotel dealers whose annual turnover was more than ₹1.50 crore, sold taxable goods at the rate of five *per cent* instead of 14.5 *per cent*.
- iii. A dealer cleared cotton coated fabric (Rexine) at the rate of one *per cent* tax instead of five *per cent*.
- iv. A Tobacco product dealer cleared pan masala at the rate of 14.5 *per cent* instead of 20 *per cent*.

Short levy of tax in the above cases works out to ₹26.91 crore on the turnover of ₹309.69 crore.

In reply, three AAs<sup>27</sup> replied that files were submitted to JC (ST) for revision; while two other AAs<sup>28</sup> stated that show-cause notices were issued to the dealers. 11 AAs<sup>29</sup> replied that the matter would be examined. In one case, the AA<sup>30</sup> stated that though the assessee had effected transactions under Section 4(9)(c), five *per cent* sales was relevant to branded bread items. Reply is not acceptable, as the taxable sales effected by assessee in restaurant premises / outlet attract 14.5 *per cent* as the total turnover exceeded the threshold limit of ₹1.50 crore.

The matter was referred to the Government (July and October 2021). Reminders were issued in January 2022 and April 2022; replies have not been received.

## 2.8.2 Short levy of VAT on mobile phones

**Incorrect levy of Tax at five *per cent* instead of at 14.5 *per cent* on mobile phones resulted in short levy of Tax amounting to ₹8.56 crore**

According to VAT Act<sup>31</sup>, 2005, every VAT dealer shall pay Tax at the rate of 14.5 *per cent* on the sale of goods falling under Schedule V to the Act. Government orders issued

<sup>25</sup> Section 4(9)(c) of VAT Act, 2005.

<sup>26</sup> JC (ST)- Abids, ACs (ST)- Agapura, Bhongir, Fathenagar, Gowliguda-Osmangunj, Jubilee Hills, Khairtabad-Somajiguda, Malakpet, Nacharam, Punjagutta, Rajendranagar, Saroornagar, Tarnaka, Vanasthalipuram and Vengalraonagar.

<sup>27</sup> ACs (ST) – Agapura, Gowliguda-Osmangunj and Vanasthalipuram (three cases).

<sup>28</sup> ACs (ST) – Khairtabad-Somajiguda and Punjagutta (two cases).

<sup>29</sup> JC (ST)- Abids, ACs (ST) - Bhongir, Fathenagar, Gowliguda-Osmangunj, Jubilee Hills, Malakpet, Nacharam, Rajendranagar, Saroornagar, Tarnaka and Vengalraonagar (14 cases).

<sup>30</sup> AC (ST) – Punjagutta (one case).

<sup>31</sup> Section 4(3) of VAT Act, 2005.

in March 2013<sup>32</sup> placed "Mobile Phones" under Schedule V. Prior to that, and post July 2016, these were under Schedule IV with tax rate of five *per cent*. Thus, sale of Mobile Phones during the intermediary period from 1 April 2013 to 27 July 2016<sup>33</sup> was to be taxed at 14.5 *per cent*.

We test checked (between May 2018 and November 2018) the VAT assessments and VAT records for the period from 1 April 2013 to 27 July 2016 and observed that in the case of 12 dealers pertaining to four circles<sup>34</sup>, the AAs levied Tax on sale of Mobile phones at the rate of five *per cent* instead of at 14.5 *per cent*. This resulted in short levy of Tax of ₹8.56 crore on a turnover of ₹89.98 crore.

AC (ST), Bhongir circle in one case replied that the file was submitted to JC (ST), Nalgonda for revision and other three AAs<sup>35</sup> replied that the matter would be examined.

The matter was referred to the Government (July 2021). Reminders were issued in January 2022 and April 2022; replies have not been received.

### 2.8.3 Irregular exemption under VAT

#### Irregular exemption of turnover resulted in non-levy of Tax aggregating ₹75.17 lakh

According to VAT Act<sup>36</sup>, 2005, every dealer shall pay tax on sale of taxable goods at the respective rates specified in Schedules III, IV and VI of the Act. Under Schedule-I to the Act, some goods are exempt from tax.

We test checked (between May 2018 and November 2019) VAT assessments and records for the period from 2012-13 to 2017-18 (up to June 2017). In case of six dealers pertaining to five Circles<sup>37</sup>, AAs while finalising the assessments incorrectly exempted turnover although the goods specified under Schedule-IV *viz.*, Corn products, spices, Cotton coated fabric (Rexine), Agricultural machinery, Humic acid, etc., are taxable at the rate of five *per cent*. This resulted in non-levy of Tax of ₹75.17 lakh on a turnover of ₹15.03 crore.

In reply, AC(ST), Gowliguda-Osmangunj in one case replied that the file was submitted to JC (ST) for revision; while AC(ST), Srinagar Colony in another case stated that show-cause notice has been issued to the dealer. AC(ST), Sanathnagar, in one case replied that exempt sales represent sale of Humic Acid which is Organic Manure and hence exempted. However, the reply is not acceptable as 'Humic Acid' is a taxable commodity. Incidentally, it is noticed that the dealer had paid tax on certain purchase invoices relating

<sup>32</sup> i) G.O.Ms.No.1615 Revenue (Commercial Taxes-II) Department, dated 31 August 2005 under Schedule IV at the rate of five *per cent*.

ii) G.O.Ms.No.140 Revenue (Commercial Taxes-II) Department, dated 19 March 2013 under Schedule V at the rate of 14.5 *per cent* and

iii) G.O.Ms.No.186 Revenue (Commercial Taxes-II) Department, dated 28 July 2016 under Schedule IV at the rate of five *per cent*.

<sup>33</sup> Mobile Phones were brought under Schedule IV in July 2016 liable to be Taxed at five *per cent*.

<sup>34</sup> ACs (ST) – Abids, Barkatpura, Bhongir and Jubilee Hills.

<sup>35</sup> ACs (ST) – Abids, Barkatpura and Jubilee Hills (11 cases).

<sup>36</sup>Section 4(3) of VAT Act,2005.

<sup>37</sup>ACs (ST) – Barkatpura, Gowliguda-Osmangunj, Sanathnagar, Srinagar Colony and Warangal Urban-II.

to Humic Acid but claimed exemption on few occasions. Three AAs<sup>38</sup> replied that the matter would be examined.

The matter was referred to the Government (October 2021). Reminders were issued in January 2022 and April 2022; replies have not been received.

#### **2.8.4 Non-levy of VAT on receipts towards transfer of right to use goods**

##### **VAT amounting to ₹14.58 lakh on receipts towards transfer of right to use was not levied**

According to VAT Act,<sup>39</sup> 2005, every VAT dealer, who transfers the right to use any taxable goods to any lessee or licensee for any valuable consideration in the course of his business, shall pay tax on the total amount received by him at the rates applicable to such goods.

We test checked (between November 2017 and October 2019) VAT assessments and VAT records for the period 2011-12 to 2016-17. It was found in five cases pertaining to five circles<sup>40</sup> that the AAs had not / short levied tax on a turnover of ₹1.75 crore received by the dealer on transfer of right to use goods (hire charges income) while finalising the VAT assessments. This resulted in non / short levy of Tax of ₹14.58 lakh.

The matter was referred to the Government (July 2021). Reminders were issued in January 2022 and April 2022; replies have not been received.

## **2.9 Inter-State sales**

### **2.9.1 Non or Short levy of Tax on the turnover not covered by statutory forms**

#### **Inter-State sales turnover not supported by statutory forms resulted in non / short levy of Tax of ₹ 2.84 crore**

According to Central Sales Tax (CST) Act and CST Rules<sup>41</sup>, the rate of Tax on Inter-State sales not covered by 'C Forms' shall be at the rate applicable to the sale or purchase of such goods inside that State and under the Sales Tax laws of that State.

We test checked (between April 2018 and February 2020) the CST assessments and records for the period from 2011-12 to 2016-17. Of the 39 dealers pertaining to two Divisions<sup>42</sup> and 22 Circles<sup>43</sup>, it was found that in respect of 33 dealers, the AAs levied Tax at lesser rate of five *per cent* instead of 14.5 *per cent* for non-submission of statutory forms. In the case of four dealers, no tax was levied, treating the commodities as exempt goods, although they were taxable goods. In case of other two dealers, Tax was not levied despite non-submission of the statutory forms. This resulted in short levy of Tax of ₹2.84 crore on the turnover of ₹31.77 crore.

<sup>38</sup>ACs (ST)- Barkatpura, Gowliguda-Osmangunj and Warangal Urban-III (three cases).

<sup>39</sup>Section 4(8) of VAT Act, 2005.

<sup>40</sup>ACs (ST)-Afzalgunj, Basheerbagh, Bodhan, Jubilee Hills and Mahabubnagar.

<sup>41</sup>Section 8 of CST Act, 1956 read with Rule 12 of CST Rules.

<sup>42</sup>JCs (ST) - Nizamabad and Secunderabad Divisions.

<sup>43</sup>ACs (ST) - Abids, Agapura, Barkatpura, Bodhan, Gowliguda-Osmangunj, Hyderguda-Ashoknagar, Kamareddy, Kodad, Mahankali Street-RP Road, Malkajgiri, Medak, Miryalaguda, Musheerabad, Peddapally, Rajendranagar, Sanathnagar, Saroonagar, Siddipet, Suryapet, Vanasthalipuram, Vengalraonagar and Warangal-III.

In reply, seven AAs<sup>44</sup> stated that files had been submitted to JC (ST) for revision. Four AAs<sup>45</sup> replied that show cause notices had been issued to the dealers. Fifteen AAs<sup>46</sup> replied that the matter would be examined.

The matter was referred to the Government (August 2021). Reminders were issued in January 2022 and April 2022; replies have not been received.

### 2.9.2 Non / Short levy of tax due to acceptance of invalid statutory forms

#### Acceptance of invalid statutory form resulted in non / short levy of Tax of ₹11.10 lakh

As per Section 8(2) of the CST Act, interstate sales turnover, not covered by proper declaration forms, shall be taxed at the rates applicable to the goods inside the appropriate State. Further, as per Rule 14-A(1)(b) of CST (TS) Rules, 1957, every dealer has to submit only original 'C' and 'F' forms in support of their interstate sales and branch transfers respectively.

We test checked (between April 2018 and October 2019) CST assessments and CST records for the period 2011-12 to 2014-15. In five cases pertaining to five circles<sup>47</sup>, the AAs had incorrectly allowed concessional rate of tax on the interstate sale turnover of ₹1.04 crore that were not supported by valid 'C' forms. Further, in one case pertaining to AC(ST), Kamareddy, branch transfer turnover of ₹1.27 crore supported by duplicate 'F' forms was incorrectly exempted. This resulted in short levy of Tax of ₹11.10 lakh.

In reply, two AAs<sup>48</sup> replied that pre-revision notice was issued to the dealer. AC(ST), Musheerabad in one case stated that the file was submitted to JC(ST), Secunderabad for revision. Three AAs<sup>49</sup> replied that the matter would be examined.

The matter was referred to the Government (July 2021). Reminders were issued in January 2022 and April 2022; replies have not been received.

### 2.9.3 Short levy of tax on inter-state sales due to arithmetical and computational errors

#### Arithmetical and computational errors under CST Act resulted in short levy of tax of ₹88.93 lakh

According to CST Act<sup>50</sup>, on behalf of the Union Government, the tax on interstate sale of goods shall be levied and collected by the State Government concerned, from whose jurisdiction the interstate movement of goods has commenced. Levy of taxes under Value Added Tax (VAT) Act is governed by Section 4 of the Act and tax under CST Act is levied under the provisions of Section 8 of CST Act. As per Rule 35 (7) of VAT Rules,

<sup>44</sup>ACs (ST) - Agapura, Gowliguda-Osmangunj, Malkajgiri, Miryalguda, Musheerabad, Sanathnagar and Vanasthalipuram (eight cases).

<sup>45</sup>JC (ST)- Nizambad and ACs (ST) - Kamareddy, Malkajgiri and Peddapally (seven cases).

<sup>46</sup>JC (ST) - Secunderabad & ACs (ST) - Abids, Barkatpura, Bodhan, Gowliguda-Osmangunj, Hyderguda-Ashoknagar, Kodad, Mahankali Street-RP Road, Medak, Rajendranagar, Saroornagar, Siddipet, Suryapet, Vengalraonagar and Warangal-III (24 cases).

<sup>47</sup>ACs (ST) - Abids, Hyderguda-Ashoknagar, Khairatabad-Somajiguda, Lad Bazar and Musheerabad.

<sup>48</sup>ACs (ST)- Khairatabad-Somajiguda and Kamareddy (Two cases).

<sup>49</sup>ACs (ST) - Abids, Hyderguda-Ashoknagar and Lad Bazar (three cases).

<sup>50</sup>Section 9 of CST Act, 1956.

2005, a dealer making interstate sale of goods may adjust any excess credit available under the VAT Act against any tax payable under the CST Act, for the same period.

We test checked (between October 2018 and November 2019) CST assessments and CST records for the period from 2013-14 to 2016-17. In respect of seven cases pertaining to JC(ST), Warangal Division and six circles<sup>51</sup>, it was observed that, in six out of seven cases, the AAs short levied the tax to an extent of ₹85.97 lakh due to arithmetical mistakes / adoption of incorrect figures for levy of final tax. In another case, the AC(ST), MG Road-SD Road adopted ₹26.13 lakh towards adjustment of CST dues against the actual available credit of ₹23.17 lakh leading to short levy of tax of ₹2.96 lakh. This resulted in total short levy of Tax of ₹88.93 lakh.

In reply, AC(ST), MG Road-SD Road replied that a notice was issued to dealer and AC(ST), Punjagutta stated that based on the 'C' forms furnished by the dealer the assessment was revised. However, copies of 'C' forms were not furnished to audit. Remaining five AAs<sup>52</sup> replied that the matter would be examined.

The matter was referred to the Government (July 2021). Reminders were issued in January 2022 and April 2022; replies have not been received.

#### **2.9.4 Non or Short levy of Tax due to incorrect determination of Taxable Turnover under CST**

##### **Variation in sales turnover between CST assessment orders and CST turnover in VAT assessment orders / VAT ledgers led to non or short levy of Tax of ₹4.36 crore**

According to CST Act<sup>53</sup>, the authorities empowered to assess tax under the general sales tax law of the State, shall also assess tax under the CST Act. Para 5.12 of VAT Audit Manual, 2012 prescribes the Audit Officer to verify the details given by the dealer in VAT / CST returns and to reconcile with those figures reported in certified annual accounts for that period.

As per provisions of CST Act read with Rule 12 of CST (R&T) Rules 1957, if any dealer fails to submit necessary statutory forms in support of exports, branch transfers, transit sales etc., the relevant transactions have to be treated as interstate sales not covered by 'C' forms and tax shall be levied at the rates applicable to the sale of goods inside the appropriate State.

We test checked (between April 2018 and October 2020) CST assessment files and VAT records for the period 2012-13 to 2015-16 and noticed that in 26 cases pertaining to two divisions<sup>54</sup> and 16 circles<sup>55</sup> that the taxable turnover under CST Act was not determined as assessed and mentioned in VAT assessment orders, VAT / CST returns. This resulted in non or short levy of tax of ₹4.36 crore on the turnover of ₹56.93 crore.

<sup>51</sup>ACs (ST)-Gowliguda-Osmangunj, MG Road- SD Road, Punjagutta, Sangareddy, Tarnaka and Warangal Urban-III.

<sup>52</sup>JC (ST)-Warangal and ACs (ST)-Gowliguda-Osmangunj, Sangareddy, Tarnaka and Warangal Urban-III.

<sup>53</sup>Section 9(2) of CST Act, 1956.

<sup>54</sup>JCs (ST) - Saroornagar and Secunderabad.

<sup>55</sup>ACs (ST) - Abids, Agapura, Barkatpura, General Bazar, Gowliguda-Osmangunj, Jubilee Hills, Kamareddy, Khairatabad-Somajiguda, Medak, Musheerabad, Punjagutta, Sanathnagar, Saroornagar, Tarnaka-I, Vanasthalipuram and Warangal (Rural) at Narsampet.

In reply, four AAs<sup>56</sup> replied that pre-revision notice was issued to dealers, while three AAs<sup>57</sup> stated that the files were submitted to the concerned Divisional offices for revision. Two AAs<sup>58</sup> replied that assessments were revised. However, collection is still pending. Nine AAs<sup>59</sup> replied that the matter would be examined.

The matter was referred to the Government (August and October 2021). Reminders were issued in January 2022 and April 2022; replies have not been received.

## 2.10 VAT on Works Contracts

### 2.10.1 Short levy of tax due to incorrect allowance of input tax credit under works contract

#### **Incorrect allowance of ITC to works contractors resulted in short levy of Tax of ₹37.92 lakh**

According to VAT Act,<sup>60</sup> where any VAT dealer pays tax under non-composition method, the Input Tax Credit (ITC) shall be limited to 75 per cent of the related input tax. As per Section 13(5)(a) of the Act, where any VAT dealer pays tax under composition scheme as per Sections 4(7)(b) and 4(7)(d), he is not eligible to claim ITC on purchases made. Further, as per Rule 17 (1) (g) of Telangana VAT Rules, 2005, where the VAT dealer has not maintained the accounts to determine the correct value of goods at the time of incorporation, he shall pay tax at the rate of 14.5 per cent on the total consideration and shall not be entitled to claim ITC.

We test checked (between August 2018 and February 2020) VAT assessments and records for the period from 2011-12 to 2016-17 and found that in two Divisions<sup>61</sup> and three Circles<sup>62</sup>, out of five cases, AAs (a) in three cases, allowed ITC at 100 per cent instead of at 75 per cent to the dealer who paid tax under non-composition method (b) in one case, allowed ITC to a dealer who paid tax under composition and (c) in one case, incorrectly allowed ITC to the dealer who did not maintain accounts and his assessment was completed under rule 17(1)(g). The incorrect allowance of ITC resulted in short levy of tax of ₹37.92 lakh.

In reply, JC(ST), Begumpet in respect of one case stated that re-assessment was finalised, confirming a tax demand of ₹20.81 lakh. However, tax collection is still pending. In respect of the remaining four cases, AAs<sup>63</sup> stated that the matter would be examined and detailed reply furnished in due course.

The matter was referred to the Government (November 2021). Reminders were issued in January 2022 and April 2022; replies have not been received.

<sup>56</sup>ACs (ST) - Agapura, Jubilee Hills, Khairatabad-Somajiguda and Punjagutta (nine cases).

<sup>57</sup>ACs (ST) - General Bazar, Musheerabad and Sanathnagar (four cases).

<sup>58</sup>ACs (ST)-Kamareddy and Vanasthalipuram (three cases).

<sup>59</sup>JCs (ST) - Saroornagar and Secunderabad; ACs (ST) - Abids, Barkatpura, Gowliguda-Osmangunj, Medak, Saroornagar, Tarnaka-I and Warangal (Rural) at Narsampet (10 cases).

<sup>60</sup>Section 4(7)(a) and Section 13(7) of VAT Act, 2005.

<sup>61</sup>JCs (ST) - Begumpet and Secunderabad.

<sup>62</sup>ACs (ST) - IDA Gandhinagar, Keesara-I and Musheerabad.

<sup>63</sup>JC (ST) - Secunderabad and ACs (ST) - IDA Gandhinagar, Keesara-I and Musheerabad.



### 2.10.2 Short levy of tax due to incorrect determination of taxable turnover under works contract

#### Under-assessment of Taxable turnover under works contract resulted in short levy of Tax of ₹5.23 crore

According to VAT Act<sup>64</sup>, 2005, every dealer executing works contract shall pay Tax on the value of goods incorporated in the work at the rates applicable to the goods. As per Telangana VAT Rules<sup>65</sup>, certain deductions<sup>66</sup> are to be allowed from the total consideration and the remaining turnover is to be taxed in proportion to the rates of tax at which goods are purchased. Further, as per the Act<sup>67</sup>, main contractor is exempted from levy of Tax on the turnover which has been assessed in the hands of sub-contractors.

We test-checked (between July 2017 and December 2019) the VAT assessments and records for the period 2011-12 to 2016-17 and found that in respect of 12 dealers pertaining to two divisions<sup>68</sup> and six circles<sup>69</sup>, AAs incorrectly determined the taxable turnover due to incorrect calculation of cost of establishment and profit relating to labour, purchase ratio of goods, payments made to sub-contractor, *etc.* This resulted in incorrect determination of taxable turnover and consequential short levy of tax of ₹5.23 crore.

AAs<sup>70</sup> in respect of seven cases stated that the files were forwarded to respective JCs (ST) for revision orders and in respect of three cases, the AAs<sup>71</sup> stated that the matter would be examined, and detailed reply furnished in due course. AC(ST), Khairatabad-Somajiguda circle stated that JC(ST), Punjagutta completed the revision process and raised effectual tax demand in one case.

In one case, JC(ST), Hyderabad (Rural Division) stated that profit earned by the contractor relating to supply of labour & services and materials incorporated has to be arrived on the allocated turnovers before deductions as per the annual financial statements, instead of apportioning with the entire turnover after eligible deductions. Hence, no additional demand needs to be levied. Reply of the department is not acceptable, as the taxable turnover decided by AA after allowing gross expenditure relating to labour and material, establishment, *etc.*, does not include taxable profit elements relating to labour and establishment charges as stipulated in the Rule.

The matter was referred to the Government (December 2021). Reminders were issued in January 2022 and April 2022; replies have not been received.

<sup>64</sup>Section 4(7) (a) of VAT Act, 2005.

<sup>65</sup>Rule 17(1) (e) of VAT Rules.

<sup>66</sup>Labour charges, establishment charges and other similar charges relating to labour and services, profit earned by the contractor to the extent it is relating to supply of labour and services.

<sup>67</sup>Section 4(7) (h) of VAT Act, 2005.

<sup>68</sup>JCs (ST)- Hyderabad (Rural) and Secunderabad.

<sup>69</sup>ACs (ST)- IDA Gandhinagar, Jubilee Hills, Khairatabad-Somajiguda, Sanathnagar, Srinagar Colony, and Tarnaka-I.

<sup>70</sup>ACs (ST)-Jubilee Hills, Khairatabad-Somajiguda, Sanathnagar, Srinagar Colony and Tarnaka-I.

<sup>71</sup>JC(ST)-Secunderabad, ACs (ST)- IDA Gandhinagar and Tarnaka-I.

### 2.10.3 Short levy of tax on works contract under composition scheme

#### **Incorrect determination of taxable turnover of works contractors under composition scheme resulted in short levy of Tax of ₹1.23 crore**

According to VAT Act<sup>72</sup>, 2005, a works contractor can opt to pay Tax by way of composition at the rate of five *per cent* on the total consideration on works executed, whereby Tax is payable on gross receipts without any deductions.

We test checked (between August 2018 and November 2019) VAT assessments and records of works contractors who opted to pay tax under composition for the period 2011-12 to 2016-17. In respect of five Contractors pertaining to one Division and three Circles<sup>73</sup>, it was found that AAs incorrectly determined taxable turnover due to allowing deductions<sup>74</sup> / non-inclusion of sub-contract commission to the gross receipts / application of incorrect provisions of the Act / adoption of turnover less than the turnover in Profit and Loss account and levy of lesser rate of tax. The incorrect determination of taxable turnover resulted in short levy of Tax of ₹1.23 crore.

In reply, AC(ST), Jadcherla in respect of one case stated (August 2021) that the file was submitted to JC(ST), Nalgonda for revision. AAs<sup>75</sup> in the remaining four cases stated that the matter would be examined and detailed reply furnished in due course.

The matter was referred to the Government (October 2021). Reminders were issued in January 2022 and April 2022; replies have not been received.

### 2.11 Loss of revenue due to non-forfeiture of excess tax collections

#### **Non-forfeiture of excess tax collections resulted in loss of revenue of ₹1.31 crore**

According to VAT Act,<sup>76</sup> 2005, no dealer shall collect any amount by way of tax at a rate exceeding the rate at which he is liable to pay tax. If any dealer collects tax in excess of his actual tax liability, the excess tax so collected shall be forfeited to the Government<sup>77</sup>. Further, where tax collected at source is in excess of the liability of the contractor, who has not opted for payment of tax by way of composition, such amount of tax, collected in excess of the liability shall be deemed to have been payable by the contractor and shall be liable to be forfeited<sup>78</sup>. In addition, no order for forfeiture shall be made after the expiration of three years from the date of collection of the amount<sup>79</sup>.

We test checked (August 2017, May 2019, January 2021) VAT assessments and other records for the period from 2013-14 to 2017-18 (up to June 2017). In case of three dealers

<sup>72</sup> Section 4(7)(b) of VAT Act as amended w.e.f 15 September 2011.

<sup>73</sup> JC(ST), Warangal and ACs (ST)-Bhongir, Jadcherla, Narayanaguda-MJ Market.

<sup>74</sup> Deductions towards Earnest Money Deposit, Security Deposit, Interest on mobilisation advance etc.

<sup>75</sup> JC(ST), Warangal and ACs (ST)-Bhongir and Narayanaguda-MJ Market.

<sup>76</sup> Section 57(2) of VAT Act, 2005.

<sup>77</sup> Section 57(4) of VAT Act, 2005.

<sup>78</sup> Rule 18(3)(b) of VAT Rules, 2005.

<sup>79</sup> Section 57(5) of VAT Act, 2005.



pertaining to one division<sup>80</sup> and two circles<sup>81</sup>, it was found that though the dealers had collected tax of ₹1.31 crore in excess of tax liability, AAs did not forfeit the same. Non-forfeiture of the excess tax collections within the time frame of three years resulted in loss of revenue of ₹1.31 crore to the Government.

JC (ST), Warangal in one case stated that revised assessment orders were passed (March 2021) confirming forfeiture of the excess TDS amount. AC(ST), Basheerbagh-I circle in respect of one case stated that the file was submitted to JC(ST), Abids Division for revision. AC (ST) Basheerbagh circle in respect of the remaining one case stated that the matter would be examined and detailed reply furnished in due course.

The matter was referred to the Government (November 2021). Reminders were issued in January 2022 and April 2022; replies have not been received.

## 2.12 Levy of penalties and interest under VAT

### 2.12.1 Non-levy of penalty and interest on belated payment of Tax

#### Penalty of ₹11.51 crore and interest of ₹7.53 crore on delayed payment of Tax by dealers was not levied

Every VAT dealer shall pay the Tax declared as due on Form VAT- 200 not later than 20 days after the end of the Tax period<sup>82</sup>. A dealer who fails to pay the Tax by the last day of the month in which it is due, shall pay the Tax along with a penalty at 10 *per cent* of the amount of Tax due<sup>83</sup>. If Tax or penalty due is not paid within the prescribed time, the dealer is liable to pay in addition to the amount of such Tax or Penalty, interest at the rate of 1.25 *per cent* per month for the period of delay<sup>84</sup>.

We test checked (between August 2017 and February 2020) 3,811 VAT payment records for the period from April 2013 to September 2018 and noticed that 691 dealers in 58 offices<sup>85</sup>, paid tax belatedly with delay ranging from one to 1,668 days. However, the AAs did not levy interest of ₹ 7.53 crore and penalty of ₹ 11.51 crore in these cases as shown in the **Table 2.5** below.

<sup>80</sup>JC(ST), Warangal.

<sup>81</sup>ACs (ST), Basheerbagh and Basheerbagh-I.

<sup>82</sup>Rule 24(1) of VAT Rules, every month is considered as a Tax period.

<sup>83</sup>Section 51(1) of VAT Act, 2005.

<sup>84</sup>Section 22 (2) of VAT Act, 2005.

<sup>85</sup>JCs (ST) - Punjagutta, Saroornagar, Secunderabad, Warangal; ACs (ST) - Abids, Agapura, Ashoknagar, Afzalgunj-Maharajgunj, Barkatpura, Begumpet, Bhongir, Fathenagar, Ferozguda, Gadwal, Gandhinagar (Secunderabad division), General Bazar, Gowliguda-Osmangunj, Hyderguda-Ashoknagar, IDA Gandhinagar, Jadcherla, Jangaon, Jubilee Hills-I&II, Lad Bazar, Miryalaguda, Kamareddy, Karimnagar-I, Keesara - I, Khammam-I, Khammam-II, Khammam-III, Kothagudem-I, Mahabubabad, Mahankali Street, Malakpet, Malkajgiri, Marredpally, Medak, M.G Road-SD Road, Musheerabad, Narsampet (Warangal Rural), Nizamabad - II, Nizamabad-III, Peddapalli, Sangareddy-I, Punjagutta, Rajendranagar, Sanathnagar, Saroor Nagar, Siddipet, Somajiguda-Khairtabad, Srinagar Colony, Sultanbazar, Tarnaka- I, Vanasthalipuram, Vengalraonagar, Warangal Urban-I (Beet Bazar), Warangal Urban-II and Warangal Urban-III.

**Table 2.5: Age-wise analysis of delayed payments**

(₹ in crore)

Delay	No. of tax payment records	Interest	Penalty	Total
Up to 6 months	2,308	2.65	8.09	10.74
Above 6 months and up to 1 year	750	2.58	2.53	5.11
Above 1 year and up to 2 years	491	1.39	0.67	2.06
Above 2 years and up to 3 years	210	0.72	0.19	0.91
Above 3 years and up to 4 years	46	0.17	0.03	0.20
Above 4 years and up to 5 years	6	0.02	0.00	0.02
<b>Total</b>	<b>3,811</b>	<b>7.53</b>	<b>11.51</b>	<b>19.04</b>

AAs<sup>86</sup> stated that notices had been issued / would be issued to the dealers. Eight AAs<sup>87</sup> stated that interest and penalty orders were passed. AC(ST), Agapura in one case stated that the file would be submitted to JC(ST) for further action. AC(ST), Lad Bazaar in eight cases, stated that the amounts would be collected and the remaining 48 AAs<sup>88</sup> assured that the matter would be examined.

The matter was referred to the Government (November 2021). Reminders were issued in January 2022 and April 2022; Replies have not been received.

### 2.12.2 Non or Short levy of penalties on under-declaration of Taxes

#### Penalties of ₹5.29 crore on under-declared Taxes / excess claim of Input Tax Credit were either not levied or short levied

According to VAT Act<sup>89</sup>, 2005, a dealer who has under-declared Tax, is liable for payment of penalty depending upon the quantum of tax under-declared.

Further, VAT provisions provide that penalty leviable will be equal (100 *per cent*) to the tax under-declared if it is proved that dealer committed fraud or wilful neglect while declaring tax payable, and if any dealer issues / uses fake / false tax invoice to take ITC, the penalty leviable would be 200 *per cent* of the tax involved.

Further, as per Section 49(2) of VAT Act, any dealer who fails to apply for VAT registration on crossing prescribed limit of turnover, shall be liable to pay a penalty of

<sup>86</sup>ACs (ST)- Ashoknagar, Barkatpura, Bhongir, Punjagutta and Tarnaka-I (53 dealers).

<sup>87</sup>ACs (ST)-Begumpet, Fathenagar, Malkajgiri, Marredpally, Punjagutta, Sanathnagar, Somajiguda – Khairtabad and Vanasthalipuram (66 dealers).

<sup>88</sup>JCs (ST)-Punjagutta, Saroornagar, Secunderabad and Warangal,

ACs(ST)- Abids, Agapura, Afzalgunj-Maharajgunj, Fathenagar, Ferozguda, Gadwal, Gandhinagar (Secunderabad division), General Bazar, Gowliguda-Osmangunj, Hyderguda-Ashoknagar, IDA Gandhinagar, Jadcherla, Jangaon, Jubilee Hills-I&II, Miryalaguda, Kamareddy, Karimnagar-I, Keesara -I, Khammam-I, Khammam-II, Khammam-III, Kothagudem-I, Mahabubabad, Mahankali Street, Malakpet, Medak, M.G Road-SD road, Musheerabad, Narsampet (Warangal Rural), Nizamabad-II, Nizamabad-III, Peddapalli, Sangareddy-I, Punjagutta, Rajendranagar, Saroornagar, Siddipet, Srinagar colony, Sultanbazar, Tarnaka-I, Vengalraonagar, Warangal Urban-I (Beet Bazar), Warangal Urban-II and Warangal Urban-III (563 dealers).

<sup>89</sup>Section 53 (1) of VAT Act, 2005.

25 per cent of the amount of Tax due prior to the date of the registration by the Registering Authority.

We test checked (between May 2018 and February 2020) the VAT assessments and VAT records for the period 2010-11 to 2017-18 (up to June 2017) and noticed tax compliance omissions as detailed in the **Table No. 2.6** below in 156 cases where the AAs either have short levied the penalty or not levied penalty on the dealers. This resulted in non / short levy of penalties amounting to ₹5.29 crore and differential short levy of tax of ₹37.08 lakh.

**Table 2.6: Cases of Short- Non-levy of penalty / short levy of tax**

(₹ in lakh)

Nature of Omission	Quantum of penalty leviable as per VAT Act (%)	No. of cases	Amount of non/short levy of penalty	Amount of short levy of Tax	Jurisdiction of Commercial Tax Officer
Wilful under-declaration of output tax / excess ITC	100	10	13.68		ACs (ST) – Begumbazar, Keesara-I, Lad Bazar, Malkajgiri, Marredpally, Osmangunj-Gowliguda, Punjagutta and Rajendranagar
Short payment of tax / excess claim of Input Tax credit (ITC) – normal cases	10 / 25	43	424.11		JCs (ST)-Abids, Charminar, Punjagutta, Secunderabad and Warangal ACs (ST) – Barkatpura, Bodhan, Gowliguda-Osmangunj, Fathenagar, Ferozguda, Gandhinagar, Hyderguda-Ashoknagar, Jubilee Hills, Kamareddy, Kothagudem, Malkajgiri, MG Road-SD Road, Miryalaguda, Narayanaguda-MJ Market, Rajendranagar, Sanathnagar, Saroornagar, Tarnaka, Tarnaka-I, Vanasthalipuram, Vengalraonagar and Vidyanagar
Non-registration of VAT Dealer	25	102	63.27	37.08	ACs (ST)-Barkatpura, Bodhan, Madhapur, Kamareddy and Nizamabad III
Irregular claim of ITC on the basis of fake tax invoices	200	1	27.88		AC (ST)-Ferozguda
<b>Total:</b>		<b>156</b>	<b>528.94</b>	<b>37.08</b>	

In reply, four AAs<sup>90</sup> stated in respect of six cases that penalty orders were passed. Two AAs<sup>91</sup> in five cases stated that notices were issued. AC(ST), Vengalraonagar in one case stated that penalty was levied and adjusted from excess ITC. However, penalty for the year 2013-14 was not levied. In five cases, AAs<sup>92</sup> stated that the files were submitted to JC(ST) for revision. AC (ST), Vanasthalipuram in one case replied that demand was raised and the dealer has made part payment and that the balance would be collected. AC(ST), Ferozguda in one case stated that penalty of ₹13.94 lakh was levied at 100 per cent as per Section 53(3) of VAT Act. However, in this case, the penalty was to be levied at 200 per cent.

<sup>90</sup>JC(ST)- Punjagutta, ACs (ST)-Jubilee Hills, Marredpally and Sanathnagar.

<sup>91</sup>ACs (ST)- Ferozguda and Kamareddy.

<sup>92</sup>ACs (ST)- Begumbazar, Malkajgiri, Miryalaguda and Punjagutta.

JC(ST), Abids in one case replied that output tax for the purpose of under declared tax in terms of input and output shall not override the meaning of the phrase 'tax due' used in Section 53 of VAT Act. Reply is not acceptable as the input tax restricted in VAT assessment order was more than 10 *per cent* of ITC allowed. In respect of one case, AC(ST) Barkatpura replied that dealer was non-existent and closed his business. However, no evidence was furnished in support of closure of business and intimation of action under Revenue Recovery Act. AC(ST), Madhapur in respect of seven cases stated that penalty orders were passed and amounts entered in Debt Management Unit (DMU). However, collection is still pending. In respect of remaining 128 cases, the AAs<sup>93</sup> replied that the matter would be examined.

The matter was referred to the Government (March and July 2021). Reminders were issued in January 2022 and April 2022; Replies have not been received.

### **2.13 Non-levy of interest on belated payment of deferred sales tax**

#### **Interest of ₹11.02 lakh was not levied on belated payment of deferred sales tax**

According to the Sales Tax Deferment Schemes envisaged in Government Orders<sup>94</sup> and as per the conditions stipulated in the Final Eligibility Certificate, the Sales Tax Deferment allowed to a unit in the first year should be paid back in lump sum at the end of 10<sup>th</sup> / 14<sup>th</sup> year thereof without interest. Further, the Hon'ble High Court of Telangana clarified *vide* their judgement (January 2018) that the due date for payment of sales tax deferment availed in 2003-04 was 31 March 2018. In case of non-remittance of the tax on due dates, an interest of 21.5 *per cent* has to be charged from the due date till the date of payment as per the guidelines of deferment scheme.

We test checked (between December 2017 and August 2018) records of various industrial units that had availed sales tax deferment. It was noticed in seven cases pertaining to two circles<sup>95</sup>, the units repaid the deferred tax of ₹45.41 lakh belatedly with delay ranging from 19 to 1,845 days for which they were liable to pay interest at the rate of 21.5 *per cent* per annum. However, AAs did not levy any interest on such belated payments. This resulted in non-levy of interest of ₹11.02 lakh.

In reply, AC(ST), Jeedimetla in respect of one case stated that interest was levied. However, collection is still pending. In the remaining case, AA stated that the matter would be examined.

The matter was referred to the Government (July 2021). Reminders were issued in January 2022 and April 2022; Replies have not been received.

<sup>93</sup>JCs (ST)- Charminar, Secunderabad, Warangal and ACs (ST) Barkatpura, Bodhan, Fathenagar, Gandhinagar, Hyderguda-Ashoknagar, Jubilee Hills, Kamareddy, Keesara-I, Kothagudem, Ladbazar, MG Road-SD Road, Miryalaguda, Nizamabad-III, Narayanaguda-MJ Market, Osmangunj-Gowliguda, Rajendranagar, Sarooranagar, Tarnaka, Tarnaka-I, Vanasthalipuram and Vidyanagar.

<sup>94</sup>G.O.Ms.No.187, Industries & Commerce Department, dated 21 November 1995, G.O.Ms.No.108, Industries & Commerce (IP-II) Department, dated 20 May 1996 & G.O.Ms.No.134, Industries & Commerce Department, dated 1 July 1996.

<sup>95</sup>ACs (ST) - Jeedimetla and Tarnaka.

## 2.14 Goods and Services Tax (GST)

Goods and Services Tax (GST) was implemented with effect from 01 July 2017. GST is being levied on intra-State supply of goods or services (*except alcohol for human consumption and five specified petroleum products*<sup>96</sup>) separately but concurrently by the Union (CGST) and the States (SGST) / Union territories (UTGST). Further, Integrated GST (IGST) is being levied on inter-State supply of goods or services (including imports). Parliament has exclusive power to levy IGST.

State Government is empowered to regulate the provisions of TVAT Act, whereas, provisions relating to GST are regulated by Centre and State on the recommendation of the Goods and Services Tax Council (GSTC), which was constituted with representation from Centre and all the States to recommend on matters related to GST. The State Government notified (June 2017) the Telangana Goods and Services Tax (TGST) Act, 2017 and the Telangana Goods and Services Tax Rules, 2017 wherever various taxes were subsumed.

Goods and Services Tax Network (GSTN) was set up by the Government of India as a private company to provide IT services under GST. It provides front-end IT services to taxpayers like registration, payment of tax and filing of returns. Back-end IT services include registration approval, taxpayer detail viewer, refund processing, MIS reports *etc.* GSTN developed the back-end IT services for States that did not have the requisite IT support systems. These States, including Telangana State, are referred to as Model-II States. Model-I States are those that have developed the back-end systems on their own.

With automation of the collection of GST having taken place, it is essential for Audit to have access to GST data to transition from sample checks to a comprehensive check of all transactions. Accountant General (Audit) has written to Commissioner of Commercial Taxes, Telangana to provide access to GST data (May 2018 and November 2018). Based on the decision of GST Implementation Council (GSTIC) in providing data access, Chief Secretary and Special Chief Secretary to Government were addressed (October 2020) to provide access to back-end system of the Commercial Taxes Department. Reminders were issued in November 2020. However, access to data is yet to be provided (April 2022). The Commissioner of Commercial Taxes stated (January 2021) that access would be provided to the deployed Audit officials at their premises by providing logins to GST portal for conducting Subject Specific Compliance Audits (SSCAs) and hence, remote access would not be given. Accordingly, limited access to GST portal alone was provided for conducting SSCAs. Audit of GST Revenue is restricted to that extent.

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<sup>96</sup> Petroleum products: crude, high speed diesel, petrol, aviation turbine fuel and natural gas.

## **2.15 Subject Specific Compliance Audit on 'Refunds under GST'**

### **2.15.1 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.

GST law provides admissibility of claim for refund arising on account of (i) Export of goods or services;(ii) Supplies to Special Economic Zone units and developers;(iii) Deemed exports supplies; (iv) Inverted tax structure; (v) Refund arising on account of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court;(vi) Refund of taxes on purchase made by UN or embassies *etc.*;(vii) Refund of balance in electronic cash ledger; (viii) Refund of pre-deposit;(ix) Excess GST payment; (x) Refunds to International tourists of GST paid on goods in India and carried abroad at the time of their departure from India;(xi) Refund on account of issuance of refund vouchers for taxes paid on advances against which, goods or services have not been supplied;(xii) Refund of CGST & SGST paid by treating the supply as intra-state supply which is subsequently held as inter-state supply and *vice versa*.

### **2.15.2 Procedure for Refund claims**

The provisions pertaining to refund contained in the GST laws aim to streamline and standardise the refund procedures under GST regime. It was decided that the claim and sanctioning procedure would be completely online. However, due to unavailability of electronic refund module on the common portal, a temporary mechanism was devised and implemented. In this electronic-cum-manual procedure, the applicants were required to file the refund applications in Form GST RFD-01A on the common portal, take a printout of the same and submit it physically to the jurisdictional tax office along with all supporting documents. Further processing of these refund applications, *i.e.*, issuance of acknowledgement, issuance of deficiency memo, passing of provisional / final refund orders, payment advice *etc.*, were being done manually.

In order to make the refund procedure fully electronic, all the steps from submission of applications to processing thereof electronically have been deployed on the common portal with effect from 26 September 2019.

The claims are administered by respective circles / divisions of the Department of Commercial Taxes.

### **2.15.3 Audit Objectives**

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

- i. The adequacy of Act, Rules, notifications, circulars, *etc.*, issued in relation to grant of 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 effective internal control mechanism exists to check the performance of the departmental officials in disposing the refund applications.



#### 2.15.4 Scope of Audit

Pan-India GST refund data was obtained from GSTN and through risk-based data analysis, a sample of refund cases was extracted for detailed examination. Telangana is a model-II State which uses GSTN Back-end portal for processing and scrutiny of cases. Refund cases processed by the Department of Commercial Taxes during the period from July 2017 to July 2020 were examined.

An Entry conference was held with the Head of the Department on 25 November 2020 to apprise the Department of the Audit methodology including audit objectives and criteria. Field audit was conducted between November 2020 and March 2021. Draft Report was communicated to State Government on 17 August 2021. Exit conference was held with the Commissioner, Commercial Taxes on 24 February 2022 to discuss the Report and replies of the Department. Department furnished a generic reply (February 2022) stating that a circular had been issued on 22 February 2022 reiterating to ensure strict compliance to all the provisions of GST Act, Rules and other circular instructions issued from time to time. It was also stated that the officers concerned will be instructed to submit report to AG office after completion of action. Reply from Government is awaited (April 2022).

#### 2.15.5 Sample selection and audit methodology

GSTN provided Pan-India Refund Data for the period from July 2017 to July 2020. For the period prior to 26 September 2019, *i.e.*, pre-automation period, the refund applications under each category were sorted in descending order of refund amount claimed by taxpayers. The sorted refund applications were divided into four quartiles for drawing the sample.

For selecting refund applications filed after 26 September 2019, a composite risk score was devised using risk parameters such as refund amount claimed (60 *per cent* weightage), delay in sanctioning refund (15 *per cent*), refund sanctioned to refund amount claimed ratio (10 *per cent*) and issue of deficiency memo issued. Based on the risk score arrived as per this process, refund applications were selected.

Based on the above procedure, 848 cases of Refunds (354 Pre-Automation (prior to 26 September 2019 and 494 Post-Automation) pertaining to 72 circles / divisions were sampled for detailed scrutiny by Audit.

Audit acknowledges the support extended by Department in furnishing the information pertaining to the 840 refund cases amounting to ₹1,460.91 crore, out of 848 sample refund cases demanded, to Audit for detailed scrutiny. Case files of eight<sup>97</sup> refunds were not produced by the Departmental Authorities on the grounds of sending them to the office of Commissioner *etc.* Information pertaining to the total refund cases processed by the Department during the period from July 2017 to July 2020 was also not provided to Audit.

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<sup>97</sup>Amount of refund claimed in these eight cases was ₹3.72 crore.

### 2.15.6 Audit criteria

Audit findings were benchmarked against the criteria sourced from the following.

- (i) Section 54 to 58 and Section 77 of Telangana Goods and Services Tax Act, 2017
- (ii) Rule 89 to 97 of Telangana Goods and Services Tax Rules, 2017
- (iii) Section 15, 16 and 19 of Integrated Goods and Services Tax Act, 2017
- (iv) Other Government Orders, Circulars issued from time to time by the State Government / Department.

### Audit findings

During detailed scrutiny of 840 refund claims, Audit observed following excess / incorrect grant of refunds, delays in processing of refund claims and other miscellaneous lapses while processing refund claims.

**Table 2.7: Summary of findings**

Sl. No.	Nature of audit objections	Total				Percentage of deficiency to Audit sample (no. wise)
		Audit sample		Deficiency noticed		
		No.	Amount (₹ in crore)	No.	Tax effect (₹ in crore)	
1	Acknowledgments not issued in time	840	1,460.91	170	NA	20.24
2	Provisional refund not sanctioned in time	530 <sup>98</sup>	1,236.37	114	NA	21.51
3	Refund orders not sanctioned in time	840	1,460.91	219	2.58	26.07
4	Delay in communicating refund orders to counterpart tax authorities	210 <sup>99</sup>	755.24	149	NA	70.95
5	Excess / Incorrect grant of refund	840	1,460.91	149	31.06	17.74
6	Miscellaneous lapses in processing of refund claims	840	1,460.91	225	NA	26.79

These audit findings are detailed in succeeding paragraphs.

### 2.15.7 Scrutiny of Refund Applications

#### 2.15.7.1 Acknowledgments not issued in time

Rule 90 (1) and (2) of Telangana GST Rules, 2017 stipulates that after filing of refund application, the proper officer shall scrutinize the application for its completeness and issue acknowledgement within a period of 15 days of filing of the said application. In case of manual processing of refund, it was from the date of filing of application in jurisdictional office and in case of automated processing, from the date of filing of application in GSTN portal. The acknowledgement is issued in Form GST RFD-02 and clearly indicates the date of filing of the claim for refund<sup>100</sup>.

<sup>98</sup>Out of 840 cases, 530 cases pertain to export and SEZ supplies where provisional refund was to be granted.

<sup>99</sup>Out of 840 cases, 346 cases pertain to pre-automation period only to be communicated to counterpart tax authorities. Out of 346 cases, audit received relevant information for 210 cases only.

<sup>100</sup>Government vide G.O. Ms. No. 136 dated 27 November 2020, extended due date for completion or compliance of any action relating to certain provisions (including refund) which were falling due between 20 March 2020 to 30 August 2020 as 31 August 2020. Hence period from 20 March 2020 to 30 August 2020 was excluded while determining the due dates for various refund related compliances.



Of 840 test-checked Refund cases, we noticed delay in issue of acknowledgements in 170 Refund cases (20 per cent), involving refund of ₹390.33 crore, pertaining to 44 circles / divisions<sup>101</sup>. Of these, 135 cases were delayed up to three months, 24 cases were delayed by three to six months, 11 cases were delayed by more than six months, respectively. Further in one case involving refund of ₹9.09 lakh, pertaining to Hydernagar-II circle, acknowledgement was issued on 16 July 2019 and after that deficiency memo was issued on 20 September 2019 for submission of relevant documents which indicates that acknowledgement was issued incorrectly for incomplete application. Further, in one case, involving refund of ₹33.19 lakh, pertaining to Jubilee Hills-I circle, acknowledgement was not available in refund file. Out of above 170 cases of delayed issuance of acknowledgement, 124 cases pertain to categories where taxpayers were eligible for grant of provisional refund within seven days of acknowledgements. Hence, delay in issuance of acknowledgements consequently resulted in delay in grant of provisional refund also.

*One case is illustrated below:*

**A taxpayer, pertaining to Madhapur-II circle, filed refund application in jurisdictional office on 22 June 2019. Acknowledgement should have been issued by 6 July 2019, but it was issued on 18 January 2021 with a delay of 398 days (excluding the period from 20 March 2020 to 30 August 2020 due to pandemic related lockdown).**

On this being pointed out (November 2020 – June 2021), eight AAs<sup>102</sup> replied (December 2020 – March 2021) that the delay in 10 cases was due to late submission of required documents by the taxpayers. Reply is not acceptable, as the Department did not issue any deficiency memo in these cases for submission of incomplete refund application. Reply from other AAs is awaited (March 2022).

#### ***2.15.7.2 Non-filing of fresh refund application after issuance of deficiency memo/ incorrect issuance of deficiency memo***

As per Rule 90(3) of Telangana GST Rule, 2017, if any deficiencies are noticed in refund application, the proper officer shall communicate the deficiencies to the applicant within the period of 15 days, requiring him to file a fresh refund application after rectification of such deficiencies.

We noticed that out of 18 cases where deficiency memo was issued during manual processing of refunds, though the taxpayers did not file fresh refund application in six cases, involving refund of ₹1.03 crore, pertaining to four circles<sup>103</sup>, AAs granted refund based on original application, which was irregular, as it is not clear how the deficiencies were rectified without a fresh application. Further, in one case of post automation period,

<sup>101</sup>JCs(ST)-Abids, Begumpet, Charminar, Hyderabad Rural, Nalgonda, Punjagutta, Nizamabad, Saroonagar, Secunderabad; ACs(ST)- Abids, Basheerbagh-Nampally, Begumpet, Bowenpally-II, Fathenagar, Ferozguda, General Bazar-Market Street-Hissamgunj, Hydernagar-II, Hydernagar-III, IDA Gandhinagar, Jeedimetla-I, Jeedimetla-II, Jubilee Hills-I, Jubilee Hills-II, Khairatabad-Somajiguda, Khammam-III, MG Road-SD Road, Madhapur-I, Madhapur-II, Madhapur-IV, Malkajgiri-III, Marredpally, Medak, Mehdipatnam-II, Nacharam-I, Nagarkurnool, Narayanaguda-MJ Market, Punjagutta, Sanathnagar, Saroonagar-I, Srinagar Colony, Tarnaka-II, Vanasthalipuram-I, Vanasthalipuram-II and Vidyanagar.

<sup>102</sup>JCs(ST) - Punjagutta, Begumpet, Charminar; ACs(ST)- Basheerbagh-Nampally, Begumpet, Ferozguda, Marredpally and Vanasthalipuram-I.

<sup>103</sup>ACs(ST)- Basheerbagh-Nampally, Madhapur-I, Tarnaka-II and Vidyanagar.

involving refund of ₹9.44 lakh, pertaining to Jubilee Hills-II circle, the taxpayer was issued deficiency memo for submission of export supplies details and Bank Realisation Certificate (BRC) / Foreign Inward Remittance Certificate (FIRC) though the refund claims were filed under inverted tax structure category. As these documents were not relevant under the inverted tax structure category, issuance of deficiency memo was incorrect.

On this being pointed out (November 2020 and June 2021), AC(ST), Basheerbagh-Nampally replied (December 2020) that above deviation occurred due to transferring the file from other circle after formation of this new circle. AC (ST), Vidyanagar replied (December 2020) that initially there was no option to issue deficiency memo through GST portal. Replies are not relevant as the claims were processed without filing fresh refund application in deviation to the provisions of Telangana GST Rules. AC(ST), Jubilee Hills-II (September 2021) replied that deficiency memo was issued due to oversight and will be taken care in future. Replies from AC(ST), Madhapur-I and Tarnaka-II are awaited (April 2022).

### 2.15.7.3 *Provisional refund not sanctioned in time*

As per Section 54(6) of Telangana GST Act, 2017 read with rule 91(2) of Telangana GST Rules, 2017, in case of refund on account of zero-rated supply, the proper officer will scrutinize the claim and the evidence submitted. On being *prima facie* satisfied, he shall make a provisional refund order in Form GST RFD-04 sanctioning 90 *per cent* of the amount of refund due on provisional basis within a period of seven days from the date of acknowledgement.

Out of 530 sample refund cases, involving refund of ₹1,236.37 crore, pertaining to zero-rated supply admissible to provisional refund, we noticed delays in sanction of provisional refunds in 64 cases (12 *per cent*), involving refund of ₹103.93 crore, pertaining to 23 circles / divisions<sup>104</sup>. Of these, 59 cases were delayed up to three months, four cases were delayed by three to six months and one case was delayed by more than six months, respectively. In 50 cases, involving refund of ₹108.24 crore, no provisional refund was granted. Out of delayed sanction of provisional refund cases (64 cases), in 26 cases, acknowledgements were also issued belatedly; consequently, due date for grant of provisional refund was also delayed.

*One case is illustrated below:*

**A taxpayer pertaining to Khairatabad-Somajiguda Circle, filed refund application in office on 25 March 2019 and acknowledgement was issued on 17 June 2019 (with a delay of 69 days). Provisional refund should have been granted by 24 June 2019 but it was granted on 16 June 2020 with a delay of 269 days (period after 19 March 2020 was excluded due to imposition of nationwide lockdown)**

<sup>104</sup>JCs(ST)- Abids, Begumpet, Hyderabad Rural, Punjagutta, Saroornagar, Secunderabad; ACs(ST)- Barkatpura-Sultanbazar, Begumpet, Hydernagar-II, Jeedimetla-II, Jubilee Hills-II, Keesara-I, Khairatabad-Somajiguda, Madhapur-I, Madhapur-III, Malkajgiri-II, Musheerabad, Nacharam-II, Ramgopalpet-Ranigunj, Saroornagar-I, Srinagar Colony, Tarnaka-II and Vanasthalipuram-I.

On this being pointed out (November 2020 – June 2021), three AAs<sup>105</sup> (in nine cases) replied (December 2020 – March 2021) that the delay was due to late submission of required documents by the taxpayers. Reply is not acceptable, as the Department did not issue any deficiency memo in those cases for submission of incomplete refund application. AC(ST), Barkatpura-Sultanbazar (in three cases), replied (December 2020) that there was no delay in sanction of refunds after submission of refund application by the taxpayers manually. Reply is not acceptable as refund applications were filed manually in office on 8 August 2019. Acknowledgements were issued on 13 August 2019 and provisional refunds were granted on 30 August 2019 with a delay of 10 days. In respect of non-sanctioned cases, AC(ST), Vengalraonagar replied (December 2020) that it was due to grant of full refund after complete verification. Reply is not acceptable as although full refund was granted in time, no provisional refund was granted as stipulated. Reply from other AAs is awaited (March 2022).

## **2.15.8 Deficiencies in processing of applications**

### **2.15.8.1 Irregular grant of provisional refund**

As per Section 54(6) of Telangana GST Act, 2017, provisional refund is admissible only in case of zero-rated supply of goods and / or services and not in other categories.

Of 840 sample Refund cases, we noticed that in three cases, involving refund of ₹1.63 crore, pertaining to two circles / divisions<sup>106</sup>, Department had issued the provisional refund of 90 *per cent* amounting to ₹1.47 crore pertaining to categories other than that of zero-rated supply of goods or services.

On this being pointed out (November 2020- March 2021), AC(ST), Keesara-I (in two cases) replied (December 2020) that 90 *per cent* amount was sanctioned after verification and there was no loss of revenue. Reply is not acceptable, as there was no provision for grant of provisional refund in other than zero-rated categories. Reply from other AA is awaited (March 2022).

### **2.15.8.2 Non-availability of database of offences committed**

As per Rule 91(1) of Telangana GST Rules, 2017, a taxpayer shall be granted provisional refund 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 two hundred and fifty lakh rupees.

We noticed that no mechanism was available with the Department to verify the correctness of self-declaration given by the taxpayer regarding non-prosecution.

#### **Recommendation:**

**Department needs to put in place a mechanism to verify the correctness of declarations filed by the taxpayer regarding offences committed.**

<sup>105</sup>JCs(ST)-Punjagutta, Begumpet and AC(ST)-Begumpet.

<sup>106</sup>JC(ST)- Begumpet and AC(ST)- Keesara-I.

### 2.15.8.3 Refund orders not sanctioned in time

Section 54(7) of The Telangana GST Act, 2017 read with Rule 92 of Telangana GST Rules, 2017 stipulates that upon submission of refund application, the proper officer shall carry out the examination process. He shall examine if the refund claim is due and payable and then shall make an order in Form GST RFD-06, sanctioning the amount of refund to which the applicant is entitled within 60 days of receipt of application. Further, as per Section 56 of the Act read with G.O.Ms.No.122 dated 30 June 2017, if the amount due to be refunded to the taxpayer is not refunded within 60 days from the date of receipt of application, interest at the rate of six *per cent* will be payable along-with refund amount.

Out of 840 sample Refund cases, Audit observed delay in sanction of refunds in 201 (24 *per cent*) cases, involving refund of ₹281.57 crore, pertaining to 47 circles / divisions<sup>107</sup>. Of these, 114 cases were delayed up to three months, 33 cases were delayed by three to six months and 54 cases were delayed by more than six months, respectively.

Further, refund was not yet finalised in 18 cases, involving refund of ₹251.06 crore, pertaining to eight circles / divisions<sup>108</sup>.

**One case is illustrated below:**

**A taxpayer pertaining to Begumpet Circle, filed refund application in office on 12 April 2019. Final refund should have been granted by 11 June 2019 but it was granted on 30 October 2021 with a delay of 708 days (excluding the period from 20 March 2020 to 30 August 2020 due to pandemic related lockdown).**

On this being pointed out (November 2020 – June 2021), 10 AAs<sup>109</sup> (in 38 cases) replied (December 2020 – September 2021) that the delay was due to late submission of required documents by the taxpayers. Reply is not acceptable as the Department did not issue any deficiency memo in these cases for submission of incomplete refund application. In one case, AC(ST), Vidyanagar replied (December 2020), that the delay was due to delayed reply by the taxpayer of notice (issued in February 2020, replied in March 2020) and imposition of the lockdown subsequently. AC(ST), Tarnaka-I (in four cases), replied (March 2021), that the delay was due to ascertaining past dues before granting refund. Reply is not acceptable as Department could have completed the entire proceedings within stipulated time of 60 days. Reply from other AAs is awaited (March 2022).

Audit calculated an interest liability of ₹2.58 crore payable to the taxpayers due to belated processing of refund claims in 201 cases.

<sup>107</sup>JCs(ST)-Abids, Begumpet, Hyderabad Rural, Nalgonda, Punjagutta, Nizamabad, Saroornagar, Secunderabad; and ACs(ST)- Abids, Basheerbagh-I, Begumpet, Bhongir, Bowenpally-II, Fathenagar, Ferozguda, General Bazar-Market Street-Hissamgunj, Hydernagar-II, Hydernagar-III, IDA Gandhinagar, Jeedimetla-I, Jeedimetla-II, Jubilee Hills-I, Keesara-I, Khairatabad-Somajiguda, Khammam-III, Madhapur-I, Madhapur-II, Madhapur-III, Madhapur-IV, Marredpally, Medak, Musheerabad, Nacharam-II, Nagarkurnool, Rajendranagar-I, Rajendranagar-II, Sanathnagar, Sangareddy-II, Saroornagar-I, Saroornagar-II, Saroornagar-III, Tarnaka-I, Tarnaka-II, Vanasthalipuram-I, Vanasthalipuram-II, Vengalraonagar and Vidyanagar.

<sup>108</sup>JCs(ST)- Hyderabad Rural, Secunderabad; ACs(ST)- Hyderguda-Ashoknagar, Malakpet-II, Nacharam-I, Punjagutta, Ramgopalpet-Ranigunj and Tarnaka-II.

<sup>109</sup>JCs(ST)-Punjagutta and Begumpet; ACs(ST)-Begumpet, Hydernagar-III, Madhapur-IV, Marredpally, Nacharam-I, Ramgopalpet-Ranigunj, Vanasthalipuram-I and Vengalraonagar.

**Recommendation:**

***There should be a provision for automatic processing of payment of interest in case of delayed processing of refunds.***

**2.15.8.4 Delay in communicating refund orders to counterpart tax authorities**

As per Circular No. A (1)/170/2017, dated 29 December 2017 issued by State Government, refund order issued either by Central Tax Authority or State Tax / UT Tax Authority shall be communicated to the concerned counterpart tax authority within three working days for the purpose of payment of relevant sanctioned amount of tax or cess as the case may be. This procedure was done away by introducing sanction as well as payment of refund amount by single authority for all the tax heads *vide* Central Board of Indirect Taxes and Customs (CBIC) Circular No. 125/44/2019 - GST dated 18 November 2019.

We examined 346 sample cases of pre-automation period in seven<sup>110</sup> State Tax Divisions in Telangana. Three Divisions<sup>111</sup> furnished requisite information regarding communication of refund orders to counterpart Central Tax Authorities. The remaining four divisions did not furnish such information; hence Audit is not able to assess timeliness (or otherwise) of communication of refund orders to counterpart tax authorities. It was observed that out of total 210 cases, involving refund of ₹755.24 crore, selected in these three divisions (Hyderabad Rural, Punjagutta and Secunderabad), there was delay in communication of refund sanction orders to Central Tax Authorities in 149 cases (71 *per cent*). Of these, 144 cases were delayed up to three months, four cases were delayed by three to six months and one case was delayed by more than six months, respectively. Delay in communication of refund orders resulted in delayed disbursement of the remaining refund amount.

The Commissioner of Commercial Taxes replied (February 2022) that refund module is completely automated with effect from 26 September 2019, and hence the issue would not arise now.

**2.15.9 Refund of accumulated ITC on account of export of goods / services without payment of tax**

As per Section 16(1) of Integrated GST Act, 2017, export of goods / services is categorised as zero-rated supplies. Section 54(3)(i) of The Telangana GST Act, 2017, provides for refund of unutilized Input Tax Credit (ITC) on account of zero-rated supplies made without payment of tax. Rule 89(4) of Telangana GST Rules, 2017, provides following formula for grant of refund in case of zero-rated supply of goods / services without payment of tax under bond or letter of undertaking:

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

Where,

<sup>110</sup>Abids, Begumpet, Charminar, Hyderabad Rural, Punjagutta, Saroornagar and Secunderabad.

<sup>111</sup> Hyderabad Rural, Punjagutta and Secunderabad.

- a. "Net ITC" means input tax credit availed on inputs and input services during the relevant period
- b. "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax;
- c. "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax where the payments have been received during the relevant period including such zero-rated supply of services where the amount was received prior to relevant period but services were supplied during the relevant period.
- d. "Adjusted Total Turnover" means the turnover in a State or a Union territory, as defined under sub-section (112) of Section 2, excluding the value of exempt supplies other than zero-rated supplies, during the relevant period.

Audit sample included 458 cases of the category of export of goods / services without payment of tax, involving refund of ₹1,101.60 crore. Scrutiny of documents revealed the following:

**2.15.9.1 Excess / Incorrect grant of refund due to incorrect adoption of zero-rated supplies turnover / adjusted total turnover**

We noticed that out of 458 cases, in 36 cases, involving refund of ₹50.81 crore, pertaining to 17 circles / divisions<sup>112</sup>, there were errors in adoption of zero-rated supplies turnover / adjusted total turnover as illustrated below:

- i) In 14 cases though payments towards zero-rated supply of services were received after the relevant period of refund, these supplies were treated as zero-rated supplies of relevant period, resulting in excess adoption of zero-rated supplies turnover.
- ii) In eight cases, zero-rated supplies of goods were adopted more than that as per statement of shipping bills furnished.
- iii) In 11 cases, domestic supplies turnovers (other than exempt supplies) were not included in adjusted total turnover, resulting in less adoption of adjusted total turnover.
- iv) In respect of three cases, there was mistake in adoption of zero-rated supplies turnover as well as adjusted total turnover.

Excess / incorrect grant of refund on these cases was ₹9.94 crore.

<sup>112</sup>JCs(ST)- Begumpet, Saroornagar, Secunderabad; ACs(ST)- Abids, Ferozguda, Hyderguda-Ashoknagar, Jeedimetla-II, Jubilee-Hills-II, Madhapur-I, Madhapur-II, Madhapur-III, Madhapur-IV, Musheerabad, Nacharam-I, Nacharam-II, Punjagutta and Sanathnagar.



*One case is illustrated below:*

**In one case pertaining to JC(ST), Secunderabad, zero rated supplies turnover was adopted as ₹53.57 crore. However, as per Foreign Inward Remittance Certificate (FIRCs) statement all 20 FIRCs were after the relevant period. Audit scrutinised the statement with copies of FIRCs and noticed that for all the FIRCs, dates were mentioned incorrectly in the statement and only four FIRCs amounting to ₹25.06 crore were received during or before the relevant period of refund. All these aspects were not noticed by the Department. Further, there was a mistake in adoption of adjusted total turnover also as domestic taxable supplies were not adopted correctly as per GSTR-3B return. Had the Department verified all these aspects, excess refund of ₹1.56 crore could have been avoided**

On this being pointed out (December 2020 – June 2021), in respect of two cases, AC(ST), Punjagutta replied (March 2021) that no condition was provided regarding ineligibility due to receipts of FIRC in subsequent tax period and the definition under Rule 89 (4) (D) has *ultra-vires* effect over the definition provided under Section 2(6) of Act. Reply is not acceptable as Section 2(6) defines aggregate turnover but not zero-rated turnover. Zero rated turnover which is to be adopted while granting the refund is stipulated *vide* Rule 89(4)(D) only which clearly stipulates that only those export of services where payment is received during the relevant period, shall be considered as zero-rated supplies of relevant period.

In respect of two cases, AC(ST), Ferozguda replied (September 2021) that assessing authority cannot decide what is capital goods in the absence of details of capitalisation done in books of accounts. Reply is not relevant to the objection as it was raised on incorrect adoption of adjusted total turnover. In one case, AC(ST), Jubilee Hills-II replied (September 2021) that out of total FIRC of ₹1.31 crore, an amount of ₹83.03 lakh was realised during relevant period and hence taxpayer was eligible for refund of ₹13.94 lakh. Balance amount of ₹8.16 lakh was paid back by the taxpayer. Reply is not acceptable as the date of receipt of FIRC was 6 November 2018 which was not during relevant period of April 2018 to July 2018. Hence, the same cannot be treated as zero rated turnover for relevant period.

In another case AC(ST), Jubilee Hills-II replied (September 2021) that there was no mistake in adoption of adjusted total turnover and the variation in adjusted total turnover was due to incorrectly taking reverse charge turnover in taxable turnover in GSTR 3B returns. However, AA did not furnish relevant documents. In two cases, AC(ST), Sanathnagar replied (June 2021) that there was no excess grant of refund, as there was no domestic sale during the relevant periods. Reply is not relevant as observation was based on non-receipt of FIRC during relevant period. Reply from other AAs is awaited (March 2022).

### 2.15.9.2 Excess grant of refund due to inclusion of ITC on Capital goods in Net ITC

As per Rule 89(4) of Telangana GST Rules, 2017, "Net ITC" for the purpose of refund means input tax credit availed on inputs and input services during the relevant period. Thus, ITC availed on capital goods shall not be considered for refund.

We noticed that out of 458 cases, in 11 cases, involving refund of ₹6.88 crore, pertaining to six circles<sup>113</sup>, ITC on capital goods was not excluded from Net ITC while calculating the eligible refund amount. This had resulted in excess grant of refund of ₹1.24 crore. Further in one case, involving refund of ₹76.20 lakh, pertaining to Madhapur-IV circle, there was mistake in adoption of zero-rated turnover / adjusted total turnover along-with inclusion of ITC on capital goods in Net ITC which resulted in excess grant of refund of ₹29.16 lakh.

*One case is illustrated below:*

**A case pertaining to Khairatabad-Somajiguda Circle, whereby the taxpayer engaged in providing software services, adopted Net ITC as ₹1.29 crore in refund application which included ITC relating to Laptops, Monitors and office equipment amounting to ₹42.76 lakh. This resulted in excess grant of refund of ₹40.45 lakh.**

On this being pointed out (November 2020 – June 2021), in respect of above illustrated case, AC(ST), Khairatabad-Somajiguda replied (December 2020) that laptops, monitors and office equipment were used for furtherance of business without which business could not be functioned as a going concern. Reply is not acceptable as these items are capital goods. As they are used for furtherance of business, they are eligible for ITC but not for refund. Reply from other AAs is awaited (March 2022).

### 2.15.10 Refund of accumulated ITC on account of inverted tax structure

As per Section 54 (3)(ii) of Telangana GST 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 tax structure). Rule 89(5) of Telangana GST Rules, 2017, provides following formula for grant of refund in case of inverted tax structure.

Maximum Refund Amount = [(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover] - tax payable on such inverted rated supply of goods and services.

Where,

- a. "Net ITC" means input tax credit availed on inputs during the relevant period
- b. "Adjusted Total Turnover" means the turnover in a State or a Union territory, as defined under sub-section (112) of Section 2, excluding the value of exempt supplies other than zero-rated supplies, during the relevant period.

<sup>113</sup>ACs(ST)- Khairatabad-Somajiguda, Madhapur-I, Madhapur-III, Madhapur-IV, Malkajgiri-II and Punjagutta.



Audit sample include 155 cases of the category of inverted tax structure, involving refund of ₹116.08 crore. Scrutiny of the documents of these cases revealed the following:

**2.15.10.1 Excess grant of refund due to mistake in inverted rated supplies turnover/ adjusted total turnover**

Out of 155 cases, in 20 cases, involving refund of ₹25.09 crore, pertaining to 10 circles / divisions<sup>114</sup>, there were errors in adoption of inverted rated supplies turnover / adjusted total turnover as illustrated below:

- i) In eight cases, all the output supplies were treated as inverted rated supplies instead of only those supplies where tax was less than input supplies, resulting in excess adoption of inverted rated supplies turnover.
- ii) In 11 cases adjusted total turnover was adopted less due to non-inclusion of entire turnover as defined under Section 2(112), excluding the value of exempt supplies.
- iii) In one case there was mistake in inverted rated supplies turnover as well as adjusted total turnover.

Excess grant of refund on these cases was ₹3 crore.

*One case is illustrated below:*

**In one case, pertaining to JC(ST), Begumpet, there was mistake in adoption of adjusted total turnover as same was taken as ₹25.71 crore in place of ₹60.94 crore as domestic supplies and export supplies were not adopted correctly as per GSTR-3B returns, resulting in excess grant of refund of ₹43.41 lakh.**

On this being pointed out (November 2020 – June 2021), in two cases, AC(ST), Jubilee Hills-II replied (September 2021) that variation in adjusted total turnover was due to incorrectly taking reverse charge turnover in taxable turnover in GSTR 3B returns and there was no excess grant of refund. Reply of the Department indicates that turnovers as per GSTR-3B returns were not verified while granting refund. Further, Department did not furnish invoice wise and tax rate wise statement of outward taxable supplies and reverse charge inward supplies which were included in taxable turnover to verify the correctness of turnovers adopted in refund application. Reply from other AAs is awaited (March 2022).

**2.15.10.2 Excess grant of refund due to inclusion of ITC on Capital goods / Services in Net ITC**

As per Rule 89(5) of Telangana GST Rules, 2017, "Net ITC" for the purpose of refund means input tax credit availed on inputs during the relevant period. Thus, ITC availed on capital goods and input services shall not be considered for refund.

Out of 155 cases, we noticed that in 25 cases, involving refund of ₹27.59 crore, pertaining to five circles / divisions<sup>115</sup>, ITC on capital goods and input services was not excluded

<sup>114</sup>JC(ST)- Begumpet; ACs(ST)- Hydernagar-II, IDA Gandhinagar, Jubilee Hills-II, Keesara-I, Medak, Nacharam-I, Nacharam-II, Rajendranagar-II and Vanasthalipuram-II.

<sup>115</sup>JC(ST)- Begumpet; ACs(ST)- IDA Gandhinagar, Madhapur-I, Nacharam-I and Tarnaka-I.

from Net ITC while calculating the eligible refund amount. This had resulted in excess grant of refund of ₹6.10 crore.

*One case is illustrated below:*

**In one case pertaining to JC(ST), Begumpet, a taxpayer, adopted net ITC as ₹19.66 crore in refund application which included ITC of ₹2.92 crore relating to services and capital goods. Further adjusted total turnover was also adopted as ₹11.06 crore though the same was ₹11.27 crore as per GSTR-3B returns. This resulted in excess grant of refund of ₹2.41 crore.**

On this being pointed out (March - June 2021), in respect of one case, AC(ST), Nacharam-I replied (March 2021) that as per judgement given by Hon'ble High Court of Gujarat in case of M/s. VKC Footsteps India Private Limited, ITC availed on input services can be claimed as refund. Reply is not acceptable as Hon'ble Supreme Court<sup>116</sup> set aside this judgement and concluded that refund cannot be allowed on input tax on services under inverted duty structure. Reply from other AAs is awaited (March 2022).

#### ***2.15.10.3 Excess grant of refund due to non-reversal of accumulated ITC on textiles***

As per G.O. Ms. No. 171 dated 20 August 2018 (Notification No. 20/2018- State Tax-Rate), refund of accumulated ITC under inverted tax structure in case of textiles was allowed with effect from 1 August 2018. Further as per CBIC Circular No. 56/30/2018 dated 24 August 2018, ITC accumulated due to inverted tax structure up to July 2018 was to be lapsed and debited by way of reversal in the GSTR 3B return of August 2018.

Out of 155 cases, we noticed that in four cases, involving refund of ₹14.11 lakh, pertaining to Siricilla Circle, taxpayers did not reverse ITC accumulated till July 2018 in GSTR 3B return of August 2018. Resultantly, ITC balance available to the end of the tax period column in RFD-01 was more than eligibility. This resulted in excess grant of refund of ₹4.09 lakh. Further in one case<sup>117</sup>, involving refund of ₹70.13 lakh, pertaining to Nagarkurnool circle, the taxpayer was allowed refund from April 2018 itself instead of August 2018. This resulted in excess grant of refund of ₹25.94 lakh.

The Commissioner of Commercial Taxes replied (February 2022) that proper officers would be instructed to take necessary action and submit report.

#### ***2.15.10.4 Incorrect grant of refund on non-inverted tax structure supplies***

As per Section 54 (3)(ii) of Telangana GST Act, 2017, refund under inverted tax structure shall be granted where input tax credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. Thus, if input and output supplies are taxable at same rate, refund of ITC shall not be allowed.

Out of 155 cases, we noticed that in one case<sup>118</sup>, involving refund of ₹7.92 lakh, pertaining to Wanaparthy circle, input as well as output supplies were taxed at same rate

<sup>116</sup> Civil Appeal No. 4810 of 2021 Union of India and Ors. Vs. VKC Footsteps India Private Limited.

<sup>117</sup> ARN AA361119010328F.

<sup>118</sup> ARN AA3606200231004.

*i.e. five per cent.* Hence there was no inverted tax structure and hence, no refund was to be granted. However, the AA granted refund of ₹7.92 lakh, which was incorrect.

The Commissioner of Commercial Taxes replied (February 2022) that proper officers would be instructed to take necessary action and submit report.

#### **2.15.10.5 Excess grant of refund due to clerical error**

Out of 155 cases, we noticed that in one case<sup>119</sup>, involving refund of ₹15.19 lakh, pertaining to Malkajgiri-III circle, while calculating the eligible refund under inverted tax structure, tax paid on inverted rated supplies as per GSTR-3B returns / statement of invoices was ₹11.86 lakh but the same was adopted as ₹1.18 lakh. However, the Department did not verify it which resulted in excess grant of Refund of ₹10.67 lakh.

The Commissioner of Commercial Taxes replied (February 2022) that proper officer was instructed to take necessary action and to submit report.

#### **2.15.11 Excess / Irregular grant of refund on SEZ supplies**

According to Section 16(1)(b) of Integrated GST Act, 2017, supply of goods / services to a Special Economic Zone (SEZ) developer or a Special Economic Zone unit is considered as “Zero rated Supply”. As per provision to Rule 89(1) of Telangana GST Rules, 2017, in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone.

Audit sample included 60 cases, under the category of supply of goods / services to SEZ, involving refund of ₹126.41 crore. On scrutiny of the documents of these cases, Audit observed that in three cases, involving refund of ₹8.52 crore, pertaining to Vengalraonagar circle, there were errors in adoption of adjusted total turnover due to non-inclusion of entire turnover as defined under Section 2(112), excluding the value of exempt supplies. This had resulted in excess grant of refund of ₹47.10 lakh. Further in four cases, involving refund of ₹7.87 crore, pertaining to four circles / divisions<sup>120</sup>, endorsement by the specified officer of the SEZ indicating that goods have been admitted in full in the SEZ for authorised operations was not available. Hence, grant of refund was irregular.

On this being pointed out (March-June 2021), in one case, relating to non-availability of endorsement, AC(ST), Sanathnagar replied (September 2021) that taxpayer could not upload the document due to technical glitches but submitted the same in the office. However, no such endorsement was furnished to audit. In respect of three cases, relating to excess grant of refund, AC(ST), Vengalraonagar replied that there were output supplies return and goods returned turnover was deducted from adjusted total turnover while claiming the refund. Reply is not acceptable because any adjustment on account of returned goods has to be done in the month in which credit notes are received but not in

<sup>119</sup>ARN AA360320013486M.

<sup>120</sup>JC(ST)- Begumpet; ACs(ST)- Jeedimetla-II, Jubilee Hills-II and Sanathnagar.

the previous month to which the output supply relates. Reply from other AAs is awaited (March 2022).

### **2.15.12 Incorrect / irregular grant of refund on deemed export supplies**

Government of Telangana vide G.O. Ms. No. 289 dated 18 December 2017, notified supply of goods by a registered person against Advance Authorisation, supply of capital goods against Export Promotion Capital Goods Authorisation and supply of goods to Export Oriented Units (EOU) / Software Technology Park (STP) as deemed export supplies. Hence supply of capital goods to STP cannot be treated as deemed export supplies.

Further, CBIC Circular No. 14/14/2017 dated 6 November 2017 provides that the recipient of deemed export supplies shall give prior intimation to the Jurisdictional Officer in a prescribed proforma in "Form-A" bearing a running serial number containing the goods to be procured, as pre-approved by the Development Commissioner and the details of the supplier before such deemed export supplies are received. A copy of the same is to be given to supplier also. Further, in cases where supplier of deemed export supplies claims refund, an undertaking is to be submitted by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him and that he shall not claim the refund in respect of such supplies.

Audit sample include 28 cases, under the category of deemed export supplies, involving refund of ₹18.57 crore. On scrutiny of the documents of these cases, Audit observed that in one case, involving refund of ₹88.18 lakh, pertaining to Begumpet circle, refund was allowed on procurement of capital goods by a STP unit. This was incorrect as refund on input supplies received by a STP unit under deemed export category is limited to supply of goods only but not on capital goods. Further in one case, involving refund of ₹10.80 lakh, pertaining to Punjagutta circle, though the taxpayer did not furnish Form-A and under-taking by the recipient of deemed export supplies, refund was sanctioned irregularly.

### **2.15.13 Incorrect grant of refund under excess tax payment**

As per Section 2(119) of the Telangana GST Act 2017, works contract, means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods is involved in the execution of such contract. As per G.O. Ms. No. 110 dated 29 June 2017 (Notification No. 11/2017- State Tax (Rate), composite supply of works contract as defined in Section 2(119) of Telangana Goods and Services Tax Act, 2017 shall be taxable at the rate of 18 per cent (except certain notified works contract where GST was payable at the rate of 12 per cent only viz. Road works, tunnel works, water distribution works etc.). The work contract relating to construction of Electrical sub-stations & power transmission lines was taxable at the rate of 18 per cent.

In seven Refund cases of excess tax payment, involving refund of ₹39.04 lakh, Audit observed that in one case<sup>121</sup>, involving refund of ₹5.86 lakh, pertaining to Sanathnagar circle, the taxpayer was engaged in works contract relating to construction of Electrical sub-stations and power transmission lines for Telangana State Transmission Company (TS TRANSCO). The taxpayer raised invoices charging 18 *per cent* GST for the period from July 2018 to February 2019. The same were paid by the contractee (TS TRANSCO) and accordingly taxpayer paid tax at the rate of 18 *per cent* in GSTR-3B returns of above period. However, the contractee later recovered six *per cent* GST from subsequent bills of the taxpayer on the ground that GST was payable at the rate of 12 *per cent* only instead of 18 *per cent*. Accordingly, taxpayer also applied for refund of differential six *per cent* amount, claiming that tax was excess paid at the rate of 18 *per cent* instead of 12 *per cent* and the same was refunded. This was incorrect as rate of GST was 18 *per cent* on the works contracts executed by the taxpayer and there was no question of refund on the ground that GST was paid excess. Incorrect grant of refund was ₹5.86 lakh.

On this being pointed out (May 2021), AC(ST), Sanathnagar replied (July 2021) that the said work relates to lift irrigation scheme which is a DC work as per CBIC Notification No. 31/2017 dated 13 October 2017 and GST is chargeable at the rate of 12 *per cent* only. Reply is not acceptable as there is no mention of any DC work in Notification No. 31/2017. Further work order / agreement copies were also not furnished to ascertain the nature of work and its chargeability as per above provisions.

The Commissioner of Commercial Taxes replied (February 2022) that proper officer would be instructed to furnish the Work Order / Agreement copies.

#### **2.15.14 Other lapses leading to excess / incorrect grant of refund**

Out of 840 Refund Cases examined in Audit, excess / incorrect grant of refund was noticed in following 74 cases (nine *per cent*).

##### **2.15.14.1 Incorrect grant of refund on time barred claims**

As per Section 54 (1) of Telangana GST Act 2017, a registered person may file an application for claim of refund within two years from the relevant date.

As per explanation to Section 54, relevant date, *inter alia* means

- i) In case of export of goods out of India, shall be, the date on which the ship or the aircraft, in which such goods are loaded, leaves India.
- ii) In case of export of services out of India, shall be, the date of receipt of payment in convertible foreign exchange, where the supply of services had been completed prior to the receipt of such payment. Further, in cases where payment for the services had been received in advance prior to the date of issue of invoice, date of issue of invoice, shall be relevant date.
- iii) In case of supply of goods regarded as deemed exports, shall be, the date on which the return relating to such deemed exports are furnished.

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<sup>121</sup>ARN AA3611190253866.

- iv) In case of inverted tax structure, shall be, the due date for furnishing of return under Section 39<sup>122</sup>.

We noticed that in six cases, involving refund of ₹2.01 crore, pertaining to six circles / divisions<sup>123</sup>, though refund claims were filed after the expiry of two years from the relevant date, they were allowed. This had resulted in incorrect grant of refund of ₹1.44 crore.

*One case is illustrated below:*

**A taxpayer, pertaining to Punjagutta circle, claimed refund of accumulated ITC on account of export of goods for the period from July 2017 to November 2017 on 30 November 2019. As per statement of shipping bills, all the shipping bills were issued prior or up to 30 November 2017. Hence two-year period of the relevant claims would over by 29 November 2019 and claim was time barred by 30 November 2019, resulting in incorrect grant of refund of ₹49.03 lakh.**

#### **2.15.14.2 Excess / irregular grant of refund on invoices not reflected in GSTR-2A return**

The concept of invoice matching forms the backbone of Input Tax Credit under GST regime. Accordingly, invoice of the taxable supplies procured by a buyer would be matched with the invoices shown in GSTR-1 return filed by the seller. With the beginning of matching of invoices through GSTR-2A returns, it was clarified vide CBIC Circular No.59 dated 4 September 2018 that proper officer shall not insist on submission of invoices along-with refund claim, if details of invoices are present in GSTR-2A return. However, if the invoices are not reflected in GSTR-2A return, proper officer may call for the copies of such invoices for examination.

With the intention of curbing the practice of issue of fake invoices, a sub-clause (4) to Rule 36 of Telangana GST Rules, 2017 was inserted with effect from 1 October 2019 (*vide* G.O. Ms. No. 96 dated 3 September 2020) and ITC in respect of invoices / debit notes which were not reflected in GSTR-2A return was restricted to 20 *per cent* of supplies reflected in GSTR-2A return. It was further restricted to 10 *per cent* (*vide* G.O. Ms. No. 60 dated 22 June 2020) and then five *per cent* (*vide* G.O. Ms. No. 26 dated 18 February 2021) with effect from 1 January 2020 and 1 January 2021 respectively.

We noticed that out of 659 cases, pertaining to refund of accumulated ITC, in four cases (pertaining to tax period prior to October 2019), involving refund of ₹1.32 crore, pertaining to three circles<sup>124</sup>, though all the invoices on which ITC was claimed were not reflected in GSTR-2A return, proper officer allowed refund without calling for the copies of such invoices for examination, which was irregular.

Further, in four cases, involving refund of ₹8.21crore, relating to two circles / division<sup>125</sup>(pertaining to tax period October 2019 onwards), net ITC was not restricted in

<sup>122</sup>with effect from 1 February 2019.

<sup>123</sup>JC (ST)- Abids; ACs(ST)- Basheerbagh-I, Madhapur-I, Madhapur-II, Malkajgiri-I and Punjagutta.

<sup>124</sup>ACs(ST)- Begumpet, Madhapur-II and Nacharam-I.

<sup>125</sup>JC(ST)-Saroornagar and AC(ST)- Srinagar Colony.



terms of Rule 36(4) while granting the refunds, resulting in excess grant of refund of ₹1.37 crore.

*One case is illustrated below:*

**A taxpayer pertaining to JC(ST), Saroornagar, claimed refund for May 2020. As per GSTR-2A return, ITC for May 2020 was ₹2.67 crore. Hence ITC eligible as per Rule 36(4) was ₹2.95 crore but Net ITC was adopted as ₹3.86 crore in refund claim, resulting in excess grant of refund of ₹65.62 lakh.**

On this being pointed out (March-June 2021), in one case AC(ST), Nacharam-I accepted the audit observation (March 2021). Reply from other AAs is awaited (March 2022).

### **2.15.14.3 Excess grant of refund due to inclusion of ineligible ITC in Net ITC**

As per Section 16(1) of Telangana GST Act, 2017, every registered person shall be entitled to take credit of tax charged on any input supply of goods / services which are used or intended to be used in the course or furtherance of his business. Further as per Section 17(5) of the Act, the following items *inter alia* are not eligible for claiming input tax credit (ITC):

- i. motor vehicles and other conveyances (except when used for output supplies of similar category)
- ii. food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery;
- iii. membership of a club, health and fitness centre; rent-a-cab, life insurance and health insurance (except where it was provided due to Government notification or where used for output supplies of similar category)
- iv. works contract services when supplied for construction of an immovable property (other than plant or machinery) (except where it is an input service for further supply of works contract service)
- v. goods / services received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business
- vi. goods / services used for personal consumption
- vii. goods lost, stolen, destroyed, written off or disposed off by way of gift or free samples

We noticed that out of 659 cases, pertaining to refund of accumulated ITC, in 11 cases, involving refund of ₹9.23 crore, pertaining to five circles / division<sup>126</sup>, ITC on ineligible items was included in Net ITC. This had resulted in excess grant of refund of ₹25.65 lakh.

<sup>126</sup>JC(ST)- Saroornagar; ACs(ST)- Jubilee Hills-I, Madhapur-I, Madhapur-II and Srinagar Colony.

*One case is illustrated below:*

**A taxpayer pertaining to Jubilee Hills-I circle, adopted Net ITC as ₹42.84 lakh in refund application though the same was ₹42.68 lakh as per input supplies details submitted. Further ITC of ₹6.08 lakh pertaining to food and beverages was included in Net ITC which was not restricted while granting refund, resulting in excess grant of refund of ₹6.23 lakh.**

On this being pointed out (November 2020 – June 2021), in respect of above illustrated case, AC(ST), Jubilee Hills-I replied (March 2022) that out of above ITC, an ITC of ₹5.91 lakh pertaining to catering charges was already reversed while filing GSTR 3B return for the month of January 2019 i.e., before sanction of refund claim in July 2019. Hence, there was no excess refund. Further, in respect of ITC of ₹0.17 lakh pertaining to beverages and mineral water, AC (ST) replied that the same were used for business promotion and hence, eligible for ITC. Reply is not acceptable because though the ITC on catering charges was reversed before sanctioning the refund, it was to be excluded from Net ITC while calculating eligible refund amount. Otherwise, eligible refund amount would be in excess. Further, ITC on mineral water & beverages is not eligible even though they are used for business promotion as they fall under negative list.

Replies from other AAs were awaited (March 2022).

#### **2.15.14.4 Excess grant of refund due to excess adoption of Net ITC**

As per Rule 89(2)(h) of Telangana GST Rules, 2017, in cases where the refund claim pertains to refund of any unutilised input tax credit, taxpayer has to submit a statement containing the number and date of the invoices received during a tax period. Further, as per Rule 89(4) 'Net ITC' means input tax credit availed on inputs and input services during the relevant period.

We noticed that out of 659 cases, in seven cases, involving refund of ₹2.60 crore, pertaining to five circles<sup>127</sup>, Net ITC as per the statement of input supply invoices / GSTR 3B returns was ₹5.40 crore but the same was adopted as ₹7.30 crore in refund applications, resulting in excess adoption of net ITC of ₹1.90 crore. The proper officers allowed refund based on the Net ITC adopted in refund applications. Total excess grant of refund was ₹1.68 crore.

*One case is illustrated below:*

**A taxpayer pertaining to Medak circle, adopted ITC as ₹4.52 crore in refund application whereas ITC as per statement of invoices was ₹4.06 crore only. This had resulted in excess adoption of ITC of ₹46.05 lakh and consequential excess grant of refund to that extent.**

On this being pointed out (November 2020 to June 2021), AC(ST), Sanathnagar replied (June 2021) that the taxpayer reversed excess ITC claimed during the year 2018-19 in the month of August 2019 and even after this reversal, there was balance of ITC in credit ledger, hence there was no incorrect grant of refund. Reply is not acceptable because as

<sup>127</sup>ACs(ST)- Madhapur-I, Malkajgiri-III, Medak, Sanathnagar and Siricilla.



per CBIC Circular No. 79/53/2018 dated 31 December 2018, net ITC shall be adopted after considering reversal. Due to reversal of ITC in August 2019, net ITC was zero during the relevant period of refund, hence there was no question of any refund. Reply from other AAs is awaited (March 2022).

#### 2.15.14.5 Non-adjustment of arrears while granting refund

As per Rule 92(1) of Telangana GST Rules, 2017, while sanctioning the amount of refund, amount pending towards any outstanding demand under the GST Act or any Pre-GST law shall be adjusted and the balance amount only to be refunded.

We noticed that out of 840 cases, in 18 cases involving refund of ₹7.04 crore, pertaining to 13 circles / divisions<sup>128</sup>, outstanding demands under the Pre-GST laws were not adjusted. Excess grant of refund in these cases was ₹77.01 lakh.

*One case is illustrated below:*

**A taxpayer pertaining to Vanasthalipuram-II circle was granted refund of ₹51.45 lakh in the months of February and April 2020. Audit observed that as per Debt Management Unit (DMU) module of VATIS, a demand of ₹34.33 lakh was outstanding at the time of granting refund but the same was not adjusted from refunds.**

On this being pointed out (November 2020 to June 2021), in respect of one case, JC(ST), Secunderabad replied (March 2021) that the demands would be adjusted from future refunds. Reply is not acceptable as all outstanding demands were to be adjusted before granting the refund. In one case, AC(ST) Saroornagar-II replied (January 2021) that entire demand was collected but updation was not done in DMU. Reply is not acceptable as an amount of ₹0.14 lakh was still pending collection as per DMU. Reply also indicates that updation of DMU was not done regularly. Reply from other AAs is awaited (March 2022).

***Recommendation:***

***Department may ensure regular updation of DMU.***

#### 2.15.14.6 Non-levy of interest and penalty on incorrect claim of refund

As per Sections 50(3), 73(1) and 122(2) of Telangana GST Act, 2017, in case of erroneous refund, taxpayer shall pay interest at a rate not exceeding 24 *per cent* along with a penalty of ten thousand rupees or 10 *per cent* of such erroneous refund whichever is higher. As per G.O. Ms. No.122 dated 30 June 2017, rate of interest for erroneous refund was fixed at 24 *per cent*.

We noticed that out of 840 cases, in one case<sup>129</sup> involving refund of ₹8.51 lakh, pertaining to Mehandipatnam-I circle, taxpayer was granted provisional refund on 15 July 2019 for ₹7.66 lakh which was subsequently rejected *vide* final refund order dated

<sup>128</sup>JCs(ST)- Nalgonda and Secunderabad; ACs(ST)- Balanagar, Hydernagar-I, Jeedimetla-II, Keesara-I, Malkajgiri-I, Malkajgiri-III, MG Road-SD Road, Nacharam-II, Rajendranagar-I, Saroornagar-II and Vanasthalipuram-II.

<sup>129</sup>ARN AA3603194949795.

20 September 2019. However, the Department did not levy interest and penalty as stipulated which worked out to ₹1.10 lakh.

The Commissioner of Commercial Taxes replied (February 2022) that proper officers would be instructed to take necessary action and submit report.

#### ***2.15.14.7 Incorrect grant of refund of transitional credit***

As per second proviso to Section 142(3) of Telangana GST Act, 2017, no refund claim shall be allowed on any amount of input tax credit which has been carry forwarded as transitional credit from Pre-GST Acts.

We noticed that out of 840 cases, in one case<sup>130</sup> involving refund of ₹3.06 crore, pertaining to Madhapur-IV circle, taxpayer was allowed refund of IGST paid on export of services. It was observed from credit ledger that this IGST towards export was paid by utilizing transitional credit. Hence taxpayer was ultimately granted refund of transitional credit of ₹3.06 crore.

#### **2.15.15 Miscellaneous lapses in processing of refund claims**

As per the instructions issued by the Department in Circular dated 29 December 2017, post-audit of the refund claims was to be carried out on the basis of extant guidelines but no post audit was done.

The following irregularities in processing of refund claims noticed in Audit indicated inadequate checks exercised by the Authorities concerned.

##### ***2.15.15.1 Non-submission of Input Supplies statement***

As per Rule 89(2)(h) of Telangana GST Rules, 2017, in cases where the refund claim pertains to refund of any unutilised input tax credit, taxpayer has to submit a statement containing the number and date of the invoices received during the relevant period. Further as per CBIC Circular No. 37/11/2018 dated 15 March 2018 and 125/44/2019 dated 18 November 2019, input supplies statement is to be furnished in prescribed proforma.

We noticed that out of 659 cases, pertaining to refund of accumulated ITC, in 126 cases, involving refund of ₹169.58 crore, pertaining to 42 circles / divisions<sup>131</sup>, statement of input supply invoices was either not submitted or not submitted in prescribed proforma. In 48 cases statement was not submitted whereas in 74 cases, though statement was submitted, it was not in prescribed format and in four cases, it was not legible. Grant of refund without verification of statement of input supplies was irregular as it could not be verified whether the Net ITC adopted for the purpose of refund does not include any ineligible ITC / ITC on capital goods / services which are ineligible for refund.

<sup>130</sup>ARN AA360817002382C.

<sup>131</sup>JCs(ST)-Begumpet, Hyderabad Rural, Nalgonda, Punjagutta and Saroornagar; ACs(ST)- Abids, Balanagar, Barkatpura-Sultanbazar, Basheerbagh-I, Begumpet, Fathenagar, Hydernagar-II, Hyderguda-Ashoknagar, Jeedimetla-II, Jubilee Hills-I, Jubilee Hills-II, Keesara-I, Khairatabad-Somajiguda, Khammam-III, Madhapur-I, Madhapur-II, Madhapur-III, Madhapur-IV, Malkajgiri-I, Malkajgiri-II, Malkajgiri-III, Medak, Mehdiapatnam-II, MG Road-SD Road, Musheerabad, Nacharam-I, Nacharam-II, Nagarkurnool, Punjagutta, Sanathnagar, Sangareddy-II, Saroornagar-I, Srinagar Colony, Tarnaka-I, Tarnaka-II, Vanasthalipuram-I and Vengalraonagar.

On this being pointed out (November 2020 to June 2021), in respect of 10 cases, three AAs<sup>132</sup> replied (May 2021 to September 2021) that due to technical problem / size issue, input supplies statements could not be uploaded in GSTN portal and the same were submitted in office manually due to initial technical issues. Reply is not acceptable as these documents are necessary for processing of refund claims. In respect of three cases, AC(ST), Khairatabad-Somajiguda replied (May 2021) that refund claims were filed before 18 November 2019 (date of issuance of Master circular), hence there was no requirement of filing of input supplies statement. However, the same were furnished separately. Reply is not acceptable because as per CBIC Circular No. 37/11/2018 dated 15 March 2018, input supplies statement was required to be submitted along-with refund claim. Replies from other AAs are awaited (March 2022).

#### **2.15.15.2 Non-submission of Form GSTR-2A**

Under the invoice matching mechanism in GST regime, invoices of taxable supplies procured by a buyer would be generated in Form GSTR-2A, based on the invoices shown in GSTR-1 return filed by the sellers. As per CBIC Circular No.59 dated 4 September 2018, the refund claim shall be accompanied by Form GSTR-2A of the claimant for the relevant period for which the refund is claimed.

We noticed that out of 659 cases, in 54 cases, involving refund of ₹48.55 crore, pertaining to 20 circles / divisions<sup>133</sup>, Form GSTR-2A was not submitted. Grant of refund without verification of Form GSTR-2A was irregular.

On this being pointed out (December 2020 to June 2021), in respect of one case, AC(ST), General Bazaar-Market Street-Hissamgunj replied (September 2021) that GSTR-2A return could not be uploaded in GSTN portal due to size issue, and the same was submitted in office manually. Reply is not acceptable as no ticket was raised at GSTN for technical issue faced while uploading the documents. Replies from other AAs are awaited (March 2022).

#### **2.15.15.3 Non-submission of Output Supplies statement**

As per Rule 89(2)(h) of Telangana GST Rules, 2017, in cases where the refund claim pertains to refund of any unutilised input tax credit, taxpayer has to submit a statement containing the number and date of the invoices issued during the relevant period.

We noticed that out of 734 cases, in six cases, involving refund of ₹22.47 crore, pertaining to three circles / division<sup>134</sup>, statement of output supply invoices was not submitted. In the absence of same, correctness of inverted supplies turnover / adjusted total turnover adopted by the taxpayer could not be verified. Grant of refund without verification of statement of output supplies was irregular.

<sup>132</sup>ACs(ST)- Fathenagar, Khairatabad-Somajiguda and Sanathnagar.

<sup>133</sup>JCs(ST)-Begumpet and Saroornagar; ACs(ST)- Abids, Balanagar, Barkatpura-Sultanbazar, General Bazaar-Market Street-Hissamgunj, Jeedimetla-II, Keesara-I, Madhapur-I, Madhapur-III, Madhapur-IV, Malkajgiri-I, Malkajgiri-II, Malkajgiri-III, Mehdiapatnam-II, MG Road-SD Road, Punjagutta, Saroornagar-I, Tarnaka-II and Vanasthalipuram-I,

<sup>134</sup>JC(ST)-Begumpet; ACs(ST)- Madhapur-III and Malkajgiri-II.

#### **2.15.15.4 Non-submission of shipping bill statement**

As per Rule 89(2)(b) of Telangana GST Rules, 2017, in case where the refund is on account of export of goods, a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices shall be submitted along-with refund claim.

We noticed that out of 530 cases, pertaining to refund on account of export and SEZ supplies, in three cases<sup>135</sup>, involving refund of ₹1.59 crore, pertaining to JC(ST), Begumpet division, statement of shipping bill was not submitted. In the absence of same, correctness of zero-rated turnover adopted by the taxpayer could not be verified. Grant of refund without verification of shipping bill statement was irregular.

#### **2.15.15.5 Non-submission of FIRC copies**

As per Rule 89(2)(c) of Telangana GST Rules, 2017, in case of refund on account of the export of service, a statement containing the number and date of invoices and the relevant Bank Realisation Certificates (BRC) / Foreign Inward Remittance Certificates (FIRC) shall be furnished.

We noticed that out of 470 cases, pertaining to refund on account of export supplies, in 13 cases, involving refund of ₹8.25 crore, pertaining to 11 circles<sup>136</sup>, copies of FIRCs were not submitted. In the absence of same, correctness of zero-rated turnover adopted by the taxpayers could not be verified. Grant of refund without verification of copies of FIRCs was irregular.

On this being pointed out (March-June 2021), in respect of one case, AC(ST), General Bazaar-Market Street-Hissamgunj replied (September 2021) that due to size issue, copies of FIRCs could not be uploaded in GSTN portal and the same was submitted in office manually. Reply is not acceptable as no ticket was raised at GSTN for technical issue faced while uploading the documents. Replies from other AAs are awaited (March 2022).

#### **2.15.15.6 Non-following order of debit of IGST / CGST/ SGST in refund claims**

As per CBIC Circular No. 59/33 dated 4 September 2018, after determination of amount refundable, the equivalent amount is to be debited to electronic credit ledger in an order prescribed thereunder. First against Integrated Tax (IGST) to the extent of balance available and thereafter to Central tax (CGST) and State / Union territory tax (SGST), equally to the extent of balance available and in the event of shortfall in the balance available in a particular electronic credit ledger, the differential amount is to be debited from the other heads of the electronic credit ledger.

We noticed that out of 659 cases, this order was not adhered to by the applicant / Department in 110 cases, involving refund of ₹120.62 crore pertaining to 31 circles / divisions<sup>137</sup> as there is no such automated provision in GSTN portal. In 72 cases, without

<sup>135</sup>ARNs AA360219333242G & AA360319365825Q & AA361218513808Z.

<sup>136</sup>ACs(ST)- Abids, Basheerbagh-I, Begumpet, General Bazaar-Market Street-Hissamgunj, Jubilee Hills-I, Madhapur-I, Madhapur-II, Madhapur-III, Madhapur-IV, Malkajgiri-I and Tarnaka-II.

<sup>137</sup>JCs(ST)-Abids, Begumpet, Hyderabad Rural, Saroonagar and Secunderabad; ACs(ST)- Basheerbagh-I, Begumpet, Hydernagar-II, Hydernagar-III, IDA Gandhinagar, Jeedimetla-I, Jeedimetla-II, Jubilee Hills-I, Jubilee Hills-II, Khairatabad-Somajiguda, Madhapur-I, Madhapur-II, Madhapur-III, Malkajgiri-II, Marredpally, Medak, MG Road-SD Road, Nacharam-I, Nacharam-II, Nagarkurnool, Punjagutta, Sanathnagar, Siricilla, Srinagar Colony, Tarnaka-II and Vengalraonagar.

claiming full eligible amount from IGST head, amounts were claimed from CGST / SGST heads. In 21 cases, refund was not claimed equally from CGST and SGST heads even though amounts were available therein. In 17 cases neither full eligible IGST was claimed nor was the amount equally claimed from SGST / CGST heads.

*One case is illustrated below:*

**A taxpayer pertaining to JC(ST), Begumpet was eligible for refund of ₹9.19 crore. Though balance in IGST head of credit ledger was more than eligible refund amount, the taxpayer claimed only ₹5 crore from IGST head and remaining amount was claimed from SGST and CGST heads which was irregular.**

On this being pointed out (March-June 2021), in respect of 21 cases, five<sup>138</sup> AAs replied (March-September 2021) that if the taxpayer had claimed CGST and SGST instead of IGST, there is no loss to revenue. As per relevant notifications, in refund cases where this order of claiming the refund from different heads is not adhered to by the applicant, no adverse view was to be taken by the sanctioning authority. In respect of three cases, AC(ST), Vengalraonagar replied (August 2021) that assessing authority had no access to change the amount claimed by the taxpayer from one head to another. In respect of 10 cases, AC(ST), Hydernagar-III replied (September 2021) that it was due to less familiarity with the provisions and procedures being new Act. Replies from other AAs are awaited (March 2022).

The Commissioner of Commercial Taxes replied (February 2022) that based on CBIC Circular Nos. 59/2018 and 125/44/2019 dated 4 September 2018 and 18 November 2019, instructions were given not to take adverse view, even if, the order of claiming the refund from different heads was not adhered to. Subsequently, changes were made in GSTN Portal for the automatic order of debit of IGST, CGST & SGST.

#### ***2.15.15.7 Lapses while restricting the refund claims***

Rule 92 (3) of Telangana GST Rules, 2017 stipulates that where the proper officer is satisfied, for the reasons to be recorded in writing that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in Form GST RFD-08 to the applicant requiring him to furnish a reply in Form GST RFD-09 within a period of 15 days of the receipt of such notice. The proper officer after considering the reply shall make an order in Form GST RFD-06 sanctioning the amount of refund in whole or part or rejecting the said refund claim. As per Rule 93(2) where any amount claimed as refund is rejected under Rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in Form GST PMT-03.

Further, as per Section 73 or 74 of the Act read with G.O. Ms. No. 62 dated 3 June 2019, in case of rejection of refund claim pertaining to accumulated ITC due to ineligibility of the input tax credit (ITC) under any provisions of Telangana GST Act, the proper officer shall have to issue a show cause notice and the amount of ineligible ITC determined on

<sup>138</sup>JCs(ST)-Hyderabad Rural and Secunderabad; ACs (ST)- Jubilee Hills- I, Jubilee Hills-II and Sanathnagar.

adjudication, along with interest and penalty, if any, shall be entered by the officer in the electronic liability register of the applicant through issuance of Form GST DRC-07.

We noticed that out of 840 cases, in five refund cases, involving refund of ₹5.94 crore, pertaining to three circles<sup>139</sup>, an amount of ₹39.90 lakh was restricted due to various reasons without issuing notices to taxpayers *i.e.*, violating the principle of natural justice. Form GST PMT-03 was also not on record to ensure that amount rejected was re-credited to the electronic credit ledger.

Further, in these cases, since amount was rejected due to claim of ineligible ITC, Form GST DRC-07 was also to be issued for restricting the ineligible ITC but it was also not on record to ensure that the amount was taken to the electronic liability register of the taxpayer.

*One case is illustrated below:*

**In one case, pertaining to Basheerbagh-I circle, taxpayer claimed refund of ₹61.64 lakh which was restricted to ₹28.37 lakh duly restricting an amount of ₹33.27 lakh due to claim of ITC on capital goods and ineligible items. However, notice was not issued to taxpayer before restricting the amount.**

The Commissioner of Commercial Taxes replied (February 2022) that proper officers would be instructed to issue notices before rejecting the refund amount, to re-credit the rejected amount by issuing PMT-03 wherever applicable, and to issue DRC-07 notices where the refund is rejected due to ineligibility of ITC.

#### **2.15.15.8 Irregular issuance of notice in Form RFD-08**

Rule 92 (3) of Telangana GST Rules, 2017, stipulates that where the proper officer is satisfied, for the reasons to be recorded in writing that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in Form GST RFD-08 to the applicant requiring him to furnish a reply in Form GST RFD-09 within a period of 15 days of the receipt of such notice. The proper officer after considering the reply make an order in Form GST RFD-06 sanctioning the amount of refund in whole or part or rejecting the said refund claim.

We noticed that out of 840 cases, in seven cases involving refund of ₹4.88 crore, pertaining to Khairatabad-Somajiguda Circle, during electronic processing of refunds, taxpayers were issued notices for rejection of refund claims (in Form RFD-08). Instead of specifying proper grounds for rejection, taxpayers were asked to submit physical copies of GSTR-3B return, GSTR-1 return, credit ledger and cash ledger to the jurisdictional office. This is irregular as there is no need for physical submission of any documents after automation of processing of GST refunds and also, these documents are available in GSTN portal.

On this being pointed out (May 2021), AC(ST), Khairatabad-Somajiguda replied (May 2021) that notices for production of hard copies were issued to keep the hard copies in the office as a stock file. Reply is not acceptable as these documents *viz.* GSTR-1, GSTR-3B,

<sup>139</sup>ACs(ST)- Basheerbagh-I, IDA Gandhinagar and Khairatabad-Somajiguda.



credit ledger are available in GSTN portal itself. Further, there was no requirement for physical submission of any document after automation of processing of GST refunds. This is causing unnecessary inconvenience and hardship to the taxpayers.

The Commissioner of Commercial Taxes replied (February 2022) that proper officers would be instructed not to issue irregular rejection notices to submit physical copies of documents which are readily available in GSTN Portal.

#### **2.15.15.9 Non-filing of refund claim in proper category**

As per Rule 89(1) of Telangana GST Rules, 2017, any person, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, may file an application electronically in Form RFD-01 through the common portal. Taxpayer has to specify the ground of refund in Form RFD-01.

We noticed that out of 840 cases, in three cases<sup>140</sup>, involving refund of ₹3.21 crore, pertaining to two circles<sup>141</sup>, taxpayers did not mention the ground of refund. As eligible refund amount depends upon the ground of refund / category of refund, in the absence of same, correctness of refund amount claimed could not be verified.

The Commissioner of Commercial Taxes replied (February 2022) that proper officers would be instructed to verify whether the correct ground of refund is mentioned in the GST Refund Application.

#### **2.15.16 Conclusion**

Detailed examination of 840 GST sample Refund cases revealed non-compliance with the provisions of GST Act in scrutiny of claims submitted by the taxpayers and granting of claims. Audit observed 149 excess / incorrect claims valuing ₹31.06 crore was allowed by the department in various categories such as ITC accumulated on account of export of goods / services, inverted duty structure, SEZ supplies, deemed export supplies, excess tax payment, incorrect adoption of zero-rated supplies, allowance of ITC on capital goods, non-reversal of ITC on textiles, etc. In respect of 225 refund claims, Assessing Authorities allowed refund claiming without following the due procedure in the Act / Rules such as allowance of refund without submission of input / output statement, Form GSTR-2A, shipping bill statement, FIRC copies, not following order of debit of IGST / CGST / SGST. etc., indicated weak internal controls.

#### **2.15.17 Recommendations**

- *Department needs to put in place a mechanism to verify the correctness of declarations filed by the taxpayer regarding offences committed.*
- *There should be a provision for automatic processing of payment of interest in case of delayed processing of refunds.*
- *Department may ensure regular updation of DMU Module of VATIS portal.*
- *Looking into the size of sample cases (840) test checked and number of irregular refund claims noticed (149), Department may rigorously examine similar cases not covered in the audit sample and take corrective action within a timeframe.*

<sup>140</sup>ARNs AA3603200101237 & AA360720003129M & AA360620002115Y.

<sup>141</sup>ACs (ST)- Balanagar and Madhapur-III

## 2.16 Subject Specific Compliance Audit on 'Transitional Credits'

### 2.16.1 Introduction

Introduction of Goods and Service Tax (GST) was a significant reform in the field of indirect taxes in our country, which replaced multiple taxes levied and collected by the Centre and States. GST is a destination based tax on supply of goods or services or both, which is levied at multi-stages wherein the taxes will move along with supply. The tax, which is levied simultaneously by the Centre and States on a common tax base will accrue to the taxing authority having jurisdiction over the place of supply. Central GST (CGST) and State GST (SGST) / Union Territory GST (UTGST) is levied on intra state supplies, whereas Integrated GST (IGST) is levied on inter-state supplies. Availability of input tax credit of taxes paid on inputs, input services and capital goods for set off against the output tax liability is one of the key features of GST. This will avoid the cascading effect of taxes and ensures uninterrupted flow of credit from seller to buyer. To ensure the seamless flow of input tax from the existing laws into the GST regime, 'Transitional arrangements for input tax' was included in the GST Acts to provide for the entitlement and manner of claiming input tax in respect of appropriate taxes or duties paid under existing laws.

To make provisions for levy and collection of Tax on intra-State supply of goods or services or both by the state, the State Government of Telangana notified<sup>142</sup> (June 2017) the Telangana Goods and Services Tax (TGST) Act, 2017, (herein after referred to as 'the Act') subsuming various taxes. For carrying out the provision of the Act, the Telangana Goods and Services Tax Rules, 2017 were also notified<sup>143</sup> (June 2017).

### 2.16.2 Transitional arrangements for input tax

Section 140 of the Act enables the taxpayers to carry forward the Input Tax Credit (ITC) earned under the existing laws to the GST regime. The section read with Rule 117 of TGST Rules 2017 prescribes elaborate procedures in this regard. All registered taxpayers<sup>144</sup>, except those who are opting for payment of tax under Composition scheme<sup>145</sup> (under Section 10 of the Act), are eligible to claim Transitional Credit by filing **Tran 1 return**. Under transitional arrangements for input tax credit (ITC), the ITC of Value Added Tax (VAT) and Entry Tax are eligible to be carried forward to the GST regime as under:

- i. **Closing balance of the credit in the last returns:** The closing balance of the VAT input tax credit available in the returns filed under the existing law for the month immediately preceding the appointed day<sup>146</sup> can be taken as credit in electronic credit ledger.

<sup>142</sup>Vide Act No. 23 of 2017.

<sup>143</sup>Vide Notification No. 1/2017 issued in G.O.Ms. No.121, Revenue (CT-II) dated 30 June 2017.

<sup>144</sup>other than a person opting to pay tax under Section 10.

<sup>145</sup>Scheme under which, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed.

<sup>146</sup>The date on which provisions of this Act came into force *i.e.*, 1 July 2017.

- ii. **Un-availed credit on capital goods:** The balance installment of un-availed credit on capital goods.
- iii. **Credit on duty paid stock:** A registered taxable person, other than the manufacturer or service provider, may take the credit of the duty / tax paid on goods held in stock based on the invoices.
- iv. **Credit on duty paid stock when Registered Person does not possess the document evidencing payment of VAT:** For traders who do not have excise or VAT invoice, there is a mechanism to allow credit to them on the duty paid stock.
- v. **Credit relating to exempted goods under the existing law which is now taxable:** Input Tax Credit of VAT in respect of input, semi-finished and finished goods in stock attributable to exempted goods or services, which are now taxable under GST.
- vi. **Input / input services in transit:** The input or input services received on or after the appointed day but the duty or tax on the same was paid by the supplier under the existing law.
- vii. **Tax paid under the existing law under composition scheme:** The taxpayers who had paid tax at fixed rate or fixed amount in lieu of the tax payable under the existing law, now working under normal scheme under GST can claim credit on their input stock, semi-finished and finished stock on the appointed date.
- viii. **Credit in respect of tax paid on any supply both under Value Added Tax Act and Service Tax under Finance Act, 1994:** Transitional credit in respect of supplies which attracted both VAT and Service tax under existing laws, for which tax was paid before appointed date and supply of which is made after the appointed date.

Taxpayers can claim the components of transitional credit, under the relevant sub-Sections of Section 140 of the Act, in the appropriate tables mentioned below, in the two forms –TRAN 1 and TRAN 2.

**Table 2.8: Components of Transitional Credit**

Return	Table No	Transitional credit component
Tran 1	5(c)	Closing balance of credit from the last returns
Tran 1	6(b)	Un-availed credit on capital goods
Tran 1	7(a)7B	Credit on duty paid stock-without invoices
Tran 1	7(b)	Credit on Input / input service in transit
Tran 1	7(c)	Amount of VAT and Entry Tax paid on inputs supported by invoices / documents evidencing payment of tax
Tran 1	10	Details of Goods held as Agent
Tran 1	11	Tax paid on any supply both under the VAT Act and under Chapter V of the Finance Act, 1994 (Service Tax)
Tran 2	4	Credit afforded on stocks claimed without invoices

All registered taxpayers, except those who are opting for payment of tax under Composition scheme (under Section 10 of the Act), are eligible to claim Transitional

Credit by filing **Tran 1** returns within 90 days from the appointed day *i.e.*, up to 28 September 2017. The time limit for filing Tran 1 returns was extended initially till 27 December 2017. However, many taxpayers could not file the return within the due date due to technical difficulties. Thus, sub-Rule 1A was inserted under Rule 117 of CGST Rules, 2017 *vide* Notification 48/2018 CT Dated 10 September 2018, to accommodate such taxpayers. The due date for filing Tran 1 was further extended to 31 March 2020, *vide* CBIC order No.01.2020-GST dated 7 February 2020, for those taxpayers who could not file Tran 1 due to technical difficulties and those cases recommended by the GST Council.

### 2.16.3 Audit objectives

Audit of Transitional Credit was taken up to assess:

- i. Whether the mechanism envisaged by the Department for selection and verification of Transitional Credit claims was adequate and effective; and
- ii. Whether the Transitional Credits carried over by the Assesseees into GST regime were valid and admissible.

### 2.16.4 Audit Scope and Methodology

Telangana is a Model-II State which uses GSTN Back-end portal for processing and scrutiny of cases. Pan-India Transitional Credit data was obtained from GSTN and through risk-based data analysis, a sample of Transitional Credit cases was extracted for detailed examination. Transitional credit returns filed by the taxpayers under Sections 140 and 142 of the TGST Act 2017 from the **Appointed date** to the end of **March 2020** were examined.

An Entry conference was held with the Head of the Department on 15 April 2021 to apprise the Department of the Audit methodology including Audit Objectives and Criteria. Field Audit was conducted between June 2021 and October 2021.

As per data obtained from GSTN, a total of 23,810 Transitional credit claims of SGST were made during the period from the appointed date to end of March 2020 involving an aggregate amount of ₹820.86 crore. A sample of 1,139 Taxpayers spread across 19 Strategic Tax Units and 70 Circles under nine Tax Divisions was extracted for detailed audit scrutiny based on the stratified sampling method on materiality and number of cases, using the following parameters and considering availability of manpower and Covid pandemic:

- a. Taxpayers who have claimed Transitional credit under Table 5(c) in excess of the closing balance of the last return *i.e.*, June 2017.
- b. Taxpayers whose Value Added Tax (VAT) claim in the last six months immediately preceding the appointed day shows a growth of 25 *per cent*.
- c. Transitional claims of manufacturers or service providers who have claimed transitional credit under column 7B of Table 7a.
- d. Transitional claims in Table 5(c) or 6(b) without corresponding legacy data.

An Exit conference was held with the Commissioner, Commercial Taxes on 12 April

2022 to discuss the Report. Replies received from the Commissioner have been suitably incorporated in the Report. Reply from Government is awaited (April 2022).

## **Audit findings**

The audit findings are categorised into two broad areas as systemic and compliance issues based on the objectives of Audit. While systemic issues address the adequacy and effectiveness of the envisaged verification mechanism, the compliance issues address the deviations from the provisions of the Act / Rules.

Audit of transitional credits primarily depends upon the extent of verification of records maintained by the Department and accessing the underlying records maintained by the taxpayer. Broadly, it emerged that the Department had not maintained the necessary files / documents for the verified cases, making it incumbent for Audit to call for the underlying records of the taxpayers such as financial statements, invoices, stock registers, delivery challans *etc.*, through the respective jurisdictional formations to form substantive opinion. However, the taxpayers in as many as 58 (43 *per cent*) (in 38 circles) out of 135 claims (of other than 5 (c) category of TC) (in 65 circles) were not forthcoming with the underlying records for verification. The audit findings discussed in ensuing paragraphs are subject to these constraints.

### **2.16.5 Systemic issues**

The systemic issues comprised a review of the provisions applicable for dual control, the verification mechanism envisaged by the Department in terms of extent of coverage against the targets, policy / procedural gaps in the verification mechanism and efficiency of the recovery process.

#### **2.16.5.1 Dual Control**

GST law envisages dual control on taxpayers by both the Central Tax and State Tax officers in all aspects. Section 6(1) of the CGST Act specifies that the officers appointed under the Act are authorised to be the proper officers for the purpose of this Act, subject to such conditions as the Government shall, on the recommendations of Council, by notification specify. The Notification No.39/2017 Central Tax dated 13 October 2017 authorizes officers appointed under SGST Act / UTGST Act to be the authorised officers for the purposes of Sections 54 and 55 of the said Act, who shall act as proper officers for the purpose of sanctioning of refunds under these Sections except for Rule 96 of CGST Rules. However, similar enabling notifications, as required under Section 6(1) of the Act, have not been issued by the State Government for the purpose of transitional credit verification.

Notwithstanding the absence of Notifications, para 12 of the departmental guidance note<sup>147</sup> as issued by Central Board of Indirect taxes and Customs (CBIC) for Transitional credit verification specifies as follows:

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<sup>147</sup> D.O.F. No.267/8/2018-CX.8 dated 14 March 2018.

***“The CGST officers shall have the jurisdiction for verification of Transitional credit of CGST irrespective of whether the taxpayer is allotted to the Central Government or the State Government for the purpose of GST. TRANS credit verification process can only be done by the tax authority which had legal jurisdiction under the erstwhile law and also has the requisite past record of the taxpayer”.***

Audit examined the implementation of the powers as envisaged above and in view of the lack of enabling provisions for verification of transitional credit claims of SGST components of the taxpayers falling under the jurisdiction of the Centre, it was observed that the verification of SGST components of 38 GSTINs (in 12 circles) involving total credit of ₹18.76 crore was pending over three years for the reason that the administrative jurisdictions of these GSTINs are with the Centre, which is in contravention to the spirit of the above notification.

#### ***2.16.5.2 Verification mechanism envisaged by the Department***

Rule 121 of TGST Rules, 2017 specified that the amount of transitional credit may be verified, and proceedings may be initiated for recovery of excess claim along with interest, which shall be initiated in respect of any credit wrongly availed whether wholly or partly. Out of 1,139 sample claims, there were “nil” claims in 39 cases. Of the remaining 1,100 claims, 1,068 claims pertained to the category 5(c) of TRAN return (Closing balance of credit from the last returns). Correctness of the transitional credit claimed under this category can be ensured only after conducting VAT Assessment. Audit observed that the Tax Authorities verified 611 (in 76 circles) (57 per cent) out of 1,068 claims (in 93 circles) of this category. Audit further observed that out of the 611 scrutinised cases, the Tax Authorities verified 193 (32 per cent) (in 47 circles) by mere comparison of transitional credit claim with the credit available to the Dealer as per Demand, Collection and Balance (DCB) Report of Value Added Tax (VAT) but not by conducting VAT Audit. The remaining 418 cases (68 per cent) were verified by the Tax Authorities after conducting VAT Audit.

There were a total of 135 Transitional Credit claims<sup>148</sup> worth ₹39.79 crore (in 65 circles) in categories other than 5c (viz. 6b, 7b, 7c, 10a and 11). Transitional credit claims under these categories are verifiable only after obtaining invoices, stock registers, etc., which are available only with the Taxpayers. It was observed that the Tax Authorities did not verify transitional credit claims of above categories in respect of 58 (in 38 circles) out of 135 GSTINs (43 per cent).

Thus, in the sample verified by Audit, 44 per cent of the claims on an average of both 5(c) and other than 5 (c) remained unverified even after lapse of more than three years.

#### ***Recommendation:***

***Considering the possible deviations and high risks involved in ITC claims and also the lapse of prescribed time limit of six years for VAT Audit, Department should evolve a robust mechanism for verification of TC claims of high values on a risk prioritised basis.***

<sup>148</sup> 103 claims were in combination of 5 (c) category, while 32 claims were in combination of other than 5 (c) category.



Department replied (April 2022) that circular instructions would be issued to all the proper officers to expedite the verification process and complete the VAT Audits / Assessments in all the pending cases on priority basis.

### 2.16.6 Compliance issues

The compliance issues pertain to the validity and admissibility of the transitional credits carried over by the taxpayers into GST regime. Taxpayers were required to claim transitional credits in the various specified Tables<sup>149</sup> of TRAN 1 and TRAN 2 as applicable. Broadly, these tables provide for credit in respect of VAT / Entry Tax carried over from the legacy Returns<sup>150</sup>, un-availed VAT credit in respect of capital goods, VAT credit in respect of inputs / semi-finished goods / finished goods held in stock and VAT credit of inputs or input services in transit. The sample identified for Audit represented claims under each of these tables so that the adequacy of provisions applicable table wise could be examined for overall compliance assurance.

Audit observed compliance deviations in 356 claims (in 81 circles) out of the 1,100 claims (in 94 circles) examined, constituting an error rate of 32 *per cent*. These compliance deviations are detailed in the ensuing paragraphs. Considering that the Department had verified 53 *per cent* (188) of these claims, the deviation rate suggested that the verification process carried out by the Department suffered from inadequacies.

#### 2.16.6.1 Double claim of Transitional credit in GSTR-9

As a general principle, the input tax credit cannot be availed twice on the same documents. Audit observed in respect of 16 claims pertaining to seven Circles<sup>151</sup> out of 1,100 claims that the taxpayers had claimed Transitional Credit by filing TRAN 1 return during the year 2017-18 and the amount of Transitional credit was also taken into the annual return *i.e.*, GSTR 9 for the year 2017-18. The taxpayers again claimed same amount of Transitional Credit in GSTR 9 for the subsequent year *i.e.*, 2018-19 also, resulting in double claim of transitional credits aggregating to ₹4.36 crore.

On this being pointed out (July-September 2021), AC (ST), Madhapur-III (in five claims) replied (August 2021) that notices would be issued to the Taxpayers instructing to reverse the transitional credit. Three Tax Authorities<sup>152</sup> (in eight claims) replied (August-September 2021) that the matter would be examined, and notices would be issued to the Taxpayers and action taken intimated to Audit. AC (ST), IDA-Gandhinagar (in one claim) replied (August 2021) that notice had been issued to the Taxpayer. AC (ST), Sangareddy-II (in one claim) stated (September 2021) that the matter would be communicated to the Central Authorities as the Taxpayer was allotted to Central Jurisdiction. In respect of the remaining one claim, AC (ST), Narayanguda-MJ Market replied that Transitional Credit was reflected twice in GSTR 9 due to technical problem. However, the department did not furnish any evidence in support of their contention.

<sup>149</sup>As specified in Table 2.8.

<sup>150</sup>VAT 200, VAT 200A and VAT 200B.

<sup>151</sup>ACs(ST) - Narayanguda-MJ Market, Madhapur-III, Madhapur-IV, IDA Gandhinagar, Sangareddy-I, Sangareddy –II and Nizamabad.

<sup>152</sup>ACs(ST) – Madhapur-IV, Sangareddy-I and Nizamabad.

Since the double claim in GSTR 9 may lead to possible short levy of Tax while conducting GST Assessment, steps need to be taken to rectify the double claim in GSTR 9.

Commissioner of Commercial Taxes replied (April 2022) that reflection of the amount in the Electronic Credit Ledger (ECL) is the only criteria for utilising the credit. As there were no double entries in electronic credit ledger, Taxpayer could not avail the credit twice. Audit suggested that both GSTR 9 and ECL should be considered by the Department for assessment of Annual Returns, in order to avoid discrepancies. Department assured the same.

#### ***2.16.6.2 Non-payment of interest on excess transitional credit claimed***

As per Rule 121 of the TGST Rules 2017, the recovery of amount wrongly credited under sub-Rule (3) of Rule 117 has to be initiated under Section 73 or Section 74 of the Act. The proceedings under Section 73 or 74 shall require the taxpayer to pay the amount along with interest payable thereon under Section 50 of the Act. As per Section 50(3) of the Act read with orders issued<sup>153</sup> by the Government, a taxable person who claims excess input tax credit shall pay interest at 24 *per cent* per annum.

Audit observed that in respect of 24 claims out of the 1,100 claims of Transitional Credits pertaining to 23 Tax Authorities<sup>154</sup> involving excess / irregular claim of ₹8.60 crore, the Tax Authorities neither demanded nor did the taxpayers pay interest upon reversal in Electronic Credit Ledger (ECL) on payment of excess transitional credit claimed by them in 23 claims. One Tax Authority recovered partial interest in one claim. The interest liability in these cases aggregated to ₹1.16 crore.

***One illustrative case is given below:***

**A taxpayer reversed back the excess claim of ITC amounting to ₹1.94 crore to the Electronic Credit Ledger without making payment of ₹15.81 lakh towards the interest for the amount utilized from the excess claims. Tax authority replied (August 2021) that notice would be issued to the dealer for collection of interest.**

On this being pointed out (June-September 2021), six Tax Authorities<sup>155</sup> (in seven claims) stated (June-September 2021) that the matter would be examined and reply furnished. Two Tax Authorities<sup>156</sup> (in two claims) replied (July 2021) that action would be taken, and report submitted. AC(ST), Malkajgiri-III (in one claim) replied (August 2021) that demand notice had been issued to the taxpayer for payment of interest liability. Seven Tax Authorities<sup>157</sup> (in seven claims) replied (June-September 2021) that action would be taken / notice would be issued to levy and collect the interest. Replies furnished (July

<sup>153</sup>Vide G.O.Ms. No.122, Revenue (CT-II) Department, dated 30 June 2017.

<sup>154</sup>JC(ST)/DC(ST)/AC (ST) - Hyderguda-Ashoknagar, Abids Division, Abids, Bowenpally-II, Charminar STU-I, Charminar, Lad Bazaar, Madhapur -II, Hyderabad Rural - STU III, Madhapur-III, Jeedimetla-II, Hydernagar-II, Hydernagar-III, Nacharam-II, Saroonnagar STU-III, Malkajgiri-I, Malkajgiri-III, Rajendranagar-I, Rajendranagar-II, Saroonnagar-I, Saroonnagar-III, Secunderabad STU-I and Secunderabad STU-II.

<sup>155</sup>DC(ST)/AC (ST) - Abids, Charminar STU-I, Charminar, Nacharam-II, Saroonnagar STU-III and Malkajgiri-I.

<sup>156</sup>DC(ST) - Secunderabad STU-I and Secunderabad STU-II.

<sup>157</sup>DC(ST)/AC(ST) - Lad Bazaar, Madhapur -II, Hyderabad Rural - STU III, Madhapur-III, Hydernagar-II, Hydernagar-III and Rajendranagar-I.

2021) by two Tax Authorities<sup>158</sup> (in two claims) are not specific to the observation. Replies are awaited from four Tax Authorities<sup>159</sup> (in four claims). JC (ST), Abids (in one claim) replied (July 2021) that in terms of proviso to Section 50 (1) of CGST Act, levy of Interest did not arise, as the excess claimed amount was not re-paid through cash. Reply is not acceptable since this provision is applicable to the cases of belated payment of Tax but not to excess claim of ITC.

Commissioner of Commercial Taxes replied (April 2022) that the proper officers were instructed to take necessary action and submit report.

### ***2.16.6.3 Excess amount credited to ECL over and above the amount claimed in TRAN 1***

As per Rule 117(3) of TGST Rules, 2017, the amount of credit specified in the TRAN-1 return shall be credited to the Electronic Credit Ledger (ECL) of the applicant maintained in Form GST PMT 2 on the common portal. Hence, the business Rules applicable for the credit in ECL should not allow the credit more than the credit claimed in TRAN-1 returns.

Verification of the TRAN-1 return (Category 7 (c) & 11) of the taxpayer, M/s. Lodha (Bellissimo) Healthy Constructions and Developers Private Limited (GSTN: 36AABCL2910N1ZH) relating to Hydernagar-II Circle revealed that the Taxpayer credited (September 2017) to his ECL, ₹5.85 lakh over and above the amount declared in TRAN-1 return. Similarly, M/s. Panchi Chemicals (GSTN: 36AJCPB9945J1ZZ) under the jurisdiction of Abids Circle credited (September 2017) ₹1.27 lakh to his ECL whereas Transitional credit declared in TRAN-1 return was “Nil”. Excess credit in these two cases aggregated to ₹7.12 lakh.

On this being pointed out (June 2021), the AC (ST) Hydernagar-II replied (June 2021) that the matter was under examination. AC (ST) Abids replied (June 2021) that the matter would be examined.

Commissioner of Commercial Taxes replied (April 2022) that the proper officers were instructed to take necessary action and submit report.

## **Issues of Category wise Claims**

### ***2.16.6.4 Closing balance of the credit in the last returns***

As per Section 140(1) of the TGST Act 2017, a registered person, other than a person opting to pay tax under Section 10, shall be entitled to take, in his electronic credit ledger, the amount of VAT / Entry Tax 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. The registered person shall not be allowed to take credit in the following circumstances.

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<sup>158</sup>ACs(ST) - Bowenpally-II and Jeedimetla-II.

<sup>159</sup>ACs(ST) - Hyderguda-Ashoknagar, Rajendranagar-II, Saroornagar-I and Saroornagar-III.

- i. Where the said amount of credit is not admissible as input tax credit under the Act; or
- 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; or
- iii. Where the said amount of credit relates to the goods manufactured and cleared under such exemption notification, as are notified by the Government.

Audit verified the Transitional claims filed under Table 5(c) of TRAN 1 Return of 1,068 GSTINs (in 94 circles) and observed that the taxpayers had carried forward excess VAT Credit in 320 claims amounting to ₹55.38 crore under Table 5(c) of TRAN 1 Return as detailed in the succeeding paragraphs:

**(A) Excess credit carried forward than what was available in the last return**

As per Section 140(1) of the Act 2017, a registered person, shall be entitled to take the amount of VAT / Entry Tax carried forward in the return relating to the period ending with the day immediately preceding the appointed day. Audit observed in 117 claims out of the 1,068 claims worth ₹49.14 crore relating to 55 STUs / Circles<sup>160</sup> that the Taxpayers claimed Transitional Credit more than the VAT credit available to the end of June 2017. Amount of excess credit claimed by these Taxpayers aggregated to ₹27.88 crore. Department had already blocked ₹75.57 lakh, resulting in excess claim of ₹27.12 crore.

*One case is illustrated below:*

**A Taxpayer claimed TC of ₹8.34 crore in TRAN- 1 Form. However, the Credit Carried Forward (CCF) as per Value Added Tax return of June 2017 / VAT Audit Order was only ₹2.12 crore. Tax Authority replied (July 2021) that notice would be issued to the taxpayer and on receipt of reply, necessary action would be taken.**

On this being pointed out (June-September 2021), 29 Tax Authorities (in 63 claims) replied (June-September 2021) that the matter would be examined and detailed reply furnished to Audit (28 Tax Authorities<sup>161</sup>) / notices would be issued to the Taxpayers (one AA<sup>162</sup>). Eight Tax Authorities<sup>163</sup> (in 17 claims) stated (June-September 2021) that

<sup>160</sup>ACs(ST) - Narayanaguda-MJ Market, Hyderguda-Ashoknagar, Gowliguda-Osmangunj, Barkatpura-Sultanbazar, Agapura, Begumpet, MG Road-SD Road, Bowenpally-I, Bowenpally-II, Aflgunj-Maharajgunj, Mehdiapatnam-I, Malakpet-II, Lad bazaar, Malakpet-I, Madhapur III, Madhapur-IV, Vikarabad, Madhapur-II, Fathenagar, Balanagar, IDA Gandhinagar, Jeedimetla-I, Jeedimetla-II, Hyderabad rural-STU -III, Hydernagar-II, Hydernagar-III, Madhapur-I, Jubilee Hills-II, Sanathnagar, Jubilee Hills-I, Khairatabad-Somajiguda, Punjagutta, Keesara-I, Rajendranagar-II, Malkajgiri-II, Nacharam-II, Keesara-II, Nacharam-I, Malkajgiri-I, Saroornagar-I, Saroornagar-II, Vanasthalipuram-II, Rajendranagar-I, Saroornagar-III, General Bazar – Market Street –Hissamgunj, Tarnaka-I, Gandhinagar, Musheerabad, Vidyannagar, Sangareddy-II, Sangareddy-I, Nizamabad, Medak, Warangal urban-I and Warangal urban- II.

<sup>161</sup>ACs(ST) - Narayanaguda-MJ Market, Hyderguda-Ashoknagar, Gowliguda-Osmangunj, Barkatpura-Sultanbazar, MG Road-SD Road, Bowenpally-II, Malakpet-II, Lad bazaar, Malakpet-I, Fathenagar, Jeedimetla-II, Hydernagar-III, Jubilee Hills-II, Sanathnagar, Jubilee Hills-I, Khairatabad-Somajiguda, Punjagutta, Rajendranagar-II, Nacharam-II, Nacharam-I, Saroornagar-I, Vanasthalipuram-II, Rajendranagar-I, Saroornagar-III, General Bazar – Market Street – Hissamgunj, Medak, Warangal Urban-I and Warangal Urban II.

<sup>162</sup>Jeedimetla-I.

<sup>163</sup>ACs(ST) – Agapura, Madhapur-I, Hyderabad Rural STU-III, Keesara-I, Malkajgiri-I, Saroornagar-II, Tarnaka-I and Sangareddy-II.

notices would be issued to the Taxpayers and reply furnished to Audit. Three Tax Authorities<sup>164</sup> (in five claims) replied (August 2021) that notices had been issued / since been issued to the Taxpayers for recovery of the excess claims. Twelve Tax Authorities<sup>165</sup> (in 16 claims) replied (June-September 2021) that action would be taken to recover the excess claims. Two Tax Authorities<sup>166</sup> (in two claims) replied (July-August 2021) that out of total excess claim of ₹52.99 lakh, an amount of ₹49.11 lakh was already blocked in ECL. Three Tax Authorities<sup>167</sup> (in three claims) replied (July-September 2021) that the Taxpayers fall under Central Jurisdiction. AC (ST), Afzalgunj-Maharajgunj (in three claims) replied (September 2021) that the Taxpayers claimed transitional credit considering the VAT credit available under 28 NCCF<sup>168</sup> and 36 NCCF<sup>169</sup>. Reply is not acceptable as 28 NCCF must be adjusted before March 2016 or refund to be claimed under VAT Audit as per the instructions issued by the Commissioner of Commercial Taxes<sup>170</sup>. AC (ST), Mehdipatnam-I (in one claim) replied (September 2021) that the Taxpayer claimed excess transitional credit by filing revised return for the Month of June 2017. Reply is not acceptable due to the reason that even after filing revised return, the Taxpayer had VAT credit of only ₹27,812 whereas he claimed ₹3.69 lakh. AC (ST), Madhapur-II circle (in one claim) stated (August 2021) that the excess claimed TC was blocked. The reply is not acceptable as the department subsequently unblocked (January 2020) the said amount. AC (ST), Malkajgiri-II (in one claim) stated (August 2021) that the Taxpayer was liquidated and approached NCLT<sup>171</sup>. AC (ST), Tarnaka-I circle (in one claim) replied (June 2021) that the contents of the Audit observation were noted. Reply is awaited from three Tax Authorities<sup>172</sup> in respect of four claims.

Commissioner of Commercial Taxes replied (April 2022) that the proper officers were instructed to take necessary action and submit report.

### **(B) Non-declaration of pending CST forms while claiming transitional credit**

As per Section 140(1) of Act, read with instructions given in TRAN 1 Tables, details of all the mandatory forms required to be filed for claiming concessional rate of tax on the inter-state transactions under earlier tax law i.e. Central Sales Tax (CST) Act but not filed for the period from 1 April 2015 to 30 June 2017 shall invariably be declared in TRAN 1 return under Table 5C and differential tax (taxable amount minus concessional amount of tax) on the turnover of such pending forms should be reduced from the net VAT credit available at the end of June 2017 and remaining amount should be claimed as Transitional Credit.

Audit observed from the TRAN 1 returns and CST assessment orders finalized for the periods 2015-16, 2016-17 and 2017-18 (up to June 2017) that in respect of 158 claims

<sup>164</sup>ACs (ST) - Madhapur-III, Keesara-II and Malkajgiri-II.

<sup>165</sup>ACs (ST) - Madhapur-III, Madhapur-IV, Vikarabad, Madhapur-II, Balanagar, IDA Gandhinagar, Hydernagar-II, Musheerabad, Keesara-II, Gandhinagar, Sangareddy-I and Nizamabad.

<sup>166</sup>ACs (ST) - Narayanaguda-MJ Market and Hyderguda-Ashoknagar,

<sup>167</sup>Bowenpally-I, Mehdipatnam-I and Nacharam-II.

<sup>168</sup>Net Credit Carried Forwarded under VAT before bifurcation of the State.

<sup>169</sup>Net Credit Carried Forwarded under VAT after bifurcation of the State.

<sup>170</sup>vide CCT Ref. No. A (1)/11/2014 dated 2 June 2015.

<sup>171</sup>National Company Law Tribunal.

<sup>172</sup>ACs(ST) - Begumpet, Rajendranagar-II and Vidyannagar.



out of the 1,068 claims worth ₹51.94 crore relating to 63 STUs / Circles<sup>173</sup>, the Taxpayers did not declare / under declared the turnover of pending C-forms in TRAN 1 return or though declared, the differential amount of tax was not reduced from VAT credit. This resulted in excess claim of transitional credits by ₹11.67 crore.

**One illustration is given below:**

**A Taxpayer transitioned a VAT credit of ₹1.33 crore under 5 (c) category in TRAN 1. He also declared dues amounting to ₹1.68 crore in TRAN 1 towards differential tax amount on account of pending 'C' Forms, and hence, he is not eligible for any Transitional Credit. However, the same was not considered resulting in excess tax credit of ₹1.33 crore. Tax Authority replied (July 2021) that the matter would be examined and notice would be issued calling for information, and action taken report would be intimated to Audit.**

On this being pointed out (June-September 2021), 38 Tax Authorities<sup>174</sup>(in 87 claims) replied (June-September 2021) that the matter would be examined, and detailed reply furnished to Audit / notices would be issued to the Taxpayers. Four Tax Authorities<sup>175</sup> (in nine claims) replied (August-September 2021) that notices were issued / would be issued to the Taxpayer and reply furnished to Audit. Four Tax Authorities<sup>176</sup> (in eight claims) replied (June-August 2021) that notices were issued for payment of excess claim. 17 Tax Authorities<sup>177</sup> (in 31 claims) replied (June-September 2021) that action was being taken / would be taken to recover the excess claim. Reply is awaited from AC (ST), Begumpet in respect of three claims. AC (ST), Nizamabad (in one claim) replied (September 2021) that the matter would be communicated to the Central Authorities as the Taxpayer falls under Central Jurisdiction. AC (ST), Bowenpally-I (in one claim) replied (July 2021) that CST Assessment was under revision. Two Tax Authorities<sup>178</sup> (in two claims) replied (August-September 2021) that the CST demand was raised after filing TRAN 1 return. Reply is not acceptable, as the demands should have been issued again for non-declaration of pending forms in TRAN1 return while finalizing the CST assessment. Two Tax Authorities<sup>179</sup> (in two claims) stated (August 2021) that the Taxpayers already paid / adjusted the demand. However, payment / adjustment details were not furnished to Audit. Replies furnished

<sup>173</sup>DC(ST) / AC(ST) - Narayanaguda-MJ Market, Basheerbagh Nampally, Hyderguda-Ashoknagar, Basheerbagh-I, Abids, Marredpally, Begumpet, M.G.Road-S.D.Road, Ramgopalpet-Ranigunj, Bowenpally-I, Bowenpally-II, Charminar STU-II, Lad Bazaar, Mehdipatnam-I, Malakpet-I, Malakpet-II, Mehdipatnam-II, Madhapur - IV, Fathenagar, Ferozguda, Balanagar, Hyderabad Rural-STU-II, IDA Gandhinagar, Jeedimetla-I, Jeedimetla-II, Hydernagar-II, Hydernagar-I, Madhapur-I, Jubilee Hills-II, Sanathnagar, Jubilee Hills-I, Khairatabad-Somajiguda, Punjagutta, Vengalraonagar-STU-I, Punjagutta, Rajendranagar-I, Rajendranagar-II, Keesara-I, Malkajgiri-II, Vanasthalipuram-II, Nacharam-I, Nacharam-II, Saroornagar-I, Saroornagar-II, Malkajgiri-I, Malkajgiri-III, Vanasthalipuram-I, Keesara-II, Secunderabad-STU-II, Gandhinagar, Mahankali Street- RP Road, Musheerabad, Tarnaka-I, Tarnaka-II, Vidyannagar, Sangareddy-II, Sangareddy-I, Sangareddy STU, Nizamabad, Medak, Warangal Urban-I, Warangal Urban-II and Warangal Urban-III.

<sup>174</sup>DC(ST) / AC(ST) - Narayanaguda-MJ Market, Basheerbagh - Nampally, Hyderguda-Ashoknagar, Basheerbagh-I, Abids, M.G.Road-S.D.Road, Ramgopalpet-Ranigunj, Bowenpally-I, Bowenpally-II, Malakpet-I, Malakpet-II, Hyderabad Rural-STU-II, IDA Gandhinagar, Jeedimetla-I, Jeedimetla-II, Jubilee Hills-II, Sanathnagar, Jubilee Hills-I, Khairatabad-Somajiguda, Punjagutta, Punjagutta-STU I, Rajendranagar-I, Rajendranagar-II, Keesara-I, Nacharam-I, Nacharam-II, Saroornagar-I, Malkajgiri-I, Vanasthalipuram-I, Secunderabad STU-II, Musheerabad, Tarnaka-II, Vidyannagar, Sangareddy-I, Medak, Warangal Urban-I, Warangal Urban-II and Warangal Urban-III.

<sup>175</sup>ACs(ST) - Madhapur-I, IDA Gandhinagar, Sangareddy-II and Keesara-I.

<sup>176</sup>ACs(ST) - Marredpally, Hydernagar-II, Malkajgiri-II and Malkajgiri-III.

<sup>177</sup>DC (ST) / AC(ST) - Bowenpally-II, Charminar STU-II, Lad Bazaar, Madhapur - IV, Fathenagar, Balanagar, Hydernagar-II, Hydernagar-I, Vengalraonagar, Malkajgiri-II, Saroornagar-II, Gandhinagar, Mahankali Street- RP Road, Musheerabad, Tarnaka-I, Tarnaka-II and Sangareddy-I.

<sup>178</sup>ACs(ST) - Mehdipatnam-II and Ferozguda.

<sup>179</sup>ACs(ST) - Balanagar and Begumpet.



(September 2021) by two Tax Authorities<sup>180</sup> (in two claims) were not specific to the Audit observations. AC (ST), Vengalrao Nagar (in five claims) replied (July 2021) that the amount of Transitional claim was already blocked / recovered. Audit scrutiny, however, revealed that only partial amounts were recovered and also, the recoveries were not relevant to the amount objected to. In respect of one claim, AC (ST), Vengalrao Nagar replied (July 2021) that the Taxpayer did not file all CST forms due to COVID pandemic. Reply is not acceptable as there were no specific relaxations by Government on account of Covid situation. Two Tax Authorities<sup>181</sup> (in four claims) replied (July-August 2021) that appeals / petitions were pending with Additional Commissioner / National Company Law Tribunal. Two Tax Authorities<sup>182</sup> (in two claims) replied (August 2021) that whereabouts of the Taxpayers were not known.

Commissioner of Commercial Taxes replied (April 2022) that the proper officers were instructed to take necessary action and submit report.

***Recommendation:***

***Given the fact that CST assessment orders were finalized, action should be initiated to review the claims of transitional credits with respect to the outcome of CST orders, and notices should be issued to the Taxpayers on excess credit claims, if any.***

**(C) Transitional credit claimed without filing legacy returns**

As per Section 140 (1) of Act, transition of credit from the legacy returns shall be allowed only when the taxpayer had filed all relevant returns under the existing law for the period of six months immediately preceding the appointed day.

Section 20 of TSVAT Act read with Rule 23(1) of TSVAT Rules specified that every VAT dealer should file a return in form VAT 200 every month. Rule 20 (7) of TSVAT Rules 2005, further stipulates that every Taxpayer making taxable and exempted sales by using common inputs should furnish an additional return in Form VAT 200 A for each tax period for adjustment of input tax credit and also make an adjustment for a period of 12 months ending March every year by filing a return in Form VAT 200B. Further, every CST dealer should file CST return every month as per the Section 9(2) of CST Act read with Rule 23(1) of TSVAT Rules.

Audit observed in 20 claims out of the 1,068 claims relating to 12 STUs / Circles<sup>183</sup> that the Taxpayers claimed Transitional Credit without filing mandatory CST / VAT 200A / 200B returns for the period of six months immediately preceding the appointed day, although the Taxpayers had CST sales or taxable and exempt sales using common inputs, contrary to the Provisions of the TGST Act. Total transitional credit claimed in those cases aggregated to ₹6.39 crore.

<sup>180</sup>DC(ST) - Sangareddy-STU and AC(ST) – Mehdipatnam.

<sup>181</sup>ACs(ST) - Vanasthalipuram-II and Mahankali Street- RP Road.

<sup>182</sup>ACs(ST) - Vanasthalipuram-II and Keesara-II.

<sup>183</sup>ACs(ST)– Hyderguda-Ashoknagar, Basheerbagh-Nampally, Basheerbagh-I, Abids, Jeedimetla-II, Jeedimetla-I, Madhapur-III, Fathenagar, IDA Gandhinagar, Madhapur-I, Sangareddy-I and Sangareddy-II.

**One illustration is given below:**

**As per VAT Assessment Order of a Taxpayer, there were exempt sales. However, Form 200A for the months from January 2017 to June 2017, and Form 200B were not filed with Tran 1 by the taxpayer in contravention of the provisions of GST Act. Tax Authority confirmed (July 2021) the fact of not filing the return.**

On this being pointed out (June-September 2021), two Tax Authorities<sup>184</sup> (in two claims) replied (June-August 2021) that the matter would be examined and detailed reply furnished. In one case, AC (ST)-Madhapur-III stated (August 2021) that notice would be issued to the Taxpayer for recovery of the transitional credit. In another case, AC (ST), Madhapur-I circle replied (July 2021) that notice would be issued to the Taxpayer and action would be taken on receipt of reply. In one claim, AC (ST), IDA Gandhinagar replied (August 2021) that on verification of office records, VAT 200A was not found. In respect of the remaining 15 claims, seven Tax Authorities<sup>185</sup> confirmed (July-September 2021) the fact of non-filing of mandatory return by the Taxpayers.

Commissioner of Commercial Taxes replied (April 2022) that the proper officers were instructed to take necessary action and submit report.

#### **(D) Non-detection of excess claim of Transitional Credit in subsequent VAT Assessments**

Section 140(1) of Act allows a Taxpayer to take credit of the amount of Value Added Tax (VAT) and Entry Tax carried forward in the return relating to the period ending with the day immediately preceding the appointed day.

If amount claimed<sup>186</sup> towards Transitional Credit is found to be more than the net VAT credit available to end of June 2017 as assessed during the VAT Audit conducted subsequent to filing TRAN 1 return, amount of transitional credit claimed in excess of such VAT credit has to be specifically mentioned in the VAT assessment order and steps need to be taken to recover such excess claimed transitional credit as arrears of tax under GST Act in terms of Section 142 (7) (a) of the Act.

Audit scrutiny of VAT Assessments conducted subsequent to filing of TRAN-1 returns in respect of 48 claims worth ₹33.06 crore relating to 35 STUs / Circles<sup>187</sup> revealed that the Tax Authorities did not mention the amount claimed towards transitional credit in the VAT assessments though it was more than the VAT credit assessed. Amounts claimed more than the VAT credits aggregated to ₹8.73 crore which needs to be recovered as arrears of tax as per the above provisions.

<sup>184</sup>ACs(ST) – Abids and Fathenagar.

<sup>185</sup>ACs(ST) – Hyderguda-Ashoknagar, Basheerbagh-Nampally, Basheerbagh-I, Jeedimetla-II, Jeedimetla-I, Sangareddy-I and Sangareddy-II.

<sup>186</sup>Based on return relating to the period ending with the day immediately preceding the appointed day.

<sup>187</sup>DC(ST) / AC(ST) - Basheerbagh - Nampally, Narayanaguda-MJ Market, Gowliguda-Osmangunj, Basheerbagh-I, Hyderguda-Ashoknagar, Begumpet-STU I, M.G.Road-S.D.Road, Ramgopalpet-Ranigunj, Malakpet-II, Madhapur-III, Madhapur - IV, Madhapur-II, Fathenagar, Ferozguda, IDA Gandhinagar, Jeedimetla-I, Jeedimetla-II, Hydernagar-II, Hydernagar-III, Jubilee Hills-II, Jubilee Hills-I, Khairatabad-Somajiguda, Punjagutta, Punjagutta-STU I, Malkajgiri-II, Rajendranagar-I, Rajendranagar-II, Vanasthalipuram-I, Saroornagar-II, Nacharam-II, General Bazar – Market Street –Hissamgunj, Musheerabad, Tarnaka-I, Sangareddy-I and Medak.

*One illustration is given below:*

**As per VAT Assessment Orders finalized by the Tax Authorities of a taxpayer for the years 2016-17 and 2017-18, there was nil balance in the ITC Credit ledger. However, a claim of ₹2.02 crore towards TC was made in TRAN 1 by the taxpayer. Tax Authority replied (July 2021) that the matter would be examined and detailed reply furnished in due course.**

On this being pointed out (June-September 2021), 24 Tax Authorities (in 32 claims) replied (June-September 2021) that the matter would be examined, and reply furnished to Audit (22 Tax Authorities)<sup>188</sup> / notice issued to the Taxpayers (two Tax Authorities)<sup>189</sup>. Two Tax Authorities<sup>190</sup> (in three claims) replied (June-August 2021) that notices would be issued to the Taxpayers and action taken intimated to Audit. AC (ST), Malkajgiri-II (in one claim) replied (August 2021) that notice had been issued to the Taxpayer and collection details would be furnished to Audit. Seven Tax Authorities<sup>191</sup> (in eight claims) replied (June-September 2021) that action would be taken to collect the excess claim. AC (ST), General Bazar – Market Street –Hissamgunj (in one claim) replied (July 2021) that the Taxpayer claimed transitional credit considering the 28 NCCF<sup>192</sup> also. Reply is not acceptable as 28 NCCF had to be adjusted before March 2016 or to claim refund under VAT Audit as per the instructions issued by the Commissioner of Commercial Taxes<sup>193</sup>. AC (ST), Narayanaguda-MJ Market (in one claim) replied (July 2021) that the Taxpayer was allotted to Central jurisdiction. Reply is not acceptable since the verification of transitional credits can only be done by the tax authority which had legal jurisdiction under the erstwhile law as per Para 12 of the departmental guidance note issued by CBIC. In another one claim, AC(ST), Narayanaguda-MJ Market, stated (July 2021) that the Taxpayer already paid ₹15.52 lakh out of the excess claim of ₹17.93 lakh. However, documents evidencing the payment were not furnished to Audit. AC (ST), Hyderguda-Ashoknagar (in one claim) replied (August 2021) that the Transitional Credit was allowed after verification. Reply is not acceptable since the Taxpayer had no VAT credit as per the VAT effectual order<sup>194</sup>.

Commissioner of Commercial Taxes replied (April 2022) that the proper officers were instructed to take necessary action and submit report.

**(E) Excess transitional credit claimed on revised VAT returns**

Section 142(8) (b) of the Act specified that where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is

<sup>188</sup>DC(ST) / AC(ST) - Basheerbagh - Nampally, Gowliguda-Osmangunj, Basheerbagh-I, Begumpet-STU I, M.G. Road-S.D. Road, Malakpet-II, Fathenagar, Ferozguda, IDA Gandhinagar, Jeedimetla-II, Hydernagar-III, Jubilee Hills-II, Jubilee Hills-I, Khairatabad-Somajiguda, Punjagutta, Punjagutta- STU I, Rajendranagar-I, Rajendranagar-II, Vanasthalipuram-I, Nacharam-II, Medak and Narayanaguda M.J. Market.

<sup>189</sup>ACs(ST) - Jeedimetla-I and Saroornagar-II.

<sup>190</sup>ACs(ST) - Madhapur-IV and Tarnaka-I.

<sup>191</sup>ACs(ST) - Ramgopalpet-Ranigunj, Madhapur III, Madhapur –II, Ferozguda, Hydernagar-II, Musheerabad and Sangareddy-I.

<sup>192</sup>Net Credit Carried Forwarded under VAT before bifurcation of the State.

<sup>193</sup>Vide CCT Ref.No. A (1)/11/2014 dated 2 June 2015.

<sup>194</sup>Issued vide Order No. 1533, dated 20 January 2021.

found to be refundable or input tax credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law.

Audit observed in nine claims relating to eight Circles<sup>195</sup> that Taxpayers claimed excess Transitional Credits considering the additional credit available as per revised VAT returns filed after the appointed day, instead of claiming on the basis of original VAT returns. Violation of provisions *ibid* resulted in excess GST claim aggregating to ₹1.33 crore, which should have been processed under the existing law (not GST).

**One illustration is given below:**

**As per original VAT return, the Input Tax Credit to end of June 2017 was ₹80.47 lakh, which was later revised to ₹93.38 lakh by the Taxpayer. However, the taxpayer claimed TC for the revised amount instead of the amount filed in original return. Tax Authority replied (July 2021) that the matter would be examined and notice would be issued and action taken intimated to Audit.**

On this being pointed out (June-September 2021), four Tax Authorities<sup>196</sup> (in four claims) replied (July-September) that the matter would be examined and reply would be furnished to Audit. AC (ST), Agapura (in one claim) replied (July 2021) that notice would be issued to the Taxpayer and action taken intimated to Audit. Two Tax Authorities<sup>197</sup> (in two claims) replied (June-September 2021) that notices would be issued to the Taxpayers for collection of the excess claims. AC (ST), Jeedimetla-II (in one claim) replied (July 2021) that the taxpayer filed revised return due to mistake in original return. Reply is awaited from AC (ST), Hyderguda-Ashoknagar in respect of one claim.

Commissioner of Commercial Taxes replied (April 2022) that the proper officers were instructed to take necessary action and submit report.

#### **(F) Claim of Transitional credit without filing valid return**

As per Section 140(1) of the Act, transition of credit from the legacy returns shall be allowed only when the taxpayer had filed all relevant returns under the existing law for the period of six months immediately preceding the appointed day. Section 9(2) of CST Act read with Rules 23(1) and 23(6) of APVAT Rules, 2005 stipulates that the original / revised CST return should be filed within a period of six months from the end of the relevant month.

Audit observed in one claim<sup>198</sup> involving ₹14.44 lakh, pertaining to Hyderguda-Ashoknagar circle that the Taxpayer filed CST returns for the months of January 2017 to March 2017 after the expiry of due date for filing<sup>199</sup>. As the Taxpayer did not submit the CST returns for the said months (which were covered in six months immediately preceding the appointed day) within the respective due dates, allowing the transitional credit is incorrect.

<sup>195</sup>ACs(ST) - Agapura, Hyderguda-Ashoknagar, Gowliguda-Osmangunj, Jeedimetla-II, Khairatabad-Somajiguda, Nacharam-II, Tarnaka-I and Sangareddy-I.

<sup>196</sup>ACs(ST) - Agapura, Gowliguda-Osmangunj, Khairatabad-Somajiguda and Nacharam-II.

<sup>197</sup>ACs(ST) - Tarnaka-I & Sangareddy-I.

<sup>198</sup>M/s. Moswap Electronics Private Limited - GSTN: 36AAICM9378G1ZW - TIN: 36104033572.

<sup>199</sup>After completion of six months of relevant Tax periods.

On this being brought (August 2021) to notice, the Tax Authority replied (August 2021) that the returns under existing law were confined to VAT return only. Reply of the Circle is not acceptable since the existing law includes CST Act also.

Commissioner of Commercial Taxes replied (April 2022) that the proper officers were instructed to take necessary action and submit report.

#### 2.16.6.5 Credit on duty paid stock-without invoices

As per sub- Section (3) of Section 140 of the Act, a taxpayer is allowed to avail input tax credit in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of value added tax / entry tax. Further, as per sub-Rules (1), (2) and 4(b) of Rule 117 of TGST Rules, 2017, such credit may be claimed by filing TRAN 2 return, in addition to TRAN 1 return.

Audit observed in two claims given below that the Taxpayers claimed Transitional Credit involving an aggregate amount of ₹34.16 lakh directly through TRAN 2 return without declaring it in TRAN 1 return, contrary to the above Rules, which is considered as incorrect.

**Table 2.9: Transitional claims without declaring TRAN 1**

Sl. No.	Division	Circle	Name of the Taxpayer	GSTN	TC claimed (₹)
1	Abids	Basheerbagh - Nampally	Drive India Enterprise Solutions Limited	36AABCD5823E1ZY	23,59,236
2	Nizamabad	Nizamabad	Bajaj Agencies	36ABHPB6789P1ZV	10,56,953

On this being pointed out (July-September 2021), AC (ST), Basheerbagh-Nampally replied (July 2021) that matter would be examined and notice would be issued calling for TRAN-2 details. In respect of another claim, AC (ST), Nizamabad stated (September 2021) that issue would be examined and communicated to Central Authorities since the taxpayer was allotted to Central Jurisdiction. Reply is not acceptable as the verification of transitional credits should only be done by the tax authority which had legal jurisdiction under the erstwhile law as per Para 12 of the departmental guidance note issued by CBIC.

Commissioner of Commercial Taxes replied (April 2022) that the proper officers were instructed to take necessary action and submit report.

#### 2.16.7 Conclusion

Audit of Transitional Credits (1,139 claims) revealed that the State Government had not evolved a robust mechanism to verify the claims on risk basis, as evident from the fact that nearly 43 *per cent* of sample claims of 5 (c) category were not verified by the Department. The claims verified by the Department also suffered from deficiencies regarding non-compliance of the provisions of the GST Act / Rules resulting in excess / incorrect claims of ₹30.19 crore in 169 cases. As regards the claims not verified by the Department, excess / incorrect credits aggregated to ₹25.61 crore in 155 cases.

### **2.16.8 Recommendations**

- *Considering the possible deviations and high risks involved in ITC claims and also the lapse of prescribed time limit of six years for VAT Audit, Department should evolve a robust mechanism for verification of TC claims of high values on a risk prioritised basis.*
- *Given the fact that CST assessment orders were finalized, action should be initiated to review the claims of transitional credits with respect to the outcome of CST orders, and notices should be issued to the Taxpayers on excess credit claims, if any.*
- *Looking into the size of sample cases (1,139) test checked and number of excess/incorrect claims noticed (324), Department may rigorously examine similar cases not covered in the audit sample and take corrective action within a timeframe. A database of such cases may also be maintained to monitor / rectify the same.*