Chapter 6

Processing of refund claims under Goods and Services Tax

Chapter 6: Processing of refund claims under Goods and Services Tax

FINANCE DEPARTMENT

(Directorate of Commercial Taxes)

6.1 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. Provisions pertaining to refunds, as contained in the Goods and Services Tax (GST) Laws, aim to streamline and standardise the refund procedures under GST regime. It was envisioned that the claim and sanctioning procedure of refunds would be completely online. However, due to unavailability of electronic refund module on the common portal for GST, detailed procedures were prescribed through Circulars[87] issued in November and December 2017, for processing of refund claims through an electronic-*cum*-manual procedure. In this process, the applicants were required to file the refund applications (in the form GST RFD-01A) on the common portal, take a print out of the same and submit it physically to the jurisdictional tax office along with all supporting documents. Further processing of the refund applications, *i.e.*, issuance of acknowledgement, issuance of deficiency memo, passing of provisional/ final refund orders, issuance of payment advice, *etc.*, were done manually.

Subsequently, in order to make the process of submission of the refund application electronic, a Circular[88] was issued (December 2018), wherein it was specified that the refund applications to be submitted through the aforesaid form, along with all supporting documents, had to be submitted electronically and post-submission stages of processing of the refund applications were to be done through manual mode. The refund process was made fully electronic, with effect from 26 September 2019, wherein all steps from submission of applications to processing thereof were to be undertaken electronically. However, all refund applications filed on the common portal before 26 September 2019 were to be processed manually, as was done prior to the introduction of the fully automated system.

6.1.1 Organisational Set up

In West Bengal, GST is administered by the Directorate of Commercial Taxes (Directorate), West Bengal. The Directorate functions under the Finance Department and is headed by the Commissioner of Commercial Taxes (CCT). The CCT is assisted by Special Commissioners, Additional Commissioners, Senior Joint Commissioners, Joint Commissioners, Deputy Commissioners, Assistant Commissioners and State Tax Officers. Administratively, the Directorate is divided into 16 Circles. A Circle is headed by the Additional Commissioner or the Senior Joint Commissioner. He is supported by other Senior Joint Commissioners, Joint Commissioners and other officers, down to those at the Charge level. They exercise administrative, appellate and revisional jurisdiction over Charges under them and audit, adjudication and recovery

[87] Trade Circular Nos. 12/2017 dated 15.11.2017 and 14/2017 dated 21.12.2017
[88] Trade Circular Nos. 57/2018 dated 31.12.2018

thereof at the Circle level. There are 67 charges[89] in the State. A Charge is headed by a Charge Officer, of the rank of a Joint Commissioner or a Senior Joint Commissioner. This unit is entrusted with the administration of the GST Act and includes registration, amendment, cancellation and its revocation, audit and assessment, enforcement, anti-evasion, raising demand and its recovery and refunds. The Charge Officer reports to the Administrative Circle head.

A Large Taxpayer Unit (LTU) is there to facilitate the revenue administration of the largest taxpayers of the State. It is headed administratively by a Special Commissioner and assisted by Additional, Senior Joint and Joint Commissioners. All registered tax-payers (RTPs) under the LTU are divided into groups, meant for goods, services and legacy work.

Information Systems Division (ISD), as the internal Information Technology (IT) wing of the Directorate, is responsible for maintenance and upgradation of IT infrastructure and implementation of new e-services. With the introduction of GST, ISD provides the basis on which the entire Directorate functions. All offices have access to the Internal Website containing internal information and communication, as well as the GST Back Office portal, for their day-to-day activities under GST.

Processing of orders of refunds is the responsibility of the Proper Officers. In terms of the West Bengal Goods and Services Tax Act, 2017, "Proper Officer" in relation to any function to be performed under this Act, means the Commissioner or the Officer of the State tax who is assigned that function by the Commissioner. Without prejudice to provisions of the West Bengal Goods and Services Tax Act 2017, Officers appointed under the Central Goods and Services Tax Act are authorised to be the Proper Officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Goods and Services Tax Council, by notification, specify.

6.1.2 Audit objectives, Scope and Methodology

A Subject Specific Compliance Audit (SSCA) on processing of refund claims under Goods and Services Tax was conducted to assess

- adequacy of Acts, Rules, Notifications, Circulars, *etc.*, issued in relation to grant of refund;
- compliance of extant provisions by the tax authorities and
- efficacy of systems in place to ensure compliance by taxpayers.

Information of 17,272 refund cases (11,861 manual and 5,411 automated) processed during July 2017 to July 2020 was obtained from 67 Charge offices. Of these, 9,997 (7,201 manual and 2,796 automated) were related to zero-rated supplies of goods and services, 2,295 refund cases (1,287 manual and 1,008 automated) were related to inverted duty structure[90] and 4,980 refund cases (3,373 manual and 1,607 automated) were related to excess balance in the Electronic Cash Ledger of the taxpayers. The information so received also formed the audit universe for the SSCA.

[89] *A Charge is the basic functional unit of the Directorate*
[90] *Tax structure wherein rates of tax on input being higher than the rates of tax on output*

During field audit, 2,066 refund cases involving an amount of ₹ 667.22 crore (1,122 manual involving an amount of ₹ 353.28 crore and 944 (940+4[91]) automated involving an amount of ₹ 313.93 crore) pertaining to the period from July 2017 to July 2020 were selected for examination. Out of the total sample of 2,066 refund cases, 1,930[92] cases (986 manual and 944 automated cases) involving ₹ 645.83 crore were scrutinised. Of 1,930 cases, refund cases related to zero-rated supplies were 1,272 and refund cases related to other than zero-rated supplies were 658. Refund cases related to inverted duty structure were 351 out of 658 refund cases.

Goods and Services Tax Network (GSTN) has provided pan-India refund data from July 2017 to July 2020. Considering the refund data available for the State of West Bengal, based on electronic-*cum*-manual/ electronic mode of processing of refunds, on either side of 26 September 2019, refund risk parameters for these two stages were also different. In respect of refund applications prior to 26 September 2019, the sample drawn was based on Stratified Sampling. For selecting refund applications, submitted 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/ refund claimed ratio (*10 per cent*) and deficiency memo issued (*15 per cent*). Based on the above arrived risk score, refund applications were selected for the period after 26 September 2019.

6.1.3 Audit Criteria

The following Audit Criteria were used to assess the Audit Objectives:

- West Bengal Goods and Services Tax Act, 2017 (WBGSTA);
- West Bengal Goods and Services Tax Rules, 2017 (WBGSTR);
- Central Goods and Services Tax Act, 2017 (CGSTA);
- Central Goods and Services Tax Rules, 2017 (CGSTR);
- Integrated Goods and Services Tax Act, 2017 (IGSTA); and
- Relevant Notifications, Circulars, Trade Circulars and Instructions issued by the CCT and State Government from time to time.

6.1.4 Modus Operandi for processing of refund applications

A taxpayer, on being administratively assigned either to the Central or State tax authority, needs to file the refund claim with the jurisdictional tax authority to whom the taxpayer has been assigned. In case such an order has not been issued, the taxpayer is at liberty to apply for refund before the Central Tax Authority or the State Tax Authority, till the Administrative Order for assigning of the taxpayer to respective jurisdictional tax authority is issued. However, in such case, an undertaking is required to be submitted by the taxpayer stating that the claim for sanction of refund has been made to only one of the Tax Authority. For pre-automation cases, the payment of the sanctioned refund amount shall be made only by the concerned tax authority of the Central or State government. In other words, for pre-automation cases, the payment of sanctioned refund

[91] Six cases were for scrutiny of double payment. Out of these, two cases were from 940 cases and four cases were new

[92] This was because a total of 136 cases could not be scrutinised as (a) 20 cases were not disposed, (b) seven cases were under process and (c) 109 cases were not produced to audit

amount in relation to Central Goods and Services Tax (CGST), Integrated Goods and Services Tax (IGST) and Cess shall be made by the Central Tax Authority while in relation to SGST, it would be made by the State Tax Authority. To ensure timeliness in payment of refunds, the refund order issued either by the Central Tax Authority or the State Tax Authority was to be communicated to the concerned counter-part tax authority within seven working days from its issue, for enabling payment of the relevant sanctioned refund amount. For post-automation cases, the sanctioned refund amounts, under all tax heads, as entered in the payment orders issued by the Central and State/ Union Territory Tax Officers, are disbursed through the Public Financial Management System (PFMS) of the Controller General of Accounts (CGA), Ministry of Finance, Government of India. The disbursement status of the refund amount is communicated by PFMS to the common portal and the common portal notifies the same to taxpayers by email/ SMS.

6.1.5 Non-production of records

During audit of the 22[93] Charge offices in 10[94] Circles under the Directorate, 109 manual refund case records (out of the requisitioned 1,122 manual case records) involving refund amount of ₹ 19.69 crore were not made available to Audit for scrutiny. As a result, these 109 cases remained outside the purview of the audit coverage.

Fourteen Charge offices with 81 such cases stated (between January 2021 and September 2021) that the case records were not readily available/ traceable. Shyambazar charge, in one case, stated (January 2021) that the case was processed by Large Taxpayer Unit. In remaining cases, the Charge offices did not furnish any/ specific reply.

Audit Findings

During the SSCA, 986 manual GST refund case records and 944 automated GST refund case records were scrutinised which revealed some major systemic and compliance deficiencies of the Directorate of Commercial Taxes, West Bengal in processing and disposal of refund claims under GST. Such findings noticed during the SSCA are illustrated under the following paragraphs:

6.2 Adequacy of statutory provisions and GSTN system in relation to grant of refund

During the SSCA, the following issues relating to the above aspect came to notice:

6.2.1 Absence of a time limit for completion of the liability register

As per provisions of Rule 92 (1) of the WBGSTR, where the Proper Officer is satisfied that a refund is due and payable to the applicant, he shall make an order in FORM GST RFD-06, sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis, amount adjusted against any outstanding demand under the

[93] Asansol, Ballygunge, Barasat, Barrackpore, Baruipur, Beadon Street, Budge-Budge, Cossipur, Fairley Place, Howrah, Jorabagan, Jorasanko, Kadamtala, Manicktola, Postabazar, Radhabazar, Shibpur, Shyambazar, Siliguri, Strand Road, Suri and Taltala

[94] 24 parganas, Asansol, Barabazar, Behala, Chowringhee, Durgapore, Howrah, Kolkata (North), Kolkata (South) and Siliguri

Act or under any existing law and the balance amount refundable. Provided that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of adjustment shall be issued in Part A of FORM GST RFD-07.

For this purpose, maintenance of the Liability Register of taxpayers has been prescribed under Rule 85 of WBGSTR. The Directorate has to complete the Liability Registers of RTPs to ascertain the outstanding assessed dues of the RTPs and to facilitate the Proper Officers in deducting/ adjusting the outstanding assessed dues from the amount refundable under the WBGSTA.

However, no time limit for completion of the Liability Registers has been prescribed under WBGSTA or WBGSTR. Further, the Directorate also did not issue any instruction/ guideline to the Charge Officers under the Directorate to complete Liability Registers of RTPs within a specified time limit so as to enable the concerned Proper Officers in adjusting the outstanding assessed dues.

Out of 1,930 refund cases checked, it was noticed that in 16 cases under ten[95] Charge offices in six[96] Circles, refunds were allowed without adjusting outstanding assessed dues (related to Value Added Tax, Central Sales Tax and GST) of ₹ 5.39 crore[97] by the Proper Officers, owing to non-completion of Liability Registers. Thus, inadequacy of provisions in WBGSTA and WBGSTR regarding absence of a time limit for completion of Liability Registers of RTPs, resulted in non-realisation of the assessed dues amounting to ₹ 5.39 crore from the claimants of GST refund.

In reply, the Directorate stated (February 2022) that the WBVAT Act and CST Act had not been repealed and dues under such Acts were recoverable under the appropriate provisions of the said Acts. It was further intimated (February 2022) that there was post-refund realization of ₹ 15.01 lakh (₹8.60 lakh based on audit observations and ₹ 6.41 lakh prior to audit) against seven cases. In remaining nine cases, the Charge offices either did not furnish any reply or did not furnish supporting documents to substantiate their replies.

The reply did not address the core issue of non-recovery of outstanding dues of existing Acts at the time of refund of GST in violation of specific provision under GST Laws. The maintenance and updating of Electronic Liability Register would facilitate monitoring the assessed dues of existing Acts and GST Laws as well. Moreover, the above cases were pointed out by Audit only on the basis of sample check. Possibility of more such occurrences, especially in the absence of updated Electronic Liability Registers, could not be ruled out.

6.2.2 Absence of database of taxpayers who have been prosecuted for any offence

In terms of Rule 91 (1) of the WBGSTR "the provisional refund shall be granted subject to the condition that the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds two hundred and fifty lakh rupees."

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[95] Barrackpore, Bhabanipore, Bowbazar, Chandni Chowk, Esplanade, Fairley Place , Large Taxpayer Unit, New Market, Park street and Suri

[96] 24 Parganas, Chowringhee, Corporate Division, Dharmatolla, Durgapur and Kolkata South

[97] considering amount of refunds allowed or quantum of outstanding dues whichever was less in individual cases.

WBGSTR or WBGSTA did not, however, have any enabling provision for maintenance of a database of such persons, in this regard, to keep proper control over the process of making provisional refunds.

Scrutiny of the selected 944 automated GST refund cases records revealed that in 140 cases in 37[98] Charge offices, provisional refunds of ₹ 49.67 crore were sanctioned. Discussion with the Charge Officers/ Proper Officers and scrutiny of refund sanction orders disclosed that there was no database created and maintained by the Directorate in this regard. In absence of such a database, the Proper Officers were unable to cross verify the status of prosecution and amount of tax evasion by the refund claimants. Thus, the provisional refund sanction orders were issued without any verification by the Proper Officers in this regard.

When Audit pointed this out (August 2021), the Directorate stated (February 2022) that under provisions of Letter of Undertaking (LUT), the eligibility to export under LUT is made available only to persons who have not been prosecuted for any such offence and self-declaration of the exporters in this respect shall be accepted unless there is specific information otherwise. The Directorate further added that the data on prosecution instituted by the Directorate is maintained at the Head Office of the Directorate.

The reply was not acceptable as no database on prosecutions (other than those initiated by the State Directorate) was maintained and thus, it remained unclear as to how the Directorate assured itself that applicant RTPs were not prosecuted under any existing law. Further, the fact remained that the self-declaration of exporters regarding fulfillment of the conditions of LUT was accepted by the Proper Officers without any verification at the time of LUT and refund as well, because the maintained database was not made available to them. Moreover, the Directorate was silent on the issue of availability/ sharing of the maintained database to the Proper Officers.

6.2.3 Absence of validation controls in the GSTN system

6.2.3.1 More than one payment advice issued against one refund sanction order: Under provisions of Rule 91 (3) and Rule 92 (4) of the WBGSTR, the Proper Officer shall issue a payment advice in Form GST RFD-05 for the amount sanctioned provisionally (in GST RFD-04) and finally (in GST RFD-06) respectively and the amount so sanctioned shall be electronically credited to the bank account of the applicant. Thus, only one payment advice should be issued against each of the sanction order (provisional or final) to avoid double payment of the sanctioned refund amount. GSTN system must have validation control so that more than one payment advice may not be issued against the same sanction order.

Audit observed that in five refund cases (out of 944 sampled automated cases) under four[99] Charge offices, the Proper Officers issued payment advice more than once against a single sanction order. As the entire process of GST refund has since been digitised, in absence of validation control in the GSTN system to

[98] Alipore, Amratala, Armenian Street, Asansol, Bally, Ballygunge, Baruipur, Beadon Street, Behala, Belgachhia, Bhabanipur, Bowbazar, Budge-Budge, Burtola, Chandni Chowk, College Street, Coloototla, Cooch Behar, Cossipur, Diamond Harbour, Durgapore, Fairley Place, Howrah, Jorabagan, Kadamtala, Lalbazar, Large Taxpayer Unit, Malda, Manicktala, Midnapore, Postabazaar, Radhabazar, Raiganj, Salt Lake, Sealdah, Siliguri and Taltala

[99] Ballygunge, Bhabanipur, Lalbazar and Siliguri

restrict issuance of more than one payment advice against any particular refund sanction order, double payment of the sanctioned amount of ₹ 18.09 lakh have been made to the taxpayers.

On this matter being pointed out by Audit (between March 2021 and August 2021), the Charge offices stated (between July 2021 and August 2021) that the excess paid refund amount had been recovered from the taxpayers. However, regarding establishment of validation control in the GSTN system, the Charge offices did not furnish any specific reply. Further, the Directorate stated (February 2022) that the cases reported pertained to the period when the refund applications were processed manually. GSTN had introduced appropriate validations in the system with the implementation of the fully electronic refund procedure with effect from 26 September 2019. The reply of the Directorate was not acceptable as the five cases reported pertained to the period after 26 September 2019. It sheds doubts on the effectiveness of the validation control in the GSTN system. Moreover, mere recovery of excess payments pointed out by Audit would not be enough, as possibility of occurrence of more such cases was substantial.

6.2.3.2 More than one refund sanction order issued against one refund application: Under provisions of Rule 92 (1) of the WBGSTR, the Proper Officer shall issue a refund sanction order in Form GST RFD-06 for the amount sanctioned finally. On the basis of this refund sanction order, the payment advice in Form GST RFD-05 is to be issued and the amount so sanctioned shall be electronically credited to the bank account of the applicant. Thus, ideally only one refund sanction order should be issued against each of the refund application (ARN) to avoid any possibility of double payment of the sanctioned refund amount. GSTN system must have validation control so that more than one sanction order may not be issued against one refund application (ARN) of GST refund.

During scrutiny of 944 automated refund cases, it was noticed that in two refund cases of two[100] Charge offices under the Directorate, the Proper Officers issued refund sanction order more than once against a single application (ARN) of refund. As the entire process of GST refund has been digitized, in absence of validation control in the GSTN system to restrict issuance of more than one refund sanction order against any particular refund application, the system remained vulnerable to the risk of double payment against such multiple refund sanctioned orders. Out of these two cases, in one case (M/s Flora Rubber Products), two separate payment advices of ₹ 1.62 lakh each have been issued leading to a double payment of ₹ 1.62 lakh to the claimant.

When Audit pointed this out (August 2021), the Ballygunge Charge office stated (August 2021) that the excess amount refunded to the taxpayer has been realized. The Directorate stated (February 2022) that the cases reported pertained to the period when the refund applications were processed manually. GSTN had introduced appropriate validations in the system with the implementation of the fully electronic refund procedure with effect from 26 September 2019. The reply of the Directorate was not tenable as the two cases reported pertained to the period after 26 September 2019. It obviously meant that no validation control was there in the GSTN system in this regard.

[100] *Ballygunge and Postabazar*

6.2.3.3 More than one acknowledgement issued against one refund application: Under provisions of Rule 90 of the WBGSTR, the application for refund, shall be forwarded to the Proper Officer who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically. Accordingly, only one acknowledgement should be issued against one application of refund (ARN) and the GSTN system should have the validation control to restrict issue of more than one acknowledgement against one ARN.

During scrutiny of 944 automated refund cases, it was noticed that in one refund case of Bhabanipur Charge under Kolkata (South) Circle of the Directorate, the Proper Officer issued acknowledgement more than once against a single application of refund (ARN). As the entire process of GST refund has been digitized, in absence of validation control in the GSTN system to restrict issuance of more than one acknowledgement against any particular ARN, the system allowed issuance of more than one acknowledgement against a single application of refund.

The Directorate stated (February 2022) that the case reported pertained to the period when the refund applications were processed manually. GSTN had introduced appropriate validations in the system with the implementation of the fully electronic refund procedure with effect from 26 September 2019. The reply of the Directorate was not tenable as the case reported pertained to the period after 26 September 2019. It obviously meant that no validation control was there in the GSTN system in this regard.

6.3 Compliance of extant provisions by the tax authorities & the efficacy of systems in place to ensure compliance by taxpayers

During the SSCA, on the above mentioned aspect, the following issues emerged:

6.3.1 Acknowledgements not issued within the specified time limit

Rule 90 of the CGSTR and WBGSTR prescribes that the application for refund, shall be forwarded to the Proper Officer who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically. The acknowledgement should clearly indicate the date of filing of the claim for refund.

During scrutiny of 1,930 refund cases, it was noticed that in 147 refund cases[101], involving an amount of ₹ 39.79 crore related to 35[102] Charge offices in 15[103] Circles, there was delay in issue of acknowledgement ranging from one to

[101] All post-automation cases

[102] Charge offices: Armenian Street, Asansol, Bally, Ballygunge, Balurghat, Beadon Street, Behala, Bhabanipur, Bowbazar, Budge-Budge, Burtola, Chandni Chawk, College Street, Cooch Behar, Durgapore, Esplanade, Ezra Street, Howrah, Jorabagan, Kadamtala, Lalbazar, Large Taxpayer Unit, Manicktala, N. D. Sarani, N.S.Road, Park Street, Postabazar, Princep Street, Raiganj, Rajakatra, Salt Lake, Sealdah, Shyambazar, Siliguri and Srirampur

[103] Circle offices: 24 Parganas, Asansol, Bally, Barabazar, Behala, Chowringhee, Dharmatala, Durgapore, Howrah, Jalpaiguri, Kolkata (North), Kolkata (South), LTU, Raiganj and Siliguri

76 days from the due date of acknowledgement. This resulted in non-observance of the provisions referred *ibid*. Analysis of delays disclosed that delays in 140 cases, five cases and two cases were up to 30 days, between 31 and 60 days and more than 60 days respectively.

When Audit pointed this out (between January and September 2021), two[104] Charge offices in 11 cases accepted the delay in issue of acknowledgement, five[105] Charge offices in 52 cases stated that due to technical reasons like internal server and GSTN related problems, the delay occurred. In remaining cases, the Charge offices did not furnish any/ specific reply.

The Directorate stated (February 2022) that all cases reported pertained to the period when the refund applications were processed manually. The reply of the Directorate was not tenable as all 147 cases pertained to the period after 26 September 2019, *i.e.*, the date of implementation of the fully electronic refund procedure.

6.3.2 Refund sanction orders not issued within the specified time limit

Under section 54(7) of the WBGSTA and the CGSTA, the Proper Officer shall issue the order of refund within 60 days from the date of receipt of application. Section 56 of these Acts prescribes that if any tax ordered to be refunded under section 54 of these Acts, to any applicant is not refunded within 60 days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six *per cent* is payable. Section 56 also prescribes that the interest is payable in respect of such refund from the date immediately after the expiry of 60 days from the date of receipt of application under the sub-section (1) of section 54, till the date of refund of such tax. The prescribed interest rate was six *per cent*. In terms of Para 34 of the Trade Circular No. 45/2019 dated 21.11.2019 issued by CCT, WB any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the applicant, so the interest has to be paid till the date on which the amount is credited to the bank account of the applicant.

During scrutiny of 1,930 refund cases, it was noticed that in 216 refund cases involving refund sanction amounting to ₹ 45.59 crore related to 49[106] Charge offices in 16[107] Circles, there was delay in issue of final refund sanction order (GST RFD-06) ranging from one to 616 days. Out of these, 171 cases, 36 cases and nine cases were delayed up to three months, between three to six months and more than six months respectively. This has resulted in non-observance of the provisions referred *ibid* and non-payment of interest[108] amounting to ₹ 29.48 lakh.

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[104] *Ezra Street and Park Street*

[105] *Armenian Street, Ballygunge, Esplanade, Jorabagan and Manicktala*

[106] *Amratala, Armenian Street, Asansol, Bally, Ballygunge, Barasat, Baruipur, Beadon Street, Behala, Belgachhia, Beliaghata, Bhabanipur, Bowbazar, Budge-Budge, Burtola, Chandni Chawk, Colootola, Cooch Behar, Cossipur, Diamond Harbour, Durgapore, Esplanade, Ezra Street, Howrah, Jalpaiguri, Jorabagan, Jorasanko, Kadamtala, Krishnanagar, Lalbazar, Large Taxpayer Unit, Malda, Manicktala, Monoharkatra, N. D. Sarani, Park Street, Postabazar, Princep Street, Radhabazar, Raiganj, Rajakatra, Salt Lake, Sealdah, Shyambazar, Siliguri, Srirampur, Strand Road, Suri and Taltala*

[107] *24 Parganas, Asansol, Bally, Barabazar, Behrampur, Behala, Chowringhee, Dharmatala, Durgapore, Howrah, Jalpaiguri, Kolkata (North), Kolkata (South), LTU, Raiganj and Siliguri*

[108] *In case of manual application, interest has been calculated from the date of issue of acknowledgement to the date of issue of refund sanction order RFD-06 as the date of credit was not available in the manual cases.*

When Audit pointed this out (between December 2020 and September 2021), none of the Charge office contradicted the delayed disposal of the refund cases. However, 13[109] Charge offices in 37 cases stated that the taxpayers have submitted declarations for not claiming the interest amount. The reply is not acceptable as there was no provision under the GST laws for foregoing the interest amount by the taxpayers by submission of declarations. In remaining cases, the Charge offices did not furnish any/ specific reply. On this being pointed out (December 2021), the Directorate stated (February 2022) that the cases reported pertained to the period when the refund applications were processed manually. It was also contended that the refund process of GST was initiated after introduction of Rule 97A of the GST/ WBGST Rules 2017[110]. The Directorate further opined that the issues raised by Audit in this section would be addressed with the introduction of the fully electronic refund procedure. The reply of the Directorate is not acceptable as out of 216 cases reported, 124 cases pertain to the period after 26 September 2019, *i.e.*, the date of implementation of the fully electronic refund procedure.

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

Rule 91 (2) of the WBGSTR and CGSTR prescribes that the Proper Officer, after scrutiny of the claim and the evidence submitted in support thereof and on being *prima facie* satisfied that the amount claimed as refund under sub-rule (1) is due to the applicant on account of zero-rated supply of goods or services or both in accordance with the provisions of sub-section (6) of Section 54, shall make an order in FORM GST RFD-04, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days from the date of the acknowledgement.

During scrutiny of 1,272 refund cases related to zero-rated supply, it was noticed that in 43 refund cases involving provisional refund amount of ₹ 8.75 crore related to 15[111] Charge offices in eight[112] Circles under the Directorate, there was delay in issue of provisional refund sanction order (GST RFD-04) ranging from two to 103 days. Out of these, delays in 41 cases and two cases were up to three months and between three to six months respectively. This resulted in violations of provisions referred *ibid*.

When Audit pointed this out (between January and September 2021), none of the Charge office contradicted the audit observation. However, two Charge offices in eight cases stated that technical problems were responsible for the delay. In remaining cases, the Charge offices did not furnish any/ specific reply. On this being pointed out (December 2021), the Directorate stated (February 2022) that the cases reported pertain to the period when the refund applications were processed manually. The reply of the Directorate is not

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[109] Amratala, Armenian Street, Baruipur, Beliaghata, Budge-Budge, Chandni Chawk, Cooch Behar, Esplanade, Ezra Street, Jorabagan, Park Street, Salt Lake and Srirampur

[110] The Rule inter alia provided for manual filling and processing of refund application following decision of the GST council in this regards in its 23rd meeting dated 10.11.2017

[111] Charge offices: Armenian Street, Beadon Street, Bowbazar, Burtola, Chandni Chawk, Colootola, Diamond Harbour, Howrah, Kadamtala, Krishnanagar, Malda, Manicktala, Sealdah, Siliguri and Ultadanga

[112] Circle offices: 24 Parganas, Baharampur, Behala, Dharmatala, Howrah, Kolkata (North), Raiganj and Siliguri

tenable as out of 43 cases reported, 15 cases occurred even after implementation of the fully electronic refund procedure.

6.3.4 Delay in communicating refund orders to counterpart tax authority

Trade circular No. 14/2017 dated 21.12.2017 issued by the CCT, WB prescribes that, the refund order issued by the State Tax Authority, during pre-automation period, was to be communicated to the concerned counter-part central tax authority within seven working days from its issue for enabling payment of the relevant sanctioned refund amount.

On scrutiny of the database of the Directorate regarding transmission of refund sanction orders by the Directorate to counterpart central tax authority pertaining to the refund cases manually processed, it was observed that total 11,051 refund orders (RFD-04 and/ or RFD-06) were communicated to the Central Tax Authority. Out of these, 1,122 cases were selected/ scrutinised[113] and it was noticed that in 314 cases involving an amount of ₹ 44.26[114] crore, there was delay ranging from one to 361 days in communication of the refund sanction orders by the respective Charge Officers to the State Nodal Officer. Out of these, delays in 293 cases, 17 cases and four cases were up to three months, between three to six months and more than six months respectively.

When Audit pointed this out (between March and September 2021), two[115] Charge offices accepted the delay in five cases involving an amount of ₹ 56.45 lakh. Three[116] Charge offices in 11 cases involving an amount of ₹ 67.37 lakh stated that the delay was due to technical problems related to internet and server. In remaining cases, the Charge offices did not furnish any/ specific reply.

The Directorate stated (February 2022) that the cases reported pertain to the period when the refund applications were processed manually. However, the Directorate was silent about the reasons and circumstances under which the GST provisions have been violated by the Proper Officers.

6.3.5 Excess refund due to wrong calculation of net Input Tax Credit

Rule 89 (4) of the West Bengal Goods and Services Tax Rules, 2017 and Central Goods and Services Tax Rules, 2017 prescribes that, in the case of refund on account of zero-rated supply of goods and services or both without payment of tax, refund of input tax credit shall be granted as per the following formula.

Maximum Refund Amount = {(Turnover of zero-rated supply of goods and services) x Net ITC ÷Adjusted Total Turnover}.

During scrutiny of 1,272 refund cases related to zero-rated supply, it was noticed that in 16 refund cases of nine[117] Charge offices in eight[118] Circles under the Directorate, the Proper Officers had assessed net ITC of the claimants incorrectly, which resulted in excess allowance of refund of ₹ 45.36 lakh.

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[113] As database contained details of all 1122 cases, the entire quantum could be scrutinised, regarding delays in communication
[114] It includes amount of IGST, CGST and Cess only for which payment was to be made by the central tax authority
[115] Ezra Street and Park Street
[116] Krishnanagar, Manicktala and Shyambazar
[117] Barasat, Baruipur, Bhabanipur, Cooch Behar, Lalbazar, Park Street, Salkia, Siliguri and Suri
[118] 24 Parganas, Bally, Behala, Chowringhee, Durgapore, Jalpaiguri, Kolkata (South) and Siliguri

When Audit pointed this out (between March and September 2021), two[119] Charge offices stated (August 2021) that the excess refunded amount of ₹ 2.50 lakh had been realized. In the remaining cases, the Charge offices did not furnish reply. Further, on this being pointed out (December 2021), the Directorate did not furnish any reply.

Case Study

In respect of one taxpayer in one case (under Barasat Charge office), GST refund case records for the period from 01 September 2017 to 31 March 2018, revealed that the tax payer claimed refund of ₹ 33.52 lakh against the total zero-rated supply of goods and services of ₹ 2.36 crore, adjusted total turnover of ₹ 2.36 crore and ITC of ₹ 33.52 lakh. The Proper Officer admitted the total refund claim of the taxpayer and sanctioned the refund.

Scrutiny of the export documents like month-wise statement of shipping bills and Export General Manifests (EGMs[120]) with reference to the Indian Customs Electronic Gateway (ICEGATE[121]) disclosed that in case of 10 shipping bills, involving an amount of ₹ 19.99 lakh, neither the Shipping bill details nor EGM no. and date were available in ICEGATE. In absence of EGM details in ICEGATE, supply involving an amount of ₹ 19.99 lakh, could not be treated as export (zero-rated supply). Thus, the taxpayer's admissible zero-rated supply was to be ₹ 2.16 crore (₹ 2.36 crore - ₹ 19.99 lakh). Further scrutiny of GSTR-3B, GSTR-2A and Annexure A of the taxpayer revealed that the ITC as per GSTR 3B was ₹ 33.52 lakh, as per GSTR -2A the ITC was ₹ 17.32 lakh and as per Annexure A the ITC was ₹ 12.63 lakh. In absence of any reconciliation either by the taxpayer or by the Proper Officer, the ITC for calculation of maximum refundable amount could be considered as ₹ 12.63 lakh.

Thus, the maximum refund admissible[122] was to be ₹ 11.56 lakh (₹ 2.16 crore/ ₹ 2.36 crore X ₹ 12.63 lakh). However, the Proper Officer allowed refund of the total claimed refund amount of ₹ 33.52 lakh. This resulted in excess allowance of refund of ₹ 21.96 lakh (₹ 33.52 lakh - ₹ 11.56 lakh). .

When Audit pointed this out (August 2021), the Charge office did not furnish any reply. Further, on this being pointed out (December 2021), the Directorate also did not furnish any reply.

6.3.6 Excess refund due to wrong calculation of Adjusted Total Turnover

Rule 89 (4) of the West Bengal Goods and Services Tax Rules, 2017 and Central Goods and Services Tax Rules, 2017 prescribes that in the case of refund on account of zero-rated supply of goods and services or both without payment of tax, refund of input tax credit shall be granted as per the following formula.

Maximum Refund Amount = {(Turnover of zero-rated supply of goods and services) x Net ITC ÷Adjusted Total Turnover}.

[119] Baruipur and Cooch Behar

[120] EGM is a statutory declaration and every ship, which leaves Indian waters with the intention of carrying cargo is bound to deliver this document. It inter alia includes details on description of goods, consignor & consignee particulars, shipping bill nos., etc.

[121] ICEGATE is the national portal of Indian Customs that provides e-filing services to the Trade, Cargo Carriers and other Trading Partners electronically

[122] Rule 89 (4) of WBGSTR and CGSTR provides the formula for maximum refund admissible as (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

During scrutiny of 1,272 refund cases related to zero-rated supply, it was noticed that in 10 refund cases of the nine[123] Charge offices in five[124] Circles under the Directorate, the Proper Officers had assessed the turnover of the claimants incorrectly due to non-consideration of admissible turnover as disclosed in GST return filed by claimants, which resulted in excess allowance of refund of ₹ 36.10 lakh.

When Audit pointed this out (between February and September 2021), two[125] Charge offices realised the excess refunded amount of ₹ 15.01 lakh in three cases. In remaining cases, the Charge offices did not furnish any reply. Further, on this being pointed out (December 2021), the Directorate did not furnish any reply.

Case Study

Scrutiny of the GST refund case records of one taxpayer in one case (Amratala Charge office) for February 2019 and March 2019 revealed that the taxpayer claimed refund of ₹ 1.25 crore against zero-rated supply of goods & services of ₹ 13.38 crore, adjusted total turnover of ₹ 13.38 crore and net input tax credit of ₹ 1.31 crore. The maximum admissible amount of refund was calculated as ₹ 1.31 crore. However, the Proper Officer issued sanction order in RFD-06 and payment advice in RFD-05 for ₹ 1.25 crore.

Subsequent scrutiny of GSTR-3B submitted by the taxpayer for February 2019 and March 2019 revealed that the zero-rated supply for February 2019 and March 2019 was ₹ 8.92 crore and ₹ 4.46 crore respectively (totalling to ₹ 13.38 crore). Further, the adjusted total turnover of the taxpayer for the month of February 2019 and March 2019 was ₹ 9.58 crore and ₹ 5.78 crore respectively (totalling ₹ 15.36 crore). Thus, the maximum refund admissible was to be ₹ 1.14 crore {(₹ 13.38 crore divided by ₹ 15.36 crore) multiplied by ₹ 1.31 crore}.

Hence, the Proper Officer calculated and sanctioned excess refund amounting to ₹ 11.08 lakh (₹ 1.25 crore minus ₹ 1.14 crore) due to wrong consideration of the adjusted total turnover. This resulted in excess allowance of refund amounting to ₹ 11.08 lakh.

When Audit pointed this out (February 2021), the concerned Charge office realised (February 2021) the amount.

6.3.7 Refund sanctioned without proper verification

Para 36 of the Circular No. 125/44/2019-GST dated 18 November 2019 issued by the CBIC and Trade Circular 45/2019 dated 21 November 2019 issued by the CCT, West Bengal prescribes that in case of refund of unutilised ITC, applicants shall upload details of all invoices on the basis of which input tax credit has been availed during the relevant period for which the refund is being claimed, in the required format (in Annexure B) along with the application for refund claim.

Further, the requirement to mention the Servicing Accounting Code/ Harmonized System of Nomenclature code (SAC/ HSN) in the Annexure B,

[123] *Amratala, Armenian Street, Barasat, Bhabanipur, Esplanade, Park Street, Sealdah, Siliguri and Taltala*
[124] *24 Parganas, Chowringhee, Dharmatala, Kolkata (South) and Siliguri*
[125] *Amratala and Armenian Street*

was introduced vide Para no. 6.1 of the Trade Circular No. 06/2020 dated 21 April 2020 of the Directorate of Commercial Taxes, West Bengal. The said Trade Circular prescribes that HSN-wise details of goods and services are not available in FORM GSTR-2A and therefore it becomes very difficult to distinguish ITC on capital goods and/ or input services out of total ITC for a relevant tax period. It has been recommended that a column relating to HSN/ SAC Code should be added in the statement of invoices relating to inward supply as provided in Annexure–B, so as to easily identify between the supplies of goods and services.

During scrutiny of 944 automated refund cases, it was noticed that in three refund cases of two[126] Charge offices in two[127]Circles under the Directorate, column related to HSN/ SAC has not been found incorporated in the Annexure B. Though the refund case was disposed by the Proper Officer on a date after the date of implementation of the provisions of Trade circular 06/2020 dated 21 April 2020, the Proper Officer did not seek for Annexure B in the revised format. In absence of which it could not be ascertained in audit that how the Proper Officer has been able to distinguish ITC on capital goods and/ or input services out of total ITC for a relevant tax period. In absence of any clarification from the Proper Officer found uploaded in the system, it can be treated that refund of ₹ 1.18 crore was made without proper verification by the Proper Officer.

When Audit pointed this out (between February and August 2021), College Street charge in one case involving an amount of ₹ 19.43 lakh stated that the taxpayer had filed the refund application before the effective date of the trade circular. Hence, the Proper Officer could not seek Annexure B in new format. The reply was not acceptable as the refund application was disposed by the Proper Officer after the effective date of the Trade Circular. So, he was well within his authority to call for the revised Annexure B from the taxpayer to ascertain the admissibility of the claim. In remaining cases, no reply was furnished. Further, on this being pointed out (December 2021), the Directorate did not furnish any reply.

6.3.8 Excess refund due to wrong calculation due to non-verification of shipping bills with amount claimed as zero-rated supplies

Rule 89 (4) of the West Bengal Goods and Services Tax Rules, 2017 and Central Goods and Services Tax Rules, 2017 prescribes that, in the case of refund on account of zero-rated supply of goods and services or both without payment of tax, refund of input tax credit shall be granted as per the following formula.

Maximum Refund Amount = {(Turnover of zero-rated supply of goods and services) x Net ITC ÷Adjusted Total Turnover}.

During scrutiny of 1272 refund cases related to zero-rated supply, it was noticed that in two refund cases of two[128] Charge offices in two[129]Circles under the Directorate, the Proper Officers had assessed zero-rated supplies of claimants incorrectly due to non-verification of the amount claimed on account of

[126] College Street and Park Street
[127] Dharmatala and Kolkata (South)
[128] Barasat and Diamond Harbour
[129] 24 parganas and Behala

zero-rated supplies with the amount of shipping bills. This resulted in excess allowance of refund of ₹ 2.23 lakh.

No reply was forthcoming, though the matter was pointed out both to the Charge offices (July 2021 and August 2021) and the Directorate (December 2021).

6.3.9 Irregular allowance of IGST and CGST refund despite drawback allowed at higher rate

Proviso to the Section 54 (3) of the CGSTA prescribes that no refund of ITC shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies. Further, as per circular no. 23/2017-Customs dated 30 June 2017 and 37/2018-Customs dated 09 October 2018, issued by the Central Board of Indirect Taxes and Customs (CBIC), it is not justified to allow exporters to avail CGST and IGST refunds in cases where the benefit of higher duty drawback under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, has been claimed. Further, the CBIC vide circular No. 32/2017-Customs dated 27 July 2017 clarified that for all exports made with effect from 01 July 2017 for which higher rate of drawback is claimed, an exporter has to submit self-declaration to the effect that no input tax credit of CGST or IGST has been or shall be availed on export product or no refund of IGST paid on export of goods shall be claimed.

During scrutiny of 1,272 refund cases related to zero-rated supply, it was noticed that in two refund cases of two[130] Charge offices in two[131] Circles under the Directorate, assesses had availed drawback at higher rate. Therefore, they were not entitled to refund of ITC availed in respect of IGST and CGST of ₹ 9.55 lakh. However, Proper Officers allowed the refund in the provisional and final sanction orders.

When Audit pointed this out (between December 2020 and March 2021), the Charge Officer (LTU) in one case involving an amount of ₹ 6.79 lakh issued demand notice (March 2021) asking the RTP to pay the erroneously refunded amount. Neither the remaining Charge office, nor the Directorate furnished any reply.

6.3.10 Non-raising of demand against rejected claims of refund

Para 4.1 of Trade circular no. 42/2018 dated 17 September 2018 issued by the CCT in pursuance of provisions of WBGSTA and WBGSTR prescribes that in case of rejection of claim for refund of unutilised ITC on account of ineligibility of the said ITC, the Proper Officer shall order for the rejected amount to be re-credited to the Electronic Credit Ledger of the claimant using form GST RFD-01B. For recovery of this amount, a demand notice shall have to be simultaneously issued to the claimant.

During scrutiny of 1930 refund cases, it was noticed that in nine refund cases of five[132] Charge offices in four[133]circles under the Directorate, the Proper Officers rejected the claim of refund of ₹ 18 lakh, on account of ineligibility of ITC. The Proper Officers re-credited the rejected amount of ₹ 11.48 lakh in three cases.

[130] *Behala and LTU*
[131] *Behala and LTU*
[132] *Barasat, Bhabanipur, Park Street, Radhabazar and Shyambazar*
[133] *24 parganas, Chowringhee, Kolkata (North) and Kolkata (South)*

However, demand notices for recovery of the rejected amount were not raised by the Proper Officers. In remaining cases, Proper Officers neither re-credited the rejected amount of ₹ 6.52 lakh nor were demand notices sent to the taxpayers. This resulted in non-raising of demand of ₹ 18 lakh.

When Audit pointed this out (between January and August 2021), Shyambazar Charge office in respect of one case involving an amount of ₹ 10.87 lakh stated that the amount would be adjusted from the subsequent refund claims of the taxpayer. In remaining cases, the Charge offices did not furnish any reply. Further, on this being pointed out (December 2021), the Directorate did not furnish any reply.

6.3.11 Non/ short levy of interest

Under provisions of Section 73 (1) of the WBGSTA, where it appears to the Proper Officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50. Further, Section 73(5) of the WBGST Act 2017, prescribes that the person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 at the rate of 18 *per cent*.

During scrutiny of 1930 refund cases, it was noticed that in eight refund cases of five[134] Charge offices in four[135] circles under the Directorate, the taxpayers were erroneously refunded ₹ 39.79 lakh. The taxpayers admitting their mistake paid the erroneously refunded amount in GST DRC-03 by debiting their Electronic Cash/ Credit Ledgers. The taxpayers were also liable to pay interest on the erroneously refunded amount from the date after the date of refund sanctioned to the date prior to the date of debiting their Electronic Cash/ Credit Ledgers. However, neither the Proper Officers levied and demanded such amount of interest nor the taxpayers paid the amount of interest. The interest amount worked to ₹ 6.73 lakh, which remained unrealized.

When Audit pointed this out (between March and September 2021), the Charge offices did not furnish any reply. No response was received from the Directorate either.

6.3.12 Irregular allowance of refund on account of inverted duty structure

As per Section 54 (3) of the WBGST Act 2017, a registered person may claim refund of any unutilized Input Tax Credit (ITC) at the end of any tax period where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (i.e. Inverted Duty Structure). Further, Rule 89(5) of the WBGST Rules 2017 prescribes the formula for maximum refund of unutilized ITC on account of inverted duty structure as following:

[134] *Armenian Street, Beadon Street, Durgapore, Raiganj and Shyambazar*
[135] *Dharmatala, Durgapore, Kolkata (North) and Raiganj*

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.

As per the Rule, Net ITC includes the input tax credit availed only on inputs during the relevant period and does not include credit availed on input services.

During scrutiny of 351 refund cases related to inverted duty structure, it was noticed that in 13 refund cases of five[136] Charge offices in four[137] circles, the Proper Officers considered incorrectly the amount of net ITC/ adjusted total turnover for calculation of maximum refundable amount while granting refunds. This resulted in irregular allowance of refund of ₹ 7.94 lakh.

When Audit pointed this out (between January and September 2021), two[138] Charge offices realized the irregularly refunded amount of ₹ 3.51 lakh in four cases. In remaining cases, the Charge offices did not furnish any reply. The Directorate was also silent when the matter was flagged (December 2021).

6.3.13 Irregular refund in cases where refund applications were filed after expiry of two years from the relevant dates

Under provisions of Section 54(1) of the WBGSTA and CGSTA, claim of refund of any tax and interest by any person claiming such refund, can be made before the expiry of two years from the relevant date. Further, the "relevant date" has been defined for various nature of refunds under Section 54 (14) (2) of the Act. In case of export, the relevant date is the date on which the ship/ aircraft leaves India or the goods passes the frontier or the goods are dispatched by post. In case of refund of unutilised ITC due to inverted duty structure, the relevant date is the due date for furnishing of returns for the period in which such claim for refund arises. In case of refund due to excess payment of tax, the relevant date is the date of payment of tax.

During scrutiny of 1,930 refund cases, it was noticed that in 20 refund cases of 11[139] Charge offices in seven[140]Circle under the Directorate, the taxpayers filed refund application after expiry of more than two years from the relevant dates. However, the Proper Officers issued refund sanction orders in deviation of the above stated provisions. This resulted in irregular refund of ₹ 1.46 crore.

When Audit pointed this out (between March and August 2021), Barasat Charge office stated (August 2021) that in one case, an amount of ₹ 3.07 lakh had been realized. Beadon Street Charge office in respect of one case involving an amount of ₹ 0.68 lakh stated that application for refund of unutilized ITC can be filed within two years from the end of financial year in which such claim of refund arises. The reply is not tenable as the said provision has been amended and the application for refund of unutilized ITC can be filed within two years from the relevant dates. The remaining Charge offices and the Directorate did not furnish any reply.

[136] Ballygunge, Beadon Street, Howrah, Shyambazar and Srirampur
[137] Bally, Howrah, Kolkata (North) and Kolkata (South)
[138] Beadon Street and Shyambazar.
[139] Amratala, Ballygunge, Barasat, Beadon Street, Belgachhia, Cossipur, Kadamtala, Krishnanagar, Lalbazar, Salt Lake and Taltala
[140] 24 Parganas, Baharampur, Chowringhee, Dharmatala, Howrah, Kolkata (North) and Kolkata (South)

6.3.14 Issuance of payment advice for refund in cases where refund amount had already been adjusted against the outstanding assessed dues

In terms of Rule 92 (1) of the WBGSTR, where the Proper Officer is satisfied that a refund is due and payable to the applicant, he shall make an order in FORM GST RFD-06, sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis, amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable. Provided that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of adjustment shall be issued in Part A of FORM GST RFD-07.

During scrutiny of 1930 refund cases, it was noticed that in ten refund cases of Barrackpore Charge office in 24 Parganas Circle under the Directorate, the Proper Officer had adjusted ₹ 63.88 lakh against the outstanding assessed dues of the taxpayers and shown net amount of refund payable as 'Nil'. However, payment advice for refund was issued by the Proper Officer for ₹ 14.49 lakh (related to SGST) and the central tax authority was intimated for issue of refund of ₹ 49.39 lakh (related to IGST and CGST). This resulted in irregular refund of ₹ 63.88 lakh.

Neither the Charge office nor the Directorate gave any reply, though pointed out by Audit (in August 2021 and December 2021 respectively).

6.3.15 Non-credit of the rejected amount to the electronic credit ledger

Para 4.2 of Trade circular no.42/2018 dated 17 September 2018 issued by the CCT in pursuance of provisions under GST Acts and Rules prescribes that in case of rejection of claim for refund of unutilized input tax credit, on account of any reason other than the eligibility of credit, the rejected amount shall be re-credited to the electronic credit ledger of the claimant only after the receipt of an undertaking from the claimant to the effect that he shall not file an appeal against the said rejection or in case he files an appeal, the same is finally decided against the claimant, as has been laid down in Rule 93 of the WBGSTR.

During scrutiny of 1930 refund cases, it was noticed that in 63 refund cases of 15[141] Charge offices in 10[142] circles under the Directorate, the Proper Officers had rejected the claim of refund of unutilised ITC amounting to ₹ 1.42 crore. However, the Proper Officer did not issue order for the rejected amount to be re-credited to the Electronic Credit Ledger of the claimants even after expiry of a period more than three to 20 months from the order of rejection, though the time limit for filling appeal under the GST has already expired.

When Audit pointed this out (between January and September 2021), five[143] Charge offices re-credited the rejected amount of ₹ 32.32 lakh in 16 cases after obtaining declaration from the taxpayers. Three[144] Charge offices in 13 cases involving an amount of ₹ 33.56 lakh stated that the taxpayers had not furnished required declaration. So, the rejected amount could not be re-credited. The

[141] Balurghat, Barasat, Barrackpore, Beliaghata, Bhabanipur, College Street, Cooch Behar, Howrah, Park Street, Radhabazar, Rajakatra, Salt Lake, Shyambazar, Siliguri and Ultadanga

[142] 24 Parganas, Barabazar, Chowringhee, Dharmatala, Howrah, Jalpaiguri, Kolkata (North), Kolkata (South), Raiganj and Siliguri

[143] Beliaghata, College Street, Cooch Behar, Park Street and Shyambazar

[144] Barasat, Park Street and Salt Lake

replies were not tenable as the Proper Officers did not pursue the matter regarding obtaining declaration from the taxpayers and the cases were pending for a long period of time. In remaining cases, the Charge offices did not furnish any/ specific reply. Further, on this being pointed out (December 2021), the Directorate did not furnish any reply.

6.3.16 Non-disposal of refund cases

Under Section 54(7) of the WBGSTA, the Proper Officer shall issue the order of refund within 60 days from the date of receipt of application complete in all respect. Further, as per instruction issued by the CCT in December 2018, in respect of refund applications that have been generated in the portal but not physically received in the jurisdictional tax offices, a communication is to be sent to all claimants on their registered E-Mail IDs informing them that the application needs to be physically submitted to the Jurisdictional tax office within 15 days of the date of the E-mail. If the claimant does not submit the application physically within the period, the application shall be summarily rejected and the debited amount shall be re-credited to the Electronic Credit Ledger. Regarding automated refund cases, Para 34 of the trade circular No. 45/2019 dated 21-11-2019 issued by CCT, W.B. prescribes that any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the applicant.

Out of a total 2066 cases selected for scrutiny, in 27 refund cases related to 14[145] Charge offices in 11[146] Circles under the Directorate, the procedure for disposal of refund applications in accordance with the instructions referred *ibid* were not followed. Non-compliance to these provisions resulted in non-disposal of these refund cases, involving refund amount of ₹ 1.46 crore.

After the issue was pointed out by Audit (between December 2020 and September 2021),

- Four[147] Charge offices in four cases involving an amount of ₹ 7.15 lakh disposed the cases after being pointed out in audit.
- Tamluk Charge office, in one case involving an amount of ₹ 1.40 lakh, stated that in absence of bank account/ validation of the taxpayer, payment advice could not be issued.

In remaining cases, the Charge offices did not furnish any/ specific reply. Further, the Directorate was also silent though the matter was flagged to it (December 2021).

6.3.17 Miscellaneous regularity issues

Apart from the issues of non-compliance discussed in earlier paragraphs, Audit came across various isolated cases of irregularities, which are summarized in the following table:

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[145] Bally, Barasat, Behala, Cooch Behar, Cassipur, Diamond Harbour, Durgapore, Ezra Street, Howrah, Purulia, Salt Lake, Siliguri, Taltala and Tamluk

[146] 24 Parganas, Asansol, Bally, Behala, Chowringhee, Durgapore, Howrah, Jalpaiguri, Kolkata (South), Midnapore and Siliguri

[147] Bally, Cossipur, Cooch Behar and Tamluk

Table 6.1: Details of some miscellaneous regularity issues noticed in audit

Name of the Charge office/ Circle	Rule provisions which was violated	Observations
Ezra Street Charge office in Dharmatala Circle	As per Section 54(6) of WBGSTA and CGSTA, sanction of provisional refund is allowed on account of zero-rated supply of goods and/ or services and not in other categories	***Irregular grant of provisional refund:*** Irregular grant of refund of ₹ 44.78 lakh was allowed in one case of other than zero-rated supply. The case was pertaining to refund on account of inverted duty structure.
Raiganj Charge office under Raiganj Circle	Section 74 (1) read with 74 (5, 7 & 8) of the WBGSTA deals with cases of erroneous availing of input tax credit and imposition of interest and penalty thereon.	***Non-imposition of penalty:*** The Proper Officer instructed a taxpayer to pay ₹ 11.43 lakh along with interest and penalty against an erroneous refund received by the later. Though the taxpayer refunded ₹ 11.43 lakh, no notice was issued for realization of penalty of ₹ 2.86 lakh.
Siliguri Charge office in Siliguri Circle	Under Rule 87 (10) and 89 (3) of the WBGSTR, where a person has claimed refund of any amount from the Electronic Cash/ Credit Ledger, the said amount shall be debited to the Electronic Cash/ Credit Ledger.	***Refund without debiting the Electronic Cash/ Credit Ledger:*** A taxpayer claimed refund of ₹ 2.33 lakh. The Proper Officer admitted the claim of taxpayer and sanctioned the refund. However, the amount was neither debited from any ledger (Electronic Cash Ledger or Electronic Credit Ledger) nor any trace of making payment of excess tax was found in any ledger.
Siliguri Charge office in Siliguri Circle	Under Rule 92 (1) of the WBGSTR and CGSTR, in case of refund under sub-section (5) of section 54 of the WBGSTA, the Proper Officer is required to adjust outstanding demand under the Act or under any existing law and issue order for the balance amount indicating the amount so adjusted..	***Excess refund due to incorrect adjustment of provisionally sanctioned refund amount:*** In one case, though ₹ 3.45 lakh was outstanding, the Proper Officer adjusted only ₹ 1.43 lakh at the time of issue of final sanction order leading to short-adjustment of ₹ 2.02 lakh.
Purulia Charge office in Asansol Circle	Under provisions of Rule 89(4) of WBGST Rules 2017, in case of zero-rated supply of goods and services or both without payment of tax, refund of input tax credit shall be granted as per the following formula: Refund amount = (turnover of zero-rated supply of goods and services multiplied by Net ITC) divided by adjusted turnover. Here Net ITC means ITC availed on inputs and inputs services during the relevant period. Thus, ITC availed on capital goods is not admissible for refund under the GST Laws.	***Irregular refund of ITC on capital goods:*** The Proper Officer issued refund sanction order amounting to ₹ 14.66 lakh for payment of IGST. However, on scrutiny of the records of the Purulia Charge office and Statement 5B and Annexure A submitted by the taxpayer, it was observed that the taxpayer had claimed refund for the ITC paid on the purchase of capital goods which is not admissible for refund under the GST laws. So, sanction of refund for the ITC paid on purchase of capital goods was irregular.

Source: Records related to respective Charge office

6.4 Conclusions and Recommendations

Conclusions:

Audit found that WBGSTA and WBGSTR did not prescribe any timeframe for completing the Liability Registers of RTPs, which resulted in non-adjustment of outstanding assessed dues (related to Value Added tax, Central Sales Tax and GST) of ₹ 5.39 crore from refund claims settled under GST. There was post-refund realisation of ₹ 15.01 lakh against seven cases.

WBGSTA and WBGSTR did not stipulate preparation and maintenance of database of taxpayers who have 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. Though a database was maintained, it was neither comprehensive nor it was shared with the Proper Officers. In absence of such a database, refund claims were allowed in a routine manner, without verification of status of prosecution and amount of tax evasion, by the refund claimants.

Audit observed that absence of validation controls in the GSTN system led to double release of refunds involving an amount of ₹ 0.20 crore. Recovery of the amount has since been effected. Such absence of validation controls in the system construed to indicate that there was a lack of efficacy in the system.

Audit noticed instances of delays ranging between one day and 616 days in various stages of processing of refund cases namely, issue of acknowledgement and sanction orders for refunds, making provisional refunds, communicating the refund orders to the counterpart central tax authority, etc. Such delays were due to absence of a proper monitoring over the processing of refund cases, while technical problems was also one of the attributable reasons. It was observed that refund cases, involving refund amount of ₹ 1.46 crore, were lying undisposed.

Further, manual refund case records, relating to 109 cases involving refunds of ₹ 19.69 crore, were not made available to Audit limiting the scope and coverage of audit.

Audit noticed several instances of non-compliance to provisions of WBGSTA, CGSTA, IGSTA, CGSTR and WBGSTR relating to zero-rated supplies. This led to excess release of refunds amounting to ₹ 0.93 crore. On being pointed out by Audit, ₹ 0.18 crore had been realised.

Audit came across issues of non-compliance to the referred Acts and Rules like non-raising of demand against rejected claims of refund, non/ short levy of interest, irregular allowance of refund on account of inverted duty structure, irregular grant of provisional refund, irregular refund in cases where refund applications were filed after expiry of two years from the relevant dates, issuance of payment advice for refund in cases where refund amount had already been adjusted. Total money value of these observations stood at ₹ 2.87 crore, of which excess release of refund/ non-levy or short levy of interest accounted for ₹ 2.43 crore. Of the same, ₹ 0.07 crore had been recovered in response to audit observations.

There were also issues of non-compliance to rules like refund without debiting the Electronic Cash/ Credit Ledger, excess refund due to incorrect adjustment of provisionally sanctioned refund amount, refund sanctioned without proper verification, non-credit of the rejected amount to the electronic credit ledger and irregular refund of ITC on capital goods, *etc.*

Recommendations:

- ***The Department may consider stipulation of a timeframe for completing the Liability Registers of RTPs and ensure preparation and maintenance of a database of prosecuted taxpayers in compliance to the WBGST Rules to facilitate verification at the time of sanctioning GST refunds.***
- ***Steps may be taken to establish proper validation controls in the GSTN system to avoid issue of multiple a) payment advices against one refund sanction order and b) refund acknowledgements/ sanctions orders against one refund application.***

The matter has been referred to the Government in December 2021; reply was awaited (April 2022).