Chapter 7

Transitional Credits under Goods and Services Tax

Chapter 7: Transitional Credits under Goods and Services Tax

FINANCE DEPARTMENT

(Directorate of Commercial Taxes)

7.1 Introduction

With the introduction and implementation of Goods and Services Tax (GST), which subsumed multiple indirect taxes, there was also a need to clearly spell out provisions and arrangements to ensure smooth transition from the old tax regime to GST. GST is a destination-based tax on supply of goods or services or both, which is levied at multi-stages wherein taxes 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.

Provisions and arrangements were needed especially to provide for carry forward of Input Tax Credits (ITCs), relating to pre-GST taxes that were available with taxpayers on the day of roll out of GST, into GST regime (hereinafter referred to as transitional credits). Transitional credit provisions and arrangements are important for both the Government and business. For businesses, these transitional credits should be carried forward properly to give them benefit of taxes they had already paid on inputs or input services in the pre-GST regime. From the view point of the Government, the amount of admissible transitional credits will determine the extent of cash flow of GST revenue and hence, in the interest of revenue, only admissible and eligible transitional credits should be carried forward into the GST regime.

7.1.1 Transitional arrangements for input tax

'Transitional arrangements for input tax' were 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. Section 140 of the West Bengal Goods and Services Tax (WBGST) Act, 2017 enables taxpayers to carry forward the entitled amount of Input Tax Credit (ITC) under the existing laws, into the GST regime. This section read with Rule 117 of WBGST Rules, 2017 prescribes elaborate procedures in this regard.

Taxpayers can claim components of transitional credit, in keeping with the relevant sub-sections of Section 140 of the WBGST Act, 2017 read with Rule 117 of WBGST Rules, 2017 in the appropriate tables (through the two return forms–GST TRAN 1 and GST TRAN 2), as shown below:

Table 7.1: Statement showing details of tables relatable to transitional credit components

Return	Table No.	Transitional credit component
TRAN1	5 (c)	Closing balance of credit from the last return
TRAN1	6 (b)	Un-availed credit on capital goods
TRAN1	7 (b)	Credit on duty paid stock-with invoices
TRAN1	7 (c)	Credit on duty paid stock-without invoices
TRAN1	7 (d)	Stock of goods not supported by invoice/ documents evidencing payment of tax

Return	Table No.	Transitional credit component
		(To be there only in States having VAT at single point)
TRAN1	10 (a)	Details of goods held as an agent on behalf of principal
TRAN1	10 (b)	Details of goods held by agent
TRAN1	T (11)	Details of credit availed in terms of Section 142 (11(c))
TRAN2	4	Credit afforded on stocks claimed without invoices

Source: Transitional provisions of WBGST Act

All registered taxpayers, except those who are opting for payment of tax under Composition Scheme (under section 10 of the WBGST Act, 2017), are eligible to claim transitional credit by filing TRAN 1 returns within 90 days from the appointed date[148]. 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 (September 2018) under Rule 117 of WBGST Rules, 2017 to accommodate such tax payers. The due date for filing TRAN1 was further extended to 31 March 2020 for those taxpayers who could not file TRAN 1 due to technical difficulties and for those cases recommended by the GST Council.

7.1.2 Organisational Set up

In West Bengal, the Goods and Services Tax is administered by the Directorate of Commercial Taxes (Directorate), West Bengal. The Directorate functions under the Finance Department (Department) and is headed by the Commissioner of Commercial Taxes (CCT).

Administratively, the Directorate is divided into 16 Circles. A Circle is headed by the Additional Commissioner or the Senior Joint Commissioner. The Circle exercises administrative, appellate and revisional jurisdiction over Charges under them and audit, adjudication and recovery thereof at the Circle level. There are 67 charges[149] in the State. A Charge is headed by a Charge Officer, who can be 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, *etc*. 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.

Information Systems Division (ISD) is the internal Information Technology (IT) wing of the Directorate. 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.

7.1.3 Audit Objectives, Scope and Methodology

Transitional credit claims directly impact GST revenues as the credit is eligible for set off against the output GST liability of taxpayers. A Subject Specific Compliance Audit (SSCA) on transitional credits under Goods and Services Tax was conducted to assess whether a) the mechanism envisaged by the

[148] Appointed date 1 July 2017
[149] A Charge is the basic functional unit of the Directorate

Department for selection and verification of transitional credit claims was adequate and effective and b) transitional credits carried over by taxpayers into GST regime were valid and admissible.

The SSCA covered the period from July 2017 to March 2020 and undertook scrutiny of 1,973 transitional credit returns (TRAN 1) filed by taxpayers. These 1,973 returns (involving ₹ 546.84 crore) spread across 55 Charge offices in 14 Circles were selected based on the following parameters:

- Cases involving claim of high money value.
- Jurisdictional offices falling under industrial hub/ economic centres.
- Proportional representation of each of the ITC category such as Table 5(c), 6(b), 7(b), 7(c), 10(a) and T(11).

The table-wise representation of the audited quantum and the transitional credit amount involved therein are given in the table below.

Table 7.2: Statement showing representation of the audited quantum and the transitional credit amount involved therein

Table	Audited quantum[150]	Transitional Credit Amount (₹ in crore)
Table 5(c)	1,729	474.62
Table 6(b)	21	18.96
Table 7(b)	122	6.27
Table 7(c)	169	16.90
Table 10(a)	9	1.16
Table T(11)	6	28.93
Total	**2,056**	**546.84**

Source: Data from GSTN

The methodology adopted for audit of transitional credit claims involved data analysis for selecting the returns to be audited. The SSCA involved the examination of records pertaining to transitional credits maintained in the field formations including the Directorate. Field audit was conducted between January 2021 and September 2021. The consolidated draft report was issued to the Finance Department (State Tax Department) on 14 January, 2022, reply is awaited.

7.1.4 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);
- West Bengal Value Added Tax (WBVAT) Act, 2003;
- Central Sales Tax Act (CST Act), 1956;
- Central Sales Tax (Registration and Turnover) Rules-CST Rules, 1957; and
- Relevant Notifications, Circulars, Trade Circulars and Instructions issued by the CCT, State Government and Government of India from time to time.

[150] *This is more than 1,973 as there were instances of multiple transitional credit components under a single case, leading to overlapping of cases*

Audit Findings

The audit findings elaborated in the following paragraphs are broadly categorised in two categories, namely

- **Systemic issues and**
- **Compliance issues**

7.2 Systemic issues

Adequacy and effectiveness of mechanism for selection and verification of transitional credit claims

The mechanism adopted by the Department for selection and verification was not ascertainable in audit, as no documents had been furnished in this regard. Audit, therefore, could not give assurance on the above mentioned audit objective.

7.2.1 Inadequate follow up measure and non-recovery of ineligible claim including interest/ penalty

As per Rule 117 (3) of the WBGST Rules, 2017, the amount of credit specified in the application in Form- GST TRAN-1 shall be credited to the Electronic Credit Ledger of the applicant maintained in Form- GST PMT-02 on the common portal. As per Rule 121 of WBGST Rules 2017, the amount credited under sub-rule (3) of rule 117 may be verified and proceedings under section 73 or section 74, as the case may be, shall be initiated in respect of any credit wrongly availed, whether wholly or partly.

Sub section (1) of the section 73 or 74 of the WBGST Act, 2017 prescribes that where it appears to the Proper Officer that input tax credit has been wrongly availed or utilized for any reason, he shall serve notice on the person wrongly availing or utilizing 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 and a penalty leviable under the provisions of this Act or the rules made thereunder.

Section 50(1) of the WBGST Act, 2017 stipulates that every person liable to pay tax in accordance with the provisions of this Act or the rules made there under, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay interest at 18 per cent.

During the conduct of audit, out of 1973 cases, in two cases ***(Appendix 7.1)*** involving an amount of ₹ 75.31 lakh, in two[151] Charge offices, it was noticed that Departmental verification had resulted in detection of ineligible or incorrect credit claims.

The taxpayer, however, paid amount of excess credit taken in one case but recovery measures for excess credit taken in another case, interest and penalty were not initiated even after a lapse of one year of verification. Non-initiation of recovery measures resulted in non-realisation of revenue ***(Appendix 7.1)***.

When Audit pointed this out (between March 2021 and August 2021), Ballygunge Charge office in one case admitted (March 2021) the audit

[151] *Shibpur & Ballygunge*

observation and stated that final demand notice would be issued and in the remaining one case, Shibpur Charge office did not furnish any reply.

7.3 Compliance issues

Transitional credits carried over by taxpayers into GST regime

During the SSCA, Audit attempted to evaluate the validity and admissibility of transitional credits carried over by taxpayers. Out of 1973 sampled cases involving transitional credit of ₹ 546.84 crore, Audit observed deviations to the extant provisions in 212 cases involving transitional credit of ₹ 32.05 crore. Findings in this regard are summarised in the following table.

Table 7.3: Summary of total deviations observed and recovery there-against *(Deviation amount and recovery-₹ in lakh)*

Objection	Total no. of cases	Amount involved	Objection cases	Deviation amount	Recovery
Incorrect Credit in ECL	1,973	₹ 546.84 crore[152]	04	125.03	0
ECL populated in excess			03	0.00	0
Ineligible carry forward of credit from Legacy Returns despite 'Nil' balance			33	1,201.87	862.84
Excess Credit taken from Legacy Returns			29	281.86	19.95
Excess Credit Carried Forward from legacy returns of previous year (2016-17)			18	373.83	7.06
Irregular Credit availed due to mismatches in ITC			11	129.44	1.03
Credit incorrectly claimed twice/ in excess under Table 5 (c) and 7(c)			07	4.84	0
Credit taken without filing Legacy Returns			10	136.29	7.27
Ineligible credit taken due to non-deduction of tax for pending Form C			03	5.98	0
Credit taken without filing supporting documents			48	354.47	6.03
Non-levy of interest on irregular claims of transitional credits			45	589.52	1.63
Miscellaneous			1	1.51	1.51
TOTAL	**1,973**	**₹ 546.84 crore**	**212**	**3,204.64**	**907.32**

Source: As recorded in GST back-office managed by Directorate of Commercial Taxes

It may be observed that out of total 212 deviation cases involving ₹ 32.05 crore, recovery could be effected only for ₹ 9.07 crore (28 *per cent*). The deviations are discussed in detail in the subsequent paragraphs.

7.3.1 Incorrect population of Credit in ECL

As per Section 140(1) of West Bengal Goods & Services Tax 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, credit of the amount of Value Added 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.

---

[152] *This amount represents the total of table numbers 5 (c), 6 (b), 7 (b)-7 (d), 10 (a)-10 (b) and T (11) (which are a part of the GST Annual Return). While rounding off the amount in lakh, it comes to ₹54,681.88 lakh. The difference is due to rounding off.*

Further, sub-rule (3) under Rule 117 of WBGST Rules, 2017, envisaged that the amount of credit specified in the application in FORM GST TRAN-1 shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the common portal (GSTN portal).

As per Rule 121 of WBGST Rules, 2017, the amount credited under sub-rule (3) of rule 117 may be verified and proceedings under section 73 or section 74, as the case may be, shall be initiated in respect of any credit wrongly availed, whether wholly or partly.

7.3.1.1 Incorrect credit in the ECL: Out of the selected sampled cases, in four cases in four[153] Charge offices under four[154] Circles, Audit observed instances of incorrect credit in the ECL, though the taxpayers claimed no or less amount in TRAN 1 or credit accounted for in different account of electronic credit ledger than that claimed in TRAN 1, as carried forward of input credits from the WBVAT regime. Audit noticed that in these cases, where incorrect credit under Central/State head had been administered to the tune of ₹ 125.03 lakh, recovery measures were not initiated till date of audit ***(Appendix 7.2)***.

When Audit pointed this out (between March 2021 and August 2021), Shibpur Charge office stated (August 2021) that this is software development and deployment issue, Burtola Charge office in one case stated (September 2021) that proceedings had been initiated, while Behala Charge office accepted the audit finding. Salt Lake Charge office did not furnish any/ specific reply.

A case study is illustrated below:

Case Study

On verification of transitional credit claim of a taxpayer (M/s Gontermann Pipers (India) Limited GSTIN: 19AABCG0946P1Z6) coming within the jurisdiction of Behala Charge office under Behala Circle, Audit noticed that though the taxpayer did not submit TRAN 1 for carrying forward of Input Tax Credit relating to the WBVAT regime, the electronic credit ledger of the taxpayer for the respective period was credited with ₹ 108.91 lakh.

On this being pointed out by Audit (August 2021), the Charge office admitted the audit observation (August 2021).

7.3.1.2 Electronic Credit Ledger populated in excess: Out of the selected sample cases, three instances were observed in three[155] Charge offices under three[156] Circles where taxpayers' claim of transitional credit had been credited to the Electronic Credit Ledger in excess of TRAN-1 involving ₹ 19.35 lakh. The taxpayers, however, reversed ₹ 19.35 lakh in those cases ***(Appendix 7.3)***.

When Audit pointed this out (between March 2021 and July 2021), Charge offices did not furnish any/ specific reply.

An illustrative case is given below:

[153] *Shibpur, Salt Lake, Burtola and Behala*
[154] *Howrah, 24 Parganas, Kolkata (North) and Behala*
[155] *Postabazar, Bowbazar, Strand Road & Shyambazar*
[156] *Kolkata (North), Dharmatala & Barrabazar*

Case Study

Verification of TRAN 1 returns and Electronic Credit Ledger (ECL) data of the taxpayer M/s Fairfield Equipment Private Limited (GSTIN: 19AABCF1812F1Z1) within the jurisdiction of Strand Road Charge office under Barrabazar Circle showed that the ECL of the taxpayer was credited with excess input tax credit amounting ₹ 13.36 lakh, over and above the credit of ₹ 13.36 lakh claimed by the taxpayer as per TRAN 1 return.

When Audit pointed this out (March 2021), the Charge office did not furnish any reply.

7.3.2 Ineligible carry forward of credit from Legacy Returns

As per Section 140(1) of West Bengal Goods & Services Tax 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, credit of the amount of Value Added 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.

Further, sub-rule (3) under Rule 117 of WBGST Rules, 2017, envisaged that the amount of credit specified in the application in FORM GST TRAN-1 shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the common portal (GSTN portal).

As per Rule 121 of WBGST Rules, 2017, the amount credited under sub-rule (3) of rule 117 may be verified and proceedings under section 73 or section 74, as the case may be, shall be initiated in respect of any credit wrongly availed, whether wholly or partly.

7.3.2.1 Ineligible carry forward despite 'Nil' balance: During the conduct of audit, out of total 1,729 cases, 33 instances were observed in 20[157] Charge offices under 11[158] Circles, involving an amount of ₹ 12.02 crore where taxpayers claimed and availed input tax credit through TRAN 1, though they had nil-balance of input tax credits from the WBVAT regime ***(Appendix 7.4)***.

When Audit pointed this out (between January 2021 and September 2021), four[159] Charge offices realised the amount of ₹ 862.84 lakh in five cases. Three[160] Charge offices in three cases accepted audit findings, four[161] Charge offices in four cases stated that proceedings had been initiated, three[162] Charge offices in three cases stated that notice had been issued and in the remaining eighteen cases, ten[163] Charge offices did not furnish any/ specific reply.

[157] Amratolla, Bally, Ballygunje, Beadon Street, Behala, Beliaghata, Central Section, Chandni Chowk, Durgapur, Howrah, Lalbazar, Large Taxpayer Unit, New Market, Park Street, Radhabazar, Rajakatra, Salt Lake, Shibpur, Srirampur &Taltala

[158] Large Taxpayer Unit, Barrabazar, Kolkata (South), Chowringhee, Dharmatolla, Kolkata (North), 24 Parganas, Behala, Howrah, Bally, Durgapur

[159] ChandneyChowk, Durgapur, Large Taxpayer Unit, Park Street & Salt Lake

[160] Central Section, Howrah & Srirampur

[161] Ballygunje,Chandney Chowk, Lalbazar & Shibpur

[162] Behala, Park Street &Taltala

[163] Amratolla, Bally, Beadon Street, Beliaghata, Durgapur, Lalbazar, , New Market, Radhabazar, Rajakatra& Salt Lake

Case Study

M/s Neo Metaliks Ltd., (GSTIN: 19AABCN8514G1ZE) falling within the jurisdiction of Large Taxpayer Unit Charge under Large Taxpayer Unit Circle had carried forward closing balance of WBVAT input tax credit of ₹ 601.82 lakh from the legacy returns under table 5(c) of TRAN 1 return. However, verification of the corresponding legacy return for the taxpayer showed that there was no such credit to be carried forward.

On this being pointed out in audit (March, 2021), the taxpayer was seen to have paid the tax dues (March, 2021).

7.3.2.2 Excess credit taken from Legacy Returns: During audit, out of 1,729 cases[164], 29 instances of the 25[165] Charge offices under 10[166] Circles under the Directorate of Commercial Taxes, West Bengal, involving ₹2.82 crore were observed where the taxpayers claimed and availed input tax through TRAN 1 in excess of credit available in the closing balance of WBVAT regime ***(Appendix 7.5)***.

When Audit pointed this out (between March 2021 and September 2021), two[167] Charge offices realised the amount of ₹ 19.95 lakh in two cases. Four[168] Charge offices in four cases accepted audit findings, eight[169] Charge offices in eight cases stated that proceedings had been initiated, two[170] Charge offices in three cases stated that notice had been issued and in the remaining 13 cases, 11[171] Charge offices did not furnish any/specific reply.

7.3.2.3 Excess Credit carried forward from legacy returns of previous year (2016-17): Audit observed 18 instances in 13[172] Charge offices under nine[173] Circles (out of 1729 cases specifically related to taxpayers' claim of VAT ITC) where taxpayers claimed and availed excess input tax credit as brought forward in the legacy return for the year 2017-18 from the carried forward input tax credits available as per the legacy return for the year 2016-17. This resulted in carry forward of excess credit of ₹ 373.83 lakh from the closing balance of WBVAT regime to the GST regime, which was reflected in the TRAN 1 return ***(Appendix 7.6)***.

When pointed out by Audit (between March 2021 and September 2021), three[174] Charge offices realised ₹ 7.06 lakh in three cases. Three[175] Charge offices in six

---

[164] Out of 1973 sample cases, 1729 cases were specifically related to taxpayers' claim of VAT ITC available as per their VAT return and claim their of in TRAN 1.

[165] Alipore, Armenian Street, Bally, Barasat, Barrackpore, Behala, Belgachhia, , Burtola, Chandni Chowk, College Street, Cossipore, Esplanade, Jorasanko, Kadamtala, Lalbazar, Lyons Range, N S Road, Park Street, Radhabazar, Rajakatra, Salt Lake, Shibpur, Siliguri, Srirampur& Strand Road

[166] Barrabazar, Kolkata (South), Chowringhee, Dharmatolla, Kolkata (North), 24 Parganas, Behala, Howrah, Bally &Siliguri

[167] Alipore, & Park Street

[168] Armenian Street, Barrackpore,Siliguri& Srirampur

[169] Behala, Belgachhia,Burtola,Chandni Chowk,Cossipore, Kadamtala, Salt Lake &Shibpur,

[170] Esplanade &N S Road

[171] Bally, Barasat, Behala, College Street, Jorasanko, Lalbazar, Lyons Range, Radhabazar, Rajakatra, Salt Lake & Strand Road

[172] Asansol, Barrackpore, Colootola, Durgapur, Howrah, Kadamtala, Large Taxpayer Unit, N S Road, Rajakatra, Salt Lake, Shibpur, Siliguri& Srirampur

[173] Large Taxpayer Unit, Barrabazar, Dharmatolla, 24 Parganas, Howrah, Bally, Asansol, Durgapur & Siliguri

[174] Durgapur, Kadamtala& Salt Lake

[175] Asansol, Barrackpore& Srirampur

cases accepted audit findings, N S Road Charge office in one case stated that proceedings had been initiated, three[176] Charge offices in four cases stated that notice had been issued and in the remaining four cases, four[177] Charge offices did not furnish any/specific reply.

7.3.2.4 Irregular Credit availed due to mismatches in ITC: During audit, out of total 1973 sampled cases, claims of ₹129.44 lakh in 11 instances in six[178] Charge offices under five[179] Circles under the Directorate of Commercial Taxes, West Bengal, Input Tax Credit (ITC) were found irregular, as the corresponding sale based on which purchaser was claiming this carried forward amount of ITC had not been admitted to by the selling dealer. This was reflected in the TRAN 1 return ***(Appendix 7.7)***.

When Audit pointed this out (between July 2021 and September 2021), Durgapur Charge office realised the amount of ₹ 1.03 lakh in one case. Three[180] Charge offices in four cases stated that proceedings had been initiated and in the remaining six cases, three[181] Charge offices did not furnish any/specific reply.

7.3.3 Credit incorrectly claimed twice/ in excess under Table 5(c) and 7(c)

As per Section 140(5) of SGST Act, a registered person shall be entitled to take, in his electronic credit ledger, credit of value added tax in respect of inputs received on or after the appointed day but the tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other taxpaying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day provided further that the said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

Further, sub-rule (3) under Rule 117 of WBGST Rules, 2017, envisaged that the amount of credit specified in the application in FORM GST TRAN-1 shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the common portal (GSTN portal).

As per Rule 121 of WBGST Rules, 2017, the amount credited under sub-rule (3) of rule 117 may be verified and proceedings under section 73 or, as the case may be, section 74 shall be initiated in respect of any credit wrongly availed, whether wholly or partly.

During the conduct of audit, seven instances involving an amount of ₹ 4.84 lakh were observed in four[182] Charge Offices under three[183] Circle offices (out of 1,973 sample cases) where tax payers claimed and availed transitional credit through TRAN 1 under table 5(c) and 7(c) in excess/ twice over the eligible quantum of credit in their account ***(Appendix 7.8)***.

When Audit pointed this out (between March 2021 and September 2021), Shibpur Charge office in two cases stated (September 2021) that proceedings

[176] Colootola, Kadamtala & Siliguri
[177] Howrah, Large Taxpayer Unit, Rajakatra & Shibpur
[178] Bally, Durgapur, Howrah, Salt Lake, Shibpur & Siliguri
[179] Bally, Durgapur, Howrah, 24 Parganas & Siliguri
[180] Howrah, Salt Lake & Siliguri
[181] Bally, Durgapur & Shibpur
[182] Kadamtala, NS Road, Salt Lake & Shibpur,
[183] Barrabazar, Howrah & 24 Parganas

had been initiated, N S Road Charge office in one case stated (March 2021) that notice had been issued and in the remaining four cases, two[184] Charge offices did not furnish any/ specific reply.

7.3.4 Credit taken without filing Legacy Returns

As per second proviso to Section 140(1) of West Bengal Goods & Services Tax 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, credit of the amount of Value Added 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 provided that the registered person shall not be allowed to take credit where he has not furnished all returns required under the existing law for the period of six months immediately preceding the appointed date.

Audit came across ten instances involving an amount of ₹ 136.29 lakh in eight[185] Charge offices under seven[186] Circles (out of total sample size of 1973 cases) where taxpayers claimed and availed transitional credit of WBVAT credit balances remaining in the accounts, even though the taxpayers had not filed all returns required under the existing laws. This resulted in contravention of the transitional credit provisions ***(Appendix 7.9)***.

When Audit pointed this out (between February 2021 and September 2021), two[187]Charge offices realised the amount of ₹ 7.27 lakh in two cases. Three[188] Charge offices in three cases accepted audit findings, two[189] Charge offices in two cases stated (September 2021) that proceedings had been initiated, Ballygunje Charge office in two cases stated (March 2021) that notice had been issued and in the remaining one case, Salt Lake Charge office did not furnish specific reply.

7.3.5 Ineligible credit taken due to non-deduction of tax for pending Form C

As per second proviso to Section 140(1) of West Bengal Goods & Services Tax 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, credit of the amount of Value Added 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 provided that the registered person shall not be allowed to take credit, which is attributable to any claim related to section 3, sub-section (3) of section 5, section 6, section 6A or sub-section (8) of section 8 of the Central Sales Tax Act (CST Act), 1956 (74 of 1956), which is not substantiated in the manner and within the period, prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules-CST Rules, 1957.

Out of 1973 sampled cases, in course of audit, three instances having money value of ₹ 5.98 lakh in three[190] Charge offices under two[191] Circles, were

[184] Kadamtala & Salt Lake
[185] Armenian Street, Asansol, Bally, Ballygunje, Howrah, Jorasanko, Shibpur & Siliguri
[186] Kolkata (South), Dharmatolla, Kolkata (North), Howrah, Bally, Asansol & Siliguri
[187] Asansol & Bally
[188] Armenian Street, Howrah & Shibpur
[189] Jorasanko & Siliguri
[190] Bally, Shibpur & Srirampur
[191] Bally & Howrah

noticed where taxpayers claimed and availed transitional credit of WBVAT credit balances remaining in the accounts, without deducting difference of tax payable on the amount of turnover against which C Forms were pending. This contravened the provision of Rule 12 of the CST (Registration and Turnover) Rules, 1957 and hence, rendered the credit ineligible ***(Appendix 7.10)***.

When Audit pointed this out (between August 2021 and September 2021), Srirampur Charge office in one case accepted audit findings (September 2021) and in the remaining cases, two[192] Charge offices did not furnish any reply.

7.3.6 Irregular availment of WBVAT credit on capital goods relating to pre-GST regime, as transitional credits

As per Section 140(2) of the WBGST 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, credit of the un-availed WBVAT Credit in respect of capital goods, not carried forward in a return, furnished under an existing law for the period ending with the day immediately preceding the appointed day. This is subject to the provision that the registered person shall not be allowed to take credit unless said credit was admissible as WBVAT credit under existing law and is also admissible as input tax credit under GST Act. The unavailed WBVAT credit represents the amount that remains after subtracting the amount of WBVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of WBVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

During audit of the Large Taxpayer Unit (LTU) Charge office under LTU Circle under the Directorate of Commercial Taxes, West Bengal, one instance (out of 21 cases relating to Table 6 (b)) was noticed where a taxpayer (M/s. IFB Industries Ltd.-GSTIN 19AAACI6561R1ZU claimed transitional credit (₹ 1.51 lakh) on account of un-availed WBVAT Credit in respect of capital goods, as closing WBVAT credit balance in legacy return. The claim was made stating that the credit had not been previously carried forward in a return, furnished under an existing law for the period ending with the day immediately preceding the appointed day, which was allowed to be availed. However, verification of TRAN 1 return and legacy return corresponding to the WBVAT regime disclosed that the taxpayer had already availed the credit in the legacy return, hence, no such credit was available for the GST regime. Thus, such availment proved irregular.

After the issue was pointed out by Audit (March 2021), the LTU Charge office produced the document for realization of the amount of ₹ 1.51 lakh along with the interest of ₹ 1.02 lakh (March 2021).

7.3.7 Credit taken without filing supporting documents

As per Section 140 (3) of WBGST Act, 2017, a registered person, who was not liable to be registered under the existing law or who was engaged in the sale of exempted goods or tax free goods, by whatever name called, or goods which have suffered tax at the first point of their sale in the State and the subsequent sales of which are not subject to tax in the State under the existing law but which

[192] *Bally & Shibpur*

are liable to tax under this Act or where the person was entitled to the credit of input tax at the time of sale of goods, if any, shall be entitled to take, in his electronic credit ledger, credit of the value added tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions namely:

- **(i)** such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- **(ii)** the said registered person is eligible for input tax credit on such inputs under this Act;
- **(iii)** the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of such inputs; and
- **(iv)** such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

During audit, it was noticed that out of total sample of 1973 cases, 122 cases were related to claims of credit covered under table 7 (b). Of these 122 cases, 48 instances involving ₹ 354.47 lakh were found in 20[193] Charge offices under 12[194] circles under the Directorate of Commercial Taxes, West Bengal, where taxpayers claimed and availed transitional credit of inputs held in stock in respect of goods not carried forward in a return, for the period ending with the day immediately preceding the appointed day. However, verification of TRAN 1 return and legacy return corresponding to the WBVAT regime revealed that taxpayers had not submitted requisite details of invoices and other documents evidencing payment of tax in TRAN-1 to sustain their claim in the GST regime ***(Appendix 7.11)***.

When Audit pointed this out (between March 2021 and September 2021), six[195] Charge offices realised the amount of ₹ 6.03 lakh in six cases. Four[196] Charge offices in 10 cases accepted the audit findings, two[197] Charge offices in four cases stated that proceedings had been initiated, Jorasanko Charge office in one case stated that noticed had been issued and in the remaining 27 cases, 11[198]Charge offices did not furnish any/ specific reply.

7.3.8 Non-levy of interest on irregular claims of transitional credits

As per Rule 121 of WBGST Rules, 2017, the amount credited under sub-rule (3) of rule 117 may be verified and proceedings under section 73 or, as the case may be, section 74 shall be initiated in respect of any credit wrongly availed, whether wholly or partly.

The proceeding under section 73 or 74 shall require the taxpayer to pay the credit along with interest payable thereon under section 50 of the WBGST Act,

---

[193] Alipore, Amratala, Asansol, Barasat, Barrackpore, Behala, Bhowanipore, Bugde Budge, Durgapur, Howrah, Jorasanko, Kadamtala, Large Taxpayer Unit, Manicktala, Salt Lake, Shibpur, Siliguri, Srirampur, Strand Road &Ultadanga

[194] Asansol, Bally, Barrabazar, Behala, Dharmatolla, Durgapur, Howrah, Kolkata (South), Kolkata (North), Large Taxpayer Unit, 24 Parganas, & Siliguri.

[195] Alipore, Amratala, Barrackpore, Behala, Durgapur &Kadamtala

[196] Howrah, Manicktala, Shibpur & Srirampur

[197] Budge Budge & Siliguri

[198] Asansol, Barasat, Barrackpore, Behala, Bhowanipore, Durgapur, Kadamtala, Large Taxpayer Unit, Salt Lake, Strand Road & Ultadanga

2017.Section 50(1) of the WBGST Act, 2017 stipulates that every person liable to pay tax in accordance with the provisions of this Actor the rules made thereunder, but, fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay interest at 18 *per cent*.

During audit, out of 1973 cases, 45 instances of the 25[199] Charge offices under 13[200] Circles under the Directorate of Commercial Taxes, West Bengal, were found having irregular claims of transitional credits. Though the excess credits were reversed subsequently, taxpayers had not discharged the interest liability, as interest was not levied upon the taxpayers. The total interest liability in these cases worked out to ₹ 589.52 lakh ***(Appendix 7.12)***.

When Audit pointed this out (between February 2021 and September 2021), nine[201] Charge offices realised the amount of ₹ 1.63 lakh in 12 cases. Two[202] Charge offices in three cases accepted audit findings, Barasat Charge office in seven cases stated that proceedings had been initiated, six[203] Charge offices in six cases stated that notice had been issued and in the remaining 17 cases, 14[204] Charge offices did not furnish any/ specific reply.

7.4 Conclusions and Recommendation

Conclusions:

Audit came across issues of non-compliance to the referred Acts and Rules like incorrect credit in ECL, electronic credit ledger being populated in excess, excess credit taken from legacy returns, ineligible carry forward of credit from Legacy Returns despite 'Nil' balance, excess credit carried forward from legacy return of previous year (2016-17), irregular credit availed due to mismatches in ITC and credit claimed twice/in excess. Total money value of these observations stood at₹ 21.17 crore (105 instances), of which ₹ 8.91 crore (11 instances) had being recovered, after the issues were pointed out in audit.

Audit also came across issues of non-compliance like credit taken without submission of legacy returns; ineligible credit taken; irregular availment of WBVAT credit on capital goods relating to pre-GST regime, as transitional credits; credit taken without filing supporting documents and non-levy of interest on irregular claims of transitional credits. Here, the financial impact of audit observations aggregated to ₹ 10.88 crore (107 cases) against which recovery of ₹ 0.16 crore (21 cases) was made.

This apart, the SSCA highlighted the issue of inadequate follow up measure and non-recovery of ineligible claim and interest/ penalty, in two cases, involving pending realisation of excess credit taken, interest and penalty of ₹ 0.75 crore.

[199] Amratala, Asansol, Bally, Ballygunge, Barasat, Barrackpore, Behala, Bhowanipore, Budge Budge, Chandni Chowk, Durgapur, Esplanade, Ezra Street, Fairley Place, Large Taxpayer Unit, Manicktala, Monoharkatra, NS Road, Park Street, Postabazar, Sealdah, Shibpur, Shyambazar, Siliguri & Strand Road.

[200] Large Taxpayer Unit, Barrabazar, Kolkata (South), Chowringhee, Dharmatolla, Kolkata (North), 24 Parganas, Behala, Howrah, Bally, Asansol, Durgapur & Siliguri.

[201] Amratala, Barrackpore, Behala, Durgapur, Ezra Street, Manicktala, N S Road, Park Street & Siliguri.

[202] Manicktala & Sealdah.

[203] Ballygunge, Bhowanipore, Budge Budge, Esplanade, Monoharkatra & Park Street

[204] Asansol, Bally, Ballygunge, Chandni Chowk, Fairley Place, Large Taxpayer Unit, Manicktala, Monoharkatra, N S Road, Postabazar, Sealdah, Shibpur, Shyambazar & Strand Road.

Overall, audit of transitional credits under the SSCA, carried out on test-check basis, showed deviations in 11 *per cent* of cases (214 cases out of 1,973 sampled cases) test-checked.

Recommendation:

- ***A comprehensive/ thorough review of the transitional credits may be undertaken to identify cases of non-compliance by taxpayers to the extant Rules and Regulations.***

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