Chapter 8

Individual Observations of Compliance Audit

Chapter 8: Individual Observations of Compliance Audit

TECHNICAL EDUCATION AND TRAINING DEPARTMENT

(Directorate of Industrial Training)

8.1 Unfruitful Expenditure on construction of an Industrial Training Institute

Lack of proper planning and administrative supervision led to selection of landlocked and disputed plots of land in Chengail, Howrah, for construction of an Industrial Training Institute (ITI), meant for extending technical training to the common people of Howrah. Consequently, the ITI could not be made functional even after eight years from its inauguration, thereby frustrating the envisaged objective.

With a view to extending technical education by way of creating facilities for technical training to the common people in Howrah, the Technical Education and Training Department (TETD), Government of West Bengal (GoWB) decided (November 2009) to construct an Industrial Training Institute (ITI) on plots of land (measuring 5.17 acres) in Chengail, Howrah. Accordingly, administrative approval of ₹ 4.86 crore was accorded (February 2010) and the execution of the work was entrusted to Sundarban Infrastructure Development Corporation Limited (SIDCL).

Work order for construction of the ITI was issued (March 2010) to an agency[205] at a tendered value of ₹ 4.05 crore after due[206] tender procedure. The contractor completed the civil work along with sanitary & plumbing/ fitting works and handed over[207] (January 2014) the building to the Principal, ITI Howrah Homes. The external electrical power supply connection and work of installation of bore well, remained incomplete[208]. An expenditure of ₹ 4.11 crore was incurred for the construction of the ITI building and considering ancillary works, the total expenditure incurred was ₹ 4.46 crore. The ITI, however, could not be made operational, as of October 2021.

Examination of records (February 2021) of the Directorate of Industrial Training (DIT), as made available to audit, brought out the following:

- The plots of land were transferred (November 2009) by Land and Land Reforms Department (L&LRD) to the TETD with the condition that the L&LRD would not take the responsibility for arranging for ingress and egress to the land so transferred. These plots were selected by the TETD. The reason for selection, as mooted by the TETD, was that approach road was available.

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[205] M/s Infinity Devcon Private Limited

[206] By SIDCL, after following due tender procedure in February 2010, at 0.01 per cent below the tendered value of ₹4,05,24,738

[207] In September 2013, the ITI building was, however, inaugurated

[208] The internal electrical works were completed

- These plots of land were landlocked and under dispute[209], about which the L&LRD was aware. So, rationale behind allotting such plots of land remained unclear. Further, when these plots were landlocked since very long period, circumstances under which, the TETD found the availability of approach road to these plots, also remained unclear. Moreover, records indicated that the TETD, prior to issue of the Work Order, was aware of the disputes[210] concerning these plots of land.
- Despite being aware of the disputes concerning these plots of land, the TETD issued work order on 31 March 2010. The TETD initially succeeded to arrange for transportation of construction material to the site by constructing a temporary approach road through the premises of an adjacent Jute Mill on mutual consent. In this way, the construction of the ITI building, sanitary and plumbing/ fitting work and internal electrical work could be completed. The adjacent Jute Mill however, closed the approach road subsequently causing the works 'external electrical power supply connection' & 'work of installation of bore well' remaining incomplete.
- Subsequently, an administrative approval and sanction of fund amounting ₹ 3.17 crore was accorded (March 2016) by TETD for construction of an approach road to the ITI. No development was, however, noticed in this regard. In November 2016, the Department decided to stop all pending works, pending settlement of disputes.
- There was nothing on record to indicate that the TETD had taken any initiative to fix responsibility on delinquent Officers/ officials. So, in these circumstances, the TETD needs to initiate steps for fixation of responsibility.

The Directorate of Industrial Training (DIT) accepted (February 2021) the facts and figures and the ITI was yet to be made functional, as of October 2021.

Technical Education, Training & Skill Development Department, in its reply in April 2022, while communicating the above referred facts, stated that it was trying to amicably resolve the issue with the Ludlow Jute and Speciality Limited. However, the fact remains that the ITI is yet to be made functional, as of date.

Thus, lack of proper planning and administrative supervision led to selection of landlocked and disputed plots of land for construction of an Industrial Training Institute (ITI), meant for extending technical training to the common people of Howrah. Consequently, the ITI could not be made functional even after eight years from its inauguration, rendering the expenditure of ₹ 4.46 crore incurred thereon unfruitful and frustrating the intended objective.

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[209] For more than 42 years, since November 1979. Cases were raised by a private concern namely 'Ludlow Jute and Speciality Limited-LJSL', between 1984 and 2014, with the Court of Civil Judge (Jr. Division), Uluberia, Howrah; West Bengal Land Reforms and Tenancy Tribunal; Hon'ble High Court, Kolkata and Additional District and Session Judge, Uluberia, Howrah. All these cases were pending. The last case was raised with the Hon'ble High Court in 2014

[210] Cases raised in 2009 with the West Bengal Land Reforms and Tenancy Tribunal

FOOD & SUPPLIES DEPARTMENT

8.2 Improper storage of foodgrains leading to loss of ₹1.34 crore

The Food & Supplies Department failed to enforce the provision of the West Bengal Urban Public Distribution System (Maintenance & Control) Order, 2013 regarding safe storage of 6,317.51 quintals of public distribution foodgrains and also ensure the distribution of such foodgrains by the Authorised Wholesaler (AW). This led to the PDS foodgrains becoming unfit for human consumption. Loss to the state exchequer, based on the cost of procurement, worked out to ₹ 1.34 crore.

The Food & Supplies Department (FSD) under the Government of West Bengal functions as the nodal Department for distribution of foodgrains through the Public Distribution System. The Directorate of Rationing (DR), under the FSD, operates under the ambit of the West Bengal Urban Public Distribution System (Maintenance & Control) Order, 2013 (Order) to carry out public distribution of food grains throughout Kolkata and adjacent industrial areas of Howrah, Hooghly, Barrackpore and Asansol.

In course of audit (between February & March 2021) of the O/o the Deputy Director of Rationing, Barrackpore (DDRB), functioning under the aegis of DR, it was observed that the DDRB issued licence to M/s Hindustan Food Suppliers (HFS) to act as an authorised wholesaler to distribute foodgrains to 109 Fair Price Shops (FPS). Scrutiny revealed that HFS lifted (October to December 2018) 7,408.41 quintals of rice & 245.76 quintals of sugar from State owned godowns and 6,046.44 quintals of wheat from Food Corporation of India. Audit examined the allotment of foodgrains as made to HFS and found the following:

- There was lack of monitoring by the DDRB over distribution of foodgrains by HFS *vis-à-vis* allocation. Due to this, there were cases of non-submission of indents/ stock returns by HFS to the DDRB, on regular basis.

- HFS failed (November 2018) to deliver lifted foodgrains for the second fortnight of November 2018, to 96 of 109 FPSs and consequently, 6,317.51 quintals of stock[211] remained undistributed. Subsequently, the concerned Authority under DDRB conducted a physical inspection (12 to 20 November 2018) of the authorised godown, which had stored 1,935.47 quintals of rice, wheat and the two varieties of sugar. In the submitted Inspection Report (relating to the physical inspection) it was pointed out that the godown, did not have proper hygiene or quality control measures. This was violative of the requirement of safe storage of foodgrains, as laid down in the Order. Based on the Inspection Report, the license of HFS was suspended[212] (November 2018) and a penalty amounting ₹ 2,68,64,281 was imposed[213]. The penalty was, however, not deposited by HFS.

[211] *Rice-2020.56 quintals, Wheat-4114.51 quintals, Sugar (Antodaya Anna Yojana-AAY)-63.10 quintals, Sugar (Festive season)-119.34 quintals*
[212] *for violating the Order*
[213] *in accordance with applicable provisions of the Order*

- HFS stored the residual quantity of 4,382.04 quintals (6,317.51 quintals *minus* 1,935.47 quintals) of the above referred PDS commodities in another godown. There was nothing on record to indicate that this godown maintained proper hygiene or quality control measures were duly adopted for storing the foodgrains, in terms of the above referred Order.
- As per direction (September 2019) of the FSD, the DDRB restored (24 September 2019) the suspended license of HFS and allowed (30 September 2019) them to start distribution of foodgrains. Though, the HFS was directed (September 2019) by the FSD to undertake curative/ chemical treatment and obtain fresh report from the Directorate of Inspection & Quality Control (DIQC) of the FSD, for distributing the chemically treated food-grains under monitoring of DDRB, it did not a) undertake any curative/chemical treatment and b) start distributing the foodgrains. Thus, the total quantity of foodgrains of 6,317.51 quintals remained undistributed with HFS, without undergoing any curative/chemical treatment.
- The entire stock was found to be unfit for human consumption by DIQC.

Cost of procurement of the total stock of 6,317.51 quintals of rice, wheat and sugar was ₹ 1.43 crore, of which, ₹ 0.09 crore was paid by HFS at the time of lifting the stock. As such, the loss to the state exchequer worked out to ₹ 1.34 crore ***(Appendix 8.1)***.

Thus, the Food & Supplies Department failed to enforce the provision of the Order regarding safe storage of 6,317.51 quintals of public distribution foodgrains in proper and hygienic manner on the Authorised Wholesaler (AW) and also ensure the distribution of such PDS foodgrains by the AW. This led to the PDS foodgrains becoming unfit for human consumption. Consequently, the twin objectives of safeguarding the interest of the state exchequer and achieving the intended objective of distribution of foodgrains through PDS, stood compromised. Loss to the state exchequer, based on the cost of procurement, worked out to ₹ 1.34 crore.

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

PANCHAYATS & RURAL DEVELOPMENT DEPARTMENT

8.3 Infructuous expenditure of ₹ 1.78 crore

Non-consideration of crucial parameters like selection of site/ connectivity by roads, during construction of three Karma Tirthas (KTs) and non-ensuring of key facilities like availability of water and electricity, in these constructed KTs, led to the infructuous expenditure of ₹ 1.78 crore.

Karma Tirtha (KT), a flagship programme (launched in 2014-15) of the Government of the West Bengal was designed to provide an ideal ambience for marketing products of artisans, weavers, micro & small entrepreneurs, backward and poor Self Help Group members including women artisans. It also aimed to promote interaction between them and consumers, buyers, exporters round the year in an organised manner. So, Karma Tirthas were *inter alia* to provide opportunities for organised marketing facilities & wider scope for employment generation and consequently bring about economic, social and cultural development of the area.

In the 1st phase, each KT was to house 30 permanent stalls in a single storied building with foundation for two storied structure and an open space for temporary accommodation for economically weak micro artisans/ entrepreneurs on rotation basis[214]. In the 2nd phase, each KT was to accommodate 20 stalls in each floor of a two storied structure with accommodation for meeting room & guest house.

Test-check of records of Panchayats and Rural Development Department (PRDD) disclosed that the PRDD sanctioned (during January 2016 to September 2017) ₹ 1.80 crore in favour of the District Rural Development Cell (DRDC) Birbhum for construction of three KTs at Bolpur-Sriniketan, Sainthia and Mayureswar-I blocks. Status of construction and functioning of these KTs are detailed in the table below:

Table 8.1: Status of construction and functioning of KTs

Name of the block in which the KT is located	When completed	Cost of construction (₹ in crore)	No. of stalls distributed	No. of stalls operating (as of September 2021)
Bolpur-Sriniketan	August 2018	0.60	24 Stalls initially distributed in December 2018, were further re-allotted in April 2021 in view of non-functionality of stalls. As of September 2021, all stalls were distributed.	Six stalls were found to be operating occasionally, of which, four stalls were operating without any revenue generation.
Sainthia	February 2018	0.59	24 stalls distributed in December 2019. Fate of distribution of the remaining six stalls were not available.	Two stalls were operating occasionally, but without any revenue generation.
Mayureswar - I	November 2018	0.59	24 stalls distributed in June 2020. Fate of distribution of the remaining six stalls were not available.	No stalls were operating
Total cost		**1.78**		

Source: Records of DRDCs

Non/ partial operation of the aforementioned KTs were attributable to poor selection of site, poor connectivity by roads, non-availability of water and electricity, *etc.* Such non/ partial operation was also attributable to lack of initiative for promotion of KTs in print and digital media. Further, details

[214] *Rotation basis means that while a particular group of artisans, who had not been provided a permanent stall, would use the open space on a given day, another such group would use the facility on another day.*

relating to whether any feasibility study or survey of the sites was undertaken or not, before construction of the KTs, was not forthcoming from records made available to Audit.

These factors had not only rendered the expenditure of ₹ 1.78 crore incurred on the construction of the aforementioned KTs infructuous, but also frustrated the very purpose of providing an ideal ambience for marketing the products of the artisans, weavers, micro & small entrepreneurs, *etc.*, and improving their quality of life.

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

FOOD PROCESSING INDUSTRIES AND HORTICULTURE

(West Bengal State Food Processing and Horticulture Development Corporation Limited)

8.4 Wasteful expenditure on sowing of high yielding papaya seeds

Due to prolonged inaction by the Corporation, 8.02 lakh hybrid papaya seedlings produced in its farm were destroyed while there was almost no prospect of sale of 1.50 lakh papaya trees overgrown beyond saleable size. This has rendered an expenditure of ₹ 1.20 crore on their sowing and raising, wasteful.

West Bengal State Food Processing & Horticulture Development Corporation Ltd (Corporation) is a State Government company under the Food Processing Industries & Horticulture Department. Its functions *inter alia*, include procurement of various seeds, germination of the same in its farms and commercial sale/ distribution of seedlings to different agencies through District Horticulture authorities.

With a view to providing high yielding variety of papaya seeds to approximately 10 lakh farmers, the Corporation decided to procure 40 kg of Hybrid Papaya Seeds (HPS) of Red Lady variety. After tender formalities, the Corporation issued work order (August 2020) to a private agency for supply of 20 kg (1st Phase) of HPS at ₹ 4,46,000 per Kg. It was also decided (August 2020) that after germination of seeds in its Ayeshpur farm, Nadia[215], the Corporation would supply seedlings to the districts in November 2020.

Scrutiny in audit, however, showed that though the agency was ready to supply the seeds in August 2020 itself, the Corporation postponed the supply without any recorded reason and issued (November 2020) fresh supply order for supply of 20 Kg HPS on 23rd November 2020 after sample testing. The seeds were thereafter germinated (during December 2020 to January 2021) at the said farm and a total of 9.52 lakh hybrid papaya seedlings were produced in phases. By the 1st week of March 2021, around 30 thousand papaya seedlings had grown to marketable size and the Horticulturist, Ayeshpur farm suggested the Corporation[216] to arrange for sale of the seedlings, lest the same would become unfit for sale. The authority decided in the third week of March 2021 that the

[215] *under the administrative control of the Corporation*
[216] *through e-mail*

papaya seedlings would be sold at a rate of ₹ 17 per sapling in market through District Horticulture offices. It was, however, observed that the saplings were neither sold nor-supplied to the district Horticulture offices. An internal inspection[217] (April 2021) by the Horticulturist of the farm and the Corporation revealed that out of 9.52 lakh seedlings, 8.02 lakh saplings had already become unfit. Thereafter, the Corporation tried to sell those 9.52 lakh papaya seedlings through auction (May 2021). However, no agency showed interest to purchase those. Records further showed that an expenditure of ₹ 1.20 crore [218] had been incurred, for production of 9.52 lakh seedlings from 20 kg of HPS (Red Lady variety) including the cost of seeds

Pic 8.1: Hybrid Papaya Seeds after germination during January 2021

Pic 8.2: Marketable Hybrid papaya saplings during March 2021

Pic 8.3: Position found during joint inspection in November 2021

During joint physical inspection (November 2021) of the farm by Audit alongwith officials of the Corporation, it was observed that most of the hybrid papaya seedlings had been destroyed and some existed in the fields of the farm which were grown beyond saleable size.

It was further observed that the Corporation had placed supply order (October 2020) and purchased (January 2021) another 20 kg of HPS (2nd phase). However, instead of sowing those seeds in their own farm, the same were raised and distributed to districts by outsourcing[219] the work to three private agencies. The selected agencies supplied a total of 8.87 lakh papaya seedlings to different districts and the Corporation made a payment of ₹ 1.17 crore for the same.

Thus, due to prolonged inaction by the Corporation, lakhs of hybrid papaya seedlings produced in its farm were either destroyed or remained unsold rendering an expenditure of at least ₹ 1.01 crore (expenditure on 8.02 lakh destroyed saplings) wasteful, while the

[217] *The inspection was conducted by the Horticulturist of the farm along with Officer on Special Duty of the Corporation.*

[218] *Purchase of papaya seeds: ₹ 0.89 crore; Vermi Compost: ₹ 0.25 crore; Tricoderrma Virdie: ₹0.01 crore; Cocopit: ₹0.02 crore and Poly Packet: ₹ 0.03 crore*

[219] *For this purpose three agencies were selected through tender for raising of hybrid papaya seedlings in their nurseries and supplying the same to various districts as per distribution list placed by the Corporation.*

prospect of sale of remaining 1.50 lakh papaya trees (expenditure: ₹ 18.87 lakh) overgrown beyond saleable size, was almost non-existent.

The reply furnished (April 2022) by the Managing Director of the Corporation, which was duly endorsed (April 2022) by the Department, *inter alia* mentioned that the loss of ₹ 1.20 crore could not be avoided due to factors like prevailing Covid situation, Cyclone, introduction of Model Code of Conduct for General Assembly Election 2021, *etc*. The reply further contended that the Corporation, through sale of seedlings reared out of the Red Lady Papaya seeds[220] had made an overall profit of ₹ 0.08 crore and it would not be proper to segregate the two tranches of seeds received by the Corporation.

The reply was not tenable on the following counts:

- As distinct *modus operandi* were adopted for germination and distribution of seedlings in each case, so the two tranches were treated separately.
- In respect of the loss making first tranche of seeds, there were delays in receipt of seeds for reasons not on record, even though the supplying agency had been ready to supply the same since August 2020.
- The decision, to procure high yielding papaya seeds, was taken and the work was executed during the prevalence of Covid pandemic. As such, an appropriate mechanism could have been adopted while finalising the timelines for procurement, germination and distribution/ sale of the seedlings, *etc*.
- The Corporation did not provide any documentary evidence in support of sale proceeds from the sale of germinated seedlings in respect of supplies relating to the second tranche. As such, veracity of the claim could not be ascertained in audit.
- Though the reply conveys that the Corporation made an overall profit of ₹ 0.08 crore, the reply also accepts the loss of ₹ 1.20 crore, which contributed to the depletion of the State exchequer by the same amount. This apart, the envisaged objective of distributing high yielding papaya plants to farmers stood compromised to an extent.

FINANCE DEPARTMENT

(Directorate of Registration and Stamp Revenue)

8.5 Short levy of stamp duty due to incorrect determination of lease periods

In two cases, the Registering Authorities (RAs) incorrectly determined the lease periods and consequently levied stamp duty of ₹ 0.36 lakh instead of the leviable stamp duty of ₹ 28.29 lakh. This resulted in short levy of stamp duty of ₹ 27.93 lakh.

Article 35 of Schedule-IA of the Indian Stamp (IS) Act, 1899 amended (January 2013) provides that lease deeds for a term exceeding 30 years are chargeable to stamp duty at the same rate as applicable for conveyance/ sale

[220] By selling seedlings reared out of the second tranche of 20 kg of seeds, the Corporation made a profit of ₹ 0.08 crore on overall basis.

deed on the market value of the property. Further, explanation-II under the Article 35 of Schedule-IA of the IS Act, 1899 provides that, apart from the lease period stated in the lease document, any prior/ subsequent period in continuation of the present lease shall also be added with the present lease period for the purpose of determination of the lease period, for cases where the lessor and lessee for both periods are same. However, stamp duty on lease deeds up to 30 years depends on the period of lease and is chargeable on the average annual rent and/ or premium paid for the lease.

Audit found (March 2020 and January 2021) in offices of the Additional District Sub-Registrar (ADSR), Bagdogra and Howrah, in two cases (involving two deeds), properties were leased out for period of '29 years', which involved market value of ₹ 417.05 lakh. In these cases, the concerned Registering Authorities (RAs), assessed the stamp duty on the basis of average annual rent and/or premium and levied stamp duty of ₹ 0.36 lakh. These deeds were registered between March 2018 and July 2018.

Scrutiny of recitals of the lease deeds, however, revealed that these deeds contained specific clauses for automatic renewal/ further renewal of tenure of leases for subsequent periods on the same terms and conditions. Therefore, the subsequent lease periods were required to be added to the lease periods stated in the instant deeds for determination of the lease periods of these leases. Hence, in these cases, stamp duty was leviable at the same rate as applicable for conveyance/ sale deed on the market value of the property and not on rent and/ or premium. RAs, though, while determining the lease periods, did not consider this aspect and short determined the lease period. This resulted in stamp duty being levied at ₹ 0.36 lakh instead of the leviable amount of ₹ 28.29 lakh. This resulted in short levy of stamp duty of ₹ 27.93 lakh.

After these were pointed out, the ADSR, Bagdogra replied (March 2020) that the case would be consulted with the District Registrar, Darjeeling and forwarded to the concerned Deputy Inspector General of Registration under applicable provision of the IS Act. ADSR, Howrah did not furnish any reply.

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

FINANCE DEPARTMENT

(Directorate of Commercial Taxes)

8.6 Suppression of Contractual Transfer Price

Contractual Transfer Price (CTP) amounting ₹ 36.36 crore was suppressed by twenty-two dealers in their returns. Such suppressions could not be detected by the Assessing Authorities. This led to short levy and consequent non-realisation of tax of ₹ 2.04 crore.

Section 2(10) of the West Bengal Value Added Tax Act, 2003 (Act) defines Contractual Transfer Price (CTP) in relation to any period as the amount received or receivable by a dealer in respect of transfer of property in goods in the execution of any works contract. Further, sections 14 and 18 of the Act prescribes that any transfer of property in goods involved in the execution of a works contract shall be deemed to be a sale by the person making such transfer and tax shall be leviable at prescribed rates. Also, in terms of section 40 of the Act, any person responsible for paying any sum to a dealer for execution of works contract, shall at the time of payment, deduct tax at source from payments made to a registered dealer for execution of works contract, at prescribed rates. Under section 23 of the Act, a dealer is required to get registered mandatorily within 30 days from the date from which the dealer is liable to pay tax. In addition, section 47 of the Act prescribes for the deemed assessment of a dealer on the basis of returns filed on acceptance of the same as correct and complete.

In the above backdrop, details of payments made to dealers (contractors) and tax deducted at source (from contractors) for execution of works contracts from the database of the Directorate of Commercial Taxes (Directorate), were scrutinised in audit, on test-check basis. Test-check disclosed the following:

I. *Suppression of CTP by dealers whose returns were deemed as assessed*

Audit found (February and March 2021) that in two Charge offices (Park Street and Shibpur Charge offices), in 12 cases, 12 dealers had filed their returns (Assessment period- 2016-17) showing CTP as 'Nil' and these returns were deemed as assessed. From the database, as referred above, it was, however, seen that these dealers had executed works contracts (assessment period-2016-17) amounting ₹ 23.00 crore, which was suppressed by them in their returns. This resulted in short levy of tax of ₹ 1.30 crore.

Assessing Authorities (AAs) could not detect such suppression owing to non-verification of the database.

Thus, AAs could not detect suppression of Contractual Transfer Price of ₹ 23.00 crore by 12 dealers, pertaining to the assessment period 2016-17, which resulted in short levy and consequent non-realisation of tax of ₹ 1.30 crore.

In this context, it is pertinent to mention that, no mechanism was found to be existent in the Directorate for consideration of relevant information from the database during assessment of cases. In absence of such a mechanism, the Directorate failed to correctly assess the CTP of dealers. Further, in view of instances of suppression of CTP by dealers, a thorough review needs to be undertaken by the Directorate, to assess the actual position in this regard.

On being pointed out,

- Shibpur Charge office in seven cases involving ₹ 0.67 crore replied (March 2022) that all cases were reopened. Of which, in one case involving ₹ 0.07 crore, the dealer had made part -payment amounting ₹ 0.04 crore and in one another case involving ₹ 0.13 crore the demand was raised. In the remaining five cases (₹ 0.47 crore) hearing process/ assessment proceedings were going on.
- Park Street Charge office in five cases involving ₹ 0.63 crore replied (March 2022) that in three case (₹ 0.26 crore) detailed reply would be furnished in due course. Further, in one case involving ₹ 0.22 crore they replied (March 2022) that the dealer was engaged in supply of surgical goods and he had never executed any works contract and the concerned recipient of goods, mostly different government hospitals had erroneously deducted TDS during payment, which had been reflected in database.

They also stated that the dealer submitted sample invoice, challan, order and goods received note in support of his claim and, hence, the dealer had no output tax liability with respect to works contract. The reply was not tenable since the sample invoice submitted by the dealer pertained to the period 2017-18 and was not for the relevant assessment period of 2016-17. In the remaining case involving ₹ 0.15 crore, the Charge office replied (March 2022) that the dealer had claimed that he did not execute/ undertake any works contract and contractees had wrongly mentioned his registration number while submitting details of tax deducted at source. The reply of the Charge office was not tenable as views of the contractees were neither called for nor made available to Audit, to evaluate the veracity of information submitted by the dealer.

II. *Suppression of CTP by dealers having cancelled Registration Certificates*

In 10 cases, in two Charge offices (Siliguri and Behala), ten dealers (works contractors), had continued their business even after cancellation (between April 2009 and April 2014) of their Registration Certificates (RCs), without getting registered again.

Scrutiny, in this regard, disclosed that while continuing their business, these contractors had suppressed their entire CTP of ₹ 13.36 crore (assessment periods 2015-16 and 2016-17). Against this CTP of ₹ 13.36 crore, tax leviable was ₹ 1.15 crore. From the database, as referred above, it was seen that in these 10 cases, an amount of ₹ 0.41 crore only was deducted by way of tax deducted at source, which resulted in short levy of tax by ₹ 0.74 crore on these dealers.

Assessing Authorities (AAs) could not detect continuance of business by these unregistered dealers, which could have been detected had verification of the database been done.

The database meant for capturing details of only registered contractors had also captured details of these ten contractors, whose RCs had been cancelled. This was so because, these contractors, had used cancelled RCs, while executing projects, in the referred periods of assessment. This was a cause of concern, for which the database is required to be thoroughly reviewed to find out comprehensive details of all such cancelled RCs, which were used by different contractors, to get contracts and consequently avoid payment of tax.

Thus, AAs failed to detect suppression of the entire Contractual Transfer Price of ₹ 13.36 crore by 10 dealers, pertaining to assessment periods 2015-16 and 2016-17, leading to short levy of tax of ₹ 0.74 crore.

On these being pointed out (March and December 2020), the Siliguri Charge office in two cases involving ₹ 0.07 crore replied (February 2022) that cases have been assessed and demand notices issued, whereas in other two cases involving ₹ 0.15 crore they replied (March 2022) that assessment proceedings have been initiated. In the remaining six cases (₹ 0.52 crore), the Behala Charge office replied (March 2022) that assessment proceedings were underway.

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

8.7 Irregular allowance of Input Tax Credit

Failure of the Assessing Authorities (AAs) to detect irregular claims of Input Tax Credit (ITC) by dealers in 18 cases resulted in irregular allowance of ITC of ₹ 4.67 crore.

In terms of the West Bengal Value Added Tax Act, 2003 (Act), Output tax, in relation to any period, means the aggregate amount of tax payable by a dealer liable to pay tax in respect of any sale, or purchase of goods or execution of works contract, made in West Bengal. Input tax in relation to a tax period, means the amount of tax, paid or payable under the Act, by a registered dealer, to a registered dealer, or a dealer (who is required to be registered/who is not otherwise required to be registered, but has made an application for registration within thirty days from the date of liability to pay tax under the Act) at the time of purchasing taxable goods, other than such taxable goods as may be prescribed, during that period.

In terms of the Act, Input Tax Credit (ITC), in relation to any period, means the setting off the amount of input tax, or part thereof, by a registered dealer against the amount of his output tax. The Act prescribes that a registered dealer can avail benefits of Input Tax Credit (ITC) to the extent of tax paid or payable in respect of purchase of taxable goods from 'registered dealers/ category of dealers referred *ibid'* of West Bengal. Further, as per the Act, the ITC shall not be claimed by the purchasing dealer where original tax invoice has not been issued by the selling dealer from whom goods have been purchased.

In this backdrop, returns filed by purchasing dealers, were cross-examined (May 2019 to March 2020) in audit, on test-check basis, with reference to details sourced from the database of the Directorate like a) particulars of purchases submitted by the purchasing dealers, b) corresponding particulars of sales submitted by sellers (from whom purchases were shown to be made by these purchasing dealers) and c) registration status of these purchasing and selling dealers, in nine Charge offices[221]. Audit findings are discussed below:

- In these nine Charge offices, 18 dealers (in total 18 cases[222]), had availed benefit of ITC of ₹ 4.92 crore on the basis of purchase transactions. Assessment periods/ concerned financial years were 2012-13 to 2015-16. It was observed that in these 18 cases, dealers were eligible for benefit of ITC of only ₹ 0.25 crore. Reasons for higher availment of ITC than eligibility, as emerged from the database, were either that sellers had not made any sales to purchasers or made sales of such amount which was less than that claimed to be purchased by purchasers.

- Assessing Authorities (AAs) failed to detect (through scrutiny of returns and details of sales, purchases, *etc.*, which were available in the database) such irregular claims of ITC amounting ₹ 4.67 crore (₹ 4.92 crore *minus* ₹ 0.25 crore) and consequently these claims were allowed.

This resulted in irregular allowance of ITC of ₹ 4.67 crore.

[221] *Asansol, Beadon Street, Budge Budge, Colootola, Jalpaiguri, Lalbazar, Postabazar, Rajakatra and Salkia*

[222] *5,717 cases were test-checked*

In this context, it is pertinent to mention that these 18 cases were either deemed assessed[223] (17 cases, which included three cases of three dealers having cancelled registration) or unassessed (one case). Hence, a thorough review needs to be undertaken by the Directorate, in respect of all deemed/ unassessed cases/ cases involving dealers functioning with cancelled registration, to assess the actual position in this regard.

On these being pointed out,

- Asansol Charge office, in respect of three cases involving ₹ 0.40 crore, replied (March 2022) that in two cases involving ₹ 0.12 crore re-opening proposal had been sent to the Circle office. In the other case involving ₹ 0.28 crore, the Charge office replied that the dealer had been cancelled *ab initio* and, hence, the irregular allowance of ITC was not sustainable as the benefit of ITC was not allowable as per provisions of the Act. The reply was not tenable as the case was assessed deemed and no assessment proceedings were initiated against such irregular claim of ITC, as a consequence of which, the ITC claim (relating to assessment period 2015-16) stood allowed by way of set-off against the dealer's output tax liability for the assessment period 2015-16.

- Beadon Street Charge office in four cases involving ₹ 0.78 crore replied (March 2022) that in one case involving ₹ 0.22 crore the case was re-opened and assessment proceeding was initiated against the dealer. In another case involving ₹ 0.04 crore, it replied that the case was re-opened and demand notice had been issued. In the remaining two cases involving ₹ 0.52 crore it replied that necessary action would be taken.

- Budge Budge Charge office in two cases involving ₹ 0.60 crore replied (March 2022) that in one case involving ₹ 0.24 crore, the case was re-opened and demand notice had been issued, while in the other case involving ₹ 0.36 crore it replied that the case was re-opened and notice for assessment was issued to the dealer.

- Colootola Charge office in one case involving ₹ 0.03 crore and the Jalpaiguri Charge office in one case involving ₹ 0.05 crore replied (March 2022) that the respective case had been re-opened and assessment proceedings were being initiated against the dealers.

- Lalbazar Charge office in two cases involving ₹ 0.12 crore stated (June 2019) that proposal for re-opening of assessment had been sent. No further response was submitted, as of March 2022.

- Postabazar Charge office in one case involving ₹ 2.01 crore replied (March 2022) that at present, status of the dealer is unregistered, that means, all sales and purchases made by the dealer since his registration or commencement of his business is to be treated as paper transaction only without supply of goods. Thus, whatever sales or purchases

[223] Section 47 of the Act prescribes for the deemed assessment of a dealer on the basis of returns filed on acceptance of the same as correct and complete

mentioned in the submitted returns of the dealer is to be considered as fake or incorrect. So, the scope of taking ineligible ITC or non-realisation of Government revenue throughout the period is not tenable. Since, the dealer was cancelled *ab-initio*, making a paper demand on the basis of fake transactions is not desirable or justifiable.

The reply was not tenable as the case was assessed deemed and no assessment proceedings were initiated against such irregular claim of ITC, as a consequence of which, the ITC claim (relating to assessment period 2014-15) stood allowed by way of set-off against the dealer's output tax liability for the assessment period 2014-15.

Moreover, the reply was silent about the basis of treating the business of the dealer as consisting of only paper transactions.

- Rajakatra Charge office in two cases involving ₹ 0.50 crore replied (March 2022) that in one case involving ₹ 0.31 crore the dealer's registration certificate was cancelled prior to the assessment period, thus the query relating to non-assessment does not arise at all. The reply was not tenable as no assessment proceedings were initiated against such irregular claim of ITC, as a consequence of which, the ITC claim (relating to assessment period 2015-16) stood allowed by way of set-off against the dealer's output tax liability for the assessment period 2015-16. In the remaining case involving ₹ 0.19 crore, it replied that reply would be provided soon.

- Salkia Charge office in two cases involving ₹ 0.18 crore replied (March 2022) that in one case involving ₹ 0.11 crore assessment proceedings were nearing completion.

In the other case involving ₹ 0.07 crore, it replied that the dealer was allowed to settle the case by paying tax[224] (March 2021) of ₹ 0.02 crore under the Settlement of Dispute Scheme, 2020. This meant that in this case, the state exchequer had to sustain a loss of ₹ 0.05 crore.

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

8.8 Loss of interest

In five cases, the Assessing Authorities did not levy interest for non-reversal of inadmissible input tax credit, delayed and non-payment of tax by four dealers. This resulted in non-levy and consequent loss of interest of ₹ 73.34 lakh.

In terms of Section 33 of the West Bengal Value Added Tax Act, 2003, a dealer shall be liable to pay interest if he; fails to adjust the amount of any inadmissible input tax credit (ITC) by way of deduction from the amount of ITC claimed for a tax period, or fails to make full payment of tax; or makes delay in payment of net tax in respect of any tax period. Further, under Section 34(1) of the West Bengal Value Added Tax Act, 2003, where a dealer fails to make payment of

[224] *25 per cent of the actual amount of tax payable*

any tax due after provisional or other assessments by the date specified in the notice issued for payment thereof, he shall pay a simple interest at the rate prescribed, calculated from the date next following the date specified in such notice upto the date of full payment of such tax or up to the date preceding the date of commencement of proceedings under Section 55 of the West Bengal Value Added Tax Act, 2003, whichever is earlier upon so much of the amount of tax due from him according to such notice as remains unpaid.

On this account, interest at the rate of 12 *per cent* per annum was payable upto 31 March 2015 and from 01 April 2015, at rates as specified below:-

(i) At the rate of one *per cent* per month upto the first 90 days of the period for which such interest is payable;

(ii) At the rate of one and half *per cent* per month after the first 90 days and upto 300 days of the period for which such interest is payable; and

(iii) At the rate of two *per cent* per month after the first 300 days of the period for which such interest is payable.

Audit observed[225] in respect of three Charge offices (Large Tax Payers' Unit-Kolkata (LTU), Darjeeling and Shyambazar) in five cases[226], involving four dealers, that interest of ₹ 73.34 lakh was either not levied or not incorporated in the certificate of demand of tax, penalty and interest. Of these five cases, in one case under the Shyambazar Charge office, interest amounting ₹ 50.98 lakh was not levied by the Assessing Authority (AA) for non-reversal of inadmissible (the dealer failed to produce relevant purchase documents) ITC of ₹ 96.97 lakh by the dealer and in two cases under the LTU Charge office, interest of ₹ 4.91 lakh was not levied where a dealer admitted and paid the tax liability of ₹ 6.30 lakh belatedly (delay ranged between 41 and 64 months) on suppressed sales of ₹ 45.60 lakh. In the remaining two cases (under the Darjeeling Charge office) demand of interest of ₹17.45 lakh was not incorporated in the amount shown as due (₹ 28.67 lakh), from the two dealers, before sending those two cases to the Tax Recovery Officer for realisation of dues. This resulted in non-levy and consequent loss of interest of ₹ 73.34 lakh.

On these being pointed out (in July and December 2019), while accepting the audit observations the Darjeeling Charge office in two cases involving interest of ₹ 17.45 lakh replied (February 2022) that the modified amount of demands by incorporating the interest due were forwarded to the Tax Recovery Officer. In two cases involving ₹ 4.91 lakh, the LTU Charge office replied (March 2022) that, modified demand notices (by including due interest) were issued. However, these Charge offices did not furnish any information regarding realisation of interest. In the remaining one case involving ₹ 50.98 lakh, the Shyambazar Charge office furnished a non-specific reply (March 2022) that the matter was being looked into.

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

[225] *2,800 cases were checked*

[226] *LTU (two cases)-assessment periods-2012-13 and 2013-14; Darjeeling (two cases)-assessment periods-2010-11 and 2011-12 and Shyambazar (one case)-assessment period-2014-15*

8.9 Short levy of tax due to application of incorrect rate of tax

The Assessing Authority, in one case, levied tax of ₹ 3.36 crore on Turnover of Sales of ₹ 67.32 crore instead of ₹ 16.95 crore due to application of incorrect rate of tax. This resulted in short levy of tax of ₹ 13.59 crore with consequent non-realisation.

As per section 2(55) of the West Bengal Value Added Tax Act, 2003 (Act) the Turnover of Sales (TOS) in relation to any period, means the aggregate of the sale prices or parts of sale prices received/ receivable by a dealer in respect of sales of goods made during such period, after making deductions prescribed under the Act.

Section 16 of the Act provides for levy of tax at applicable rates on such part of the TOS which remains, after making deductions prescribed under the Act. Prescribed rates of taxation are one, five and 14.50 *per cent*, apart from exempted goods. Section 16 also provides that tax at such rate may be fixed by the State Government, under section 19 of the Act, on the TOS in respect of sales of goods specified in Schedule D (goods like chewing tobacco and *pan masala* of any type, when sold in a packaged condition; Motor Car, price of which exceeds ₹ 10 lakh; *etc.*).

Further, in terms of section 19 of the Act, for the sale of goods specified in Schedule D, rate may be fixed at a quantum not exceeding 35 *per cent* of the TOS. Finance Department, Government of West Bengal, through notification number 511-F.T. (April 2013) fixed the rate (effective from 25 April 2013) of tax for *pan masala* of any type, when sold in packaged condition at 35 *per cent* on the TOS.

Audit scrutiny (February 2021) in this backdrop disclosed the following:

- In one case (relating to the Shibpur Charge office) the Assessing Authority (AA) while assessing (assessment period 2016-17) a dealer (dealing with miscellaneous taxable goods and *pan masala*) determined the TOS at ₹ 67.32 crore and levied tax at the rate of five *per cent* amounting ₹ 3.36 crore. This apart, Input Tax Credit (ITC) claim was not allowed in the assessment, owing to non-production of documents.
- From quarterly returns filed by the dealer it was noticed that the dealer had admitted TOS of ₹ 67.32 crore and tax liability of ₹ 17.53 crore falling under tax slabs as i) exempted, ii) at the rate of 5 *per cent* and 14.5 *per cent* and iii) at the rate of 35 *per cent* as shown in the following Table:

Table 8.2: Details as disclosed by the dealer in the quarterly returns

(₹in crore)

Period of return	Sales exempted from tax		Sales of miscellaneous taxable goods taxable @ five *per cent*		Sales of miscellaneous taxable goods not specified elsewhere taxable @ 14.5 *per cent*		Sales of *pan masala* taxable @ 35 *per cent*		Total	
	Sales	Tax	Sales	Tax	Sales	Tax	Sales	Tax	TOS	Tax
Quarter ending June 2016	0.00	0.00	0.05	0.00	0.00	0.00	11.99	4.20	12.04	4.20

Period of return	Sales exempted from tax		Sales of miscellaneous taxable goods taxable @ five *per cent*		Sales of miscellaneous taxable goods not specified elsewhere taxable @ 14.5 *per cent*		Sales of *pan masala* taxable @ 35 *per cent*		Total	
	Sales	Tax	Sales	Tax	Sales	Tax	Sales	Tax	TOS	Tax
Quarter ending September 2016	0.11	0.00	0.51	0.03	2.05	0.30	0.00	0.00	2.67	0.33
Quarter ending December 2016	0.00	0.00	15.23	0.76	4.08	0.59	33.30	11.65	52.61	13.00
Total	**0.11**	**0.00**	**15.79**	**0.79**	**6.13**	**0.89**	**45.29**	**15.85**	**67.32**	**17.53**

Source: Quarterly returns filed by the dealer

Note: 1. Return for the period 'quarter ending March 2017' was not filed by the dealer.

2. Nomenclature of miscellaneous taxable goods not mentioned in returns submitted by the dealer.

- Cross-referencing of the Assessment Order with returns (and supporting details) showed that the AA considered the TOS disclosed by the dealer in these returns, in the Assessment Order. However, the AA did not consider rates of taxation and the tax admitted by the dealer as disclosed in these returns, in the Assessment Order. Reasons therefor were not recorded in the Assessment Order. Further, the AA levied tax at the rate of five *per cent* amounting ₹ 3.36 crore on the entire TOS of ₹ 67.32 crore, basis for which was not recorded in the Assessment Order.

From the gamut of facts narrated above, it would emerge that the item *(pan masala)* was clearly mentioned in returns submitted by the dealer and rate mentioned in returns was in agreement with the prescribed rate. In respect of the TOS of ₹ 67.32 crore, had the AA considered the item *(pan masala)* from returns and the residual amount of the TOS taxable at the rate of five *per cent*, the tax liability[227] of the dealer would have been ₹ 16.95 crore. Thus, there was short levy of tax of ₹ 13.59 crore (₹ 16.95 crore *minus* ₹ 3.36 crore) due to application of incorrect rate of tax with consequent non-realisation.

On being pointed out, the Charge office stated (February 2021) that as there was no provision of 35 *per cent* as rate of tax in the Act, so the tax rate on Turnover of Sales could not be determined at 35 *per cent*.

The reply was not tenable as applicable rate of taxation in keeping with the notification of the Finance Department for *pan masala* was 35 *per cent* and the same was in effect, since 25 April 2013.

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

[227] *TOS-₹67.32 crore. Tax applicable- @ 35 per cent on ₹45.29 crore & @ five per cent on ₹22.03 crore. So, the tax liability was ₹16.95 crore*

8.10 Excess claim of transitional credit of State Goods and Services Tax

In three Charge offices, 71 Registered Goods and Services Taxpayers (RTPs) claimed excess transitional credit of State Goods and Services Tax of ₹ 0.85 crore. No verification or initiation of proceedings, in keeping with the extant provisions of the West Bengal Goods and Services Tax Act and Rules, 2017 was, however, undertaken against these RTPs for such excess claims. As a consequence, such excess claim of ₹ 0.85 crore stood allowed.

Under the transitional arrangements for input tax credit (ITC), section 140 (1) of the West Bengal Goods and Services Tax Act, 2017 (WBGSTA) prescribes that every registered person, other than a person opting to pay tax at special rates under 'composition levy' system, shall be entitled to take credit of the balance of Input Tax Credit (ITC) available under Value Added Tax (VAT), carried forward in the return relating to the period ending with the day immediately preceding the appointed day. The appointed date being 01 July 2017, with the period being the month ending June 2017.

In this regard, the West Bengal Goods and Services Tax Rules, 2017 (WBGSTR) through rule 117 (1) prescribes that every registered person entitled to transitional credit of input tax, has to submit a declaration electronically (in FORM GST TRAN-1) within 90 days of the appointed day, on the Common Goods and Services Tax Electronic Portal (common portal). Further, in terms of rule 117 (3) of the WBGSTR, the amount of credit specified in the application (in FORM GST TRAN-1) shall be credited to the electronic credit ledger (ECL) of the applicant in FORM GST PMT-2 on the common portal.

Further, in terms of rule 121 of the WBGSTR, the amount so credited under rule 117 (3) may be verified and proceedings shall be initiated in respect of any credit wrongly availed, whether wholly or partially. Regarding initiation of proceedings, the WBGSTA through, a) section 73, addresses issues like 'determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilised for any reason other than fraud or any willful misstatement or suppression of facts' and b) section 74, deals with 'determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts'.

In this backdrop, data of the Directorate of the Commercial Taxes, West Bengal regarding "State Goods and Services Tax (SGST) claim as per Form GST TRAN-1" and "ITC available to be carried forward as per last VAT return, June 2017" was scrutinised in audit. Audit found that 71 Registered Goods and Services Taxpayers (RTPs) under three Charge offices (Beadon Street, Budge Budge and Jorasanko) claimed SGST ITC of ₹ 1.39 crore as transitional credit of SGST. However, as per VAT returns, June 2017, the total amount of ITC to be carried forward was ₹ 0.54 crore only. Thus, 71 RTPs claimed ITC of ₹ 0.85 crore in excess as transitional credit of SGST. These claims of transitional credit of SGST are deemed allowed, until claims are verified and proceedings initiated & specifically disallowed. However, in these cases, no such verification/initiation of proceedings was found to have been undertaken. Consequently, excess claim of ₹ 0.85 crore stood allowed.

On this being pointed out (October and November 2019):

- In 13 cases involving ₹ 0.06 crore, the Beadon Street Charge office replied (December 2021) that queries were being diligently pursued and replies to those would be given shortly.
- In 49 cases involving ₹ 0.72 crore, the reply furnished (December 2021) by the Budge Budge Charge office showed that in two cases, RTPs paid the difference amount of ₹ 0.27 crore, at the instance of Audit. The reply also showed that in the other 47 cases, recovery was yet to be effected.
- Out of 9 cases involving ₹ 0.07 crore, the Jorasanko Charge office replied (December 2021) that in seven cases they were trying to recover the excess amount. For the remaining two cases, the Charge office did not furnish any specific reply.

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

8.11 Incorrect allowance of refunds

In two Charge offices, in three cases, involving three Registered Taxpayers, inadmissible claims of refunds of unutilised Input Tax Credit of ₹ 41.37 lakh were allowed.

Proviso to Section 54 (3) of the West Bengal Goods and Services Tax Act, 2017 (WBGSTA) prescribes that no refund of unutilised Input Tax Credit (ITC) shall be allowed in cases other than a) zero-rated supplies made without payment of tax and b) where the ITC has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies, except supplies of goods or services or both, as may be, notified by the Government, on the recommendations of the Goods and Services Tax Council. These provisions are also applicable in respect of Integrated Goods and Services Tax (IGST).

Proviso to Section 54 (3) of the WBGSTA, 2017 also prescribes that no refund of unutilised input tax credit 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, through instructions issued in June 2017, the Central Board of Indirect Taxes & Customs (erstwhile Central Board of Excise & Customs) conveyed that IGST refund shall not be allowed to be availed, if the benefit of higher duty drawback[228] under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 has been availed[229].

Scrutiny of the refund cases in two Charge offices (Barrackpore and Bhawanipur Charge offices) under the Directorate of Commercial Taxes, West Bengal revealed that, in three cases, three Registered Taxpayers (RTPs) claimed refunds[230] of unutilised ITC (relating to CGST and IGST) of ₹ 41.37 lakh for the months from July 2017 to September 2017, which were allowed. However, in these cases, claims of refunds were inadmissible as RTPs had availed higher

[228] *a transition period of three months from date of introduction of Goods and Services Tax has been provided i.e. from 01 July 2017 to 30 September 2017 by continuing the Duty Drawback scheme*

[229] *no such instruction has been issued by the State Government*

[230] *in respect of zero-rated supplies, made without payment of tax*

duty drawback. This resulted in incorrect allowance of refunds amounting to ₹ 41.37 lakh.

On this being pointed out (November and December 2019), the Barrackpore Charge office in one case replied (March 2022) that the RTP had reversed the excess ITC of ₹ 9.81 lakh and the Bhawanipur Charge office in two cases replied (March 2022) that action had been initiated and results would be communicated at the earliest.

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

8.12 Non-realisation of interest

Twenty four taxpayers, involving three Charge offices, did not pay interest of ₹ 12.29 lakh for excess claim of transitional credit. No action was taken to realise the interest from these taxpayers.

Rule 117(3) of West Bengal GST Rules, 2017 specifies that the amount of credit specified in the application in Form GST TRAN-1 shall be credited to the ECL of the applicant maintained in Form GST PMT 2 on the Common Portal. As per Rule 121 on recovery of credit wrongly availed, the recovery of amount credited under sub-Rule (3) of Rule 117 may be initiated under Section 73 or, as the case may be, Section 74 of the Act. West Bengal Goods and Services Tax Act (WBGSTA), 2017 through Section 73 prescribes determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilised for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax. WBGSTA, 2017 through section 73 also prescribes that the person chargeable with tax may, before serving of a notice or a statement[231], pay the amount of tax along with interest payable thereon. Further, in terms of section 50 (1) of the WBGSTA, 2017, every person who is liable to pay the tax, but fails to pay 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 on his own, interest at such rate, not exceeding eighteen *per cent*, as may be notified by the Government on the recommendation of the GST Council. Government of West Bengal, notified (June 2017) the interest rate as 18 *per cent*.

Data of the Directorate of Commercial taxes, West Bengal regarding discrepancy between "SGST ITC claim as per Form GST TRAN-1" and "ITC available to be carried forward as per last VAT return, June 2017" was checked in audit. Audit found (between November 2019 and February 2020) that 24 taxpayers involving three Charge offices (Barrackpore, Bhabanipur and Salt Lake) claimed and utilised ITC of ₹ 83.95 lakh in Form GST TRAN-1, whereas ITC of ₹ 5.47 lakh only was available in their last VAT returns. It was further found that such excess claimed and utilised SGST ITC of ₹ 78.48 lakh (₹ 83.95 lakh-₹ 5.47 lakh) was subsequently reversed/paid by the taxpayers; however, interest was not paid. Also, no action was taken to realise the interest from the taxpayers. This resulted in non-realisation of interest of ₹ 12.29 lakh.

[231] *containing details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods (other than those periods covered in the notice), on the person chargeable with tax*

On this being pointed out, the three Charge offices accepted (March 2022) the audit observations in all cases and stated that reminders were issued/ the process of communication with the Registered Taxpayers was under process/ notices were issued for recovery of interest. They also informed that realisation of interest of ₹ 0.58 lakh in three cases had been made.

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

Kolkata
The 18 AUG 2022

(SATISH KUMAR GARG)
Principal Accountant General (Audit-I)
West Bengal

Countersigned

New Delhi
The 26 AUG 2022

(GIRISH CHANDRA MURMU)
Comptroller and Auditor General of India