Chapter IV: Compliance Audit of GST

This chapter includes audit findings related to Goods and Services Tax (GST). The instances mentioned in this chapter are those which came to notice in the course of test audit of GST transactions, conducted during the years 2018-19 and 2019-20. The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

4.1 Audit examination

During the years 2018-19 and 2019-20, we focused mainly on audit of transitional credits, GST registrations and refunds. Audit of GST returns is yet to be started as the original due date for filing annual return for 2017-18 by December 2018 has been subsequently extended to 5th/7th February 2020[49] in a staggered manner. Similarly, the original due date for filing annual return for 2018-19 by December 2019 has been subsequently extended to 31 December 2020[50].

The audit findings are included in the subsequent paragraphs:

Part A : Transitional credits

4.2 Introduction

With the introduction and implementation of 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. This was needed especially to provide for carry forward of input tax credits (ITC), relating to pre-GST taxes that were available with the taxpayers on the day of roll out of GST, into GST regime (*herein after referred to as transitional credits*).

Transitional credit provisions are important for both the Government and business. For business, these 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 GST.

[49] Notification No.6/2020-CT dated 3 February 2020

[50] Press release dated 24 October 2020

4.3 Provisions relating to transitional credits

4.3.1 Conditions for availing transitional credits

Section 140 of the CGST Act contains elaborate provisions relating to transitional arrangements for ITC. This section provides for a registered person, other than composition taxpayer, to carry forward closing balance of input tax credit under Central Excise and Service Tax Act as CGST and input credit under State VAT Acts as SGST, subject to specified conditions. The important conditions are discussed below : -

a) Credit can be carried forward as given in the last return filed under pre-GST statutes

b) Such credit should be admissible as ITC under GST Act and pre-GST Acts

c) Returns for at least previous six months before roll out of GST should have been furnished.

A registered person, not liable to be registered under the pre-GST law, or who was dealing with exempted goods / services or a first / second stage dealer or a registered importer or a depot of a manufacturer, is also entitled to carry forward credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock. The important conditions prescribed for this are that the said registered person should be in possession of invoice or other prescribed documents, evidencing payment of duty under the existing law in respect of such inputs, which were issued not earlier than twelve months immediately preceding the appointed day (viz. 1 July 2017).

4.3.2 Timelines for transitional credit returns

Rule 117 of the CGST Rules, 2017, provides that every registered person entitled to transitional credit, has to file a declaration electronically in FORM GST Tran-1, on the GST portal within 90 days of roll out of GST. This rule also provides for extension of this 90 days period by a further period not exceeding ninety days by the Commissioner, on recommendation of the GST Council. Thus, the *CGST Rules initially provided for a maximum of 6 months to file Tran-1*. However, to facilitate those taxpayers who could not file Tran-1 by the due date on account of technical difficulties on GST portal, a provision was inserted[51] in this rule for extension of date for Tran-1 by a further period not beyond 31 March 2020, on the recommendations of the Council.

The due date for filing or revising Tran-1, which *originally was 28 September 2017,* has been extended from time to time with final deadline extended to 31 March 2020 as detailed below : -

[51] Vide Notification no. 02/2020-CT dated 1 January 2020.

Date of Order	Extended due date	Reason for extension
18 and 21 Sep 2017	31 Oct 2017	The due date for submission of Tran-1 return was extended to facilitate revision of Tran-1.
28 Oct 2017	30 Nov 2017	No specific reason was found for extension but the GST Council discussed about the delay in development of the functionality for revision of Tran-1.
15 Nov 2017	27 Dec 2017	Based on deadlines provided by GSTN and discussions with GSTN, the due date for submission extended.
17 Sep 2018	Up to 31 Jan 2019 in certain cases	Owing to technical difficulties on common portal, extension recommended by the GST Council, for the class of registered persons who could not submit Tran-1 by the due date on account of technical difficulties on GST portal.
31 Jan 2019	Up to 31 March 2019 in certain cases	
7 Feb 2020	Up to 31 March 2020 in certain cases	

4.4 CBIC instructions for verification of transitional credits

CBIC issued instructions from time to time during September 2017 to March 2018 regarding verification of transitional credits by its field formations as detailed below : -

i. In September 2017, CBIC directed its field formations to verify claims of ITC of more than ₹ One crore by matching the credit claimed in transitional returns with the closing balance in returns filed under earlier laws, and checking eligibility of credit under GST regime.

ii. Through instructions dated 1 December 2017, field formations were directed to verify cases of transitional credit over ₹ One crore with special care and thereafter to undertake verification in descending order of credit availed.

iii. The circular issued (March 2018) by CBIC indicated that Central Tax Offices would verify transitional credit claims in respect of CGST in case of all taxpayers irrespective of whether the taxpayer was allotted to Central or State Tax Office. CBIC also shared the list of identified 50,000 cases of CGST credits along with datasets with Central Tax Offices and asked them to complete verification by March 2019. Ministry in

September 2020 informed that 37,622 Tran-I declarations have been verified by the CBIC field formations.

4.5 Inability to carry out audit of transitional credits due to non-furnishing of Tran-1 data by the DOR/CBIC

To conduct data analysis and identify areas of focus and to select units / cases for audit, we requested Department of Revenue to provide data relating to transitional credits. Despite repeated requests, we were not provided the requisitioned data[52] during FY 19 and FY 20.

In the absence of data, we could carry out only a limited audit of transitional credit claims in the units which we selected for audit based on other revenue related risk parameters. We had to restrict audit to mostly those Tran-I cases that had already been verified by the department, as access to other Tran-I declarations was not provided through the GST IT system.

4.6 Audit of transitional credits

Given the importance of transitional credits, being a one-time activity during transition to GST and its impact on revenue inflows in GST regime, we focussed on verification of transitional credit cases by CBIC field formations during our field audit in 2018-19 and 2019-20.

The individual cases noticed and the system lapses identified based on these cases are included in the subsequent paragraphs.

4.6.1 Overview of audit of transitional credits

During the period October 2018[53] to March 2020, we audited 626 ranges and 29 divisions in 81 Central GST Commissionerates and five Audit Commissionerates. We verified 5,822 out of 77,363 transitional credit cases in these units, and noticed 1,182 instances (20 *per cent*) of omissions with money value of ₹ 543.70 crore. Out of 1,182 instances issued as observations to CBIC field formations, 325 omissions had money value of more than ₹ 10 lakh in each case, and 857 omissions had money value of less than ₹ 10 lakh in each case.

105 significant observations pertaining to 36 Commissionerates have been included ***(Appendix-IV)*** in this report, involving a money value of ₹ 86.11 crore as detailed below: -

[52] The transitional credit data has now been provided in July 2020

[53] Audit objections noted before October 2018 have been reported in Audit Report No. 11 of 2019.

(₹ in crore)

Issue noticed	Commissionerates involved	No. of cases	Amount of audit objection
Irregular claim of transitional credit on input services in transit	4	18	36.77
Irregular availing of Cess of earlier regime as credit	13	16	4.52
Irregular claim of transitional credit on stock entered in books of accounts after the permissible period	11	13	6.67
Excess carry forward of Cenvat credit	12	13	4.01
Irregular availment of transitional credit on exempted goods	6	7	7.16
Irregular claim of transitional credit on goods in stock	1	5	7.69
Irregular availment of transitional credit without filing the ER-1/ST-3 returns	4	4	2.34
Irregular claim of transitional credit which do not fall in the ambit of inputs, input services and capital goods	3	3	0.69
Other irregularities related to transitional credits	15	26	16.26
Total		**105**	**86.11**

Out of these 105 cases, Ministry accepted the audit observation in 44 cases involving an amount of ₹ 21.18 crore and intimated recovery of ₹ 3.60 crore in 15 cases. Replies in the remaining cases are awaited (December 2020).

4.6.2 Irregular claim of transitional credit on input services in transit

The Point of Taxation Rules, 2011 provides that the point in time when a service shall be deemed to have been provided shall be earlier of the (1) Date of invoice or payment, whichever is earlier (if the invoice is issued within the prescribed period from the date of completion of the provision of service) (2) Date of completion of the provision of service or payment, whichever is earlier (if the invoice is not issued within the prescribed period as above) (3) Date of receipt of advance payment.

Para 8.1 of the Board's instructions of March 2018 required verification by the CBIC field formations that the duty paying document exists and confirming

from the taxpayer that the duty or the tax paying document were recorded in the books of account of such person as per the conditions prescribed in law.

During test check of 167 transitional credit declarations out of 333 in selected four[54] CGST Commissionerates, it was observed in eighteen cases that the taxpayers irregularly claimed transitional credit of ₹ 36.77 crore under table 7(b)[55] of Tran-1 declaration. During test check of invoice details in the statement of Cenvat credit transitioned through table 7(b) of Tran-1, we noticed that the taxpayers had irregularly carried forward Cenvat credits, which were invoiced before the appointed date. As per the provisions of Point of Taxation Rule, 2011, these input services had already been received on the invoice date i.e. before 30 June 2017. Accordingly, the credits were required to be taken through table 5(a)[56] instead of table 7(b) of Tran-1 declaration. Hence, the irregular credits claimed on such input services amounting to ₹ 36.77 crore need to be recovered.

Though these cases had been verified by the department, the lapses pointed out by Audit were not detected.

When we pointed these out (between November 2018 and May 2019), the department intimated that show cause notices (SCN) were issued in seven cases and the taxpayers had reversed credit in two cases. The department further stated (between July and October 2019) that the credit cannot be denied on the ground of procedural lapses. As the GST is a new tax scheme, the taxpayers were likely to commit such procedural mistakes.

Though the department in its reply admitted that there was procedural lapse, the departmental contention regarding allowance of such credit is not acceptable, as the possibility of the taxpayer claiming credit twice on the same invoice i.e., one through table 5(a) and again through table 7(b) cannot be ruled out. The department, therefore, needs to confirm this aspect for the above mentioned cases.

Reply of the Ministry is awaited (December 2020).

4.6.3 Irregular availing of cess of earlier regime as credit

Through the Taxation Law Amendment Act, 2017, the Education Cess (EC), Secondary and Higher Secondary Cess (SHEC), Swachh Bharat Cess (SBC), and Krishi Kalyan Cess (KKC) were abolished with effect from 1 July 2017 and had,

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54 Belapur, Bhiwandi, Mumbai south and Pune I

55 Table 7(b) : Amount of eligible duties and taxes/VAT in respect of inputs or input services under section 140(5) and section 140(7)

56 Table 5(a) : Amount of Cenvat credit carried forward to electronic credit ledger as central tax (Section 140(1), Section 140(4)(a) and Section 140(9)

thus, become ineligible to be carried forward to GST regime as input tax credit (ITC). This was also clarified by the directions of the CBIC in March 2018.

Section 140(9) stipulates that where any Cenvat credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed subject to the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

Para 4.1.1 of the Board's instructions of March 2018 requires the CBIC field formations to verify that the credit taken should not be more than the closing balance of credit in legacy Service Tax and Central Excise returns minus the cess.

We noticed in 16 cases, in 12[57] Commissionerates, that the taxpayer had availed input tax credit of the above mentioned cesses in Tran-1 amounting to ₹ 4.52 crore ***(Appendix-IV),*** which was inadmissible.

When we pointed this out (between September 2017 and March 2019), the Ministry, while admitting the observation in nine cases, intimated (between August and December 2020) recovery of ₹ 1.71 crore in seven cases. Reply of the Ministry in the remaining cases is awaited (December 2020).

One illustrative case is given below: -

During test check of transitional credit declarations in Alandur Outer range of Pallavaram Division under Chennai Outer Commissionerate, we observed that a taxpayer had carried forward the input tax credit of ₹ 44.40 lakh in respect of EC, SHEC and KKC. The taxpayer also reclaimed the transitional credit of ₹ 41.23 lakh in terms of Section 140 (9) of the Act, ibid, in respect of EC, SHEC and KKC. Since these cesses are not eligible to be carried forward, the total amount of ₹ 85.63 lakh needs to be recovered. Though this case was verified by the department, this lapse was not detected by the department.

When we pointed this out (September 2019), the Ministry while admitting the objection intimated (August 2020) that a show cause notice had been issued to the taxpayer. However, as regards reasons for non-detecting the lapse, it was stated that department had already detected the lapse during service tax internal audit conducted in January and June 2019.

The reply of the Ministry regarding non-detection of this lapse is partially acceptable. Though the department had detected irregular carry forward of

[57] Bengaluru East, Chennai Outer, Delhi South, Delhi East, Hyderabad (Audit-1), Bengaluru North, Bengaluru South, Howrah, Vadodara – I, Ahmedabad South, Visakhapatnam and Gurugram

₹ 44.40 lakh, it did not detect reclaimed transitional credit of ₹ 41.23 lakh. Further, the department had not issued SCN in respect of irregular carry forward of ₹ 44.40 lakh until the irregularity was pointed out by Audit.

4.6.4 Irregular claim of transitional credit on stock entered in books of accounts after the permissible period

As per Section 140(5) of CGST Act, 2017, transitional credit can be availed in respect of inputs or input services received on or after 1 July 2017, the duty or 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 duty or tax paying document of the same was recorded in the books of accounts of such person within a period of thirty days from the appointed day (1 July 2017). The period of thirty days may, on sufficient cause being shown, can be extended by the Commissioner for a further period not exceeding thirty days.

Para 8.1 of the Board's instructions of March 2018 required verification by CBIC field formations that the duty paying document exists and confirming from the taxpayer that the duty or the tax paying document were recorded in the books of account of such person as per the conditions prescribed in law.

In respect of 13 cases in 11 Commissionerates[58], we noticed irregular availment of transitional credit involving revenue of ₹ 6.67 crore **(*Appendix-IV*)** without adhering to the provisions quoted above.

When we pointed this out (between November 2018 to February 2020), the Ministry, while admitting the observation in ten cases, intimated (between August and December 2020) recovery of ₹ 40.19 lakh in two cases. Reply of the Ministry in the remaining cases is awaited (December 2020).

One illustrative case is given below: -

During test check of transitional credit declarations in Egmore III range of Egmore Division under Chennai North CGST Commissionerate, we noticed that a taxpayer claimed transitional credit of ₹ 24.59 crore under table 7(b) of Tran-1 declaration. It was noticed that 914 invoices were entered in the books of accounts beyond the permissible period of 30 days, which were not eligible to be carried forward under the Act, ibid. The ineligible transitional credit amounted to ₹ 3.36 crore, which needs to be recovered from the taxpayer.

When we pointed this out (August 2019), the Ministry while admitting the objection stated (September 2020) that a show cause notice had been issued for ₹ 3.36 crore.

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[58] Daman, Chennai North, Coimbatore (Audit), Hyderabad (Audit – 1), Visakhapatnam (Audit-1), Vadodara-II, Tiruchirappalli, Kolkata North, Bolpur, Ahmedabad South and Gandhinagar

4.6.5 Excess carry forward of Cenvat credit

As per Section 140 (1) of the CGST Act, 2017, a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of Cenvat credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed. Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as Cenvat credit under the existing law and is also admissible as input tax credit under this Act.

Further, as per section 50(3), a taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four *per cent*.

Para 4.1.1 of the Board's instructions of March 2018 requires CBIC field formations to verify that the credit taken should not be more than the admissible closing balance of credit in legacy Service Tax and Central Excise returns.

In respect of 13 cases in 12 Commissionerates[59], we noticed irregular carry forward of excess Cenvat credit involving revenue of ₹ 3.84 crore **(*Appendix-IV*)** without adhering to the provisions quoted above.

When we pointed this out (between October 2017 to August 2020), the Ministry, while admitting the observation in seven cases, intimated (between September and December 2020) recovery of ₹ 77.08 lakh in one case. Reply of the Ministry in the remaining cases is awaited (December 2020).

One illustrative case is given below: -

During test check of transitional credit declarations in Range 4 under Kochi Commissionerate, we noticed that a taxpayer had availed Cenvat credit of ₹ 9.99 crore as per the ST-3 return for second half of 2016-17 as against ₹ 9.25 crore available as per Cenvat credit statement. This had resulted in availing of excess credit of ₹ 73.60 lakh which needs to be reversed.

When we pointed this out (October 2017), the Ministry while admitting the objection intimated (September 2019) that the taxpayer had reversed the excess credit.

[59] Bengaluru East, Chennai South, Coimbatore, Kochi, Delhi East, Dimapur East, Guwahati, Pune I, Bengaluru North, Delhi West and Medchal

4.6.6 Irregular availment of transitional credit on exempted goods

As per Section 140 (1) of the CGST Act, 2017 a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of Cenvat credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed. Provided that the registered person shall not be allowed to take credit where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

Further, as per section 50(3), a taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four *per cent*.

Para 6.1 of the Board's instructions of March 2018 requires CBIC field formations to verify that if only exempted goods were being manufactured, Rule 6(2) of Cenvat Credit Rules (CCR) did not allow any credit in the Cenvat register and therefore, no credit can flow from the return in relation to inputs in such cases. The entry in table 5(a) of Tran-1 should, therefore, be Nil. In such cases, only credit of inputs and inputs contained in semi-finished goods which existed in stock on the day of the transition and for which conditions prescribed in section 140(3) are satisfied would be available.

In respect of seven cases in six Commissionerates[60], we noticed irregular availment of transitional credit on exempted goods involving revenue of ₹ 7.16 crore **(*Appendix-IV*)** without adhering to the provisions quoted above.

When we pointed this out (between November 2018 to August 2020), the Ministry, while admitting the observation in four cases, intimated (between November and December 2020) recovery of ₹ 5.42 lakh. Reply of the Ministry in the remaining cases is awaited (December 2020).

One illustrative case is given below: -

During test check of transitional credit declarations in Coimbatore Audit Commissionerate, we noticed that a taxpayer, manufacturer of viscose staple fibres (VSF), availed transitional credit of ₹ 1.94 crore towards carry forward of closing balance of Cenvat credit in table 5(a). The credit availed was utilised in full.

Since manufacturing of VSF, falling under central excise tariff 55101110, was exempt from payment of excise duty in terms of Notification No. 30/2004-CE,

[60] Coimbatore, Coimbatore (Audit), Gandhinagar, Madurai, Guntur and Ahmedabad South

dated 9 July 2004, the tax payer was not entitled to avail any Cenvat credit on inputs and input services and therefore, not eligible to carry forward any balance of credit in table 5(a). Thus, the carry forward of closing balance of ₹ 1.94 crore as transitional credit needs to be recovered. Further, as the credit was utilised in full, interest at 24 *per cent* amounting to ₹ 96.83 lakh was also recoverable from the taxpayer.

When we pointed this out (February 2020), the Ministry while not admitting the objection stated (August 2020) that the tax payer has only carried forward accrued eligible credit as per the provisions of Cenvat Credit Rules, 2004 from the erstwhile dubitable regime, and from the period 2008-09 onwards, the assessee was operating under both notifications Nos.29/2004-CE (partially exempted) and 30/2004-CE (fully exempted) dated 9 July 2004. Ministry further stated that on perusing the ER-1 data, the eligible carry forward credit pertaining to dubitable regime amounts to ₹ 1.71 crore as on April 2008 and that the tax payer has not availed input credit on raw materials meant for manufacture of exempted goods. The tax payer availed credit on raw materials only in the instances used for manufacture of dutiable goods as per notification 29/2004-CE dated 9 July 2004.

The reply of the Ministry is not acceptable as scrutiny of the ER-1 returns for the period January to June 2017, furnished to audit, revealed that the tax payer in fact had cleared the said goods by availing exemption under notification No.30/2004-CE dated 9 July 2004 and hence, Cenvat credit on inputs is not admissible. Thus, the carry forward of closing balance of ₹ 1.94 crore in Table 5(a) as transitional credit was ineligible.

4.6.7 Irregular claim of transitional credit on goods in stock

As per Section 140(3) of CGST Act, a registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing the benefit of notification No. 26/2012—Service Tax, dated 20 June 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties 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 duty under the existing law in respect of such inputs; (iv) such invoices or other prescribed documents were issued not earlier than twelve months

immediately preceding the appointed day; and (v) the supplier of services is not eligible for any abatement under this Act.

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents as evidence of payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

Para 6.1 of the Board's instructions of March 2018 requires tax authorities to verify those cases carefully, where the credit is being shown by an assessee who was registered in Central Excise or Service on account of inputs relating to exempted goods, and to carefully check whether the assessee has followed the provisions of rule 6 of Cenvat Credit Rules.

During the scrutiny of 167 transitional credit declarations out of 333 in selected four[61] CGST Commissionerates, in five cases we observed irregular claim of transitional credit on goods in stock amounting to ₹ 7.69 crore by the taxpayers.

One illustrative case is given below: -

A taxpayer in Pune-I CGST Commissionerate, claimed transitional credit of ₹ 5.62 crore under table 7(a)[62] in Tran-1. On test check of invoices/documents, it was noticed that such inputs were procured from their existing registered manufacturing unit located at Jammu & Kashmir (J&K). The taxpayer cleared excisable goods availing benefit under notification No.1/2010-CE dated 6 February 2010, which exempts the clearance from a unit located in the state of J&K from levy of excise duty or additional excise duty. Further, it was noticed that a refund of ₹ 4.40 crore was sanctioned to the taxpayer on account of central excise duty paid by him under the said notification, which proves that the excise duty element which had been paid earlier by the manufacturing unit at J&K through PLA was returned back to the manufacturing unit by way of refund, which implies that the goods became exempted. Hence, the goods lying in the stock procured from J&K unit of the taxpayer were not eligible for claim of transitional credit. This resulted in incorrect claim of transitional credit on goods in stock amounting to ₹ 5.62 crore, which needs to be recovered.

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[61] Belapur, Bhiwandi, Mumbai south and Pune I

[62] Table 7(a) : Amount of duties and taxes on inputs claimed as credit excluding the credit claimed under Table 5(a) (under sections 140(3), 140(4)(b), 140(6) and 140(7))

When we pointed this out (May 2019), the department stated (June 2019) that the impugned goods received by the taxpayer on payment of duty from their unit in J&K cannot be considered as exempted goods for the reason that the J&K unit has claimed refund of duty payable on value addition. Department further stated that the taxpayer had received the goods under duty paying documents and the amount claimed as transitional credit under table 7(a) was found to be proper and in order. However, an SCN in this matter was being issued.

The reply of the department is not acceptable since Section 140(3) of CGST Act, 2017, clearly stipulates that the said registered person should be in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs. The excise duty element which had been paid earlier by the manufacturing unit at J&K through PLA was returned back to the manufacturing unit by way of refund, which implied that the goods became exempted from payment of duty. The taxpayer at Pune location received the goods under cover of tax invoice from its J&K unit and claimed transitional credit under table 7(a). Claim of such credit resulted in undue double benefit to the taxpayer once in the form of refund and second in the form of transitional credit.

Reply of the Ministry is awaited (December 2020).

4.6.8 Irregular availment of transitional credit without filing ER-1/ST-3 returns

As per Section 140 (1) of the CGST Act, 2017, a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of Cenvat credit 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 subject to the condition that the registered person should have filed all the returns under the existing law for the period of six months immediately preceding the appointed date.

Section 50(3) stipulates that a taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four *per cent*.

Para 4.3 of the Board's instructions of March 2018, requires tax authorities to verify submission of last six months returns by the taxpayer claiming transitional credit.

During test check in four Commissionerates[63], we noticed Irregular availment of transitional credit of ₹ 2.34 crore by four taxpayers without filing the requisite ER-1/ST-3 returns **(*Appendix-IV*)**.

These cases were brought to the notice of the Ministry between June and August 2020. The reply of the Ministry is awaited (December 2020).

One illustrative case is given below: -

During the test check of transitional credit declarations in Chennai outer Commissionerate, it was observed that a taxpayer carried forward the closing balance of ₹ 25.34 lakh in the ER 1 return of June 2017 (filed belatedly on 17 November 2017) as transitional credit through Tran-1 declaration. However, the taxpayer had not filed ER-1 returns for the period from January to May 2017 thereby rendering the taxpayer ineligible to avail transitional credit as per the provisions cited above. The entire amount of transitional credit of ₹ 25.34 lakh, therefore, needs to be recovered along with interest of ₹ 13.68 lakh.

Though the issue of non –filing of ER-1 returns for consecutive 6 months prior to the appointed day was red-flagged by the system, the Range officer failed to act upon it by not disallowing the transitional credit during verification process.

When we pointed this out (December 2019) the department stated (February 2020) that the taxpayer has been instructed to pay the transitional credit of ₹ 25.34 lakh along with interest.

Reply of the Ministry is awaited (December 2020).

4.6.9 Irregular claim of transitional credit which do not fall in the ambit of inputs, input services and capital goods

Section 140 (2) of CGST Act, 2017, stipulates that 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 unavailed Cenvat credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed provided that the registered person shall not be allowed to take credit unless the said credit was admissible as Cenvat credit under the existing law and is also admissible as input tax credit under this Act.

Section 140(3) of the said Act provides that a first stage dealer shall be entitled to take in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock on the appointed day.

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[63] Bengaluru South, Belapur, Pune-I and Chennai outer

During test check in three Commissionerates[64], we noticed irregular claim of transitional credits in three cases which do not fall in the ambit of inputs, input services and capital goods involving revenue of ₹ 0.69 crore **(*Appendix-IV*)** without adhering to the provisions quoted above.

When we pointed these out (between August and December 2019), the Ministry while admitting the objection in one case intimated (August 2020) recovery of ₹ 18.83 lakh. Reply in the remaining cases is awaited (December 2020).

One illustrative case is given below: -

As per Rule 2(l) of Cenvat Credit Rules (CCR), 2004, as amended, 'input service' means any service used by a provider of output service for providing that service. Rule 3 of CCR provides that a provider of output service shall be allowed to take credit of duties and taxes specified thereunder paid on any input service received by the provider of output services.

During the test check of transitional credit declarations in Walajabad range, Maraimalai Nagar Division in Chennai outer Commissionerate, we observed that a taxpayer, a first stage dealer, also engaged in providing Business Auxiliary Service, availed transitional credit of ₹ 59.49 lakh in terms of section 140(1) and on duties paid on inputs held in stock on the appointed day under section 140(3) of the CGST Act.

We noticed that the taxpayer under the erstwhile law availed Cenvat credit of service tax paid on warehouse rent amounting to ₹ 18.83 lakh and carried forward the same as balance of credit. The warehouse was taken on lease to store the imported goods meant for subsequent sales and had no connection to the output service provided by the taxpayer, which was on account of the sales commission received from the parent company. Therefore, the lease rent paid for warehousing the imported goods did not fall within the ambit of "input service" as defined in the CCR, 2004. Consequently, the service tax credit of ₹ 18.83 lakh availed and carried forward as transitional credit was inadmissible and recoverable from the taxpayer along with interest of ₹ 10.17 lakh.

When we pointed this out (December 2019) the Ministry while admitting the objection intimated (August 2020) that the taxpayer had paid ₹ 18.83 lakh, and a show cause notice had been issued for interest.

[64] Chennai outer, Guntur and Medchal

4.6.10 Other irregularities related to transitional credits

In respect of 27 cases in 16 Commissionerates[65], we noticed irregular claim of transitional credit on issues other than those pointed out in the preceding paragraphs involving revenue of ₹ 17.20 crore **(*Appendix-IV*)**.

When we pointed these out (between November 2018 and February 2020), the Ministry while admitting the objection in 13 cases intimated (between August and December 2020) the recovery of ₹ 47.31 lakh in three cases. Reply in the remaining cases is awaited (December 2020).

A few illustrative cases are given below: -

(a) Irregular availment of transitional credit on works contract service

Section 140(3) of the Central Goods and Services Act (CGST Act), 2017 stipulates that a registered person who was providing works contract service and was also availing the benefit of Notification No. 26/2012-ST dated 20 June 2012 (provides abatement to the persons discharging service tax under the category of construction services) shall be entitled to avail credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

During test check of transitional credit declarations in AED-1 Range, under Bengaluru East Commissionerate, we noticed that a taxpayer was engaged in providing works contract services for construction of residential complexes in the erstwhile service tax regime. While verifying the transitional credit claimed by the taxpayer, we noticed that the taxpayer availed transitional credit of ₹ 4.81 crore in respect of inputs held in stock. Further verification revealed that the taxpayer was paying service tax under works contract service without availing the benefit of Notification No. 26/2012-ST, dated 20 June 2012. Hence, the taxpayer was not eligible to carry forward the said credit of ₹ 4.81 crore.

Though this case was verified by the department, this lapse was not detected by the department.

When we pointed this out (January 2019), the department stated (August 2019) that Bengaluru Audit Commissionerate-I verified the transitional credit availed by the taxpayer during Internal Audit (March 2019) and did not find any discrepancy.

The department's reply was generic and did not specify the grounds on which the taxpayer was eligible to avail the said credit. The department's reply shows not only the failure of Internal Audit in detecting the lapse but also the fact

[65] Gandhinagar, Bengaluru East, Chennai North, Coimbatore (Audit), Hyderabad, Hyderabad (Audit-I), Bhubaneswar, Rourkela, Belapur, Bhiwandi, Mumbai South, Pune-I, Ranchi, Visakhapatnam, Guntur and Ahmedabad South

that it did not substantively address the lapse pointed out in the audit observation.

Reply of the Ministry is awaited (December 2020).

(b) Irregular claim of transitional credit on inadmissible items

(i) Section 140(1) of the CGST Act, 2017 stipulates that a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of Cenvat credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed. Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as Cenvat credit under the existing law and is also admissible as input tax credit under this Act.

Section 140 (2) of CGST Act, 2017, stipulates that 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 unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed provided that the registered person shall not be allowed to take credit unless the said credit was admissible as Cenvat credit under the existing law and is also admissible as input tax credit under this Act.

Further, natural gas being a petroleum product has been kept out of the ambit of GST and the existing central excise law is applicable to it.

During test check of Tran-1 declarations in Range I under Ahmedabad South Commissionerate, it was observed that a taxpayer claimed the input tax credit of ₹ 2.21 crore in respect of Cenvat credit related to manufactured products which are out of the ambit of Goods and Services Tax. The taxpayer is engaged in the business of gas distribution including sale, purchase, supply, distribution, transportation, trading in Natural Gas, Compressed Natural Gas (CNG) and Piped Natural Gas (PNG) through pipelines, trucks or other mode of transportations. After migration to GST regime, the assessee continued to maintain its registration under Central Excise regime for payment of central excise duty/VAT on its manufactured products (natural gas) that are outside the ambit of GST. Since the products (CNG, PNG) manufactured by the assessee do not attract GST, Cenvat credit on any input/input services/capital goods related to the manufacturing of these products was also not eligible to be carried forward as input tax credit (ITC) under GST Act. This resulted in carry

forward of inadmissible Cenvat credit of ₹ 2.21 crore, which needs to be recovered.

When we pointed this out (November 2019), the Ministry while admitting the objection intimated (December 2020) that the draft SCN was being issued.

(ii) As per Section 16(1) of the CGST Act, 2017, every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Further, as per Section 17(5) of the CGST Act, 2017, notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of (a) motor vehicles and other conveyances except when they are used for making taxable supplies, (b) supplies of foods and beverages, outdoor catering, any inward supplies for making an outward taxable supply, (b) (iii) rent-a-cab, life insurance and health insurance except where the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force, (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business, (g) goods or services or both used for personal consumption. In case where input credits has been wrongly availed or utilized for any reason can be recovered with interest under Section 73 or 74 of the Act.

During the course of audit (August 2019) of Paradeep II range under Bhubaneswar Commissionerate, audit scrutiny of GSTR-3B return, electronic credit ledger, and GST ITC register for the period from July 2017 to March 2018 of a taxpayer revealed that the taxpayer had irregularly availed ITC on GST paid on inadmissible goods viz., Cement, TMT bars, medicines for corporate hospitals, and supply of services viz., civil works, canteen, guest house expenses, maintenance of civil township etc., which are inadmissible as per provisions ibid. This resulted in irregular availment of input tax credit on inadmissible items amount to ₹ 1.14 crore which needs to be reversed along with interest and penalty.

When we pointed this out (January 2019), the Ministry while admitting the objection intimated (November 2020) that the SCN had been issued to the taxpayer.

(c) Irregular claim of transitional credit of VAT under value of tax deducted at source

Section 73(1) of CGST Act, 2017 stipulates that where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any willful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

During test check of transitional credit declarations in Range II of Giridih division falling under Ranchi CGST Commissionerate, we noticed that a taxpayer claimed VAT credit of ₹ 2.16 crore through Tran-1 declaration. After verification, the State tax authority intimated the Central Tax authority that the ITC claim of ₹ 2.16 crore by the taxpayer was inadmissible as the said amount was the value of tax deducted at source. Hence, action under section 73 of the Act, ibid, was to be initiated. However, till the date of audit (December 2018), action under section 73 had not been initiated by the department.

When we pointed this out (December 2018), the Ministry while admitting the objection stated (September 2020) that the action for recovery of ineligible ITC (under SGST) has been initiated as per section 73.

(d) Both transitional credit and refund allowed irregularly for the same Cenvat credit

Section 142(3) of CGST Act, 2017 provides that every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of Cenvat credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing Law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing Law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944. Provided that where any claim for refund of Cenvat credit is fully or partially rejected, the amount so rejected shall lapse. Provided further that no refund shall be allowed of any amount of Cenvat credit where the balance of the said amount as on the appointed day has been carried forward through Tran-1.

During test check of transitional credit declarations in Pune-I CGST Commissionerate, we observed that a taxpayer claimed transitional credit of ₹ 1.54 crore through Tran-I. We noticed that the taxpayer had filed two refund claims for the same amount of ₹ 1.54 crore under Rule 5 of Cenvat Credit Rules, 2004 read with notification No.27/2012-CE (NT) dated 18 June 2012 against the export of services for the period July 2016 to September 2016, and October 2016 to December 2016. The said refund claims were sanctioned to the taxpayer. Thus, the irregular transitional credit of ₹ 1.54 crore for which the refund has been sanctioned, needs to be recovered.

Though this case was verified by the department, it did not point out this lapse.

When we pointed this out (May 2019), the department while admitting the objection intimated (June 2019) that an amount of ₹ 1.38 crore had been recovered and the balance amount of ₹ 15.76 lakh was being recovered.

Reply of the Ministry is awaited (December 2020).

Systemic issue

4.6.11 Transitional credit verification done by the department on inadequate records

The Board had prescribed 14 checks to be carried out by the tax officials during transitional credit verification process. Different records/information were required to apply these 14 checks. As per para 13.1 of the guidance note, it was also directed that foremost effort should be taken to verify Tran-1 Credit on the basis of data already available with the department without contacting the taxpayer. Where such verification needs contact with the taxpayer, a letter may be written giving adequate lead time and calling for specific information which would assist in verification as per the fourteen checkpoints listed above. Record of results obtained shall be maintained in the Commissionerate concerned and reported to the Board on or before the 10thof the month following the quarter in which verification is completed.

During the course of audit of CGST Commissionerates of Pune-I and Belapur, to ascertain the status of records available in case files, Audit had requested to furnish all Tran-1 verified cases. On perusal of case files, it was noticed that the records and information in the case files were very limited, even basic records/information such as copy of Tran-1 form, Electronic Credit Ledger, Statement of credit claimed in different tables of Tran-1 form, ER-1/ST-3 returns for last 6 months, Electronic Cash Ledger etc. were not available in the produced case files. The records/information available in the Tran-I verification files were grossly inadequate.

When we pointed this out (May 2019), the department stated (July 2019) that AIOs computer terminals (all in one) were not fully functional, as all the back end systems of the department were not in place. Hence, the verification process carried out in Phase-1 mainly focussed on the documents/information that were readily available or the information submitted by the taxpayers.

The reply of the department indicates that the verification of Tran-1 cases was not performed as per the Board's guidance note and such limited exercise can not be considered optimal for achieving the objectives of Tran-1 verification.

Reply of the Ministry is awaited in all the above cases (December 2020).

Part B : Refunds

4.7 Overview of audit of refund claims

During the period October 2018 to March 2020, we examined the records relating to 4,736 refunds out of 23,106 in 33 CGST Commissionerates. We noticed non-adherence to extant provisions in processing of refunds in 280 claims (6 *per cent*) involving an amount of ₹ 16.16 crore. Out of these, the department while admitting the audit objections in 53 cases intimated recovery of ₹ 1.87 crore in 15 cases. Out of 280 claims against which audit observation was issued to CBIC field formations, 42 claims had money value of more than ₹ 10 lakh in each case, and 238 claims had money value of less than ₹ 10 lakh in each case.

Twenty five significant observations in six Commissionerates have been included (***Appendix-V***) in this report, involving a money value of ₹ 8.26 crore as detailed below: -

(₹ in crore)

Issue noticed	Commissionerates involved	No. of cases	Amount of audit objection
Irregular grant of refund due to non-consideration of minimum balance in electronic credit ledger	2	10	5.57
Irregular sanction of refund of input tax credit availed on capital goods	2	3	1.18
Other cases	3	12	1.51
Total		25	8.26

Out of these 25 cases, Ministry accepted the observation in two cases involving an amount of ₹ 32.54 lakh and intimated (between August and October 2020) recovery of ₹ 32.54 lakh. Replies in the remaining cases are awaited. Two

cases on compliance issue and two cases on systematic issues are narrated below:-

4.7.1 Irregular grant of refund due to non-consideration of minimum balance in electronic credit ledger at the end of tax period

Section 54 (3) of the Central Goods and Services Tax Act, 2017, stipulates that refund of ITC in respect of zero-rated supplies can be claimed by registered persons at the end of tax period. Rule 89 (3) of the Central Goods and Service Tax Rules, 2017 provides that for refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed. Further, Rule 89(4) of the Central Goods and Services Tax (CGST) Rules, 2017, prescribes the formula as per which the refund in the case of zero-rated supply of goods or services shall be granted.

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

where, "Net ITC" means input tax credit availed on inputs and input services during the relevant period, and refund amount means the maximum refund amount that is admissible.

The CBIC vide circular dated 4 September 2018 has clarified that in case of refund of unutilized input tax credit of zero rated supplies, the refundable amount is to be calculated as the least of the following amounts:

(a) The maximum refund amount as per the formula laid down in rule 89(4) of the CGST Rules, 2017;

(b) The balance in the electronic credit ledger of the claimant at the end of the tax period for which the refund claim is being filed after the return for the said period has been filed; and

(c) The balance in the electronic credit ledger of the claimant at the time of filing the refund application.

Further, according to Section 142 of CGST At 2017, refund of tax/duty paid under the existing law (Central Excise Act, 1944 and Finance Act, 1994) shall be disposed of in accordance with the provisions of existing law.

CBIC instructions dated 15 November 2017 directed inter alia that post-audit of all GST refund orders has to be carried out on the basis of extant guidelines. Para 2.6 of the Circular dated 16 May 2008 prescribed that post-audit be completed within two months of the date of refund Order-in-Original.

(i) During test check of refund claims (January 2019) in Central Tax and Central Excise Division Perumbavoor, we noticed that a taxpayer had applied (February 2018) for refund of ITC of ₹ 2.56 crore (₹ 2.34 crore as CGST and

₹ 22.56 lakh as SGST) for the month of July 2017, and the Department had sanctioned (April 2018) refund of ₹ 2.54 crore (₹ 2.32 crore as CGST and ₹ 22.04 lakh as SGST). The eligible refund was, however, ₹ 27.97 lakh (i.e. least of the three amounts as per CBIC criteria), being the unutilized ITC balance in ECL at the end of July 2017. As a result, there was irregular sanction of CGST refund of ₹ 2.27 crore. We further noticed that the sanctioned refund ₹ 2.54 crore (₹ 2.32 crore as CGST and ₹ 22.04 lakh as SGST) included Cenvat credit of ₹ 1.15 crore, refund of which was not in order.

Even though the refund in the above case was sanctioned in April 2018, post-audit was not carried out which was the only check available to ensure statutory compliance as well as arithmetical accuracy.

Further, SGST refund of ₹ 3.60 lakh was adjusted towards excess CGST refund of ₹ 2.27 crore, whereas Section 49(5)(f) of CGST Act, 2017 does not permit utilisation of State Tax or Union Territory Tax towards payment of Central Tax.

When we pointed this out (January 2019), the Ministry while not admitting the objection stated (October 2020) that the computation of refunds to be claimed as per refund application on GST portal included values as per Statement 3A, balance in electronic cash ledger, tax credit availed during the period and eligible amount (lowest of all). The option to calculate the least of the three amounts came in effect after circular dated 4 September 2018. It was further stated that a protective show cause demand has also been issued. As regards adjustment of ₹ 3.60 lakh SGST towards CGST, it was intimated that final adjustment of the CGST and SGST will be done during the adjudication of show cause notice.

The reply of the Ministry is not acceptable as the circular dated 4 September 2018 is clarificatory in nature and provides clarification of refund related issues. As per the provision quoted above, refund is required to be calculated as the least amount of the three as per the provisions of the statute. The reply of the Ministry is silent on the aspect of non-conducting of post audit of the refund case.

(ii) During test check of refund records of Division IV in Mumbai East Commissionerate, it was observed that a taxpayer was sanctioned (July and September 2018) refund of ₹ 2.45 crore on account of zero-rated supply of goods for the month of July 2017 as claimed. Audit scrutiny revealed that the balance in the electronic credit ledger of the claimant at the end of the tax period, after filing of the return for the said period, was at ₹ 1.10 crore. This being the least, the claimant was entitled to refund to the extent of ₹ 1.10 crore. Thus, there was an excess allowance of refund of ₹ 1.35 crore (CGST: ₹ 48.25 lakh, SGST: ₹ 48.25 lakh and IGST: ₹ 38.32 lakh).

When we pointed this out (February 2019), the department while not accepting (March 2019) the para contented that the refund amount was calculated by the GST portal as per the then existing instructions issued by the Board vide circular dated 15 November 2017, and the department had only manually processed the claims as per the instructions. Further, the department was of the view that the revised method of determining refundable amount was to be followed after the date of issue of circular dated 4 September 2018.

Reply of the department is not acceptable as the Board's circular is clarificatory in nature explaining the intention of the law. The intention of the legislature was not to allow full refund of ITC in respect of zero rated supplies when in fact it was partly utilised for discharge of liability for local supplies and balance in the credit ledger at the end of tax period was less than the ITC availed. It prima facie appeared that there were deficiencies in devising the refund module, and as such the common portal admitted the refund claim despite the balance in the electronic credit ledger, at the end of tax period, was less than the accumulated ITC claimed as refund. Further, contention of the department that the method of determining refund clarified in Board's circular dated 4 September 2018 was applicable from the date of issue of the circular is not acceptable.

Reply of the Ministry is awaited (December 2020).

4.7.2 Irregular sanction of refund of input tax credit availed on capital goods

During test check of refund claims in Maraimalai Nagar Division of Chennai Outer Commissionerate, it was observed that in three refund claims of a taxpayer for the tax-period October to December 2017, refund of unutilized input tax credit of ₹ 5.65 crore was sanctioned. While computing the "Net ITC" for arriving at the refund amount, the taxpayer included the ITC of ₹ 1.10 crore availed on capital goods. This resulted in irregular sanction of refund of ₹ 1.10 crore, which was recoverable with interest in terms of section 73 read with section 50 of the CGST Act, 2017. Though the refund claims were sent for post audit, this excess refund was not noticed.

When we pointed this out (October 2019), the Ministry stated (December 2020) that the excess refund of ₹ 1.10 crore was recovered (March 2020) along with interest of ₹ 27.28 lakh.

Systemic issues

4.7.3 Abnormal delay in communicating refund orders to counterpart tax authority

Section 54 (7) of the CGST Act, 2017 stipulates that refund order shall be issued within sixty days from the date of receipt of application complete in all respects. Further, Rule 91 (2) of the Central Goods and Service Tax Rules, 2017 provides that after scrutiny of the refund claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund, sanctioning authority can sanction the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days from the date of the acknowledgement under.

Further, as per Board circular dated 21 December 2017, refund order issued either by central tax authority or state tax/UT tax authority shall be communicated to the concerned counterpart tax authority within 7 working days for the purpose of payment of relevant sanctioned amount of tax or cess as the case may be. It was also reiterated therein to ensure adherence to time line specified under section 54(7) and rule 91(2) of CGST Act and Rules respectively for sanction of refund orders.

During test check of refund claims in Mumbai East Commissionerate, we observed that out of 3,730 refund orders issued upto December 2018, the Commissionerate forwarded 972 refund orders (26 *per cent*) involving ₹ 47 crore to the nodal officer in Principal Chief Commissioner's office Mumbai for onward transmission to state tax authority with a delay ranging from 16 to 195 days. Department did not intimate the exact dates of communication of these orders to state tax authority for subsequent payment of refund to the taxpayers concerned.

Further, it was observed from the data made available that out of 4,519 refund orders transmitted by state tax authority during financial years 2017-18 and 2018-19 (upto December 2018), 4,382 refund orders (97 *per cent*) involving ₹ 419.37 crore were forwarded by Mumbai East Commissionerate to PAO for payment of refund claim with a delay ranging from 16 to 383 days.

Department has been requested to ascertain whether interest was paid to the tax payers on delayed payment of refund on the above mentioned cases.

This was brought to the notice of the department in March 2019. Reply of the department is awaited.

Reply of the Ministry is awaited (December 2020).

4.7.4 Non-production of records for audit

We intimated Mumbai East Commissionerate in July 2018 that the audit of GST Refund cases would be taken up from October 2018. Subsequently, we issued requisitions calling for 652 GST Refund cases for audit in the month of October 2018. However, despite various reminders and follow up, department furnished records relating to only 478 GST cases. The remaining 174 GST Refunds cases (26.69 *per cent*) involving refund of ₹ 173.14 crore have not been furnished for audit without assigning any reason.

Reply of the Ministry is awaited (December 2020).

Part C : Other cases

4.8 Other irregularities noticed during GST audit

In addition to audit objections pointed out in the preceding paragraphs, we noticed irregularities relating to non-filing of GST returns, non-cancellation of GST registration of the non-filers of GST return, non/short payment of GST, non-payment of interest on delayed payment of GST etc., during test check in 56[66] Commissionerates.

Eight significant observations in respect of six Commissionerates[67] amounting to ₹ 6.77 crore were issued to Ministry (***Appendix-VI***). The Ministry while admitting the objection in six cases involving an amount of ₹ 5.51 crore intimated (between August and December 2020) the recovery of ₹ 3.40 crore along with interest. Reply in the remaining cases is awaited (December 2020).

A few cases have been narrated below :-

4.8.1 Non-payment of interest on delayed payment of GST

As per Section 50 (1) of the CGST Act, 2017, every person liable to pay tax in accordance with the provisions of this Act or 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 on his own, interest at such rate, not exceeding eighteen *per cent*, as may be notified by the Government on the recommendation of the Council. As per Section 50 (2) of the CGST Act, 2017, interest shall be calculated from

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66 Ahmedabad (South), Daman, Surat, Vadadora I & II, Alwar, Jaipur, Jodhpur, Udaipur, Belgavi, Bengalur East, Bengaluru West, Bengaluru North, Bengaluru South, Chennai North, Chennai South, Chennai Outer, Coimbatore, Madurai, Tiruchirapally, Kochi, Thiruvananthapuram, Chandigarh, Faridabad, Gurugram, Jalandhar, Ludhiana, Punchkula, Shimla, Delhi East, Delhi North, Delhi South, Raipur, Bhopal, Indore, Jabalpur, Ujjain, Guntur, Hyderabad, Medchal, Rangareddy, Secunderabad, Tirupathi, Visakhapatnam, Bhubaneswar, Rourkela, Agra, Gautham Budh Nagar, Jamshedpur, Patna I and II, Ranchi and Patna Audit, Mumbai West, Navi Mumbai, Nagpur and Howrah.

67 Rourkela, Varanasi, Ranchi, Jaipur, Jamshedpur and Agra.

the day succeeding the day on which such tax was due to be paid. Further as per Notification dated 28 June 2017, the interest rate notified is 18 *per cent*.

As per Notification Nos. 35/2017-CT dated 15 September 2017 and 56/2017-CT dated 15 November 2017, every registered person furnishing the return in FORM GSTR-3B shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax, interest, penalty, fee or any other amount payable under the said Act, by debiting the electronic cash ledger or electronic credit ledger, as the case may be, not later than the last date on which he is required to furnish the said return.

Section 46 of the CGST Act, 2017, read with rule 68 of the CGST Rules, 2017, requires issuance of a notice in FORM GSTR-3A to a registered person who fails to furnish return under section 39, requiring him to furnish such return within fifteen days of issuance of notice by the department. Further Rule 68 did not include the time limes for issuance of such notice.

During test check of GST return/records of taxpayers in Rajagangpur Range, under Rourkela CGST Commissionerate, we noticed that a taxpayer paid GST (CGST, SGST and IGST) with a delay ranging from 51 to 174 days for the period from July 2017 to March 2018 but did not pay interest for the delayed payment of GST. This resulted in non-payment of interest of ₹ 3.15 crore (including amount of ₹ 1.37 crore towards interest on SGST).

When we pointed this out (February 2019), the Ministry while admitting the objection stated (October 2019) that an amount of ₹ 1.03 lakh has been recovered and recovery process has been initiated for the remaining amount.

4.8.2 Non-payment of GST

Section 46 of the Central Goods and Services Tax Act, 2017 deals with notice to return defaulters, and stipulates that where a registered person fails to furnish a return a notice shall be issued requiring him to furnish such return within fifteen days.

Further, as per Section 50 (1) of the CGST Act, 2017 read with notification dated 28 June 2017, every person liable to pay tax in accordance with the provisions of the Act or rules made thereunder, who fails to pay the tax or any part thereof to the account of the Central or a State Government within the period prescribed, shall, on his own, for the period for which the tax or any part thereof remains unpaid, pay interest at 18 *per cent*.

During test check of the taxpayers' records in Daltoganj Range of Ranchi Commissionerate, we noticed non-payment of GST in one case. We noticed that a taxpayer had raised gross bills of ₹ 14.11 crore in February 2018 and ₹ 11.23 crore in March 2018, on which the taxpayer was liable to pay GST

amounting to ₹ 1.27 crore. However, the taxpayer had not discharged the liability of GST. The taxpayer had not filed GSTR-1 and GSTR-3B returns for the months of February 2018 and March 2018 till the date of audit (June 2018). This resulted in non-payment of GST amounting to ₹ 1.27 crore (CGST – ₹ 2.01 lakh, SGST – ₹ 2.01 lakh and IGST ₹ 1.23 crore) and interest thereon.

The department did not initiate any action on non-submission of returns by the taxpayer as per the provisions of Section 46 of the Central Goods and Services Tax Act, 2017.

When we pointed this out (June 2018), the Ministry while admitting the objection (November 2020) stated that the taxpayer had filed their GSTR-3B returns for the months of February 2018 and March 2018 with delay of 185 and 156 days and paid GST of ₹ 2.26 crore.

The taxpayer is also liable to pay interest of ₹ 19.59 lakh for delayed payment of GST, the status of which is yet to be conveyed to Audit.

As for the interest amount, the Ministry stated that the taxpayer has filed a petition before Hon'ble High Court, Ranchi and the High Court quashed/set aside the recovery of interest. However, the department has sent proposal for filing an SLP before the Hon'ble Supreme Court.

4.8.3 Short payment of GST

Section 61 of CGST Act, 2017, stipulates that the proper officer may scrutinize the return and related particulars to verify the correctness of the return and inform discrepancies if any, in such manner as may be prescribed and seek his explanation thereto. In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67,or proceed to determine the tax and other dues under section 73 or section 74.

As per Board's letter dated 27 November 2018, the Directorate General of Analytics and Risk Management (DGARM) prepares analytical reports through data analysis and the same are shared with the respective CGST zones to initiate necessary action by the field formations of the department. Further, the Zonal Chief Commissioners should submit monthly feedback on each of the analytical reports received from (DGARM).

During the test check of 15 (DGARM) reports received upto March 2019 of CGST Range XXVII, under Jaipur CGST Commissionerate, we noticed that in one (DGARM) report, in row no. 19 D (related to difference in liability reported in

GSTR-1 and GSTR-3B), it was reported that there was a difference in liability of ₹ 1.26 crore as per GSTR-1 and GSTR-3B return for the month of January 2019 submitted by an assessee. Acting upon the information received from DG (ARM), the Range officer scrutinised the return submitted by the assessee and found that the assessee paid ₹ 0.16 crore in GSTR-3B against liability of ₹ 1.42 crore declared in GSTR-1.The assessee accepted the discrepancies and submitted that the tax will be deposited at the time of filing of return for the months of March 2019 and April 2019 in the first week of May 2019. Range officer in the compliance report submitted to higher authorities marked the case as 'Action Completed' but the assessee failed to pay the tax upto the date of audit, *i.e.*, till September 2019. Thus, there was a short payment of ₹ 1.26 crore by the assessee for the month of January 2019.

When we pointed this out (September 2019), the Ministry while not admitting the objections stated (October 2020) that the issue was already in their knowledge. A show cause notice had been issued in February 2020 and the taxpayer deposited the amount in March 2020.

The reply of the Ministry is not acceptable, since the taxpayer had not deposited the amount till the date of audit i.e., September 2019 though he informed the department the tax would be deposited in the month of March and April 2019. However, the Range officer marked the case as 'Action completed' while submitting the report to the higher authorities. After it was pointed out by Audit, the department issued SCN in February 2020 and the taxpayer deposited the amount in March 2020. Hence, it is clear that if Audit had not pointed out this lapse, amount of GST would have remained unpaid since the case was marked as 'Action completed' by the Range Officer.

4.8.4 Non-cancellation of registration of the non-filers of GST return

Section 29(2)(b) and (c) of CGST Act, 2017, authorises the proper officer to cancel the registration of a person from such date, including any retrospective date as he may deem fit, where "a person paying tax under Section 10 has not furnished returns for three consecutive tax periods and any registered person has not furnished returns for a continuous period of six months".

During examination (August/September 2019) of the data of the non-filers of GSTR-3B returns in the Range-I and II of the Aligarh Division under Agra CGST Commissionerate, we noticed that 1,965 taxpayers out of 12,694, had not submitted their GST-3B returns for a continuous period of six or more than six months. However, the registration of these defaulters were not cancelled by the department after following the process laid down in Rule 22 of CGST Rules, 2017.

This was brought to the notice of the department in September and October 2019, reply of the department/Ministry is awaited (December 2020).

4.9 Impact on State Goods and Services Tax

For the audit observations highlighted in paragraphs 4.6, 4.7 and 4.8 of this chapter, the corresponding impact on the State Goods and Services Tax is given in **Appendix-VII**.