

CHAPTER-II
TAXES ON SALES,
TRADE, SUPPLIES, etc.

CHAPTER-II: TAXES ON SALES, TRADE, SUPPLIES etc.

2.1 Tax administration

The receipts from the Goods and Services Tax/Value Added Tax/Central Sales Tax/Entry Tax payable under the respective laws relating to state taxpayers are administered at the Government level by the Principal Secretary (Finance). The Commissioner is the head of the Commercial Taxes Department (Department) and is assisted by 23 Additional Commissioners, 46 Deputy Commissioners (DC), 91 Assistant Commissioners (AC), 136 Commercial Taxes Officers (CTO), 405 Assistant Commercial Taxes Officers (ACTO) and a Financial Advisor (FA). They are assisted by Junior Commercial Taxes Officers (JCTO) and other allied staff for administering the relevant tax laws and rules.

2.2 Internal audit

Financial Advisor is the head of the Internal Audit Wing. There are 17 internal audit parties. The status of internal audit conducted during the period 2016-17 to 2020-21 is given in Table 2.1 below:

Table 2.1

Year	Units pending	Units due for audit during the year	Total units due for audit	Units audited during the year			Units remaining unaudited	Percentage of units remaining unaudited
				Pertaining to previous years	Pertaining to current year	Total		
2016-17	484	468	952	284	142	426	526	55
2017-18	526	468	994	385	141	526	468	47
2018-19	468	467	935	565	282	847	88	09
2019-20	88	467	555	324	162	486	69	12
2020-21	69	467	536	69	467	536	-	-

Source: Information furnished by Commercial Taxes Department.

It is evident from the table that the Department has performed well to cover all the units due for audit during 2020-21 and bring down the shortfall from 55 per cent in 2016-17 to *nil* in 2020-21.

It was noticed that 11,210 paragraphs of the internal audit reports were outstanding as on 31 March 2021. Year-wise break up is given in the Table 2.2 below:

Table 2.2

Year	Up to 2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Outstanding paragraphs of the audit conducted during the year	4,022	336	527	1,302	1,978	3,045	11,210

Source: Information furnished by Commercial Taxes Department.

Out of 11,210 paragraphs, 4,022 paragraphs were outstanding for more than five years for want of compliance/corrective action. The Department may undertake a focused intervention for reduction of outstanding paragraphs of internal audit reports to enhance the effectiveness of internal control system and maximize revenue collection.

2.3 Results of audit

- There are 484 auditable units in the Commercial Taxes Department, out of which, audit selected 45 units for test check during the year 2020-21 wherein 1.37 lakh assessments were finalised.
- Among these, audit test checked 4,668 assessments (approximately 3.41 per cent) and noticed 462 cases (approximately 9.9 per cent of the audited sample) of short/non-levy of tax/interest, irregular allowance of Input Tax Credit, non-imposition of penalty for misuse of declaration forms, irregular allowance of investment subsidy, application of incorrect rate of tax, irregular allowance of refunds under GST, excess allowance of transitional credits under GST and non-observance of provisions of Acts/Rules etc. involving an amount of ₹449.68 crore.
- These cases are illustrative as these are based on test check of records. Audit pointed out similar omissions in earlier years also. However, not only do these irregularities persist, but they also remain undetected till the next audit is conducted. There is a need for the Government to improve the internal control system so that recurrence of such cases can be avoided.

Irregularities noticed broadly fall under the categories given in Table 2.3 below:

Table 2.3

Sl. No.	Category	Number of cases	(₹ in crore) Amount
1.	Under assessment of tax	75	431.04
2.	Acceptance of defective statutory forms	1	0.03
3.	Evasion of tax due to suppression of sales/purchase	41	3.46
4.	Irregular/incorrect/excess allowance of Input Tax Credit	59	5.97
5.	Other irregularities relating to		
	(i) Revenue	275	9.01
	(ii) Expenditure	11	0.17
Total		462	449.68

During 2020-21, the Department accepted underassessment and other deficiencies of ₹ 12.30 crore in 602 cases, of which 70 cases involving ₹ 0.82 crore were pointed out in audit during 2020-21, and the rest in earlier years. In addition, during 2020-21, the Department recovered/ adjusted ₹ 4.51 crore in 248 cases, of which 70 cases involving ₹ 0.82 crore pertained to 2020-21 and the rest to earlier years.

The State Government accepted and recovered/adjusted (March 2021 and August 2021) an amount of ₹0.22 crore from two dealers on account of tax on

Inter-state sale and short-levy of exemption fee after it was pointed out (July 2020 and September 2020) by the Audit. These paragraphs have not been discussed in the Report.

Few illustrative cases involving ₹ 189.71 crore are discussed in the succeeding paragraphs. It is pertinent to mention that most of these issues have been raised earlier and published in the CAG's Audit Report of previous years wherein the Government accepted the observations and initiated action/recoveries. However, it is seen that the Department took action only in cases which were pointed out by audit and failed to strengthen the internal control system which has led to recurrence of the same issues in subsequent years.

2.4 Short levy of tax

Incorrect assessment of taxable turnover by Assessing authority resulted in short levy of tax

Section 21 of Rajasthan VAT Act, 2003 provides that every registered dealer shall assess his liability under this Act, and shall furnish return, for such period, in such form and manner as may be prescribed, to the assessing authority or to the officer authorized by the Commissioner. Further, Section 23 of the Act provides that every registered dealer who has furnished, all the returns under the provisions of section 21, for the year, shall, subject to the provisions of section 24, be deemed to have been assessed on the basis of such returns.

During test check of assessment records of office of the Assistant Commissioner, Circle-H, Jaipur, it was noticed (June 2020) that a dealer had disclosed taxable turnover¹ of goods amounting to ₹131.02 crore² in his annual return³ for the year 2016-17. However, while finalizing the assessment, the assessing authority incorrectly assessed the taxable turnover at ₹90.00 crore. Thus, incorrect assessment of taxable turnover at lower value resulted in short levy of tax amounting to ₹41.02 lakh.

The matter was reported to the Department and the State Government (May 2021). The Department replied (July 2021) that ₹17.74 lakh was adjusted from the excess ITC of previous years and demand of ₹ 38.88 lakh⁴ had been raised. The State Government further informed (August 2021) that efforts are being made for recovery. Further progress was awaited (December 2021).

1 as per section 2(40) of the Rajasthan VAT Act, 2003

2 taxable at one *per cent*

3 VAT 10-A

4 Revised assessment at ₹ 41.62 lakh and Interest ₹ 15.00 lakh.

2.5 Irregular allowance of Input Tax Credit

Failure of Assessing authorities to reverse excess input tax on goods sold at subsidized prices led to irregular allowance of Input Tax Credit

According to section 18(3)(A) of RVAT Act, 2003, notwithstanding anything contained in the Act, where any goods purchased in the State are subsequently sold at subsidized price, the input tax allowable under this sub-section in respect of such goods shall not exceed the output tax payable on such goods.

During test check of the assessment records of three circles⁵, it was noticed (September/ October 2020) that twelve dealers purchased goods in the State and subsequently sold them at subsidized prices due to which input tax on these goods exceeded the output tax. However, the assessing authorities, while finalising the assessments, failed to reverse the excess Input Tax Credit (ITC) and allowed the ITC as claimed by the dealers which resulted in irregular allowance of ITC amounting to ₹43.75 lakh.

The omission was reported to the Department and State Government (July 2021). The Government replied (September 2021) that demand of ₹46.17 lakh along with interest of ₹16.77 lakh had been raised in eleven cases, out of which in eight cases ₹24.15 lakh was recovered/ adjusted from the excess ITC of previous years and ₹8.09 lakh waived off under Amnesty scheme 2021, while notice had been issued in the remaining case. Further progress was awaited (December 2021).

2.6 Short/ Non- levy of Entry Tax

Short/ Non- levy of Entry Tax on specified goods due to non-utilization of information available on *RajVISTA*

According to notification dated 9 March 2015 under section 3(1) of the Tax on Entry of Goods into Local Area Act, 1999, the State Government notified the tax payable by a dealer in respect of the specified goods brought into any local area for consumption or use or sale at such rates as given in the notification.

During test check of records of seven commercial tax offices⁶, it was noticed that 23 dealers purchased goods specified vide notification *ibid* worth ₹ 54.66 crore from outside the state during 2015-18. Further scrutiny revealed that the dealers had not mentioned the sale of these goods in their respective VAT returns which indicated that the goods were used for consumption or in business due to which entry tax was leviable on these goods. Complete information regarding purchase of goods was available on the departmental web-based application '*RajVISTA*' and accessible to all assessing authorities (AAs). However, the concerned AAs while finalizing the entry tax assessment of these dealers did not utilize the available information to impose entry tax and plug the revenue leakage. This resulted in short/non-levy of entry tax amounting to ₹1.81 crore and interest of ₹1.02 crore.

5 Circles: B- Sikar, I- Jaipur and P- Jaipur.

6 Circle -E ,H ,I ,Q , Special Circle-II, Special Circle-XI Jaipur and Circle B- Sikar.

The omission was pointed out to the Department and the State Government (September 2021). The Government replied (October 2021) that demand of ₹ 1.88 crore had been raised in 20 cases, of which ₹0.98 crore had been recovered and ₹0.52 crore waived off under Amnesty scheme 2021 in 15 cases. Further, notices had been issued in three cases, of which, two dealers stated that the purchased goods were sold out within the state and VAT on these goods had been paid. The reply is not acceptable as it is evident from the 'Form C'⁷ of the dealers that the goods were purchased from outside the state for the purpose of use in manufacture. Further, in case of one of these dealers, the sales invoices indicate that excise duty was collected on the sold goods which further corroborates the fact that the purchased goods were utilized for manufacture. Therefore, entry tax was leviable in case of both these dealers. Further progress was awaited (December 2021).

2.7 Subject Specific Compliance Audit on 'Processing of Refund claims under GST'

2.7.1 Introduction

Timely refund mechanism constitutes a crucial component of tax administration as it facilitates trade through release of blocked funds for working capital, expansion and modernization of existing businesses. Goods and Services Tax (GST) laws aimed to streamline and standardize the refund procedures with the claim and sanctioning procedures contemplated to be completely online. However, in the initial phase of GST implementation, due to unavailability of electronic refund module on the GST Network (GSTN) portal, a temporary mechanism was followed where the applicants were required to file the refund applications in Form GST RFD-01A, take a printout of the same and submit it physically to the jurisdictional tax officer along with all the supporting documents. The procedure for the subsequent processing of the refund application by the Commercial Taxes Department continued to be manual.

Section 54 to 58 and section 77 of Central Goods and Services Tax Act, 2017, Section 15, 16 and 19 of the Integrated Goods and Services Tax Act, 2017 and Section 54 to Section 58 of the Rajasthan State Goods and Services Tax Act, 2017 provide legal authority for claim and grant of refund.

2.7.1.1 Categories of taxpayers eligible for refund and Conditions of refund

A claim for refund by taxpayer may arise on account of the following:

- (i) Export of goods or services;
- (ii) Supplies to Special Economic Zone (SEZ) units and developers;
- (iii) Deemed exports;
- (iv) Refund of taxes on purchase made by UN or embassies etc.;

⁷ Available on 'RajVISTA.'

- (v) Refund arising on account of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court;
- (vi) Refund of accumulated Input Tax Credit of GST on account of Inverted Duty structure/Reverse Charge cases;
- (vii) Finalisation of provisional assessment;
- (viii) Balance in electronic cash ledger;
- (ix) Refund of pre-deposit;
- (x) Excess GST payment;
- (xi) Refunds to International tourists of GST paid on goods in India and carried abroad at the time of their departure from India;
- (xii) Refund on account of issuance of refund vouchers for taxes paid on advances against which, goods or services have not been supplied;
- (xiii) Refund of CGST & SGST paid by treating the supply as intra-state supply which is subsequently held as inter-state supply and *vice versa*.

A taxpayer may claim refund of any unutilised input tax credit in case of (i) zero rated supplies made without payment of tax; (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. Further, a registered person may claim refund of any balance in the electronic cash ledger and a specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation, Consulate or Embassy of foreign countries *etc.* may also claim refund of tax paid by it on inward supplies of goods or services or both.

2.7.1.2 Electronic Refund procedure came into effect from 26th September 2019, wherein submission and processing of refund claims under GST were brought online.

2.7.2 Audit Objectives

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

- (i) The adequacy of the Acts, Rules, notifications, circulars *etc.* issued in relation to grant of refund;
- (ii) The compliance of extant provisions by the tax authorities and the efficacy of the systems in place to ensure compliance by taxpayers;
- (iii) Whether effective internal control mechanism exists to check the performance of the departmental officers in disposing the refund applications.

2.7.3 Scope of Audit

Pan-India GST refund data was obtained from GSTN and through risk-based data analysis, a sample of refund cases was extracted for detailed examination. Refund cases processed in the selected circles of Commercial Taxes

Department, Rajasthan (Department) from July 2017 to July 2020 were examined. According to the information provided by the Department, during the period July 2017 to March 2021, 31,229 refund claims involving ₹ 3,287.66 crore were received in the state, out of which 26,398 refund claims involving ₹ 2,392.35 crore were sanctioned by the Department.(December 2021).

An Exit Conference was held on 20th July 2021 with Secretary, Finance (Revenue) Department, Chief Commissioner (CCT) State Tax and other representatives of the Department in which the audit findings were discussed. The views expressed by the State Government during Exit Conference and the written replies to draft report have been suitably incorporated in the relevant paragraphs.

2.7.4 Sample selection and audit

GSTN provided pan-India Refund Data for the period from July 2017 to July 2020. For the period prior to 26 September 2019, i.e. pre-automation period, the refund applications under each category were sorted in descending order of refund amount claimed by taxpayers. The sorted refund applications were divided into 4 quartiles for drawing the sample.

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

Based on the above procedure, 1193 cases of refunds claimed prior to 26 September 2019 pertaining to 93 circles were selected (pre-automation cases) out of which 491 cases belonging to 35 circles could be examined due to constraints on physical movement as a result of COVID-19 pandemic. For the post 26 September 2019 period, 1,212 refund cases of 92 circles (post automation cases) were selected and examined using the login ID based access to State GST portal⁸. Thus, out of 13,231 refund cases processed in the selected circles, a total of 1,703 cases (12.87 *per cent*) were examined by Audit for this Subject Specific Compliance Audit (SSCA). Category-wise audit universe and sample selection are given in the **Appendix 2.1**.

2.7.5 Audit Criteria

The audit criteria were derived from the following Acts, Rules and notifications/circulars issued thereunder:

- (i) Central Goods and Services Tax (CGST) Act, 2017
- (ii) Rajasthan Goods and Services Tax (RGST) Act, 2017
- (iii) Central Goods and Services Tax Rules, 2017

⁸ BOWEB portal

- (iv) Rajasthan Goods and Services Tax Rules, 2017
- (v) Integrated Goods and Services Tax (IGST) Act, 2017
- (vi) Integrated Goods and Services Tax Rules, 2017

2.7.6 Audit Findings

Table 2.4 brings out the extent of deficiencies noted during the audit of refund cases, selected for detailed audit.

Table 2.4

(₹ in lakh)

Nature of Audit Findings	Audit Sample		Number of deficiencies noticed		Deficiencies as percentage of Sample
	Number	Amount	Number	Amount	
Delay in issue of acknowledgment	1703	32,624.54	415	-	24.37
Delay in issue of Refund orders	1703	32,624.54	247	16.82	14.50
Delay in sanction of Provisional refund on account of Zero-rated supply	607	16,844.83	57	-	9.39
Irregular refund under Inverted Duty structure	835	12,972.09	62	999.46	7.43
Irregular refund in Zero-rated supply cases	607	16,844.83	16	35.98	2.64
Irregular grant of provisional refund other than Zero rated supply	988	15,779.71	22	261.96	2.23

As evident from the table above, Audit noticed significant delay in issuance of acknowledgment in 24 *per cent* cases, in issuance of refund orders in 14 *per cent* cases, and in sanction of Provisional Refunds in Zero-rated supplies in 9 *per cent* cases.

Further, Audit also noticed deviations from provisions of the Acts and Rules which resulted in irregular refunds in cases pertaining to Inverted Duty Structure, zero-rated supply and provisional refund other than zero-rated supply; the deviation ranges from two *per cent* to seven *per cent*.

Audit findings noticed and the lapses identified based on these cases are included in the subsequent paragraphs.

2.7.6.1 Delay in issue of acknowledgment

Rule 90(1) and (2) of CGST/SGST Rules, 2017 stipulate that the acknowledgment shall be issued within fifteen days of filing of refund claim by the proper officer, if the application is found complete in all respects. In case of pre-automation cases, the stipulated period of 15 days will be counted from the date of manual submission of refund application along with all supporting documents.

During the audit period, 13,231 refund cases were processed in the selected circles, out of which 1,703 refund cases were examined and it was noticed that there was delay in issue of acknowledgement in 415 cases⁹ (24.37 *per cent*) from 1 to 272 days with the average delay being 25.61 days in these cases. Of these, 388 cases were delayed by 1 to 3 months, 23 cases by 3 to 6 months and four cases by more than six months. Thus, the department failed to adhere to the timelines for issuing acknowledgements as prescribed in the rules *ibid*.

The matter was reported to the Department and the State Government (May 2021). The Government accepted the audit observation (July 2021) and stated that the delay in 17 circles¹⁰ (151 cases) was due to technical problems on the GST portal and in eight circles¹¹ (32 cases), it was attributable to imposition of lockdown due to COVID 19 pandemic.

For seven cases pertaining to one circle¹², Government stated that delay in acknowledgment of refund application has not resulted in delay of issue of the refund. The fact remains that the Department failed to adhere to the timeline for issuing acknowledgements as prescribed in the rules *ibid*.

During the Exit Conference, the CCT accepted the audit contention and stated that even though the acknowledgements were delayed, the refunds were issued within the prescribed period.

Reply in respect of 225 cases pertaining to 37 circles was awaited (December 2021).

(Refer to Appendix 2.2 and 2.3)

2.7.6.2 Delay in issue of Refund orders

Section 54(5) and (7) of CGST/SGST Act, 2017 provide that the proper officer should sanction the refund within 60 days from the date of receipt of application. Further, as per Section 56 of the Act, if any tax ordered to be refunded under sub-section (5) of Section 54 to any applicant is not refunded within this period of sixty days, interest at such rate not exceeding six *per cent* as may be specified in the notification issued by the Government shall be payable in respect of such refund.

Audit observed that in 247 cases¹³ (14.50 *per cent*), out of 1,703 refund cases examined, there was delay in sanction of refunds ranging from 1 to 522 days with the average delay being 81.38 days in these cases. Of these 172 cases were delayed by 1 to 3 months, 41 cases by 3 to 6 months and 34 cases by

⁹ pertaining to 63 Circles.

¹⁰ Circle A,C,I, J, K,L,Q, P & Special III Jaipur, A Bhilwara, Kishangarh, Nagaur, Circle B, C, D & F Jodhpur and A Bhiwadi.

¹¹ Circles I, J, N & special III Jaipur, A& C Bhilwara, A Bharatpur, and Shahjahanpur.

¹² Circle B, Kota.

¹³ in respect of 57 Circles

more than six months. Further, the Department did not pay interest amounting to ₹ 16.82 lakh¹⁴ which was due to the claimants in all these cases.

The matter was reported to the Department and the State Government (May 2021). The Government accepted the audit contention (July 2021) and stated that the delay was due to technical problems on GST portal in sixteen circles¹⁵ (83 cases) and imposition of lockdown due to COVID-19 pandemic in eight circles¹⁶ (twenty two cases). Regarding non-payment of Interest, the Government stated that for two cases (one circle¹⁷) no interest for delay was claimed by the taxpayers and for two cases (one circle¹⁸) it was stated that the taxpayers requested in writing that they do not want to claim the interest. The reply is not acceptable as Section 56 of the CGST/SGST Act makes it mandatory for the interest to be paid in cases of delayed refund orders without making it contingent upon claim by the taxpayer. In one case (one circle¹⁹), the Government stated that the interest was not paid as wrong bank account was given by the taxpayer. The reply is not acceptable as the Interest could have been paid in the same account in which the Refund amount was paid. The Government reply was silent about the non-payment of interest in 105 cases of 24 circles.

During the Exit Conference, the CCT agreed with the audit contention and stated that directions are being issued to all the field offices to ensure that the prescribed timelines are followed.

Reply in respect of 137 cases pertaining to 30 circles was awaited (December 2021).

(Refer to Appendix 2.4 and 2.5)

2.7.6.3 Delay in sanction of provisional refund on account of zero-rated supply

Rule 91 of CGST/SGST Rules, 2017 provides that provisional refund to the extent of 90 percent of the total refund claimed on account of zero-rated supply shall be granted within seven days of the acknowledgement subject to fulfillment of certain conditions.

During the audit period, 5,013 refund cases of zero-rated supply were processed in the selected circles. Out of these, 607 refund cases were examined and it was noticed that there was delay in sanction of provisional refund in 57 cases²⁰ (9.39 per cent) ranging from 1 to 324 days with the average delay being 29.85 days in these cases. Of these, 55 cases were delayed by 1 to 3 months, one case by 3 to 6 months and one case by more than six

14 calculated at the rate of six per cent

15 Circle A, C, F, I, J, K, L, P, M, N & Spl. III Jaipur, Circle A Bhiwadi, Circle Jhalawar, Circle Shahjahanpur, Circle A Bharatpur and Circle B Kota

16 Circle C, J, L, Q and Special- III Jaipur, Circle A & B Bharatpur and Special I, Bhiwadi.

17 Circle D, Jodhpur.

18 Circle A, Jaipur

19 Circle, Dausa.

20 In respect of 15 Circles.

months. Thus, the department failed to adhere to the timeline of sanctioning provisional refund for zero-rated supplies as prescribed in the rule *ibid*.

The matter was reported to the Department and the State Government (May 2021). The Government accepted the audit contention (July 2021) and stated that the delay in six circles²¹ (30 cases) was due to technical problems on GST portal. During the Exit Conference, the CCT agreed with the audit contention and stated that directions are being issued to all the field offices to ensure that the prescribed timelines are followed.

Reply in respect of 27 cases pertaining to nine circles was awaited (December 2021).

(Refer to Appendix 2.6 and 2.7)

2.7.6.4 Irregular refund under Inverted Duty structure

As per section 54 (3) of the CGST/SGST Act 2017, a registered person may claim refund of any unutilized Input Tax Credit (ITC) at the end of any tax period where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (i.e. Inverted Duty Structure). Further, Rule 89(5) of the CGST/SGST Rules 2017 prescribes the formula²² for maximum refund of unutilized ITC on account of inverted duty structure. As per the rule, Net ITC includes the ITC availed only on inputs during the relevant period and does not include credit availed on input services and capital goods.

During the audit period, 3,845 refund cases of Inverted Duty structure were processed in the selected circles. Out of these, 835 refund cases were examined and it was noticed that the department, while granting the refund in 24 cases²³ (2.87 per cent) considered ITC availed on input services and capital goods for calculating the Net ITC or considered incorrect total adjusted turnover/inverted turnover/tax paid to calculate maximum amount of eligible refund. This indicated lack of proper scrutiny of refund claims by jurisdictional officers. This resulted in irregular allowance of refund amounting to ₹ 7.09 crore.

The matter was reported to the Department and the State Government (May 2021). The Government stated (July 2021) that ₹ 10.24 lakh has been recovered in four cases²⁴ while notices have been issued in seven cases²⁵. For three cases pertaining to one circle²⁶, the Government stated that ITC on services or capital goods have not been claimed by the taxpayer. The reply in

21 Circle C, N and Q Jaipur, Circle Shahjahanpur, Circle Kishanganh and Circle C Jodhpur.

22 Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) * Net ITC/Adjusted Total Turnover} - Tax payable on such inverted rated supply of goods and services.

23 Relating to 13 circles.

24 pertaining to Circle C Jaipur (₹ 0.12 lakh) Circle G Jaipur (₹ 0.17 lakh) Circle B Ajmer (₹ 9.64 lakh and Circle C Jodhpur (₹ 0.31 lakh)

25 Pertaining to Circle P, L & C Jaipur Circle A Bhiwadi and Circle Nagaur.

26 Circle K Jaipur.

respect of these three cases is not tenable as the details in the returns filed by the taxpayers viz. inverted turnover/ITC as per 2A/ adjusted turnover do not match with the details in the refund claims and the refund claims include the ITC on services as well due to which refunds granted were more than the maximum amount of eligible refund. For two cases²⁷, it was stated that the refund has been claimed within the relevant period. The reply is not appropriate as the irregularity in these cases pertains to irregular refund of ITC under the inverted duty structure. During the Exit Conference, Secretary Finance (Revenue) stated that Department would take up the matter of introduction of validation check to segregate the ITC on Input Services and Capital Goods in the IT system.

Reply in respect of eight cases pertaining to three circles was awaited (December 2021).

(Refer to Appendix 2.8 and 2.9)

An illustrative case is given below: -

During test check of processing of refund claims in Circle K Jaipur, it was observed that a taxpayer had made separate refund claims for June 2019, September 2019 and January 2020 aggregating ₹ 6.12 crore. Scrutiny of records revealed that the Net ITC as claimed by the taxpayer in his refund applications did not match with the details of ITC in the taxpayer's GSTR-2A. It was also evident from the details provided in the taxpayer's GSTR-2A that the taxpayer had irregularly availed ITC of capital goods and services. Further, the taxpayer had not submitted Annexure-B containing the HSN code along with the refund application as required to distinguish ITC on capital goods/and or input services out of the total ITC. The Department did not detect the irregularities and sanctioned the refund as claimed by the taxpayer due to which refunds granted exceeded the maximum amount of eligible refund. This resulted in irregular allowance of refund amounting to ₹6.08 crore.

The matter was reported to the Department and the State Government (May 2021). The State Government stated (July 2021) that the taxpayer has now provided the Annexure-B with HSN code. The Government also stated that the ITC availed by the taxpayer matched with the GSTR-2A and taxpayer has not claimed ITC on Capital Goods and Services due to which no irregular refund has been sanctioned.

While the Government did not provide any documents in support of the reply, the reply of the Government is not acceptable as it is clear from the GSTR- 2A that the ITC on Capital Goods and Services had been included in the calculation of net ITC available to the taxpayer, and in addition the ITC

27 Circle G Jaipur.

available in GSTR-2A did not match with the refund applications which were subsequently sanctioned. Further progress was awaited (December 2021).

2.7.6.5 Irregular refund in zero-rated supply cases

As per Section 54(3) of the CGST/SGST Act, 2017, refund of unutilized ITC can be claimed by a registered person at the end of any tax period. The refund in the case of zero-rated supply of goods or services shall be granted as per the formula²⁸ prescribed under rule 89(4) of the CGST/SGST Rules, 2017. According to the formula, the ITC availed on capital goods shall not be considered.

During the audit period, 5,013 refund cases pertaining to zero rated supply were processed in the selected circles. Out of these, 607 refund cases were examined and it was noticed that in 16 cases²⁹ (2.63 per cent), the Jurisdictional Officers did not exclude the ITC availed on capital goods for calculating Net ITC or considered incorrect total adjusted turnover/Zero rated turnover/Net ITC/difference of 2A return in calculating maximum amount of eligible refund. Thus, lack of correct application of the prescribed formula by the jurisdictional officers while processing the refund claims resulted in irregular allowance of refund of ₹35.98 lakh.

The matter was reported to the Department and the State Government (May 2021). The Government stated (July 2021) that ₹ 7.90 lakh has been recovered in four cases³⁰ and notices have been issued in five cases³¹. During the Exit Conference, Special Commissioner (GST) agreed with the audit contention.

Reply in respect of seven cases pertaining to four circles was awaited (December 2021).

(Refer to Appendix 2.10 and 2.11)

An illustrative case is given below: -

During test check of processing of refund claims in Circle-L Jaipur, it was observed that a taxpayer claimed refund of ₹12.21 lakh on accumulated ITC on account of zero-rated export for the period May 2018 to December 2018. Scrutiny of relevant records revealed that zero-rated export was made only during the month of May 2018 in this duration. Therefore, accumulated ITC for the period June 2018 to December 2018 was not eligible for refund. However, the Department did not detect the irregularity and sanctioned the refund as claimed by the taxpayer resulting in irregular allowance of refund amounting to ₹8.25 lakh. The matter was reported to the Department and the

28 Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) * Net ITC ÷ Adjusted Total Turnover, where "Net ITC" means input tax credit availed on inputs and input services during the relevant period.

29 Relating to 10 circles.

30 Pertaining to Circle J Jaipur (₹ 3.55 lakh) Special- I Ajmer (₹ 4.18 lakh) and Circle C Jaipur (₹ 0.17 lakh)

31 belonging to Circle C Jaipur, Circle A Bhilwara and Circle L Jaipur.

State Government (May 2021). The Government stated (July 2021) that notice has been issued to the taxpayer. Further progress was awaited (December 2021).

2.7.6.6 Irregular grant of provisional refund in cases other than zero-rated supply

As per Section 54(6) of CGST/SGST Act, 2017, in case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, 90 *per cent* of refund claimed may be sanctioned on a provisional basis and thereafter an order made under sub section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

During the audit period, 6,824 refund cases other than zero-rated supply were processed in the selected circles. Out of these, 988 refund cases were examined, and it was noticed that in 22 cases³² (2.23 *per cent*), the Department issued provisional refund of 90 *per cent* in cases pertaining to Inverted Duty structure. Thus, sanction of provisional refund in cases other than zero-rated supplies in contravention of the provision *ibid* led to irregular grant of provisional refund amounting to ₹ 2.62 crore.

The matter was reported to the Department and the State Government (May 2021). The Government stated (July 2021) in respect of nine cases³³ that the refunds were sanctioned as per rule. However, the refunds were not sanctioned as per the rules because provisional refund was provided in these cases even when these cases did not belong to the category of zero-rated supplies. Further, for three cases³⁴, the Government stated that the refund was sanctioned within the prescribed time period and paid in two instalments, through RFD 04 (90 *per cent*) and RFD 06 (10 *per cent*), therefore, no excess refund has been granted. The replies are not tenable because in these three cases, 90 *per cent* provisional refund was provided even when the cases did not pertain to zero-rated supplies. Reply in respect of 10 cases pertaining to four circles was awaited (December 2021).

During the Exit Conference, Special Commissioner (GST) while accepting the audit observation stated that this was a procedural lapse and did not cause financial loss to the government. It is pertinent to mention here that even though there is no impact on the overall refund amount, the provisional refund facility is provided exclusively to zero rated supplies as a measure to address the working capital requirements till the final settlement of refund claim. Providing refund on a provisional basis, *i.e.* before the final settlement based on due verification of documents, for other categories of taxpayers results in undue benefit to such taxpayers through premature release of government funds to them.

(Refer to Appendix 2.12)

32 Relating to seven circles.

33 Special Circle III, Jaipur

34 Belonging to Circle C and L Jaipur.

An illustrative case is given below: -

During test check of processing of refund claims in Circle Special-III, Jaipur, it was observed that a taxpayer had made nine refund claims pertaining to accumulated ITC on account of inverted duty structure. The Department issued provisional refund of 90 *per cent* against all these nine cases of inverted duty structure in contravention of the provisions *ibid* resulting in irregular grant of provisional refund aggregating ₹ 2.03 crore.

This was pointed out to the Department and the Government (May 2021). The Government stated (July 2021) that the refunds were sanctioned as per rule. The reply is not acceptable because all these nine claims pertained to Inverted duty structure and thus were ineligible for provisional refund.

2.7.7 Other Irregularities

2.7.7.1 Lack of validation check on common portal to calculate refundable amount of IGST, CGST and SGST

According to CBIC *vide* Circular No. 59/33/2018-GST dated 04 September 2018 and the Department *vide* Circular no. 6/2018 dated 26 September 2018, after the determination of the amount refundable, the equivalent amount is to be debited to electronic credit ledger (ECL) of the taxpayer in the following order: (a) Integrated tax, to the extent of balance available; (b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular ECL (say, Central tax), the differential amount is to be debited from the other ECL (i.e., State tax/Union Territory tax, in this case).

Audit observed that in 208 cases³⁵ (12.21 per cent), out of 1,703 refund cases examined, refund of CGST and SGST sanctioned was more than the eligible amount against the provision *ibid*. It is also pertinent to mention that the state GST portal lacks a system validation check to calculate the correct refundable amount of IGST, CGST and SGST in the prescribed order. Further, the taxpayers did not follow the order of debiting the refundable amount into the ECL and the jurisdictional officers, without manually checking the correctness, sanctioned the refund as claimed by the taxpayers. The error resulted in excess refunds from CGST and SGST ECLs aggregating ₹ 16.04 crore, which further resulted in excess credit balance in IGST ECL to that extent.

The matter was reported to the Department and the State Government (May 2021). The Government informed (July 2021) that notices have been issued in 30 cases³⁶ and ₹ 5.41 lakh was recovered in three cases³⁷. In 63 cases³⁸, the irregularity was attributed to technical problems of the GST portal

³⁵ Relating to 43 circles.

³⁶ Pertaining to four circles: Circle A Bhiwadi, L Jaipur, A Ajmer and Nagaur .

³⁷ Circle B and Special I Ajmer.

³⁸ Pertaining to twelve circles: C,K, Q Jaipur, B Kota , B Hanumangarh , Nagaur, Kishangarh, A and C Bhilwara, A Bhiwadi, Shahjahanpur and B Ajmer.

such as inability of the tax authorities to modify the refund claimed under various heads and lack of feature to rectify the head-wise amounts after grant of refunds. In respect of two cases³⁹, Government stated that refund has been sanctioned in compliance with the provisions of the circular after calculating the amount in accordance with rule 89(5) of the CGST Rules. The reply is not acceptable as in both these cases, the order of debiting from the ECLs as prescribed by the circulars *ibid* was not followed leading to excess debit from CGST and SGST ECLs. During the Exit Conference, Special Commissioner (GST) stated that such a validation check has now been introduced on the portal.

Reply in respect of 110 cases pertaining to 24 circles was awaited (December 2021).

(Refer to Appendix 2.13 and 2.14)

2.7.7.2 Lacunae/deficiencies in fully electronic refund process

Refund procedure became fully electronic with effect from 26th September 2019 and CBIC vide circular No.125/44/2019-GST dated 18 November, 2019 clarified that refund application (RFD-01A) along with the supporting documents shall be submitted electronically. Further, vide Circular no. 05/2020 dated 04 April 2020, Department clarified that HSN/SAC⁴⁰ code of the Goods/Services is to be mandatorily included in the statement of invoices relating to inward supply in Annexure-B to distinguish ITC on capital goods and/or input services out of the total ITC.

During the audit period, 6,155 post-automation refund cases were processed in the selected circles. Out of these, 1212 refund cases were examined and it was noticed that in 296 cases⁴¹ (24.42 *per cent*) Annexure-B was not submitted along with RFD-01A application. Further, it was also noticed that in six refund cases⁴², HSN/SAC code was not mentioned. In the absence of Annexure-B and HSN/SAC code of the goods/services, ITC eligible for refunds could not be verified. Thus, the jurisdictional officers sanctioned refunds amounting to ₹ 56.98 crore without ensuring online submission and completeness of the Annexure-B as required.

The matter was reported to the Department and the State Government (May 2021). The Government stated (July 2021) in respect of 82 cases⁴³ that there was technical problem in uploading annexure B online. Further, it was also informed that notices have been issued in 67 cases⁴⁴ and taxpayers manually submitted Annexure-B to the Department in 24 cases⁴⁵. The replies need to be

39 Circle K, Jaipur.

40 Harmonized System of Nomenclature (HSN)/ Servicing Accounting Code (SAC).

41 Relating to 44 Circles.

42 Relating to three circles.

43 Of Circle K and Special III Jaipur, Kishangarh, Shahjahanpur A & C Bhilwara,, Special-I, A & B Ajmer, B Hanumangarh and A Bhiwadi.

44 Circle B, J,Q Jaipur, A Bharatpur, B Kota, Pali, Nagaur and Balotra.

45 Circle- G and N Jaipur , Balotra and A, Alwar

viewed in light of the fact that the system was fully automated since 26th September 2019 and Annexure-B and other documents were required to be submitted electronically along with RFD-(01A). In respect of one case⁴⁶, the Government stated that the refund was applied before issue of the circulars, and therefore, the provisions of the circulars were not applicable. The reply is not acceptable because as per available records taxpayer had applied for the refund after the circulars had been issued. During the Exit Conference, CCT agreed with the audit contention.

Reply in respect of 128 cases pertaining to 23 circles was awaited (December 2021).

(Refer to Appendix 2.15 and 2.16)

2.7.7.3 Absence of mechanism to identify the export of goods where export proceeds not realized

Rule 96B⁴⁷ of the CGST Rules, 2017 relates to cases where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such exported goods have not been realized in India, in full or in part, within the period allowed under the Foreign Exchange Management Act, 1999.

As per the Rule, in such a case, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realization of sale proceeds, along with applicable interest within thirty days of the expiry of the said period.

An undertaking to the above effect has been inserted in the Form GST RFD-01 to be provided by the exporter.

During the audit period, 5,013 refund cases pertaining to zero rated supply were processed in the selected circles. Out of these, submission of proof of exports proceeds realization was examined in 111 cases and it was noticed that in 34 cases⁴⁸ (30.63 *per cent*) the taxpayers did not submit the Bank Realisation Certificate (BRC). The information regarding pendency of proof of exports proceeds realisation was not available with the jurisdictional officers of the tax circles and such MIS reports were not available on the State GST portal. Audit scrutiny revealed that such information was available with Reserve Bank of India (RBI) in the form of Export Outstanding Statement (XOS statement) which included proof of outstanding realization from the exporters under State/Department jurisdiction. However, the mechanism to make this information available to the jurisdictional officers in the tax circles was absent. Further, the Department also did not undertake correspondence with the exporters in this regard. In the absence of availability of such information, the Department did not identify cases where proof of exports proceeds realisation were not available.

46 Of circle F Jaipur.

47 Inserted *vide* Notification no. 16/2020/ dated 23 March 2020.

48 Relating to nine circles.

The matter was reported to the Department and the State Government (May 2021). The Government stated (July 2021) that notices have been issued in 12 cases⁴⁹. During the Exit conference, Secretary, Finance (Revenue) while accepting the suggestion, stated that efforts will be made to collect the required information from RBI or GSTN would be requested to provide such information on the portal.

Reply in respect of 22 cases pertaining to six circles was awaited (December 2021).

(Refer to Appendix 2.17)

2.7.7.4 Irregular Refund in time barred cases

Section 54 (1) of CGST/SGST Act, 2017 provides a time limit of two years from the relevant date for claiming refunds. Further, as per Notification No.02/2019- CBIC dated 29 January 2019 (w.e.f. 01 February 2019), in the case of accumulated ITC due to inverted duty structure, relevant date means two years from the due date for furnishing of return under Section 39 for the period in which such claim for refund arises.

During the audit period, out of 3,845 refund cases of inverted duty structure in the selected circles, 835 refund cases were examined and it was noticed that in 34 refund cases⁵⁰ (4.07 per cent), taxpayers had claimed refunds of ITC on account of inverted duty structure two years after the due date for furnishing of returns for the period to which the refund claims pertained. After deduction of the ITC pertaining to the time barred period for these cases, the eligible amount of refund was ₹ 1.05 crore. However, the Department failed to deduct the ITC pertaining to the time barred period and refunded ₹ 3.73 crore which resulted in excess refund of ₹ 2.68 crore.

The matter was reported to the Department and the State Government (May 2021). The Government stated (July 2021) that objected amount of ₹ 10.94 lakh along with interest has been recovered in two cases⁵¹ and notices have been issued in five cases⁵². In respect of one case⁵³, it was stated that the aforesaid notification is not applicable as the refund claim pertains to 2017-18. The reply is not acceptable as the amendment in the Act vide notification dated 29 January 2019 was effective from 01 February 2019 while the refund claim was made in March 2020. Therefore, the amendment was applicable on the claim due to which the claim for the period July 2017 to January 2018 was time barred and thus ineligible for refund. During the Exit conference, Secretary, Finance (Revenue) stated that the request for validation check in this regard will be made in the meeting of the GST law committee.

Reply in respect of 26 cases pertaining to 12 circles was awaited (December 2021).

(Refer to Appendix 2.18)

49 Circle A, Bhilwara, Circle B, Hanumangarh and Circle Kishangarh.

50 Relating to 19 circles

51 Circle K Jaipur (₹ 9.83 lakh) and Circle Banswara (₹ 1.11 lakh).

52 Belonging to Circles Nagaur, A, Bharatpur, C, Bhilwara and N Jaipur.

53 Circle Nagaur.

An illustrative case is given below: -

During test check of refund claims in Circle -C, Jodhpur, it was observed that a taxpayer filed a refund application on 24 June 2020 for the period July 2017 to March 2018 for refund of ITC on account of inverted duty structure amounting to ₹63.69 lakh. Out of the total refund claimed, refund claim for the period July 2017 to January 2018 was time barred as refund was applied for after the expiry of two years from the due date for furnishing of return for the period. For the period February 2018 to March 2018, the eligible refund as per the prescribed formula⁵⁴ was *nil*. However, while processing the refund claim, the Department sanctioned the entire refund claim, resulting in excess refund of ₹ 63.69 lakh.

This was pointed out to the Department and the Government (May 2021). The Government stated (July 2021) that reply from the concerned circle was awaited.

2.7.7.5 Irregular refund of compensation cess in inverted duty structure

According to proviso to section 54(3), no refund of unutilised input tax credit shall be allowed in cases other than: (i) zero rated supplies made without payment of tax; (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies).

No refund under inverted duty structure will be available on compensation cess paid on input supplies, since compensation cess on output supplies is exempted. It will be available only in case of export of goods.

Under section 11(1) of GST (Compensation to States) Act, 2017, the provisions of the CGST Act and the rules made there under, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, *mutatis mutandis*, apply, in relation to the levy and collection of the cess leviable under section 8 on the intra-State supply of goods and services, as they apply in relation to the levy and collection of central tax on such intra-state supplies under the said Act or the rules made there under.

During the audit period, out of 3,845 refund cases of inverted duty structure in the selected circles, 835 refund cases were examined and it was noticed in three cases⁵⁵ that refund of accumulated ITC of compensation cess was sanctioned in cases of inverted duty structure where cess was not leviable on outward supply, in contravention of the extant provisions. Thus, lack of proper scrutiny of the refund claims by the jurisdictional officers resulted in irregular grant of refund amounting to ₹ 9.81 lakh.

The matter was reported to the Department and the State Government (May 2021). The Government stated (July 2021) that the concerned circle

⁵⁴ According to rule 89(5) RGST/CGST rules, 2017.

⁵⁵ Pertaining to circle C, Jaipur and circle E, Jodhpur.

officers have been instructed to submit their replies. Further progress was awaited (December 2021).

2.7.7.6 Irregular refund of GST on solar energy supply

Solar plants were treated as works contract services till 31.12.2018 and were to be taxed accordingly. CBIC, vide Notification (27/2018) dated 31 December 2018, amended the law to provide that if renewable energy devices were supplied along with supply of other goods and taxable services in relation to their setting up, then 70 per cent of the gross consideration would be deemed as 'value of supply of goods' attracting GST of 5 per cent and the remaining 30 per cent would be 'value of services' attracting GST of 18 per cent. The same is to be taxed separately for supply of goods and for supply of services under Sl.No.38 of Notification No.11/2017-CT(R) and Sl. No.234 of Notification No.1/2017-CT(R) of CBIC with effect from 01.01.2019.

During the audit period, out of 3,845 refund cases pertaining to inverted duty structure in selected circles, 835 refund cases were examined and it was noticed that in one case, the taxpayer⁵⁶ had supplied services in addition to the supply of goods due to which 30 per cent of the gross consideration was required to be deemed 'value of services'. However, the taxpayer, in his returns declared the entire supply at the tax rate of 5 per cent and claimed refund on account of inverted duty structure whereas 30 per cent of the supply being 'value of services' (taxable at 18 per cent) was outside the ambit of inverted duty structure. However, the Jurisdictional Officer allowed the IGST refund as claimed by the taxpayer. Thus, lack of proper scrutiny of the refund claims by the jurisdictional officers resulted in irregular grant of refund amounting of ₹ 12.88 lakh.

The matter was reported to the Department and the State Government (May 2021). The Government stated (July 2021) that the concerned circle officer has been instructed to submit his reply. Further progress was awaited (December 2021).

(Refer to Appendix 2.19)

2.7.8 Conclusion

Audit noticed certain cases where the Department did not adhere to the prescribed timelines leading to instances of delay in issuing of acknowledgement, refund orders and provisional refund. Further, lack of proper scrutiny of refund claims by the jurisdictional officers led to irregular allowance of refund in certain cases under inverted duty structure, zero-rated supplies, time barred cases etc.

In addition, systematic issues such as lack of validation check on GSTN portal, lacunae/deficiencies in fully electronic refund process and absence of mechanism to identify the export of goods where export proceeds were not

⁵⁶ Engaged in the supply and installation of solar plant.

realized, contributing to irregular sanctioning of refund claims, were also noticed.

2.7.9 Recommendation

Apart from the requisite action on the irregularities brought out by Audit as highlighted in the preceding paragraphs, the Department needs to take proactive steps to ensure that similar instances are not repeated in other circles/cases. Moreover, the issues concerning the GST portal including the deployment of additional system validation checks need to be addressed on priority to fully leverage the benefits of the IT system to minimize human errors and to aid the tax authorities in ensuring compliance with GST laws.

2.8 Irregular allowance of refunds under GST

During 2020-21, Audit conducted a Subject Specific Compliance Audit (SSCA) on GST Refunds. The important findings of this SSCA were discussed in para 2.7 of this report. In addition to this, Audit also examined 369 cases pertaining to GST Refunds in 10 Circles, as mentioned in para 2.7 above, and observed irregularities in the processing of Refunds. The audit findings are discussed below:

2.8.1 Failure of Jurisdictional Officer to exclude Input Tax Credit of capital goods and input services on account of Inverted Duty Structure resulted in irregular allowance of refunds

According to section 54 (3) of the CGST/SGST Act 2017, a registered person may claim refund of any unutilized Input Tax Credit (ITC) at the end of any tax period where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (i.e. inverted duty structure). Further, rule 89(5) of the CGST 2017 prescribes the formula⁵⁷ for maximum refund of unutilized ITC on account of inverted duty structure in which 'Net ITC' includes the ITC availed only on inputs⁵⁸ during the relevant period and does not include credit availed on input services and capital goods.

During test check of records of office of the Deputy Commissioner, State Tax, Circle-B, Sikar, it was noticed that two taxpayers claimed refunds for the period July 2017 to December 2019 in respect of accumulated ITC on account of inverted duty structure. Audit scrutiny revealed that in the refund claims, ITC availed on input services and capital goods were also considered to calculate the Net ITC in contravention of the rules. However, the jurisdictional officer failed to detect the irregularity while sanctioning the refund and allowed the refund as claimed by the taxpayers due to which the refund sanctioned exceeded the maximum refund amount according to the prescribed formula. This resulted in irregular payment of refund of ₹2.34 crore.

57 Maximum Refund Amount= (Turnover of inverted rated supply of goods and services) * Net ITC/Adjusted Total Turnover)-Tax payable on such inverted rated supply of goods and services.

58 Inputs means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.

The audit observation was reported to the Department and the Government (July 2021). The Government replied (September 2021) that recovery of the entire amount of ₹0.81 crore has been made in one case, while the matter is *sub-judice* in the Hon'ble Rajasthan High Court in the other case. Further progress was awaited (December 2021).

2.8.2 Jurisdictional officers failed to detect duty drawback of Central Tax and allowed refunds as claimed by taxpayers

According to the third proviso to section 54(3) of the Central Goods and Services Tax (CGST) Act, 2017 no refund of Input Tax Credit (ITC) shall be allowed if the supplier of goods or services or both avails drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

Audit scrutiny of records of three State Tax Offices⁵⁹, revealed that 15 taxpayers claimed refunds of unutilized ITC under GST for the months of July, August and September 2017 in respect of export of goods without payment of tax. Further, scrutiny revealed that these taxpayers had availed duty drawback in respect of Central Tax due to which these taxpayers were not eligible to claim refund of unutilized ITC of CGST and IGST for this period. However, Jurisdictional officers while sanctioning the refunds could not detect the irregularity and erroneously allowed refunds as claimed by the taxpayers. This resulted in irregular allowance of refunds amounting to ₹1.46 crore.

The irregularity was reported to the Department and the State Government (July 2021). The Government replied (September 2021) that ₹ 46.75 lakh on account of difference of excess duty drawback has been deposited in two cases⁶⁰, ₹8.56 lakh⁶¹ has been recovered in four cases while notices have been issued in the remaining cases. Further progress was awaited (December 2021).

2.8.3 Jurisdictional officers did not ensure availability of required information, resulting in irregular sanction of refund under GST

According to section 7 of Rajasthan Goods and Service Tax (RGST) Act, 2017, read with section 2(21) of Integrated GST Act, 2017, '*supply*' includes all forms of supply of goods or services or both made for a consideration by a person in the course or furtherance of business.

The Chief Commissioner, State Tax, Rajasthan, vide GST circular⁶² no. 32/2019 clarified that the activity of sending/ taking the goods out of India for exhibition or on consignment basis for export promotion does not constitute '*supply*' as the said activity does not fall within the scope of section 7 *ibid* and hence cannot be considered as '*zero-rated supply*'⁶³ as per the provisions of

59 Circle-P, Circle-H and Circle-L Jaipur.

60 Belonging to Circle-P Jaipur.

61 Belonging to Circle-H Jaipur.

62 Notification F.17 (134-Pt-II) Acct/GST/ 2017/4644 dated 19 July 2019.

63 According to section 16 of IGST Act, 2017, 'Zero rated supply' means export of goods or services or both or supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

the section 16 of the IGST Act. The circular also provides the procedure to be followed in respect of goods sent/taken outside India and brought back.

Audit scrutiny (June 2020) of records of office of the Deputy Commissioner, State Tax, Circle-H, Jaipur, revealed that nine taxpayers claimed GST refunds of ₹ 27.34 lakh under zero-rated supply of goods outside India without payment of tax. Further scrutiny of records revealed that out of this amount, refund of ₹ 19.24 lakh pertained to goods sent/taken outside India for exhibition or on consignment basis for export promotion against which details/records of goods sold abroad were not provided. Thus, the value of actual 'supply' on which refunds were to be availed as per the provisions *ibid* could not be ascertained. The Jurisdictional Officers did not ensure availability of the information required to verify the claim and sanctioned the refund as claimed by the taxpayers resulting in irregular refund amounting to ₹ 19.24 lakh.

The issue was reported to the Department and the State Government (July 2021). The Government replied (September 2021) that notices have been issued in respect of six cases while recovery of ₹0.17 lakh has been made in two cases. In one case, the Government stated (September 2021) that the taxpayer informed that goods amounting to ₹13.15 crore, out of total ₹ 16.25 crore were re-imported and rest were sold out. However, the taxpayer did not submit the requisite documents⁶⁴ in support of his claim. The Government further stated that the taxpayer claimed the refunds in the next financial year after deducting refund on re-imported goods. Thus, it is evident from the Government reply that the Jurisdictional officers did not ensure the availability of required information before sanction of the refunds.

In case of another taxpayer, the Government stated (September 2021) that instead of zero-rated export, in two instances the refund was claimed due to excess payment of tax and in one instance the refund was claimed due to supply to Special Economic Zone with payment of IGST. However, the Government did not provide any relevant documents in support of the reply. Further progress was awaited (December 2021).

2.9 Subject Specific Compliance Audit on 'Transitional credit under GST'

2.9.1 Introduction

Introduction of Goods and Services Tax (GST) was a significant reform in the field of indirect taxes in our country, which replaced multiple taxes levied and collected by the Centre and States. GST is a destination based tax on supply of goods or services or both and is levied simultaneously by the Centre and States on a common tax base. Central GST (CGST) and State GST

⁶⁴ Such as Foreign Inward Remittance Certificate (FIRC) or Bank Reconciliation Certificate (BRC).

(SGST)/Union Territory GST (UTGST) are levied on intra-state supplies and Integrated GST (IGST) is levied on inter-state supplies. Availability of input tax credit (ITC) of taxes paid on inputs, input services and capital goods for set off against the output tax liability is one of the key features of GST as it avoids cascading effect of taxes and ensures uninterrupted flow of credit from the seller to buyer. To ensure the seamless flow of input tax from the existing laws to GST regime, a '*Transitional arrangement for input tax*' was included in the GST Acts to provide for the entitlement and manner of claiming input tax in respect of appropriate taxes or duties paid under existing laws. The transitional credit provisions ensure transition of accumulated credits from the legacy returns, input tax in respect of raw materials, work in progress, finished goods held in stock as on the appointed day⁶⁵ as well as credit in respect of capital goods into the GST regime.

2.9.2 Audit objectives

Transitional credit claimed under TRAN 1⁶⁶ and TRAN 2⁶⁷ returns, credited to the Electronic Credit Ledger of the taxpayers as ITC, is adjusted against GST output tax liability of the taxpayers and therefore, such claims have a direct impact on GST revenue collection. Thus, the audit of transitional arrangements for ITC under GST was taken up with the following audit objectives with a view to seek an assurance on:

- (i) Whether the mechanism envisaged by the Department for selection and verification of transitional credit claims was adequate and effective (System issues).
- (ii) Whether the transitional credits carried over by the assessee into GST regime were valid and admissible (Compliance issues).

2.9.3 Audit scope

The scope of audit comprised a review of Transitional credit claim returns, both TRAN 1 and TRAN 2, filed by the taxpayers under the transitional arrangements for input tax provided under Section 140 of the RGST Act. The period of review was from the appointed date to the end of March 2020.

2.9.4 Audit methodology and Sample selection

Audit methodology of the Subject Specific Compliance Audit (SSCA) involved the scrutiny of process and outcomes of departmental verifications along with detailed independent verification of selected claims. Verification of individual transitional credit claims entailed the examination of SGST credit

65 Appointed date means the date on which the provisions of GST Act came into force i.e. 01st July 2017.

66 GST TRAN- 1 is a transitional form for the already registered taxpayers under pre-GST regime who are filing the GST TRAN -1 form for availing their previous input tax credit accumulated before the implementation of the GST.

67 GST TRAN-2 is a transitional form which can be filed by a dealer/trader who was unregistered under the pre-GST regime or did not have a VAT or excise invoices for stocks held by him on 30 June 2017.

claimed by the taxpayers in the last returns filed under existing laws, immediately preceding the appointed date, along with the documentary evidence in support of such claims. Further, in respect of input tax claimed pertaining to materials held in stock, verification involved examination of necessary accounting details, documents or records evidencing purchase of such goods. In addition, the records pertaining to the transitional credit claims verified by the Department were also requisitioned for verification.

In Rajasthan, there were a total of 53,432 Transitional Credit applications which were received during the period 1 July 2017 to 31 March 2020. Out of these, 1325 cases⁶⁸ (2.48 *per cent* of the total number of claims) belonging to 94 circles of State Tax Department (Department) were selected for detailed scrutiny on the basis of risk-based data analysis carried out on the extracted TRAN-1 data and legacy VAT returns data provided by the Department. These cases were scrutinized through the login ID based access to the departmental web portal *RajVISTA* and GST *BOWEB* portal alongwith examination of records available with the Circles.

Entry conference of this SSCA was held on 20 July 2021 in which the Audit objectives, sample selection, audit scope and methodology were explained. The Exit Conference was held on 12 October 2021 with Secretary, Finance (Revenue), Government of Rajasthan, Chief Commissioner of State Tax and other officers of the State Government in which the audit findings were discussed. The views expressed by the State Government during the Exit Conference and the written replies to the draft report have been suitably incorporated in the relevant paragraphs.

2.9.5 Audit Criteria:

The audit criteria were derived from the following Acts, Rules and notifications/circulars issued there under:

- (i) Rajasthan Goods and Services Tax (RGST) Act, 2017
- (ii) Rajasthan Goods and Services Tax Rules, 2017
- (iii) Rajasthan Value Added Tax (VAT) Act, 2003
- (iv) Rajasthan Value Added Tax Rules, 2006
- (v) Central Sales Tax (CST) Act, 1956
- (vi) Central Sales Tax (Registration and turnover) Rules, 1957

2.9.6 Audit Findings

During examination of individual transitional cases, Audit observed significant deviations from the GST Acts/Rules in 691 cases⁶⁹ (52 *per cent*), out of 1,325 cases examined by Audit. The irregularities pertained to excess

68 It included 570 taxpayers under Central Jurisdiction and 755 taxpayers under State Jurisdiction.

69 674 cases of excess carry forward of Input Tax Credit as per assessment /rectification order (Para 6.1.1), One case of Irregular allowance and carry forward of ITC of previous period (Para 6.1.2) and 16 cases of non-payment of interest (Para 6.1.3).

carry forward of Input Tax Credit, non-payment of interest on reversal of irregular transitional credit, etc.

The deficiencies related to compliance issues, noticed during the SSCA, are summarized in the Table 2.5 below:

Table 2.5

(₹ in crore)

Nature of Audit Findings	Audit Sample		Number of deficiencies noticed		Deviation as percentage of Sample	
	Number	Amount	Number	Amount	Number	Amount
Excess carry forward of Input Tax Credit as per assessment order/rectification order	1325 (Central-570 & State-755)	624.24(Central 364.49 & State 259.75)	674	164.68	50.86	26.38
Excess carry forward of Input Tax Credit as per legacy returns			101 ⁷⁰	8.9	7.62	1.42
Non-payment of interest	29	7.60 (Central 0.70 & State 6.90)	16	0.90	55.17	11.84

In addition to the compliance issues, Audit also observed systemic issues, such as allowance of transitional credit without necessary details, non-reconciliation of TRAN-1 with Electronic credit ledger and lack of Management Information System (MIS) for monitoring of verification of transitional credits.

Audit findings related to compliance and systemic issues identified on the basis of scrutiny of the selected cases are included in the subsequent paragraphs.

Compliance issues

2.9.6.1 Excess carry forward of Input Tax Credit

According to Section 140 of the RGST Act, 2017, a registered person, shall be entitled to take, credit of the amount of Value Added Tax (VAT), 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. Further, it was provided in the Section that the registered person shall not be allowed to take credit unless the said credit was admissible as ITC under the existing law and is also admissible as ITC under this Act.

Further, credit as is attributable to a claim related to Section 3, sub-section (3) of Section 5, section 6, section 6A or sub-section (8) of section 8 of the Central Sales Tax Act, 1956 (Central Act No. 74 of 1956) which is not

70 Out of these 101 cases, 96 cases are included in 674 cases of excess carry forward of ITC as per assessment order. In the remaining 5 cases, the Department had already issued notices regarding excess carry forward of ITC on the basis of assessment/rectification order.

substantiated in the manner prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 shall not be eligible to be credited to the Electronic Credit Ledger (ECL). Section 23 and 24 of the RVAT Act, 2003 and Section 9 of the CST Act, 1956 provide for assessment of the taxpayers on the basis of returns filed by them under the existing GST law.

Out of the examined 1325 transitional credit claims pertaining to 94 circles, audit scrutiny revealed excess carry forward of ITC in case of 674 taxpayers⁷¹ of 79 circles. In these cases, the transitional credit of SGST, carried forwarded in Table 5(c) of TRAN-1, was more than the ITC available to be carried forward as per assessment/rectification orders. As per the assessment order, these taxpayers had pending declaration forms and/or outstanding demands under pre-GST regime which were calculated after adjusting available ITC as per the last VAT/CST returns. However, this ITC had already been carried forward as Transitional Credit by the taxpayers. As a result, excess ITC amounting to ₹164.68 crore was carried forward in ECL of the taxpayers which was required to be recovered alongwith interest as per provisions *ibid*. **Out of these 674 taxpayers, 40 taxpayers under State Jurisdiction had been verified by the State Tax Department. However, the irregularities remained unnoticed until pointed out by Audit. Further, in respect of 34 assesseees, migrated to Centre after GST implementation, it could not be ascertained during audit as to whether demand raised in the assessment of the VAT returns was intimated to the Central tax authorities.**

Non-consideration of the transitional credit already availed by the taxpayers, at the time of assessments of legacy returns by the assessing authorities, resulted in the excess availing of credit under Transition Provisions of the RGST Act, 2017.

Further, 101 taxpayers⁷² of 47 circles claimed excess ITC of ₹8.90 crore in TRAN 1 as compared to VAT credit balance declared in the legacy returns⁷³. This reflects that the taxpayers did not match their transitional credit claim with the balance to be carried forward in their legacy returns in contravention of section 140 of RGST Act. Since the transitional credit claim process on GSTN system was based on self-declaration by the taxpayers and had no linkage with the commercial taxes portal⁷⁴ of the State Government, the GSTN system could not prevent such excess claims.

The assessments of legacy returns have been carried out in all these cases and therefore, the net impact of 96 cases on the revenues of the State Government has been taken into account in the paragraph above and in the remaining five cases, the Department had already issued notices regarding excess carry forward of ITC on the basis of assessment/rectification order.

The matter was reported to the Department and the State Government (November 2021).

71 It includes 354 taxpayers of Central Jurisdiction and 320 taxpayers of State Jurisdiction.

72 It includes 49 taxpayers of Central Jurisdiction and 52 taxpayers of State Jurisdiction

73 VAT-10.

74 *RajVISTA*

- Regarding the 674 cases of excess carry forward as compared to assessment/rectification orders, the Government stated (December 2021) that the concerned circle officers have been instructed to submit compliance in 286 cases, notices have been issued in respect of 197 cases, reply would be communicated after due examination in 102 cases, matter brought to the notice of the central tax authorities in 53 cases, rectification order issued in 22 cases and ₹73 lakh recovered/ adjusted in 14 cases.
- The Government further intimated (October 2021) that out of the 34 assesseees, who migrated to Centre after GST implementation, demand raised in the assessment of the VAT returns was intimated to the Central tax authorities in respect of three assesseees and the cases of the remaining assesseees were under examination.
- In respect of the 101 cases of excess carry forward in comparison to legacy returns, the Government stated (December 2021) that the concerned circle officers have been instructed to submit compliance in 64 cases, reply would be communicated after due examination in three cases, notices issued in respect of 22 cases, matter brought to the notice of the central tax authorities in six cases, rectification order issued in three cases and ₹ 4.76 lakh recovered in three cases.

During the exit conference, Additional Commissioner, GST while accepting the facts stated that most of the cases related to ITC mismatch or pending declaration forms which would be set off after submission of pending declaration forms or verification of mismatched ITC. Further progress was awaited (December 2021).

An illustrative case is given below: -

During scrutiny of records in Circle E, Jaipur it was noticed that a taxpayer claimed ITC of ₹ 9.51 crore in legacy return⁷⁵ which was carried forward in TRAN-1 (December 2017). Further examination of records revealed that as per the assessment order of 2017-18 (December 2019), allowable ITC was only ₹ 14.65 lakh. Further, it was observed that the assessing authority raised a demand of ₹ 2.71 crore after adjusting the ITC of ₹ 14.65 lakh and tax payment of ₹ 94.52 lakh against the total liability of ₹ 3.80 crore. As a result, excess transitional credit amounting to ₹ 9.51 crore was availed by the taxpayer.

The matter was reported to the Department and the State Government (November 2021). Government stated (December 2021) that the concerned circle officer has been instructed to submit compliance. Further progress was awaited (December 2021).

75 VAT-10

2.9.6.2 Irregular allowance and carry forward of ITC of previous period

As per Section 18(1) of Rajasthan VAT Act, every taxpayer is allowed to claim ITC on the purchase of taxable goods from a registered dealer within the State and for the purposes specified in clauses (a) to (g).

During scrutiny of records of Circle Sumerpur, it was noticed that a taxpayer brought forward ITC amounting to ₹26.70 lakh from Financial Year 2016-17 to 2017-18. Examination of returns/assessment for the year 2016-17 disclosed that the taxpayer had claimed ITC of ₹26.65 lakh on purchase of goods which were sold as exempted goods. Therefore, ITC was not allowable on purchase of these goods. However, the Assessing Authority, while finalising the assessments for the year 2016-17, failed to detect the irregularity and allowed ITC as claimed by the taxpayer which was carried forward for the year 2017-18. The taxpayer claimed transitional credit of ₹32.75 lakh as a closing balance of legacy period which included ₹26.65 lakh irregularly carried forward from 2016-17. This resulted in excess claim of ITC of ₹ 26.65 lakh in TRAN-1 which was recoverable along with interest.

The matter was reported to the Department and the State Government (November 2021). The Government stated (December 2021) that notice has been issued to the taxpayer. During exit conference, the Chief Commissioner (State Tax) accepted the audit contention. Further progress was awaited (December 2021).

2.9.6.3 Non-payment of interest

Rule 121 of the CGST/SGST 2017 stipulates that proceedings under Section 73 or 74 of the SGST Act shall be initiated in respect of any credit wrongly availed. The proceeding under Section 73 or 74 shall require the taxpayer to pay the credit along with interest payable thereon under Section 50 of the Act. Section 50 of the Act stipulates that every person liable to pay tax in accordance with the provisions of this Act or the rules made there under, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay interest at the rate notified.

Out of the examined 1325 transitional credit claims pertaining to 94 circles, audit scrutiny revealed that irregular transitional credit amounting to ₹ 6.56 crore was reversed in 29 cases of 20 circles. It was noticed in case of 16 taxpayers⁷⁶ of 12 circles⁷⁷, that irregular transitional credit of ₹ 5.42 crore was claimed which was subsequently deposited by the taxpayers or reversed by the taxpayers/Department, in which interest was leviable on the amount of irregular transitional credit claimed for the period from the claim to the reversal/deposit as per the provisions *ibid*. However, neither the taxpayers paid the interest nor was it demanded by the Department which resulted in non-

⁷⁶ It includes 3 taxpayers of Central jurisdiction and 13 taxpayers of State jurisdiction.

⁷⁷ Circle A, N, WT-1 and Spl-4 Jaipur, Special Hanumangarh, Jhalawar, A and B, Kota, Gangapur City, B and Spl-1, Bhiwadi and Sahjahanpur.

payment of interest amounting to ₹ 0.90 crore. Further, out of these 16 taxpayers, four taxpayers had also utilised/partially utilised the irregular credit of ₹ 8.69 lakh.

The matter was reported to the Department and the State Government (November 2021). The Government stated (December 2021) that notices have been issued in 10 cases of seven circles⁷⁸, ₹ 0.43 lakh recovered in one case⁷⁹, concerned circle officer instructed to submit compliance in one case⁸⁰ and reply would be communicated after due examination in one case⁸¹. Further, in respect of three cases of two circles⁸² it was stated that as per the GST Council meeting 17th Sept 2021, no interest was leviable on the unutilised ITC. During the exit conference, Assistant Commissioner, GST stated that these cases need to be examined in light of the decision of 45th GST Council meeting (held on 17th Sept 2021) in which it was decided⁸³ that interest would be leviable when the ineligible ITC was availed *and utilised*. However, audit found that the relevant amendment in the CGST/SGST Acts have not yet been notified. Further progress was awaited (December 2021).

One illustrative case is given below:-

During scrutiny of records of circle N Jaipur, it was noticed that a taxpayer availed (02 December 2017) transitional credit of ₹ 65.81 lakh through TRAN-1, out of which ₹48.29 lakh was utilized (May 2018) by the taxpayer to meet tax liability. However, examination of assessment order (September 2019) revealed that ITC eligible to be carried forward was ₹ 0.34 lakh. The taxpayer reversed (August 2018) SGST amounting to ₹49.52 lakh and ₹ 16.29 lakh in GSTR-3B for the month of April 2018 and July 2018 respectively. Therefore, interest was leviable on the excess claim amount of ₹ 65.81 lakh, which was subsequently reversed, for the period from December 2017 to August 2018 as per the provisions *ibid* amounting to ₹ 8.59 lakh. However, neither the taxpayer deposited the interest nor the Department initiated action to recover the interest amount which resulted in non-recovery of ₹8.59 lakh.

The matter was reported to the Department and the State Government (November 2021). The Government stated (December 2021) that interest is not leviable on unutilised ITC. However, in the absence of any relevant amendment in the CGST/SGST Acts, interest is leviable on the irregular transitional credit availed as per the extant provisions. Further progress was awaited (December 2021).

78 Circles A and B Kota, Jhalawar, WT- 1 Jaipur, Special Hanumangarh, Special I Bhiwadi and Sahjahanpur.

79 Pertaining to circle Special IV, Jaipur.

80 Circle A, Jaipur.

81 Circle B Bhiwadi.

82 Circle N Jaipur and Gangapur City.

83 Effective retrospectively from July 2017.

Systemic issues

2.9.6.4 System for verification of transitional credits

Central Board of Indirect taxes and Customs (CBIC) issued a detailed guidance note⁸⁴ for Transitional credit verification by its field formations vide circular of March 2018. The circular specifies that “the CGST officers shall have the jurisdiction for verification of Transitional credit of CGST irrespective of whether the tax payer is allotted to the Central Government or the State Government for the purpose of GST. TRAN credit verification process can only be done by the tax authority which had legal jurisdiction under the erstwhile law and also has the requisite past record of the tax payer”.

The Commercial Taxes Department had also issued instructions (April 2018)⁸⁵ regarding verification of TRAN-1 with last return under the existing VAT/CST laws. The State Government also shared the list of taxpayers with the State tax authorities, who had claimed more than ₹ 25 lakh of input tax credit under SGST and where the amount of ITC did not match with the amount shown in the last return filed under RVAT Act, 2003.

Audit requested (May and July 2021) the Department to provide the details of taxpayers selected for verification, total number of taxpayers selected and timelines prescribed for verification. The same has not been provided to Audit (December 2021).

It was noticed during audit of the selected circles that, out of 1325 transitional credit cases selected for audit, the Department had verified 459 cases⁸⁶ i.e. 34.64 per cent of the sample. Out of the 459 transitional credit claims verified by the Department, Audit noticed further irregularities in respect of 86 cases (18.73 per cent), which were not detected by the Department.

The matter was reported to the Department and the State Government (November 2021). During the exit conference, Chief Commissioner (State Tax) admitted the audit contention. Further progress was awaited (December 2021).

2.9.6.5 Allowance of Transitional Credit without necessary details

According to second proviso of Section 140(1) of RGST Act, credit as is attributable to any claim related to Section 3, Section 5(3), Section 6, Section 6A or Section 8(8) of the Central Sales Tax Act, 1956 which is not substantiated in the manner and within the period prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 shall not be eligible to be credited to the ECL. Therefore, taxpayers were required to mention the amount of transitional credit of ITC claimed as SGST after deduction of the amount of ITC liable to be reversed.

84 D.O.F. No.267/8/2018-CX.8 dated 14 March, 2018

85 No.F.17(134)ACCT/GST/2018/3220, dated 02 April 2018

86 It includes 141 taxpayers of Central jurisdiction and 318 taxpayers of State Jurisdiction.

Rule 117(1) of RGST rules stipulates that every registered person entitled to take credit of input tax under Section 140 shall submit a declaration electronically in form TRAN-1 on the common portal specifying therein, separately, the amount of ITC to which he is entitled under the provisions of the said section.

- (i) During scrutiny of records of 1325 taxpayers of 94 selected circles, it was noticed that details of outstanding declaration forms (C, H & F) in table 5(c) of TRAN-1 such as turnover relating to outstanding declaration forms along with difference tax payable and amount of reversible ITC relatable to the pending forms was not available in case of 644 taxpayers⁸⁷ (48.60 per cent) of 77 Circles. Out of these 644 taxpayers, transitional credits with respect to 114 taxpayers (77 taxpayers pertaining to the State jurisdiction and 37 taxpayers under Central Jurisdiction) had been verified by the Tax authorities. However, the Department failed to detect the lapse.
- (ii) Further audit scrutiny revealed that in respect of nine taxpayers of six circles⁸⁸, while the balance of ITC of VAT (in legacy return) and turnover of outstanding declarations forms was mentioned in TRAN-1, the difference tax leviable was not mentioned.

In the above cases, it was seen that the department did not seek necessary details of the declaration forms from the taxpayers and the GST portal also allowed transitional credit claims with these fields left blank. In the absence of these details, Audit could not verify the correctness of ITC carried forward as transitional credit and the possibility of irregular carry forward of ITC could not be ruled out.

The matter was reported to the Department and the State Government (November 2021). The Government stated (December 2021) that the concerned circle officers have been instructed to submit compliance in 338 cases, notices have been issued in 119 cases, reply would be communicated after due examination in 24 cases, matter brought to the notice of the central tax authorities in 52 cases, rectification order issued in 19 cases and ₹20.90 lakh recovered in six cases.

Further, in 86 cases it was stated that benefit of pending declaration forms was not allowed at the time of VAT assessment for the year 2017-18 and in four cases, out of these 86 cases, it was stated that the due date for submission of declaration forms has been extended. The reply is not acceptable as the transitional credit was required to be claimed after deduction of the difference tax corresponding to the pending declaration forms. However, in all these cases, it could not be ascertained whether the difference tax was deducted from the transitional credit claim. Even if the benefit of pending declaration forms was not allowed in the VAT assessments, which were carried out after the transitional credit had been availed, the possibility of excess transitional credit claims in these cases could not be ruled out.

⁸⁷ It includes 306 taxpayers of Central jurisdiction and 338 taxpayers of State Jurisdiction.

⁸⁸ Circle C Jaipur, E Jaipur, L Jaipur, M Jaipur, A Bhiwadi and B Bhiwadi

Further, in respect of nine cases in which only the difference tax leviable was not mentioned, Government stated (December 2021) that the concerned circle officers have been instructed to submit compliance.

- (iii) A taxpayer⁸⁹, in addition to mentioning the details of turnover of outstanding forms, mentioned the difference tax leviable on pending C forms amounting to ₹ 14.62 lakh in column 4 of table 5(c) of TRAN 1. Audit scrutiny revealed that the taxpayer also mentioned the same amount in column 7⁹⁰ of table 5(c) irregularly as columns 5 and 6 pertaining to turnover and difference tax payable on pending F forms respectively were left blank. The erroneous entry in column 7 offset the difference tax mentioned in column 4, due to which the difference tax payable on pending C forms mentioned in column 4 was not deducted from the transitional credit claim. The GST portal also did not prevent the entry in column 7 in the absence of the corresponding entries in columns 5 and 6. This resulted in excess transitional credit claim of ₹ 14.62 lakh.

The matter was reported to the Department and the State Government (November 2021). The Government stated (December 2021) that the concerned circle officer has been instructed to submit compliance.

During the exit conference Additional Commissioner accepted the facts. Further progress was awaited (December 2021).

2.9.6.6 Non-availability of information/documents related to transitional credit on closing stock

The registered persons were entitled to take, in their ECL, credit of the VAT in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day as per provisions of sub-sections (3), (4) and (6) of Section 140 of the RGST Act. The registered persons were required to file a return in the prescribed form TRAN-1 in which Table 7(c) captures the transition of eligible taxes under these sub-sections.

During scrutiny of TRAN-1 filed by the taxpayers it was noticed that 13 taxpayers of seven circles⁹¹ claimed transitional credit of SGST in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day. However, Audit could not verify whether the taxpayers claimed ITC on these stocks in the returns⁹² filed under the RVAT Act and were eligible to claim transitional credit as per the conditions prescribed in the provisions *ibid* as the relevant supporting information and records i.e. details of closing stock and supporting invoices were not available with the circles.

It is relevant to mention that the transitional credit claims in these cases had not been verified by the Department. The required information/ records could

89 Pertaining to circle E Jaipur.

90 ITC reversal relatable to difference tax payable on pending F forms.

91 Circle C, E and Q Jaipur, Circle A and Special circle 1 Bhilwara, A and C Bikaner.

92 VAT-10

have been requisitioned for verification by the Department and in the absence of these records/information, the veracity of claims in these cases could not be ascertained and the possibility of irregular transitional credit claims could not be ruled out.

The matter was reported to the Department and the State Government (November 2021). The Government stated (December 2021) that notices have been issued in five cases⁹³, concerned circle officers have been instructed to submit compliance in seven cases⁹⁴ and reply would be communicated after due examination in one case⁹⁵. Further progress was awaited (December 2021).

2.9.6.7 Credit of unavailed ITC of Capital goods/Inputs received on or after the appointed day

Section 140(2) of Rajasthan GST Act stipulates that a registered person shall be entitled to take, in his ECL, credit of the unavailed input tax 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. Further, Rule 117 (2) of Rajasthan GST Rules prescribes that in the case of a claim under sub-section (2) of section 140, the particulars are required to be specified separately i.e. the amount of tax or duty availed or utilized and yet to be utilized by way of input tax credit in respect of every item of capital goods as on the appointed day. The registered person was required to claim such ITC under Transitional Credit in Column 6(b) of TRAN-1.

Further, Section 140 (5) of Rajasthan GST Act, 2017 provides that a registered person shall be entitled to take, in his ECL, credit of VAT, if any, in respect of inputs received on or after the appointed day but the tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other taxpaying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day. The registered person was required to file a return in prescribed form TRAN-1 and Table 7(b) of the TRAN-1 provided to capture the transition of eligible taxes under this category.

During scrutiny of TRAN-1 filed by the taxpayers it was noticed that a taxpayer⁹⁶ claimed transitional credit as SGST in respect of unavailed SGST credit on Capital Goods (Table 6(b) of TRAN-1) amounting to ₹52.40 lakh. Further, two taxpayers of two circles⁹⁷ claimed SGST credit amounting to ₹ 29.44 lakh on inputs received on or after the appointed day but the tax in respect of which had been paid by the supplier under the existing law (Table 7(b) of TRAN-1).

93 Pertaining to Circle C Jaipur, Circle A and Special circle 1 Bhilwara.

94 Circle A Bikaner, E and Q Jaipur.

95 Circle C Bikaner.

96 Pertaining to Special Circle-II, Udaipur.

97 Pertaining to Special Circle-II, Udaipur and Circle E, Jaipur.

However, the prescribed information e.g. details of capital goods and closing stock alongwith supporting invoices were not available with the circles as verification of these transitional credit cases was not carried out by the circles.

Therefore, Audit could not verify whether the registered persons were eligible to claim transitional credit under these categories as per conditions prescribed in the provisions *ibid*.

The matter was reported to the Department and the State Government (November 2021). The Government stated (December 2021) that the concerned circle officers have been instructed to submit compliance. Further progress was awaited (December 2021).

2.9.6.8 Non reconciliation of TRAN-1 with Electronic Credit ledger

According to Section 140(1) of Rajasthan GST Act, 2017, a registered person shall be entitled to take, in his ECL, credit of the amount of VAT, if any, carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed. The registered person was required to file a return in prescribed form TRAN-1 in which Table 5(c) would capture the transition of eligible taxes under this category.

During the SSCA, it was noticed that a taxpayer⁹⁸ claimed transitional credit of ₹ 16.83 lakh as SGST in respect of excess ITC carried forward from the return filed under Rajasthan VAT Act for the quarter ending 30 June 2017. However, in the ECL of the taxpayer, the corresponding credit entry of ₹ 23.18 lakh was available in the system instead of ₹16.83 lakh. Audit examination revealed that the credit/debit entries in the ECL correspond to the ITC claimed in table 5(c) of TRAN-1 and any revisions in it. However, in this case, the amount declared in TRAN-1 was not reconciled with the balance available in the ECL by the GST portal resulting in excess credit of ₹6.35 lakh in ECL.

The matter was reported to the Department and the State Government (November 2021). The Government stated (December 2021) that notice has been issued to the taxpayer. During exit conference, Addl. Comm. stated that the issue would be examined. Further progress was awaited (December 2021).

2.9.6.9 Lack of Management Information System (MIS) on GST portal for transitional credit

MIS is an important tool of internal control mechanism as it serves to communicate required, relevant and accurate information in a timely and regular manner to the relevant authorities which helps them to evaluate progress/ status and thus forms the basis of an effective internal control system.

98 Pertaining to Circle E Jaipur.

During the SSCA, information such as number of taxpayers who filed TRAN-1, total transitional credit claimed as SGST and number of transitional credit claims scrutinized by the Department etc. was requisitioned by audit in the 94 selected circles. The concerned Jurisdictional Officers of 71 circles, could provide only limited information attributing the reason to lack of relevant MIS on the GST BOWEB portal⁹⁹. The remaining 23 circles provided the required information on the basis of compilation of information at the level of circles. However, in the absence of any supporting documents, the veracity of the information provided by these circles could not be ascertained. It was also seen that the department had not issued directions or a common format for compilation of such basic information.

Absence of the relevant MIS of basic information relating to transitional credit claims reflects the lack of aggregation and reporting of information vital for efficient functioning and effective monitoring.

The matter was reported to the Department and the State Government (November 2021). The Government stated (December 2021) that Rajasthan being a Model-2 state, services can be added or created on the portal by GSTN only. During the exit conference, Secretary (Finance) admitted that this was very basic information which should have been available on the portal.

(Refer to Appendix 2.20 and 2.21)

2.9.7 Conclusion

Audit noticed gaps in the assessment of the VAT orders for 2017-18 and transitional credit verification, which resulted in carry forward of ITC in the GST regime in excess of the ITC available to be carried forward as per assessment/rectification orders and legacy returns in a significant number of cases.

Audit also observed systemic issues such as allowance of transitional credit without necessary details, non-reconciliation of TRAN-1 with Electronic Credit Ledger, etc. In addition, there were deficiencies in the internal control mechanism, including the system for verification of transitional credit claims.

2.9.8 Recommendation

Apart from the requisite action on the irregularities brought out by Audit as highlighted in the preceding paragraphs, there is an urgent need for the State Government to examine all the VAT assessment/rectification orders for the year 2017-18 to determine whether excess transitional credit was carried forward to the GST regime (TRAN-1). Further, the Department may take steps to strengthen internal controls to minimize errors in the verifications carried

99 BOWEB is the back-office portal provided for tax officials by the GSTN.

out by the circles for better compliance with GST laws and to plug revenue leakage. The Department may also facilitate the availability of relevant reports/MIS of basic information pertaining to transitional credit claims and address the systemic deficiencies through relevant validation checks on the GST portal by pursuing the matter with GSTN.

2.10 Excess carry forward of Input tax credit

Besides the SSCA conducted for the sampled cases in the designated circles as mentioned above, audit also noticed a case which is detailed below:

2.10.1 Failure to verify the Input tax credit available under pre-GST regime resulted in taxpayers availing excess transitional credit

According to Section 140(1) of the Rajasthan Goods and Service tax Act, 2017, a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the amount of Value Added Tax (VAT), if any, 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.

Audit scrutiny (between June 2020 to November 2020) of the records of four circles¹⁰⁰ revealed that 15 taxpayers had claimed Transitional Credit of State Goods and Service Tax (SGST) amounting to ₹ 2.94 crore in their TRAN-1 against the ITC carried forward from pre-GST regime based on the returns filed by them. Examination of assessment records of these taxpayers revealed that in case of 14 taxpayers, excess ITC under VAT was not available to be carried forward as per VAT/CST assessments (for the year 2017-18), and instead demands amounting to ₹1.38 crore were outstanding against them under the pre-GST regime. In the remaining case, the taxpayer claimed SGST Transitional Credit of ₹1.41 crore in the returns filed under pre-GST regime. However, as per the assessment orders, only ₹0.46 crore was available as excess ITC to be carried forward.

The Jurisdictional Officers (JOs) informed that transitional credits were verified in case of eight taxpayers. However, the JOs failed to detect the irregularities in these cases. In the remaining seven cases, the transitional credits were not verified which led to excess carry forward of ITC amounting to ₹ 2.48 crore.

The omission was reported to the Department and the State Government (September 2021). The Government replied (November 2021) that ITC of ₹ 0.17 crore had been reversed/recovered in four cases¹⁰¹ while tax

¹⁰⁰ Circle WT-Ajmer, Special-I, III and VIII Jaipur.

¹⁰¹ Belonging to Circle WT-Ajmer and Special- III, Jaipur.

assessments of previous years had been rectified in four cases¹⁰² with recovery of ₹ 0.01 crore in one case. Regarding one case¹⁰³, the Government stated that the taxpayer had claimed the ITC for input held in stock to be used in works contract executed under Exemption Certificate. The reply is not acceptable as scrutiny of TRAN-1 filed by the taxpayer revealed that the taxpayer had shown nil amount in Table 7.c pertaining to inputs held in stock. The Government also informed that notices had been issued in remaining cases. Further progress was awaited (December 2021).

102 Belonging to Circle Special-I and III Jaipur.

103 Belonging to Circle WT-Ajmer.