

Chapter III: Effectiveness of Compliance Verification Mechanism under GST

As per Section 59 of the Central Goods and Services Tax Act, 2017, every registered person shall self-assess the tax payable on supplies made during the tax period and file the return for each tax period. GST, therefore, continues to promote self-assessment just like Central Excise, VAT and Service Tax.

The introduction of self-assessment underscored the need for an effective tax compliance verification mechanism. Such a mechanism typically has three important components—returns' scrutiny, internal audit and anti-evasion functions. This chapter brings out the status of implementation of the simplified GST return mechanism and department's performance with respect to the aforesaid compliance verification mechanism and recovery of arrears.

3.1 Status of implementation of simplified return mechanism

In the last two Audit Reports³² on Goods and Services Tax, Audit had reviewed the progress made in respect of implementation of the simplified return mechanism and system-verified flow of Input Tax Credit (ITC). Audit observed that owing to continuing extensions in the roll out of simplified return system over the last years, and delay in decision making, the originally envisaged system verified flow of ITC was yet to be implemented despite the lapse of more than three years since the roll out of GST. In the absence of a stable and simplified return system, one of the main objectives of roll out of GST i.e. simplified tax compliance system was yet to be achieved. Accordingly, Audit recommended that a definite time frame for roll out of simplified return forms may be fixed and implemented as frequent deferments were resulting in delay in stabilisation of the return filing system and continued uncertainty in the GST eco-system.

During 2020-21, Audit further reviewed the status of implementation of simplified return mechanism and noted the significant progress made in the return system with respect to linking of GSTR-1³³, GSTR-2B³⁴ and GSTR-3B³⁵;

³² Audit Report No.11 of 2019 (Goods and Services Tax) and Audit Report No. 1 of 2021 (Indirect Taxes- Goods and Services Tax, Central Excise and Service Tax)

³³ GSTR-1 is an outward supplies statement as provided in Section 37 of the CGST Act, 2017 and Rule 59 of the CGST Rules, 2017.

³⁴ GSTR-2B is an auto-drafted statement containing the details of input tax credit which shall be made available to the registered person in GSTR-3B.

³⁵ GSTR-3B is a self-assessed summary return which captures summary of outward supplies and inward supplies liable to reverse charge

and restricting ITC of the recipient taxpayers to the supplies declared by suppliers in GSTR-1/Invoice Furnishing Facility³⁶ (IFF)³⁷ .

The return mechanism in GST as envisaged originally in the GST and the implementation status of the same is discussed in the following paragraphs.

The original return mechanism in GST envisaged electronic filing of returns, uploading of invoice level information, auto-population of information relating to ITC from returns of supplier to that of the recipient, invoice level information matching and auto-generation of monthly returns.

The system verified flow of ITC was envisaged to be achieved through the returns GSTR 1, 2 & 3.

- a. It was originally envisaged that suppliers would file invoice-wise details of outward supplies made by them during the month through GSTR-1. The details of outward supplies so furnished by the supplier in GSTR-1 were to be made available electronically to the registered recipients through Form GSTR-2A.
- b. Similarly, details of supplies relating to composition taxpayers, Input Service Distributors and Non-Resident taxpayers as well as Tax Deducted at Source (TDS) by Government departments / agencies and E-commerce operators also were to be automatically made available electronically to the recipients.
- c. Thereafter, based on details available in Form GSTR-2A, the taxpayer was supposed to furnish form GSTR-2 after including details of other inward supplies.
- d. The details of inward supplies added, corrected or deleted by the recipient in his Form GSTR-2 were to be automatically made available to the supplier electronically in form GSTR-1A through the common portal. The supplier may either accept or reject the modifications made by the recipient, and Form GSTR-1 furnished earlier by the supplier should stand amended to the extent of modifications accepted by him.
- e. As compared to GSTR-1, 1A & 2A which are invoice level granular returns, GSTR-3 is a monthly return with the details of sales and purchases during the month along with the amount of GST liability. Most elements of GSTR-3 were supposed to be auto-generated from GSTR-1 and GSTR-2 while the taxpayer had to include the details of discharge of liability of tax, interest, penalty, refund claimed from electronic cash ledger and debit entries in electronic cash/credit ledger while filing GSTR-3.

³⁶ IFF is the Invoice Furnishing Facility, which allows small taxpayers (who file quarterly returns) to upload their invoice every month.

³⁷ With effect from 1 January 2022. Vide CBIC Notification No.40/2021-Central Tax, Dated 29.12.2021.

However, owing to the unprepared GST ecosystem and complexity of return forms, the originally envisaged key returns were postponed and a new simpler temporary return, GSTR-3B, was introduced, initially for two months. GSTR-3B was designed as a self-assessed summary return which captured a summary of outward supplies and inward supplies liable to reverse charge. As a result, ITC would now be settled based on these self-assessed summary returns filed by taxpayers. The originally envisaged system verified flow of ITC at the invoice level was kept in abeyance, thus rendering the system more prone to ITC frauds.

New Return mechanism

The GST Council in its 27th meeting (May 2018) approved the broad principles for the design of the new simplified return filing system. In May 2019, a prototype of the offline tool was shared on the GST portal to give the look and feel of the new return forms to the taxpayers and from July 2019, the taxpayers were able to upload invoices on trial basis for familiarisation.

The GST Council in its 28th meeting (July 2018) decided that the new return mechanism would be implemented with effect from 1 January 2019. Later, in its 31st meeting, the GST Council (December 2018) extended the rollout date and decided to implement the new return forms in a phased manner so that from January 2020 onwards, all taxpayers would be filing returns as per the new return mechanism, and Form GSTR-3B, introduced as a temporary return, would be completely phased out. The GST Council again extended the date of roll out of the new return system in its 37th meeting (September 2018) and decided that the new return system shall be introduced from 1st April, 2020 onwards. In the 39th GST council meeting (March 2020), the implementation of the new return system was further deferred up to September 2020.

Subsequently, the GST Council, in its 42nd meeting (October 2020), has decided not to roll out the proposed new return system in one go. The Council has decided to incrementally incorporate the features of the new return system in the present familiar GSTR-1/GSTR-3B scheme. It was envisaged that the new approach would allow the taxpayer to view ITC available in his electronic credit ledger from all sources i.e. domestic supplies, imports and payments on reverse charge etc. prior to the due date for payment of tax, and enable the system to auto-populate return (GSTR-3B) through the data filed by the taxpayer and all his suppliers.

The salient features of the proposed return filing system are as follows:

1. Filing of FORM-GSTR-1 to be mandatory before filing of return in FORM GSTR-3B;
2. Filing of GSTR-1 to be sequential;

3. No two-way communication between the supplier and the recipient while filing return;
4. Provision of furnishing of details of inward supplies to be removed, instead FORM-GSTR-2B (invoice level data auto-populated from GSTR-1, GSTR-5³⁸ and GSTR-6³⁹) shall be made available to recipients;
5. Restrictions in ITC to extend where details of the Input Tax Credit of such supplies have not been communicated to the registered persons.

Accordingly, Returns Enhancement and Advance Project (REAP) was undertaken by the Government under which:

- Auto-drafted Input Tax Credit statement in GSTR-2B, based on GSTR-1, GSTR-5 and GSTR-6, had been made available to the taxpayer with effect from August 2020 containing all data regarding ITC available based on B2B supplies received from other registered persons, imports of goods, Input Service Distributer (ISD) and Reverse Charge Mechanism (RCM) supplies.
- Auto-population of ITC and liabilities in GSTR-3B return from GSTR-2B and GSTR-1 had been started with effect from December 2020.
- E-invoice had been made mandatory for taxpayers with turnover more than ₹ 500 crore with effect from 1st October 2020 for B2B transactions and for export invoices.⁴⁰ Data from e-invoice is being auto populated in GSTR-1 of the taxpayer, which in turn is being used to auto-populate GSTR-3B returns.
- Quarterly return with monthly payment (QRMP) scheme for taxpayers having aggregate turnover up to ₹ 5.00 crore was introduced with effect from 1 January 2021, providing for option for filing of returns on quarterly basis, instead of monthly basis.

Audit examined the current status of return filing system and is of the opinion that additional steps need to be taken to fully address the issue of non-intrusive e-tax system and system-verified flow of ITC based on the principles of invoice matching. The originally envisaged⁴¹ return system provided for electronically generated monthly return (Part A of GSTR-3) of the taxpayers based on tax liability declared by them and system-verified ITC available to them. The current system, although providing for auto-population of tax liability and eligible ITC in the monthly return, allows for changes in the auto-populated amounts without any limit, leaving room for either mistakes or

³⁸ Details of invoices furnished by non-resident taxpayers.

³⁹ Details of invoices furnished by an Input Service Distributor.

⁴⁰ The threshold for mandatory issuance of e-invoice had been reduced to Rs. 50 crore from 1st April 2021.

⁴¹ Section 39 (1) of CGST Act, 2017. And Rule 60 of the CGST Rules, 2017.

deliberate misstatements by the taxpayers. Further, the filing of GSTR-1 is yet to be made mandatory before filing of GSTR-3B by the taxpayer. As a result, the objective of auto-population of tax liability and available ITC in the monthly return cannot be achieved where GSTR-1 has not been filed. For example, unless GSTR-1 is filed by a taxpayer, his tax liability will not be available for auto-population in his monthly return (GSTR-3B). Similarly, unless GSTR-1 is filed by a supplier, eligible ITC will not be available for auto-population in GSTR-2B and monthly return of the recipient taxpayer.

Thus, the originally envisaged non-intrusive e-tax system, based on preventive checks, is yet to be fully implemented. This shortcoming is being compensated through the Department's more traditional intrusive functions requiring tax-officer-taxpayer interface. Notification 94/2020 dated 22 December 2020 is an example in this regard where a new sub-rule 2A has been inserted in Rule 21A of the Central Goods and Services Tax (CGST) Rules vide which if any significant differences or anomalies are observed between GSTR-3B and GSTR-1/2B, tax officers can suspend the GST registration of the taxpayer without affording a reasonable opportunity of being heard.

When pointed out by Audit (January 2022), the Ministry stated (February 2022) that efforts were being made to achieve a less-intrusive e-tax system. Ministry informed that a number of amendments have been proposed in the CGST Act, 2017 vide Finance Bill 2022 to align with the present return filing system. Section 39 of the CGST Act, 2017 has been proposed to be amended in the Finance Bill, 2022 to provide for mandatory requirement of filing of GSTR-1 before GSTR-3B return for a tax period. Further, amendment to section 37 of CGST Act, 2017 has been proposed in the Finance Bill 2022 to make filing of GSTR-1 sequential i.e. a taxpayer will not be able to file GSTR-1 unless the earlier period GSTR-1 returns have been filed.

Ministry also stated that, in view of genuine differences between the ITC as per books of the taxpayer and ITC auto-populated in GSTR-3B, the values in auto-populated GSTR-3B have been kept editable. The GST Portal highlights such fields of GSTR-3B and a warning message appears, where a taxpayer avails more ITC than the auto-populated value, to keep a check on mistakes/misstatement by the taxpayers.

Audit has noted the constraints highlighted by the Ministry in making auto-populated tax liability and ITC amounts non-editable in the monthly return (GSTR-3B). Audit, however, is of the view that the Ministry may rely more on preventive checks that are enforced through IT systems, by taking steps to limit editing of auto-populated tax liability/ITC amounts, as originally envisaged, rather than relying on post-facto intervention by the tax offices in safeguarding Government revenue.

3.2 Scrutiny of Returns under GST

Section 61 of the Central Goods and Services Tax Act, 2017 stipulates that the proper officer may scrutinize the return and related particulars furnished by the taxpayers to verify the correctness of the returns and information. Under Rule 99 of the Central Goods and Services Tax Rules, 2017, discrepancies noticed if any, shall be communicated to the taxpayer for seeking his explanation. If the explanation offered is found acceptable by the proper officer, the proceeding shall be dropped, the taxpayer shall be informed and no further action in the matter shall be taken. If, however, the taxpayer

- does not furnish a satisfactory explanation within 30 days of being informed (extendable by the proper officer), or
- does not take any corrective action in his return in which discrepancy is accepted,

the proper officer may initiate appropriate actions including adjudication proceedings for determining the tax liability under section 73 or section 74.

In the Audit Report No. 1 of 2021 on Goods and Services Tax, Audit had observed that CBIC was yet to put in place an effective system of scrutiny of returns based on detailed instructions/standard operating procedure/manual for the tax officers. Therefore, an important compliance function of the department, as mandated by law, was yet to be effectively rolled out even after three years of GST implementation.

Ministry informed⁴² (August 2021) that the report of the Committee, constituted to suggest guidelines for scrutiny of GST returns, was under examination. However, the department had been using data analytics and information technology system-based tools to identify deviant behaviour. Inconsistencies between various returns of the taxpayers are being analysed and red flag reports are being generated by GSTN as well as the Directorate General of Analysis and Risk Management (DGARM) in respect of defaulting taxpayers. These reports are being shared with the tax officers for verification.

Ministry further informed that efforts were being made to put in place a risk-based standardised system of return scrutiny within the next six months.

It may be pertinent to mention that section 73 of CGST Act, 2017 provides that where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the

⁴² In reply to Hon'ble Public Accounts Committee queries on Audit Report No.1 of 2021

person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder. The proper officer shall issue the order within three years⁴³ from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to, or within three years from the date of erroneous refund.

The due dates for filing of annual returns for FY 18, FY 19 and FY 20 were 5/7 February 2020, 31 December 2020 and 31 March 2021, respectively. Almost two years have passed (January 2022) since filing of annual returns for FY 18 and more than one year since filing of annual return for FY 19. As a result, the time available for issuance of notice and recovery of revenue in cases of non/short payment of tax has already shrunk to that extent.

In view of the above, Audit agrees with the Ministry's response and recommends that an effective risk based standardised system of returns' scrutiny (with detailed instructions/standard operating procedure) should be implemented at the earliest and certainly within the period of six months indicated by the Ministry so that the Department has sufficient time to take action against non-compliant taxpayers before time-barring of cases as per law. Such a scrutiny should involve risk-based selection of returns for scrutiny, and the results of the scrutiny (similar to scrutiny assessment in respect of income tax) should also be captured in real-time through the CBIC-GST System to ensure transparency and minimize arbitrariness.

When Audit pointed this out (December 2021), Ministry, while accepting the audit recommendation, stated (February 2022) that scrutiny of returns based on detailed instructions/standard operating procedure is under active consideration and the proposed scrutiny process is envisaged to have risk-based selection of returns and is proposed to include a robust monitoring system to ensure transparency and fairness.

⁴³ Five years in cases of any wilful-misstatement or suppression of facts to evade tax under Section 74 of the CGST Act, 2017.

3.3 Monitoring mechanism with respect to Directorate General of Analytics and Risk Management (DGARM) Reports

CBIC constituted⁴⁴ (July 2017) the Directorate General of Analytics and Risk Management (DGARM) with the aim to study, interpret and analyse indirect tax data and share the outputs with various stakeholders. The DGARM is an attached office of the Central Board of Indirect Taxes and Customs and reports to Chairman, CBIC through Member (Investigation). The Directorate General became functional in June 2018 and analyses data relating to Customs, Central Excise and Goods and Services Tax.

Working of DGARM

DGARM identifies high risk taxpayers through use of extensive data analytics on the GST returns data received from GSTN and DG Systems, and Income Tax return (ITR) data received from CBDT. The list of high risk taxpayers is shared with the CBIC field formations through various analytical reports on the Directorate of Data Management (DDM) portal for action.

On completion of action, CBIC field formations upload feedback on the respective DGARM reports incorporating details regarding detection and recoveries from the identified high risk taxpayers.

Data analysis methodology/parameters in respect of the reports uploaded on the DDM portal were requested (September 2021) by Audit. The Department did not provide the same and intimated (September, 2021) that the instructions were confidentially shared with the field formations in PDF format. As a result, Audit could not examine the risk parameters and methodology used by DGARM.

When pointed out by Audit (January 2022), Ministry replied (February 2022) that these reports are in effect intelligence reports for targeted enforcement by the field formations against identified taxpayers and therefore, are confidential in nature and cannot be shared.

The Ministry's reply is not acceptable. Non-production of data analysis methodology/parameters impedes CAG's Constitutional and statutory responsibility under section 16 of the CAG's DPC Act, 1971 to examine whether rules and procedures are designed to secure effective check on the assessment and collection of revenue. In particular in respect of cases where the feedback is reported on the DDM portal and action is completed, detailed granular data must be shared with Audit, and cannot be withheld on grounds of confidentiality.

⁴⁴ Vide Office Memorandum F. No. A-11013/19/2017-Ad.-IV dated 11.07.2017

Standard Operating procedure for “Risky Tax Payers” and others

The Board had issued (April 2019) a Standard Operating procedure (SOP) regarding the modalities of taking action by its field formations in respect of GSTINs identified by DGARM. The SOP also provides the manner in which the Jurisdictional Range, after receiving the GSTINs from the Jurisdictional Assistant/Deputy Commissioner, would approach the taxpayer, as follows:

1. The Range would send an e-mail to the taxpayer explaining the reasons as to why he was being communicated and, where applicable, clearly indicate the nature of discrepancy in payment of tax or filing of returns etc.
2. If no or an unsatisfactory response is received from the taxpayer, the Range would issue a letter by speed post to the taxpayer. If a satisfactory response was still not forthcoming within the next 15 days, or if the letter is returned by the Postal Department for any reason, the Range Officer shall bring the matter to the notice of Assistant/Deputy Commissioner. After weighing the facts, the Range Officer or preventive Branch may visit the principal place of business of the taxpayer after due authorisation.

Audit noticed that the Standard Operating Procedure (SOP) dated 30 April 2019 makes only an incidental reference to the provisions of the CGST Act as follows:

“The provisions of Chapter XII of CGST Act, 2017 regarding scrutiny of returns (Section 61), assessment of non-filers of returns (Section-62), assessment of unregistered persons (Section 63) and summary assessment in certain special cases (Section 64), should be adhered while examining these taxpayers”.

In the vast majority of cases (i.e. other than assessment of non-filers, assessment of unregistered persons, and summary assessment in special cases), the provisions of the SOP appear to refer (although not explicitly stated) to the detailed procedures to be followed under Section 61 – Scrutiny of Returns.

In Audit’s opinion, this SOP should explicitly flow from, and state clearly and transparently, the specific provisions of the CGST Act that are being implemented through the SOP.

Further, the use of a manual/ semi-automated mechanism for taxes and monitoring action in respect of Risky Taxpayers identified by DGARM instead of an IT workflow based functionality is sub-optimal as it significantly reduces the level of transparency and visibility for jurisdictional actions and fails to properly leverage the full power of information technology. The current

system of just uploading feedback post-facto onto the CBIC-DDM Module and not conducting all actions in real-time through the IT system is not adequate.

When pointed out by Audit (January 2022), the Ministry stated (February 2022) that the SOP dated 30 February 2019 was updated by the SOP dated 12 July 2021. Ministry further stated that the SOP provides a broad template on how to process the lists of risky taxpayers shared by DGARM. The SOP is not meant to act as a statutory underpinning, but is merely a broad guideline on dealing with the taxpayers identified by the DGARM for verification. Ministry's reply is not acceptable in view of the fact that the SOP makes only an incidental reference to the provisions of the CGST Act and, in the absence of clarity regarding the statutory provisions under which the Department is required to take action (in particular, scrutiny under section 61 of the CGST Act, 2017), may lead to different interpretations by various field formations. Further, the updated SOP of July 2021 also lacks clarity and makes only an incidental reference to the provisions of the Act, as in the SOP dated 30 February 2019.

Audit strongly recommends that the entire set of activities should be end-to-end automated as part of the CBIC-GST platform. The automated generation of emails to the identified taxpayers should take place through such a module. Responses from taxpayers should similarly be part of (or seamlessly inter-forced) with this module; issue of emails, auto-generated speed post letters, or automated SMSs, could take place through this system; the results of formal visits (after appropriate online authorisation) to the principal place of business of the taxpayer; and thereafter the ultimate feedback/ conclusion as a result of the risky taxpayers' identification should be done in real-time through this module. Such an end-to-end automated module would facilitate transparency and effective real-time monitoring.

The Ministry should also fix timelines for completion of verification by the field formations, and automatic tracking against such timelines. No such detailed timelines have been defined. This issue was also highlighted in the Board's letter of February 2019⁴⁵ wherein it was noted that there were Commissionerates in the five zones who had not uploaded a single feedback.

When pointed out by Audit (January 2022), Ministry stated (February 2022) that the web application of DGARM is fully automated where reports containing the details of risky entities are shared with field formations and after completing the action, the field formations upload GSTIN-wise feedback on DGARM portal immediately upon achieving key milestones indicated in sub-head/heads of feedback. Thus, the application helps in real time monitoring of action taken on risky taxpayers identified under various reports. Ministry, with

⁴⁵ D.O.F. No. DGACR/tech/Analytic/206/2018 dated 22 February 2019

respect to fixing timelines for completion of verification by the field formations, stated that though no timeline is provided in the SOP dated 30.04.2019, the feedback is examined from time to time and reminders issued to the field for timely compliance.

The reply is not acceptable as the existing semi-automated mechanism remains sub-optimal and fails to properly leverage the full potential of IT. Many actions, like correspondence with the identified taxpayers do not take place through the DGARM portal. Thus, there is a need for end-to-end automation of the entire set of activities related to verification (or scrutiny, when this is notified) for increased efficiency and transparency.

Monitoring and feedback mechanism – Audit observations

Audit noticed that a feedback view module has been created in the DDM portal to monitor the feedback on GSTINs/PANs shared under various analytical reports with the field formations. It provides the current status of report-wise/GSTIN-wise detection and recovery. It also enables the officers at various levels to monitor the quality of the analytical reports, time taken to act and pendency at the field level.

The Department was requested to provide the details of the 177 reports uploaded on the DDM portal. In reply, DGARM provided only the summary of 177 reports under 40 theme-wise Report IDs. As per the details provided, DGARM uploaded 4, 82,587 GSTINs and feedback from field formations was received in respect of 3, 71,898 GSTINs (77 *per cent*). Further, the Department detected non/short payment of tax dues of ₹ 2, 16,313 crore, based on these 177 reports, and recovered ₹ 1, 96, 355 crore from the taxpayers.

Since the details of 177 reports were not provided, Audit could not examine the efficacy of feedback mechanism in terms of time taken by the CBIC field formations and pendency of action, if any. However, on examination of the summary of 40 theme-wise reports, Audit observed the following:

(i) In respect of 13 Report IDs⁴⁶, the feedback was pending in more than 50 *per cent* cases as on September 2021, ranging from 52 *per cent* to as high as 95 *per cent*. Under these 13 report IDs, DGARM had forwarded 47,301 GSTINs during

⁴⁶ Titles of 13 Reports are: Analysis of importers not declaring GSTIN in Bill Entry, Analysis of tax payment by top 500 taxpayers-PANs (in terms of Cash payment), Analysis of taxpayers profiled on the basis of data exchange between CBDT-CBIC-GSTN, Multiple registrations linked with PAN, Analysis of taxpayer with inordinately skewed tax behaviour, Analysis of GSTINs who have filed GSTR-1 but not filed GSTR-3B or nil filed and also not shown in GSTR 2A, Verification of first stage (L1) or second stage (L2) suppliers of identified risky exporters, Regarding the lists of the taxpayers who have passed on wrongful ITC/ineligible ITC, Analysis of Exporters who have claimed refunds after exporting Goods/services under LUT/Bond and export of services with payment of duty, Monitoring of pending verification of risky exporters, Comparison of ITC claimed in reverse charge mechanism with the declared inward supply, Verification of new registration applicable by CGST authorities, Analysis of GSTIN's who have been supplying taxable as well as exempted supplies but have not reversed any ITC

February 2019 to August 2021. Out of these, the Department had submitted feedback in respect of only 12,242 cases with detection of ₹ 12,676 crore and recovery of ₹ 8,736 crore. Feedback in respect of 35,059 GSTINs was pending. In the absence of details, Audit could not ascertain the extent of delays.

(ii) In respect of two report IDs pertaining to ‘monitoring of pending verification of risky exporters⁴⁷’ and ‘ITC frauds⁴⁸’, the feedback was pending in 95 per cent cases each. In these two reports, DGARM shared the list of 7062 GSTINs since January 2021, and 2,856 GSTINs since September 2021. The field formations had submitted feedback in respect of only 334 GSTINs pertaining to monitoring of pending verification of risky exporters’ as of September, 2021. In the absence of details, Audit could not ascertain the extent of pendency.

When pointed out by Audit (January 2022), Ministry stated (February 2022) that, in respect of ‘ITC frauds’ reports, DGARM had asked (September 2021) all the Zones to get the compliance expedited from the respective Commissionerates.

Recommendations

- 1. In the absence of an effective risk-based system of scrutiny of returns with statutory backing based on detailed instructions/standard operating procedure, the Department is relying on DGARM inputs to discharge its compliance verification functions. Thus, in order to give assurance on Department’s performance, Audit needs access to data analysis methodology/parameters in respect of the DGARM reports along with the detailed reports, in particular in respect of cases where feedback is already provided. Audit recommends that such access to the records and information pertaining to DGARM reports may be provided without delay so that CAG’s constitutional and statutory duties could be discharged.**
- 2. Though the DGARM reports and the action taken by the field formations on these reports are being uploaded on the DDM portal, detailed action taken by the field formations on these reports like correspondence with the taxpayer to explain the nature of discrepancy noted and to take taxpayers’ response on the same is still being done manually/offline. Audit recommends that the entire set of activities should be end-to-end automated as part of the CBIC-GST**

⁴⁷ Monitoring of pending verification of risky exporters

⁴⁸ Analysis of GSTIN's who have been supplying taxable as well as exempted supplies but have not reversed any ITC

platform to facilitate transparency and effective real-time monitoring.

3. **Audit recommends fixing of timelines in which the Department offices should complete action on the DGARM reports, against which progress can be monitored.**

3.4 Internal Audit under GST

3.4.1 Internal audit of GST Units

Internal Audit⁴⁹ helps to assess the level of compliance by taxpayers in the light of the provisions of the Goods and Services Tax Act and rules made thereunder. The Board had issued detailed procedure of Internal Audit in the form of Goods and Services Tax Audit Manual (GSTAM) in July 2019. The internal audit provisions of the Department envisaged selection of taxpayers based on risk assessment, using GST data, done by the Director General of Analytics and Risk Management (DGARM). The financial year for the purpose of internal audit is from July to June in respect of Central Excise and Service Tax, and from April to March in respect of GST.

Section 2 (13) of the CGST Act, 2017, defines “Audit” as the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder”.

The details of internal audit undertaken by the Department during 2019-20 and 2020-21 for GST are as under: -

Table 3.1: Total detection made vis-à-vis units audited by Internal Audit (GST)

Year	Category	Amount in ₹ crore				
		Total units planned	Total units audited	Short levy detected	Total Recovery	Recovery as % of total Detection
2019-20	Large Units	17,172	244	65.51	9.42	14
	Medium Units	18,050	296	15.31	8.06	53
	Small Units	19,920	318	14.72	1.81	12
	Total	55,142	858	95.54	19.29	20
2020-21	Large Units	17,929	2816	1623.95	291.94	18
	Medium Units	18,257	4405	510.44	138.05	27
	Small Units	19,728	4781	346.84	83.57	24
	Total	55,914	12,002	2,481.23	513.55	21

Source: Monthly Progress Report of the Department.

⁴⁹ Section 65 of CGST Act, 2017

As is evident from the above table, the number of units audited during FY 20 and FY 21, respectively, were 1.56 *per cent* and 21.47 *per cent* of the total units planned. Although there has been a substantial increase in the percentage of units audited in FY21, there is still a huge gap between the numbers of units planned and audited.

The total recovery effected was 20 *per cent* and 21 *per cent* of the amount detected in Internal Audit during FY20 and FY21, respectively.

When pointed out (January 2022), Ministry stated (March 2022) that due to the extension of due date of filing of annual returns, less number of taxpayers were available for audit during 2019-20 and 2020-21. Ministry further stated that there was shortage of officers in the Audit Commissionerates, especially in the grade of inspectors whose working strength was less than 50 *per cent* of the sanctioned strength in most of the Audit Commissionerates. Non-cooperation by the taxpayers in providing documents and Covid-19 pandemic were also cited by the Ministry as the reasons for low coverage of units in internal audit.

As regards low recovery in internal audit, Ministry stated that many taxpayers, especially large units, legally contested the internal audit findings through appeal/litigation resulting in low recovery. Ministry further stated that due to Covid-19 pandemic, many business units faced liquidity crunch, resulting in lack or shortage of funds for tax compliance during internal audit.

In the era of self-assessed tax regime, internal audit is one of the main tools for ensuring compliance by the taxpayers. Further, departmental action against non-compliant taxpayers is a time bound activity under section 73 of CGST Act, 2017. Audit, therefore, recommends that suitable administrative measures should be taken to address the shortage of staff in Audit Commissionerates. Till the time man-power shortage is addressed, the Department may take into account the available staff strength for planning the number of units for internal audit with focus on high risk taxpayers.

3.4.2 Internal audit of Central Excise and Service Tax Units

The details of internal audit undertaken by the Department during 2018-19, 2019-20 and 2020-21 for the Central Excise and Service Tax units is as under:

Table 3.2: Total detection made vis-à-vis units audited by Internal Audit (CX &ST)

Year	Category	Amount in ₹ crore					
		Total units planned	Total units audited	Short levy detected	Total Recovery	Recovery as % of total Detection	% of units audited
2018-19	Large Units	9,204	6,159	5,149	1,419	28	67
	Medium Units	16,991	12,191	2,120	721	34	72
	Small Units	40,756	26,441	1,517	638	42	65
	Total	66,951	44,791	8,786	2,778	32	67
2019-20	Large Units	6,361	3,432	8,429	519	6	54
	Medium Units	12,075	6,678	1,698	365	21	55
	Small Units	35,383	21,649	1,210	412	34	61
	Total	53,819	31,759	11,337	1,296	11.43	59
2020-21	Large Units	4,075	1,421	5,532	185	3	35
	Medium Units	7,758	2,106	1,017	118	12	27
	Small Units	27,630	8,860	468	124	27	32
	Total	39,463	12,387	7,017	427	6	32

Source: Monthly Progress Report of the Department.

It is observed that the coverage of internal audit of units declined from 67 per cent in FY19 to only 32 per cent of the planned units in FY21.

Further, there was a continuous decline in the recovery effected at the instance of internal audit as percentage of the amount detected during last three years. The total recovery decreased from 31.63 per cent in FY19 to only 6.10 per cent of the amount detected in FY21. Recovery as percentage of total detection in large units decreased from 28 per cent in FY19 to only three per cent in FY21.

When pointed out (January 2022), Ministry attributed (March 2022) low coverage of internal audit during 2020-21 to shortage of staff and paucity of time caused by the Covid-19 pandemic.

As regards low recovery in internal audit, Ministry stated that due to Covid-19 pandemic, the taxpayers found it difficult to deposit money required to discharge their tax liability detected during internal audit. The difference in opinion related to issues raised in internal audit paras and taxpayers legally contesting such paras also contributed to low percentage of recovery.

3.5 Anti-Evasion functioning of DGGI

Directorate General of Goods and Service Tax Intelligence-DGGI (formerly Directorate General of Central Excise Intelligence (DGCEI)) as well as the Goods and Service Tax Commissionerates have well-defined roles in the task of detection of cases of evasion of Goods and Services Tax, Central Excise duty

and Service Tax. While the Commissionerates, with their extensive database of units in their jurisdiction and presence in the field, are the first line of defence against duty evasion, DGGI specialises in collecting specific intelligence about evasion of substantial revenue. The intelligence so collected is shared with the Commissionerates. Investigations are also undertaken by DGGI in cases having all India ramifications.

Table 3.3 below depicts the performance of DGGI and GST Commissionerates in terms of number and amount of cases detected and voluntary payments made by the taxpayers during last five years.

Table 3.3 Anti-evasion performance of DGGI and GST Commissionerates during 2016-17 to 2020-21

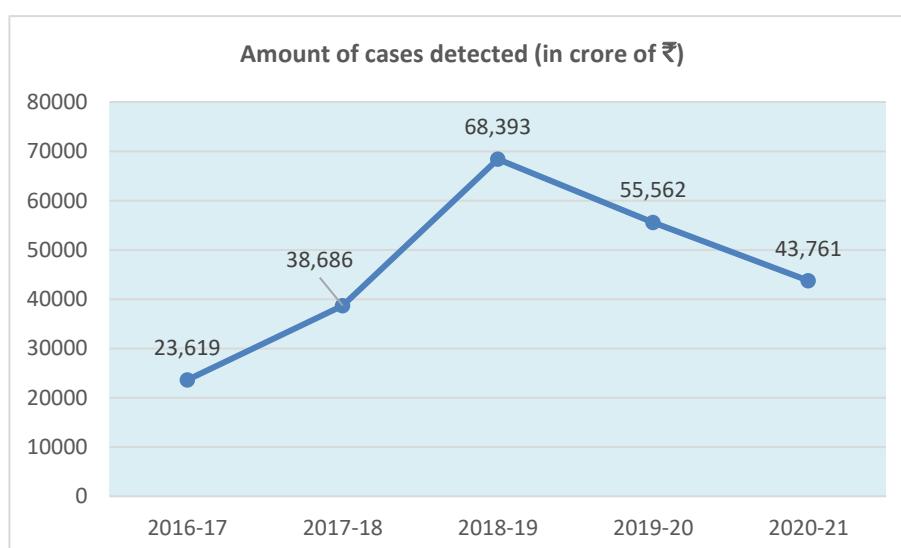
(₹ in crore)

Year	Central Excise			Service Tax			Goods and Services Tax			Total		
	No.	Amt.	VP*	No.	Amt.	VP*	No.	Amt.	VP*	No.	Amt.	VP*
2016-17	2,122	5,773	382	8,085	17,846	2,067	--	--	--	10,207	23,619	2,449
2017-18	894	6,414	203	5,299	24,201	2,549	233	8,071	7,437	6,426	38,686	10,189
2018-19	993	4,218	380	5,507	32,902	2,771	3,784	31,273	8,646	10,284	68,393	11,797
2019-20	610	8,594	231	3,839	20,451	1,156	4,865	26,517	12,803	9,314	55,562	14,190
2020-21	122	2,860	231	1,173	8,993	1,193	3,822	31,908	12,963	5,117	43,761	14,387
Total	4,741	27,859	1,427	23,903	1,04,393	9,736	12,704	97,769	41,849	41,348	2,30,021	53,012

*Voluntary Payment

Chart No. 3.1 Amount of cases detected through anti-evasion activities

(₹ in crore)



As is evident from Table 3.3, for GST, there is an increase in the amount of detection to the extent of 20 per cent from ₹ 26,517 crore to ₹ 31,908 crore, during FY21, in comparison to the year FY 20. Overall, there is a decline in the

amount of detection to the extent of 36 *per cent* from ₹ 68,393 crore during FY 19 to ₹ 43,761 crore in FY 21.

The voluntary payments of ₹ 11,797 crore in 2018-19, ₹ 14,190 crore in 2019-20 and ₹ 14,387 crore were 17 percent, 26 *per cent* and 33 *per cent* of total detection in the respective year, which showed an upward trend during the last three years.

3.5.1 Nature of anti-evasion cases during FY21

The nature of anti-evasion cases detected by DGGI involving Central Excise, Service Tax and GST during 2020-21 is highlighted in **Table 3.4**:

Table 3.4: Nature of anti-evasion cases detected by DGGI

Sr. No.	Central Excise		Service Tax		Goods and Services Tax	
	Nature	%	Nature	%	Nature	%
1	Clandestine Removal	42	Non-Payment of Service Tax for providing taxable Service	74	Wrong availment/non-reversal of Input Tax Credit	50
2	Misuse of Cenvat Scheme	19	Non-Payment of Service Tax under reverse charge mechanism	9	Non-payment of Tax on supply of taxable goods and Service	24
3	Misclassification	10	Short Payment of service tax by undervaluing taxable service	6	Tax collected but not paid to Govt exchequer	4
4	Undervaluation	7	Service tax collected but not paid to Govt exchequer	5	Short Payment of Tax by undervaluing Taxable goods and Service	3
5	Wrong Availment of Exemption Notification	6	Misuse of Cenvat Credit Scheme	2	Non-payment of Tax under Reverse charge mechanism	3
6	Others	16	Others	4	Others	16

As could be seen from Table 3.4, clandestine removal, misuse of Cenvat Scheme and misclassification formed the major portion of evasion activities detected in Central Excise. As for Service Tax, non-payment of service tax for providing taxable services, non-payment of service tax under reverse charge mechanism and short payment of service tax by undervaluation of taxable services formed the major portion of evasion activities detected.

Wrong availment/non-reversal of Input Tax Credit, non-payment of tax on supply of taxable goods and services, and tax collected but not paid to

Government exchequer were the major forms of detected evasion activity under GST during FY 21.

3.5.2 Fresh cases taken up for investigation and disposals thereof

GST law empowers the proper officer to inspect, search, seizure and investigate to check the cases pertaining to evasion of duty and taxes. Number of investigation cases pertaining to Goods and Services Tax and their disposal during 2017-18 to 2020-21 are detailed in **Table 3. 5**.

Table 3. 5 – Investigation of cases (Fresh cases) and disposals thereof

(₹ in crore)

FY	Description	Opening Balance as per MPR	Fresh cases taken up for Investigation	Total No. of cases	Cases disposed off	Closing Balance as per calculation	Closing Balance as per MPR
2017-18	No. of cases	1 ⁵⁰	217	218	23 (10.55%)	195	193
	Duty Involved (₹ in crore)	0.02	909	909	9.21 (1.01%)	900	900
2018-19	No. of cases	193	2,980	3,173	491 (15.47%)	2,682	2,560
	Duty Involved (₹ in crore)	900	29,183	30,082	520 (1.73%)	29,562	29,109
2019-20	No. of cases	1,618	2,381	3,999	309 (7.73%)	3,690	3,690
	Duty Involved (₹ in crore)	19,732	21,365	41,097	1,208 (2.94%)	39,889	39,889
2020-21	No. of cases	3,690	3,857	7,547	990 (13.12%)	6,557	6,557
	Duty Involved (₹ in crore)	39,889	32,947	72,836	5,859 (8.04%)	66,977	66,977

(Source: MPRs i.e., CEI-CE-5, CEI-ST-4 and CEI-GST-7 of the Department)

As evident from the table above, the amount involved in the cases disposed during the last four years remained very low (1.01 per cent to 2.94 per cent) except for FY 21 when it was 8.04 per cent. During 2020-21, 13 per cent of the pending cases were disposed-off as compared to only 8 per cent in 2019-20, which involved an amount of ₹ 1,208 crore in 2019-20 and ₹ 5,859 crore in 2020-21.

Further, Audit observed mismatch in the Opening and Closing Balance in the number of cases (122) and duty involved (₹ 453 crore) to the extent of five per cent and two per cent, respectively, during FY 19. Audit also observed mismatch of 942 cases (2,560-1,618) in the closing balance of cases as per MPR

⁵⁰ Opening balance of 1 as per MPR at the time of roll out of GST.

FY19 and opening balance of MPR FY20 and duty mismatch ₹ 9,377 (29,109-19,732) in the closing balance of FY19 and opening balance of FY20.

Audit requested (January 2022) the Ministry/Board to indicate the reasons for this mis-match. Reply of the Ministry/Board was awaited (February 2022).

3.5.3 Age-wise pendency of cases pending for investigation

Age-wise pendency of cases pending for investigation as on March, 2021 is detailed in **Table 3. 6**.

Table 3. 6-Closing balance of investigation pending as on March, 2021

Stream	Total	(₹ in crore)				
		Less than 6 months	More than 6 months but less than 12 months	More than 1 year but less than 2 years	More than 2 years	
Central Excise	Number of cases	67	15	2	16	34
	Duty involved (₹ in crore)	359	19	0.20	34	305
Service Tax	Number of cases	496	133	60	130	173
	Tax involved (₹ in crore)	2,283	259	265	420	1,339
Goods and Services Tax	Number of cases	6,557	2,800	821	1,882	1,054
	Tax involved (₹ in crore)	66,977	22,514	8,000	17,549	18,913

(Source: MPRs of the Department (CEI-CE-5, CEI-ST-4, CEI-GST-7))

As evident from table above, overall 6,557 cases relating to GST with tax implication of ₹ 66,977 crore were pending for investigation as of March 2021 out of which 1,054 cases (16.07 per cent) with tax implications of ₹ 18,913 (28.24 per cent) crore were pending for more than 2 years.

Similarly, as regards Central Excise and Service Tax, 67 and 496 cases with tax implication of ₹ 359 crore and ₹ 2,283 crore were pending for investigation as of March 2021. 34 and 173 cases with tax implications of ₹ 305 crore and ₹ 1,339 crore were pending for investigation for more than 2 years.

Audit requested (January 2022) the Ministry to indicate the reasons for the above mentioned trends in the pendency of cases. Reply of the Ministry was awaited (February 2022).

3.6 Recovery of Arrears

Any amount recoverable from the taxpayer due to confirmation of demands by virtue of Orders-in-Original (OIOs), Order-in-Appeal (OIA), Tribunal orders, and Courts' Orders or grant of stay applications with condition of pre-deposits, becomes arrear.

The process of recovery of arrears starts with confirmation of demand against the defaulter taxpayer and includes a number of appellate forums wherein the taxpayer as well as the Department can go for appeal.

The main statutory provisions dealing with recovery of arrears in GST are included in Section 79 of the Central Goods and Services Tax, 2017. As for Central Excise and Service Tax, provisions are included in Section 11 of the Central Excise Act, 1944 (which empowers Central Excise officers to take action for recovery of arrears), Section 142 of the Customs Act, 1962 (which have been made applicable in Central Excise cases, vide Notification No.68/63-Central Excise dated 4 May 1963), and Section 87 of the Finance Act, 1994 (which empowers the Department to take action for recovery of arrears of Service Tax).

3.6.1 Classification of arrears

Arrears are classified into two main categories viz. recoverable and irrecoverable arrears. All stayed arrears are categorised as irrecoverable. The recoverable arrears are further classified as restrained (Board for Industrial and Financial Reconstruction (BIFR)/ Debt Recovery Tribunal/Official Liquidator cases, pending applications for stay/ stay extension etc.), unrestrained (Cases where action under section 11 of Central Excise Act, 1944/section 87 of Finance Act, 1994/section 142 of Customs Act, 1962 has been initiated, Certificates sent to District Collector/other Customs-CE formations etc.), and fit for write-off (viz., units closed/defaulters not traceable/assets of company not available etc.). As per the Monthly Performance Reports (MPRs), arrears are maintained under 17⁵¹ broad categories.

3.6.2 Responsibilities for Recovery and Monitoring of Arrears

The Board monitors the overall functions and performance of the field formations in recovery of arrears and fixes targets for the same. It also issues periodical instructions to the field formations to tone up the recovery process.

Chief Commissioners bear the overall responsibility of monitoring and supervising the recovery process under their respective zones. Commissionerates are required to review and monitor the functions of Divisional and Range officers in this regard. Besides, they should exercise the

⁵¹ CESTAT, High Court, Units closed/Defaulters, Arrears where appeal period not over, Official Liquidator cases, Commissioner Appeal, Appeal period over (But no appeal filed), Units taken over by Financial Institutions, Supreme Court, Section 87 of the Finance Act. 1994, BIFR Cases, Specify, if Any, Section 142 (c) (I)- Certificate Action with District Authorities, Arrears pending for write-off, Section 142 (c) (ii) of the Customs Act, 1962.

functions for vacation of stay orders, filing for early hearing of CESTAT/Court matters, taking action for attachment of property of defaulters and follow up of cases pending in BIFR/DRT/OL etc. and watch progress and performance of Recovery Cells through monthly progress reports and take follow up action.

Divisional Officers (Assistant/Deputy Commissioner) are entrusted with supervising Range officers and to ensure that they are performing their duties in accordance with the prescribed rules/regulations/instructions. Ranges are the lowest level field formations entrusted with the task of maintaining the records relating to arrears and appeals, initiating recovery process and submitting reports to higher authorities.

In addition, the Recovery Cell operates under the supervision and control of the jurisdictional Commissioner. The major functions of the Recovery Cell are to serve notice upon defaulters, attachment and sale of defaulters' property by public auction. It is also required to send a monthly progress report to the Commissionerate regarding arrears.

3.6.3. Pendency of arrears

The overall pendency of arrears during FY19, FY20 and FY21, as per the MPRs of the department, is detailed in **Table 3. 7:**

Table 3.7: Overall Pendency of arrears of CX and ST

(Amount in crores of rupees)

Tax	March 2019		March 2020		March 2021	
	Number	Amount	Number	Amount	Number	Amount
Central Excise	51,957	86,551	44,548	83,351	38,071	80,301
Service tax	80,511	1,44,528	72,483	1,44,512	65,001	1,46,332
Total	1,32,468	2,31,079	1,17,031	2,27,863	1,03,072	2,26,633

Source: Monthly Progress Reports (MPRs) of the respective years provided by the Ministry.

As evident from the table above, the amount of arrears of Central Excise decreased (four per cent) from ₹ 83,351 crore in FY20 to ₹ 80,301 crore during FY21. However, the amount of arrears of Service Tax marginally increased (one per cent) from ₹ 1, 44,512 crore in FY20 to ₹ 1, 46,332 crore during FY21.

Audit requested (January 2022) the Ministry to indicate the reasons for lack of significant improvement in the recovery of arrears of Central Excise and Service Tax during the last two years. Reply of the Ministry was awaited (February 2022).

3.6.4 Pendency of arrears under different categories

Table 3. 8 below shows the pendency of arrears of Service Tax during FY19, FY20 and FY21 under various categories:

Table 3. 8: Pendency of arrears of Service Tax under various categories

(Amount in ₹ crore)

S. No.	Stream	March 2019		March 2020		March 2021		Percentage increase	
		No.	Amount	No.	Amount	No.	Amount	FY20	FY21
1	CESTAT	22,392	94,129.5	18,624	1,00,790.3	14,174	97,838.5	7	-3
2	High Court	3,103	12,292.6	2,534	12,987.61	2,099	15,377.3	6	18
3	Units closed/Defaulters	18,220	3,489.93	19,749	6,093.04	20,498	9,902.08	75	63
4	Arrears where appeal period not over	7,723	19,341.5	4,961	7,586.07	6,958	7,669.52	-61	1
5	Official Liquidator cases	249	3,077.06	302	4,363.36	384	4,735.25	42	9
6	Commissioner Appeal	12,193	4,231.58	10,446	4,152.19	7,355	3,030.48	-2	-27
7	Appeal period over (But no appeal filed)	10,847	2,129.56	11,549	3,752.82	9,746	2,695.44	76	-28
8	Units taken over by Financial Institutions	187	2,321.35	181	1,825.65	178	1,899.47	-21	4
9	Supreme Court	179	2,024.28	174	1,609.52	168	1,672.92	-20	4
10	Section 87 of the Finance Act. 1994	3,041	577.21	2272	600.87	1892	622.65	4	4
11	BIFR Cases	158	542.44	132	392.46	116	546.44	-28	39
12	Others ⁵²	2,219	370.63	1,559	357.83	1,433	342.01	-3	-4
	Total	80,511	1,44,527.6	72,483	1,44,511.7	65,001	1,46,332.1	-0.01	1.25

* Source: Monthly Progress Reports (MPRs) of the respective years provided by the Ministry.

As can be seen from the table above, the majority (93 per cent) of the arrears pertained to cases relating to CESTAT, High Courts, Units closed/Defaulters, Arrears where appeal period was not over and Official Liquidator cases etc. During FY 21, arrears under the category “Commissioner Appeal” and ‘Appeal period over’ declined by 27 and 28 per cent. However, arrears under the category “Units closed/Defaulters”, “BIFR Cases” and “High Court” increased by 63, 39 and 18 per cent, respectively.

Audit requested (January 2022) the Ministry to ascertain the reasons for significant increase in the arrears pertaining to “Units closed/Defaulters” and other trends highlighted in the table above. Reply of the Ministry was awaited (February 2022).

⁵² Arrears pending for write-off, JS (RA), Section 142 (c) (I) - Certificate Action with District Authorities, Section 142 (c) (ii) - of the Customs Act, 1962 as made applicable to Central excise, Section 142 (c) (ii)- of the Customs Act, 1962 as made applicable to Central excise, Settlement Commission (Cases decided in settlement commission after expiry of 30 days) and Specify, if Any.

Table 3. 9 below shows the pendency of arrears of Central Excise during FY19, FY20 and FY21 under the 17 categories

Table 3.9: Pendency of arrears of Central Excise under various categories

(Amount in ₹ crore)

S.No.	Stream	March 2019		March 2020		March 2021		Percentage increase	
		No.	Amount	No.	Amount	No.	Amount	FY20	FY21
1	CESTAT	18,866	58,841	15,215	54,728	12,175	49,160	-7	-10
2	Units closed/Defaulters	9,796	7,826	9,564	10,209	9,949	10,540	30	3
3	High Court	1,785	5,509	1,503	5,964	1,378	6,558	8	10
4	Arrears where appeal period not over	3,161	3,017	1,643	1,458	1,171	3,148	-52	116
5	Official Liquidator cases	2,627	1,773	2,722	2,595	2,855	2,567	46	-1
6	Units taken over by Financial Institutions	2,091	1,878	2,043	2,360	1,919	2,225	26	-6
7	Supreme Court	385	2,084	303	1,362	280	2,059	-35	51
8	Commissioner Appeal	7,375	2,570	5,919	2,017	4,191	1,534	-22	-24
9	BIFR Cases	1,220	1,052	1,160	1,185	939	1,412	13	19
10	Appeal period over(But no appeal filed)	1,605	1,254	1,799	548	1,069	490	-56	-11
11	Section 142 (c) (ii)- of the Customs Act, 1962 as made applicable to Central excise	489	181	366	352	250	246	95	-30
12	Others ⁵³	2,557	567.22	2,311	574.21	1,895	362.00	1	-37
	Total	51,957	86,552	44,548	83,352	38,071	80,301	-4	-4

Source: Monthly Progress Reports (MPRs) of the respective years provided by the Ministry.

As can be seen from the table above, the majority (90 per cent) of the arrears pertained to cases relating to CESTAT, Units closed/Defaulters, High Court, Arrears where appeal period was not over and Official Liquidator cases etc. During FY 21, arrears under the category “CESTAT” and “Commissioner Appeal” declined by 10 and 24 per cent. However, arrears under the category “Arrears where appeal period not over”, “Supreme Court” and “BIFR Cases” increased by 116, 51 and 19 per cent, respectively.

⁵³ Arrears pending for write-off, Section 11 of the Central Excise Act, 1944, Section 142 (c) (i)- Certificate Action with District Authorities, JS(RA), Settlement Commission (Cases decided in settlement commission after expiry of 30 days) and Specify, if Any.

Audit requested (January 2022) the Ministry to ascertain the reasons for significant increase in the arrears pertaining to “Arrears where appeal period not over” and the other trends highlighted in the table above. Reply of the Ministry was awaited (February 2022).

3.6.5 Achievement of the targets by the Field Formations

The Board sets the target for recovery of arrears for each year by its field formations. The target is fixed as a percentage of pending arrears at the end of the previous year i.e., closing balance of March of the previous financial year.

For this purpose, DGPM-TAR⁵⁴ calculates the consolidated target based on the pendency of arrear under ‘recoverable category’ of the previous fiscal. DGPM-TAR after approval from the Board allocates the consolidated targets among CC⁵⁵ zones.

The details of target and achievement by CBIC field formations, with respect to recovery of Service Tax and Central Excise arrears, are provided below in **Table 3.10** :

Table 3.10: Targets and achievements with respect to recovery of arrears

(Amount in ₹ crore)

Year	Stream	Recoverable arrear as of March (Amount in ₹ crore)	Target of central excise and service tax fixed	Recovery / Achievement	Achievement (Percent)	Shortfall in achievement (Percent)
2019-20	CX	9,709	6,096*	4,943*	81	19
	ST	6,558				
	Total	16,267				
2020-21	CX	11,555	7,437*	5,057*	68	32
	ST	10,793				
	Total	22,348				

* Source: Monthly Progress Reports (MPRs) of the respective years provided by the Ministry. Combined figures of Central Excise and Service tax have been provided. Separate figures were not provided.

As evident from the table above, there was a shortfall in achievement in targets fixed by the Board for its field formations for recovery of arrears. During FY20, the shortfall in achieving the targets was 18.92 per cent, which increased to 32.01 per cent in FY21.

Further, eight and 14 zones, out of total 21 zones, in respect of Central Excise & Service Tax for the years 2019-20 and 2020-21, respectively, did not achieve

⁵⁴ Directorate General of Performance Management – Tax Arrears Recovery

⁵⁵ Chief Commissioner

the target for recovery of arrears. Shortfall in achievement of target in these zones ranged from 1.94 per cent to 92.96 per cent and 1.82 per cent to 85.58 per cent for the years 2019-20 and 2020-21, respectively.

Further, it was noticed that targets achieved by five and six zones, out of 21 zones of Central excise and Service Tax Zones, respectively, were less than 50 per cent in FY20 and FY 21 (**Appendix-II**).

Information/ data regarding GST arrears was not provided to Audit by DGPM, which stated that field formations were facing problems in uploading the information on the portal. DGPM further stated that Directorate of Data Management had been requested for early resolution of the technical glitches. Audit pointed this out in January 2022. Reply of the Ministry was awaited (February 2022).

3.6.6 Arrears from unit closed/defaulters not traceable

Table 3.11 below shows the trends in arrears realised from “units closed/defaulters not traceable”.

Table 3.11: Trends in arrears realised from “units closed/defaulters not traceable

(Amount in ₹ crore)

	Pending Arrear as on 31.03.2019	Arrear realised in FY 2019-20	Arrears transferred to other formations/ category	Recovery in percentage of pending arrear as on 31.03.2019	Pending Arrear as on 31.03.2020	Arrear realised in FY 2020-21	Arrears transferred to other formations/ category	Recovery in percentage of pending arrear as on 31.03.2020
	FY20				FY21			
Central Excise	7,826	62	1,347	0.8	10,209	37	609	0.4
Service Tax	3,490	44	307	1.2	6,093	79	522	1.3
Total	11,316	106	1,654	0.9	16,302	116	1,131	0.7

Source: Monthly Progress Reports (MPRs) of the respective years provided by the Ministry.

As can be seen from the table above, the Department could recover only one per cent of pending arrears from the units closed/not traceable during both FY20 and FY21. During FY20, the department could recover only ₹ 106 crore (₹ 62 crore central Excise and ₹ 44 crore Service Tax) out of the pending ₹ 11,316 crore (₹ 7,826 crore in Central Excise and ₹ 3,490 crore in Service Tax) on 31 March 2019.

Similarly, in FY 21, the Department could recover only ₹ 116 crore (one percent) (₹ 37 crore central Excise and ₹ 79 crore Service Tax) out of the pending ₹ 16,302 crore (₹ 10,209 crore in Central Excise and ₹ 6,093 crore in Service Tax) on 31 March 2020.

Audit requested (January 2022) the Ministry to ascertain the reasons for low percentage of recovery of arrears in units closed/defaulters not traceable. Reply of the Ministry was awaited (February 2022).

3.6.7 Age-wise analysis of arrears pending for recovery

Age wise break-up of the arrear cases pending for recovery at the end of FY20 and FY21 is given below in **Table 3.12**.

Table 3.12: Age wise break up of arrears of Central Excise and Service Tax

(Amount in ₹ crore)

Stream	Closing Balance as on 31st March			1 year or below		Over 1 year but less than 2 years		Over 2 years but less than 5 years		Over 5 years but less than 10 years		over 10 years	
	Year	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.
Central excise	2020	44,548	83,351	12,189	25,053	4,733	11,436	8,106	26,502	8,361	13,955	11,159	6,404
	2021	38,071	80,301	8,202	23,760	3,738	9,457	7,185	20,466	7,725	19,593	11,221	7,023
Service tax	2020	72,483	1,44,512	27,947	52,078	9,671	28,058	14,771	41,087	14,259	22,344	5,835	945
	2021	65,001	1,46,332	23,158	47,239	9,180	28,749	13,934	42,665	13,000	26,238	5,729	1,442

Source: Monthly Progress Reports (MPRs) of the respective years provided by the Ministry.

With respect to Central Excise, as on 31 March 2021, out of the total pending Central Excise arrears of ₹ 80,301 crore, ₹ 26,616 crore (35 per cent) were pending for more than five years.

Similarly, with respect to Service Tax, as on 31 March 2021, out of the total pending Service Tax arrears of ₹ 1,46,332 crore, ₹ 27,680 crore (19 per cent) were pending for more than five years.

Audit further examined the pendency of arrears pending for more five years. The findings are discussed in the following paragraphs.

3.6.7.1 Age-wise analysis of arrear cases pending for long period

Table 3.13 below shows the category-wise pendency of Service Tax arrears pending for more than five years, during the last three years, i.e. FY19, FY20 and FY21.

Table 3.13: Pendency of Service Tax arrears pending for more than five years
(Amount in ₹ crore)

Stream	More than 5 years					
	March 2019		March 2020		March 2021	
	No.	Amount	No.	Amount	No.	Amount
CESTAT	5,529	21,169	4,569	19,798	4,166	21,033
Units closed/Defaulters	11,331	469	10,648	616	10,094	3,266
Official Liquidator cases	51	90	58	961	62	1,093
High Court	738	994	773	729	788	818
Supreme Court	57	288	55	482	75	566
Commissioner Appeal	1,256	192	1,126	178	1,067	196
Units taken over by Financial Institutions	70	666	65	146	62	189
Section 142 (c) (I)- Certificate Action with District Authorities	86	57.4	96	97.27	87	100
Appeal period over(But no appeal filed)	2,153	101	1,588	129	1,477	280
Section 87 of the Finance Act. 1994	1,017	99	679	74	481	69.26
Arrears pending for write-off	588	5.58	196	6.3	221	17
Other⁵⁶	511	143.41	240	80.72	149	53.28
Total	23,387	24,274.39	20,093	23,297.29	18,729	27,680.54

Source: Monthly Progress Reports (MPRs) of the respective years provided by the Ministry.

*Arrears more than 10 crore are shown category-wise.

As can be seen from the table above, ₹ 21,033 crore and ₹ 3,266 crore arrears are pending for more than 5 years under the category of “CESTAT” and “Units closed/Defaulters”, constituting 76 per cent and 12 per cent under the category, respectively, as of March 2021.

Table 3.14 below shows the category-wise pendency of Central Excise arrears pending for more than five years, during the last three years, i.e. FY19, FY20 and FY21.

⁵⁶ BIFR Cases, Arrears where appeal period not over, Section 142 (c) (ii)- of the Customs Act, 1962 as made applicable to Central excise and Specify, if Any.

Table 3.14: Central Excise arrears pending for more than five years

(Amount in ₹ crore)

Stream	More than 5 years					
	March, 2019		March, 2020		March, 2021	
	No.	Amount	No.	Amount	No.	Amount
CESTAT	6,154	11,243	5,066	10,388	4,553	16,257
Units closed/Defaulters	6,473	3,817	6,461	5,265	6,916	6,009
High Court	1,065	1,206	879	1,055	746	914
Official Liquidator cases	2,250	1,175	2,279	1,166	2,235	1,328
Units taken over by Financial Institutions	1,587	1,132	1,580	1,277	1,516	911
Commissioner Appeal	1,150	171	953	146	904	144
BIFR Cases	922	432	857	429	710	312
Supreme Court	146	288	124	415	128	432
Section 142 (c) (I)- Certificate Action with District Authorities	208	33	190	26	167	47
Section 142 (c) (ii)- of the Customs Act, 1962 as made applicable to Central excise	308	71	230	61	176	97
Appeal period over(But no appeal filed)	202	25	210	31	141	31
Arrears pending for write-off	476	57	501	65	517	60
Others ⁵⁷	302	45.98	190	32.13	237	75.35
Total	21,243	19,695.98	19,520	20,356.13	18,946	26,617.35

Source: Monthly Progress Reports (MPRs) of the respective years provided by the Ministry.

*Arrears more than 10 crore are shown category-wise.

As can be seen from the table above, ₹ 16,257 crore and ₹ 6,009 crore arrears are pending for more than 5 years under the category of “CESTAT” and “Units closed/Defaulters”, constituting 61 per cent and 23 per cent in the category, respectively, as of March 2021.

Audit pointed this out in January 2022. Reply of the Ministry was awaited (February 2022).

3.7 Conclusion

Audit observed that even after more than four years of implementation of GST, the originally envisaged non-intrusive e-tax system, based on preventive checks is yet to be fully implemented. The Department needs to take adequate steps to achieve a non-intrusive e-tax system and system-verified flow of ITC. Audit further noted that an effective system of scrutiny of returns with

⁵⁷ Arrears where appeal period not over, Section 11 of the Central Excise Act, 1944, JS (RA) and Specify, if any.

statutory backing based on detailed instructions/standard operating procedure/manual is yet to be implemented. Audit also examined the monitoring and feedback mechanism of DGARM reports and observed that use of manual/semi-automated mechanism put in place by the Department in respect of high risk taxpayers, identified in DGARM reports, is sub-optimal and fails to properly leverage the full potential of IT and thus, there is a need that the entire set of activities should be end-to-end automated as part of the CBIC-GST platform.

In addition, Audit examined the Department's performance with respect to the compliance verification system, viz. internal audit and anti-evasion functions and performance of the Department in recovery of arrears during the relevant period. Audit observed significant gaps between the number of units planned and actually audited in GST, Central Excise and Service Tax Units. Further, the amount involved in the disposed-off investigation cases remained very low during last four years. Further, Audit observed lack of significant improvement in the recovery of arrears of Central Excise and Service tax during the last two years.

3.8 Summary of Recommendations

1. In the absence of an effective risk-based system of scrutiny of returns with statutory backing based on detailed instructions/standard operating procedure, the Department is relying on DGARM inputs to discharge its compliance verification functions. Thus, in order to give assurance on Department's performance, Audit needs access to data analysis methodology/parameters in respect of the DGARM reports along with the detailed reports, in particular in respect of cases where feedback is already provided. Audit recommends that such access to the records and information pertaining to DGARM reports may be provided without delay so that CAG's constitutional and statutory duties could be discharged.
2. Though the DGARM reports and the action taken by the field formations on these reports are being uploaded on the DDM portal, detailed action taken by the field formations on these reports like correspondence with the taxpayer to explain the nature of discrepancy noted and to take taxpayers' response on the same is still being done manually/offline. Audit recommends that the entire set of activities should be end-to-end automated as part of the CBIC-GST platform to facilitate transparency and effective real-time monitoring.

3. Audit recommends fixing of timelines in which the Department offices should complete action on the DGARM reports, against which progress can be monitored.
4. In the era of self-assessed tax regime, internal audit is one of the main tools for ensuring compliance by the taxpayers. Further, departmental action against non-compliant taxpayers is a time bound activity under section 73 of CGST Act, 2017. Audit, therefore, recommends that suitable administrative measures should be taken to address the shortage of staff in Audit Commissionerates. Till the time man-power shortage is addressed, the Department may take into account the available staff strength for planning the number of units for internal audit with focus on high risk taxpayers.