

Chapter V: Processing of Refund claims under GST

5.1 Introduction

Effective management of tax refunds is a key activity in the administration of taxation systems. Hassle free, simple and timely refund process facilitates the taxpayers by providing much needed liquidity and cash flow. Tax administrators need to balance taxpayer' expectations of good levels of service with the responsibility for preventing and dealing with fraudulent and erroneous refund claims. The Supreme Court⁶⁴ has held that good government involves not only diligent collection of taxes but also ready refunds of excess levies. The rules and notifications should be drafted in a simple and clear language and the interpretation should be fair and consistent and not always the one that is adverse to the taxpayers.

Refund means the amount that is returned to the taxpayer which was either paid in excess or which was not payable under the statute. Refund includes not only tax but also interest, penalty, fee, or any other amount paid.

For ensuring single interface for the taxpayers, they are assigned to the jurisdiction of either the State or Central Authority⁶⁵ as per the cross-empowerment provisions of Section 6 of the Central Goods and Services Tax Act, 2017 (CGST Act). The taxpayers are required to submit the documents for refund claim to the assigned jurisdictional authority.

5.1.1 Processing of refunds

5.1.1.1 Pre-automation

GST law envisaged an automated environment for refund claims through a refund module in the Goods and Services Tax portal. However, the taxpayers were required to file the refund applications online in Form RFD-01A, take a printout of the application and submit it physically to the jurisdictional tax office, with all supporting documents, as the refund module was not available up to 25 September 2019.

The processing of the refund applications up to payment was carried out manually. From 1 January 2019, the refund applications and supporting documents had to be submitted online. The refund applications, however, were processed manually by the Department. The disbursement process was offline wherein the Central tax authority would disburse the Integrated Goods

⁶⁴ Aluminum Corporation Ltd. vs. Union of India {(1978) 2 ELT 452 (SC)} in context of refund arising due to conditional exemption granted to aluminum ingots under Central Excise Rules, 1944

⁶⁵ GST Council circular dated 20 September 2017

and Services Tax (IGST), Central Goods and Services Tax (CGST) and cess component, and forward the sanction order to the State tax authority for disbursement of the State Goods and Services Tax component (SGST) component of the sanctioned refund. Similarly, the State/Union Territory (UT) authority would disburse the SGST/UTGST component and forward the sanction order to the Central tax authority for disbursement of IGST, CGST and Cess component of the sanctioned refund.

5.1.1.2 Post-automation

From 26 September 2019, the entire refund process upto payment has been automated. The taxpayers are required to file the application in Form RFD-01 online and upload all relevant documents. The date of uploading the application in RFD-01 is considered as the date of submission of application.

5.1.1.3 Dual empowerment for submission, processing and payment

The administrative jurisdiction of taxpayers has been allocated to the Central or State tax authorities, based on the criteria determined by the GST Council in its 21st meeting held on 9 September 2017. A state level committee comprising of Chief Commissioner/Commissioner Commercial Taxes of the respective State and jurisdictional Central Tax Chief Commissioners/Commissioners allocated the existing taxpayers to the State or Central tax authorities⁶⁶. The newly registered persons are required to file the refund claim to the Central tax authority or State tax authority as assigned vide aforesaid Circular. The State/Union Territory (UT) authorities are empowered to sanction refund of CGST, IGST and Cess components and the Central authorities are empowered to sanction refund of SGST/UTGST claimed by the taxpayers under their respective jurisdiction⁶⁷.

5.1.1.4 Payment of refunds

In the pre-automation period, the payment of the SGST/CGST tax components was made by the respective State or Central tax authorities, based on the refund orders received from the administrative authorities sanctioning the refund. The refund order issued either by the Central tax authority or the State /UT tax authority was to be communicated to the concerned counter-part tax authority within seven working days for making the payment. The payment of the sanctioned refund amount in relation to CGST / IGST /cess had to be made

⁶⁶ GST Council Circular dated 20 September 2017

⁶⁷ Notification dated 13 October 2017

by the Central tax authority while payment of the sanctioned refund amount in relation to SGST / UTGST was made by the State /UT tax authority.

In the post-automation period, the payment of all the components viz. CGST, IGST, SGST and cess is being made⁶⁸ through the Public Financial Management System (PFMS) via e-PAO irrespective of the jurisdictional Authority (Central or State), which processed the refund application.

The various stages of processing of refund claims are detailed in **Appendix-III**.

5.1.2 Types of GST refund

Refunds are granted under various categories such as refund of tax paid on zero-rated supplies⁶⁹, refund of accumulated input tax credit (ITC) due to inverted duty structure, refund of excess balance in electronic cash ledger etc. Category wise details of refund applications received and payments made with respect to taxpayers under CBIC jurisdiction, during the period from 26 September 2019 to 31 July 2020 (post-automation), are detailed in **Table 5.1**:

Table 5.1: Category wise details of applications received and payments made from 26 September 2019 to 31 July 2020 (as on 3 November 2021)

Sl. No.	Category of refund	Applications received		Acknowledgment issued		Sanction order issued		Payment issued through PFMS	
		No of cases	Amount claimed (in ₹ crore)	No of cases	Amount claimed (in ₹ crore)	No of cases	Amount sanctioned	No of cases	Amount paid (in ₹ crore)
1	Export of goods and services without payment of Tax	58,838	26,603	27,447	16,488	26,031	14,727	25,509	14,672
2	ITC accumulated due to Inverted Duty Structure ⁷⁰	71,147	7,505	29,559	5,213	28,357	4,627	27,174	4,507
3	Excess balance in electronic cash ledger	22,893	2,599	22,567	2,509	21,629	2,253	18,963	2,245
4	Export of services with payment of Tax	4,270	3,167	1,100	1,441	1,021	1,137	944	1,118

⁶⁸ CBIC circular dated 18 November 2019

⁶⁹ Section 16(1) of the IGST Act, 2017 defines 'zero rated supply' to mean supplies of goods or services or both, namely: a) export of goods or services or both; or b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit

⁷⁰ **'Inverted Duty Structure'** refers to a situation where the rate of tax on inputs purchased is more than the rate of tax on outward supplies. Inverted Duty Structure arises when tax paid on Inward Supplies is higher than tax payable on outward supplies.

Sl. No.	Category of refund	Applications received		Acknowledgment issued		Sanction order issued		Payment issued through PFMS	
		No of cases	Amount claimed (in ₹ crore)	No of cases	Amount claimed (in ₹ crore)	No of cases	Amount sanctioned	No of cases	Amount paid (in ₹ crore)
5	Supplies made to SEZ unit/developer without payment of tax	3,794	1,666	1,214	901	1,164	769	1,144	847
6	Supplies made to SEZ unit/developer with payment of tax	3,591	370	773	305	737	294	674	293
7	Supplier of deemed export ⁷¹	1,510	329	544	272	519	252	491	252
8	Refund due to assessment, provisional assessment and appeal	989	223	399	129	367	96	314	96
9	Excess payment of tax	3,969	1,574	1,936	1,151	1,775	112	776	90
10	Recipient of deemed export	441	65	111	47	107	45	102	45
11	Tax paid on intra-state supply which is subsequently held to be inter-state and vice versa	105	11	47	5	45	4	33	4
12	Any other	13,715	5,773	5,191	3,547	4,754	369	2,771	357
	Total	1,85,262	49,885	90,888	32,008	86,506	24,685	78,895	24,526

Source: Compiled based on data furnished by GSTN.

5.2 Audit objectives

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

- (i) the adequacy of Acts, Rules, notifications, circulars etc. issued in relation to grant of refund;

⁷¹ 'Deemed Exports' refers to supplies of goods manufactured in India (and not services) which are notified as deemed exports under Section 147 of the CGST/SGST Act, 2017. The supplies do not leave India. Deemed exports are not zero-rated supplies by default, unlike regular exports. Hence all supplies notified as supply for deemed export will be subject to levy of taxes. However, the refund of tax paid on the supply regarded as Deemed export is admissible to either the supplier or the recipient. The application for refund has to be filed by the supplier or recipient of deemed export supplies.

- (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 existed to ensure effectiveness of the Departmental officials in processing and payment of refund cases.

5.3 Audit scope, sample and methodology

The Audit covered GST refund cases processed and paid by the Central tax authorities pertaining to the period from July 2017 to July 2020. Audit also test checked the disbursement of CGST and IGST refunds by the Central Board of Indirect Taxes and Customs (CBIC) field formations (Central jurisdiction) on the sanction orders issued by the State authorities in the pre-automation period.

Goods and Services Tax Network (GSTN) had provided pan-India data of refund applications pertaining to the period August 2018⁷² to July 2020. Since limited data was available for the cases processed prior to 26 September 2019 (pre-automation), the refund applications were sorted category-wise and sample was drawn based on stratified sampling.

For refund applications filed on or after 26 September 2019 (post-automation), a composite risk score was devised using multiple risk parameters such as refund amount claimed, delay in sanctioning of refund, refund sanctioned to claimed ratio and deficiency memo issued. Based on the risk score, refund applications were selected for detailed audit. Total universe of post-automation was also analysed and deviations noticed *vis-a-vis* the total universe have been incorporated wherever possible.

The sample cases selected and audited are given in **Table 5.2:**

Table 5.2: Sample cases selected and audited

Description	Selected		Audited	
	No of Cases	Claim amount (in ₹ crore)	No of Cases	Claim Amount (in ₹ crore)
Pre-Automation period	5,797	6,695	5,451	6,320
Post-Automation period	6,486	7,673	6,482	7,669
Total	12,283	14,368	11,933	13,989

Source: Compiled based on data furnished by GSTN.

⁷² GSTN provided data from August 2018 when the Refund module was integrated with the back-end systems of the tax Departments.

The Department⁷³ did not furnish 346 refund files (six *per cent*) with claim amount of ₹ 374.77 crore to Audit. In the post-automation period, four cases could not be audited as the additional details and information⁷⁴ were not furnished.

Reasons for non-submission of case files were stated to be misplacement of files, submission of files for post-audit and anti-evasion wings of the Department etc.

The draft SSCA report was issued to the Ministry of Finance for its comments on 27 December 2021. Audit findings and recommendations were discussed with the Ministry during the exit conference held on 7 February 2022. Further, the reply of the Ministry to the SSCA report was received on 25 February 2022.

5.4 Non-production of records

Documentation of the receipt of application and processing of the refund claim till its final payment constitutes a crucial component of internal control. This helps in establishing an audit trail to watch adherence to the prescribed provisions of the Act and rules.

The Board in its circular⁷⁵ required the CBIC field formations to maintain three registers⁷⁶ for monitoring the receipt, processing of refund claims and issue of provisional refund and final sanction order. The Board had instructed⁷⁷ to extend cooperation during audit by providing complete and comprehensive information and complete records.

Audit noticed that out of 99 Commissionerates, 15 Commissionerates⁷⁸ had not maintained or included all the prescribed columns in the registers. Due to non-maintenance of records, Audit could not verify adherence to the codal provisions and the timelines prescribed. Registers of refund sanction orders received and forwarded to the counterpart State authorities were not furnished to Audit by four Commissionerates⁷⁹. Registers of cases sent for post-audit and details regarding when such cases were audited, were not made

⁷³ 37 Commissionerates

⁷⁴ Bengaluru North, Bengaluru West and Belgaum Commissionerates

⁷⁵ CBIC Circular dated 15 November 2017

⁷⁶ Register in format Table 1 for recording the receipt of refund application up to the issue of Acknowledgement, Table 2 for recording issue of Provisional refund and Table 3 for issue of final sanction order

⁷⁷ DO letter F.No.232/Misc DAPs/2018-CX-7, 26 April 2018

⁷⁸ Raigad, Thane, Bhiwandi, Delhi North, Delhi East, Delhi South, Jabalpur, Guntur, Vishakhapatnam, Patna I, Patna II, Ludhiana, Shimla, Gurugram and Panchkula

⁷⁹ Vishakhapatnam, Raigad, Thane and Bhiwandi Commissionerate

available during audit of five Commissionerates⁸⁰. The list of arrears of demand were also not made available to Audit by five Commissionerates⁸¹.

The online access to the information in GSTR-2A was not provided to Audit and hence, the correctness or otherwise of the ITC was not ascertainable while checking the refunds. The data of cases in which fake ITC was availed and its encashment through use of refund was not shared with Audit and hence, the system defects and lapses that led to such frauds could not be identified.

Ambala division of the Panchkula Commissionerate accepted the observation and stated (May 2021) that registers were now being maintained properly with the signature of the competent authority.

When Audit pointed this out (December 2021), the Ministry, in respect of Patna-I Commissionerate, stated (February 2022) that the refund register was maintained and updated (Pre-automation) and the same would be produced at the time of next audit. Replies in respect of the remaining Commissionerates were awaited (February 2022).

5.5 Audit criteria

Audit criteria for this Subject Specific Compliance Audit (SSCA) were drawn from the following:

- Central Goods and Services Tax Act, 2017
- Central Goods and Services Tax Rules, 2017
- Integrated Goods and Services Tax Act, 2017
- Government notifications/circulars/instructions issued by the CBIC from time to time.

Audit Findings

5.6 Systemic issues

5.6.1 Deficiencies in automated refund module

It is internationally recognised that there should be a balance between client service levels and the prevention and mitigation of fraudulent activities. Tax refunds pose challenges to achieve good standards of service in processing of legitimate refund claims and in ensuring detection of incorrect and fraudulent claims prior to payment and post-payment. Fraudulent refunds, including by fictitious or invalid entities, have significant consequences if undetected and

⁸⁰ Guntur, North division of Vishakhapatnam, Bhiwandi, Raigad and Thane Commissionerates

⁸¹ Raigad, Thane, Bhiwandi, Guntur and Vishakhapatnam Commissionerate

untreated. The relative ease of electronic filing and refund may pose additional risks.

Office of the Directorate General of Analytics and Risk Management (DGARM) had released (July 2020) a list containing 9,757 taxpayers who had monetized the fake ITC taken by them. It also included a list of 3,208 taxpayers who were issuing fake invoices. In the financial years 2018-19 and 2019-20, the aggregate quantum of ITC frauds⁸² was ₹ 23,193.66 crore, whereas in the financial year 2020-21⁸³, about 8000 cases were detected involving fake ITC of over ₹ 35,000 crore. One of the fraudulent cases was unearthed in Nagpur against three firms involved in passing fraudulent ITC of ₹ 214 crore and claiming refund of this fraudulent ITC.

Audit observed that there exists a mechanism to match ITC availed by a taxpayer with the GSTR-1 returns filed by the suppliers and to identify fraudulent cases through data analytics after the amount has been paid. However, in Audit's opinion, adequate systems were not in place to prevent and mitigate such frauds by using real time/near real time data analytics so as to alert the tax officials before sanction of refunds. CBIC in its circular⁸⁴ stated that several cases of monetisation of fraudulently obtained credit or ineligible credit through refund of IGST on exports of goods were detected in the past months. On verification, several such exporters were found to be non-existent in a large number of cases. In all these cases, it was found that ITC was taken by the exporters on the basis of fake invoices and IGST on exports was paid using such fake ITC.

This showed that in some cases, new GST registrants, without credible antecedents, were getting the refunds with limited scrutiny or verification of the place of registration. Audit further noticed lack of adequate matching of net ITC shown in the refund application with the ITC amount available as per GSTR-2A, and grant of refund without ascertaining the status of return filing.

Audit analysed the pan-India data furnished by GSTN and observed the following:

- In respect of 2,656 cases (out of 31,173 cases⁸⁵) pertaining to the period from September 2019 to July 2020 where the refund amount sanctioned was ₹ 6,121.87 crore, the net ITC shown in the refund application filed

⁸² Data.gov.in

⁸³ Press Information Bureau of India, CGST Zones and Directorate General of GST Intelligence booked about 8000 cases involving fake ITC of over ₹ 35000 crore in FY 2020-21 July 2021. <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1735095>

⁸⁴ Circular dated 23 January 2020

⁸⁵ GSTR 2A was available in 31,173 refund cases falling under the category of Inverted duty structure, Export without payment of duty and Exports by SEZ without payment of duty in GSTN

online was more than the amount shown in GSTR 2A⁸⁶ by ₹ 11,851.48 crore.

- Refund of ₹ 6,113.63 crore was sanctioned to 56,513 taxpayers who did not file GSTR 1⁸⁷ or GSTR 3B⁸⁸ or both before filing the refund applications, which is mandated under Section 54 (10) of the CGST Act.
- 29,839 out of 51,064 taxpayers who were sanctioned refund of ₹ 8,037.19 crore did not furnish the details of refund claims filed and refund received in Part VI of the Annual Return (GSTR 9).

It can be seen from the above that although the Department could have leveraged and correlated their own database to identify non-compliance, there was a lack of an effective mechanism to red flag such cases and alert the proper officer to carry out detailed scrutiny to ensure that the taxpayer has complied with the provisions of the Act and rules, before refunds were sanctioned and paid.

Audit also noticed in certain cases that although suspicious refund claims were not supported by adequate/relevant documents to establish the veracity of the claims, the concerned officials did not scrutinise these cases with due care while sanctioning refunds.

When Audit pointed this out (December 2021), the Ministry stated (February 2022) that during the initial phases of implementation of GST, the focus of the Department was on facilitation rather than enforcement. However, from 2019 onwards, DGARM has been generating various red flag reports which are forwarded to field formations for taking necessary action. Further, regarding the audit observation that ITC had been availed more than GSTR-2A, Ministry stated that refund could exceed the ITC available in GSTR-2A *inter-alia* on credit distributed by ISD, imports, RCM supplies, and missing invoices (refund on which was available till 31 March 2020 on the basis of furnishing of copy of missing invoices to the proper officer along with refund claim). Regarding the audit observation that the details of refund claimed and received had not been furnished in the annual return, Ministry stated that filling up of details of refund claimed and received in Table 15A to 15D of FORM GSTR-9 for the FY

⁸⁶ GSTR 2A is automatically generated for each taxpayer in the GST portal. When a seller files his GSTR-1, the information is captured in GSTR 2A of the purchaser, which incorporates information of goods and/or services which have been purchased in a given month from the seller's GSTR 1. The taxpayer needs to refer to GSTR-2A for input tax credit details.

⁸⁷ The Goods and Services Tax Return 1(GSTR 1) is a return that each registered tax payer needs to file every month/quarter. It must contain the details of all sales and supply of goods and services made by the tax payer during the tax period.

⁸⁸ GSTR-3B is a self-declared summary GST return filed every month. The particulars such as inward and outward supplies of goods or services, input tax credit availed, tax payable, tax paid, etc. are required to be declared in such return.

2017-18, 2018-19 and 2019-20 was made optional vide CGST (Seventh Amendment) Rules, 2019.

Ministry's reply is not acceptable in view of the fact that the seventh amendment to the CGST Rules was notified on 29 August 2021 whereas the due date for furnishing Annual Return for the period 2017-18 was 5/7 February 2020. As regards the comparison of the amount of ITC refunded vis-à-vis the amount available as per GSTR-2A, Audit has not commented on the validity of individual refund claims. Audit is of the view that there should be a mechanism to automatically red-flag such claims, where credit available in GSTR-2A is less than the refund claimed, so that the Department could examine such claims in detail before sanction of refunds. As regards sanction of refunds without checking the return filing status, Ministry did not offer any comments.

Illustrative cases are discussed in the succeeding paragraphs.

5.6.1.1 Sanction of refunds without proper scrutiny

CBIC vide Office Memorandum issued on 12 May 2019 cautioned the field formations on the risk of encashment of ITC availed on fake invoices by obtaining IGST refund or refund of unutilized accumulated ITC.

(A) While examining the refund cases under the Mumbai West Commissionerate, Audit came across 18 refund applications under the category of zero-rated supplies, submitted during the period December 2019 to November 2020, by nine taxpayers who were granted registration between the period June 2019 to June 2020. These cases appeared to be suspicious due to the following shortcomings:

- The nine taxpayers who were sanctioned the refund of ₹ 12.01 crore were sole proprietary concerns whose e-KYC and Aadhar were not authenticated. Refund pre-application form, introduced in February 2020⁸⁹ that captures Income Tax details, export data and Aadhar number etc., of the taxpayers, was not filled-in and submitted by any of the taxpayers. The Divisional officer sanctioned the refunds without delegating the verification of claims to the subordinate officers.
- The registrations granted to eight taxpayers were cancelled by the proper officer on application made by the taxpayer⁹⁰ (July 2020 to December

⁸⁹ Newsletter of Director General of Systems and Data Management of February 2020

⁹⁰ Section 29 (1) provides for cancellation by the taxpayer if the business is discontinued, transferred fully for any reason including death of proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or there is any change in the constitution of the business; or the taxable person is no longer liable to be registered under Section 22 or Section 24 or intends to opt out of the registration voluntarily.

2020) after getting the refund of ₹ 11.60 crore and in the remaining one case, the registration was cancelled *suo moto* by the Department. The Department neither verified the receipt of export proceeds as required under Rule 96B before accepting⁹¹ the cancellation nor directed the taxpayer to file the annual returns in Form GSTR 9 despite the turnover in eight cases exceeding ₹ 2 crore, as required under Section 44.

- The refunds claimed were based on ITC on purchases made through 15 suppliers who gave fake invoices. Department had cancelled the registration of 10 of these suppliers and the other five had stopped filing the returns. The suppliers filed returns only for three to four months and stopped filing the returns after the taxpayers received the refund.
- The certificate⁹² of the CA did not contain the Unique Document Identification Number (UDIN) of the Institute of Chartered Accountants of India (ICAI) mandated by the Institute. The CA had been penalised by Customs Excise and Service Tax Appellate Tribunal (CESTAT) in November 2014 for issuing Export Certificate to a client without verifying the supporting documents or their correctness.
- In six cases, the foreign buyer was common, irrespective of the destination of the consignment. The Customs House Agents (CHA) and transporters were common in those six cases. This suggested that transporters, CHAs and CAs acted in collusion to prefer these claims.

Final refunds in all cases were granted, skipping the provisional refund. The refunds were granted in 14 cases in an unusually short time of seven days or less.

- In five cases, the refund had been sanctioned within half an hour of acknowledgement, and in two out of these five cases, the sanction orders were issued late at midnight.
- Refund in two cases was granted on the same day of receipt of application. Sanction orders were issued even on holidays. The refund application in two other cases were acknowledged and final sanction order issued within half an hour at midnight.

Taxpayers with such a large export turnover of ₹ 166.64 crore and refund claim of ₹ 12.01 crore are unlikely to close their business abruptly, unless their sole motive was to take refund and disappear. The antecedents of the taxpayers,

⁹¹ Notification dated 23 March 2020

⁹² A certificate in Annexure-2 of Form GST RFD-01 issued by a Chartered Accountant or a Cost Accountant under Rule 89(2)(m) of CGST Rules, 2017 is required where refund claimed exceeds ₹ 2 lakh for the purpose of certifying that incidence of such tax and interest had not been passed on to any other person.

input providers and the CA who issued the certificate were dubious. Thus, refunds of ₹ 12.01 crore were sanctioned without proper verification.

On this being pointed out in audit (May to July 2021), Mumbai West Commissionerate stated (August 2021) that the sanctioning officer is an officer with a limited reach and if the suppliers, of the taxpayer claiming refunds, fall outside the jurisdiction of the sanctioning authority, it becomes impossible to view the antecedents of such suppliers. A massive drive was conducted from August, 2020 wherein hundreds of registrations were cancelled which were either inactive, non-filers or on application of the taxpayer on priority basis.

The Commissionerate further added that the refund application looked less suspicious when we look at the timelines of these refunds. The refund applications were filed in a staggered manner and spread over a period of around one year which makes it harder to correlate the facts of one case to other. The taxpayers were able to mask themselves well and these details were not possible for the Departmental officer to correlate with each other. Due diligence was exercised in sanctioning all refund claims and within the framework of provisions of law.

The reply is not acceptable, as refunds were sanctioned in unusually short period of time despite several red flags. Although delegation is not explicitly provided in the rules, it was seen from the application history of refund cases checked in audit that all Divisional officers normally delegated the work of verification of refund claims to their subordinates to ensure detailed verification of the refund claims. However, this procedure was not followed in any of these suspicious refunds. The Department accepted the cancellation of registration without verifying the receipt of foreign exchange and annual returns. The taxpayers also did not file the final return in Form GSTR 10 that was required to be filed with three months of cancellation of registration as per Rule 45. Further, the reply of Commissionerates underscores the audit view that an effective mechanism to red flag high risk cases needs to be implemented to alert the proper officer before sanction of refunds.

An illustrative case is discussed below:

(a) A taxpayer applied (11 February 2020) for refund of ₹ 57.60 lakh under the category of 'Export of goods without payment of tax' for the tax period December 2019 and deficiency memo was issued on 12 February 2020. The taxpayer resubmitted the application on 14 February 2020. The acknowledgement was issued on the same day and final sanction was granted within five working days on 21 February 2020 without delegating the verification work to the Inspector or Superintendent. The ITC refunded was based on purchase invoices issued by two firms, both of whom had registered

on 21 November 2019. Department *suo moto* cancelled their registration (November 2019 and December 2020), indicating that they were fake/bogus suppliers.

(b) Another application for refund of ₹ 96.03 lakh was filed on 14 August 2020 by the same taxpayer for the tax period July 2020. The application was acknowledged on 16 August 2020 (Sunday). The refund was sanctioned within a short time of half an hour from acknowledgement. The accumulated ITC, which was refunded, was based on the purchases made from five suppliers. Two of the suppliers had surrendered their registrations in August 2020, registration of the other two were suspended (cancelled in August 2020), while in one case, registration was *suo moto* cancelled by the Department (June 2020). All these deficiencies indicated that proper verification was not carried out before the sanction and payment of refund.

When Audit pointed this out (December 2021), the Ministry contested the audit observation and stated (February 2022) that refunds had been sanctioned on the basis of the documents in term of Circular dated 26 October 2018.

Ministry further stated that Board had issued several directions that the refunds need to be sanctioned on high priority as it was a time bound matter. Although the time limit to sanction the refund claim is of 60 days, but so as to facilitate trade, in the tough COVID times and to provide much needed liquidity to the trade, field formations were asked to clear the refund claim expeditiously. Further, to carry out the mandate of the Ministry to clear all the refund on priority, remote access to AIO was provided to the officers during the COVID-19 lockdown period. Officers worked even from home and struggled to clear the refund claims on Sunday and other holidays even in night. During the said period, because of outbreak of Covid-19, offices were working with the skeleton strength.

Ministry's reply is not acceptable. While refunds need to be sanctioned on high priority according to strict timelines, a balance has to be struck between speedy processing of refund and verification of high risk refund claims. In the illustrated cases, refunds were sanctioned in an unusually short time even though there were several red flags like new taxpayers, small number of vendors, non-submission of the refund pre-application form, different address given in purchase invoice than the principal place of business, no input tax credit of essential services for exports like transportation, customs house agents etc. in GSTR-2A, export invoices showing and address that does not come under the jurisdiction of the division sanctioning the refunds etc. Therefore, due diligence for verification of correctness of the refund applications was not done in the above mentioned cases.

Recommendation 1: A comprehensive profiling of the taxpayers needs to be implemented by integrating data from both internal and external systems such as Income Tax, Directorate General of Foreign Trade, and Ministry of Corporate Affairs⁹³. A system of real time/near real time red-flagging of high-risk taxpayers/refunds may be implemented in the refund related modules to avoid refunds of fake ITC.

Ministry, regarding the Audit recommendation, stated (February 2022), that the Department had taken various measures, on the basis of recommendation of GST Council, to reduce such fraudulent refunds. The refund of unutilised ITC had been restricted to the ITC available in GSTR-2A of the relevant period from 31 March 2020. Aadhaar authentication had been made mandatory for filing of GST refund claims for all taxpayers with effect from 1 January 2022. CGST Rules, 2017 had been amended with effect from 24 September 2021 to provide for refund to be disbursed in the same bank account, which is in the name and PAN of the applicant and on which registration has been obtained and in case of proprietorship firm, the bank account has also been linked with the Aadhaar. Ministry further stated that flagging of high-risk taxpayers was already being done by DGARM through red flag reports based upon various risk parameters. As regards audit recommendation regarding real-time flagging of high risk taxpayers/ refund claims in the refund module, the Ministry stated that the matter would be taken up with GSTN and DG (Systems).

(c) In Lucknow Commissionerate, Audit observed that although the Department realised that a refund claim was prima facie based on suspicious ITC claim, it did not carry out detailed investigation to protect the interest of revenue.

The case is illustrated below:

A taxpayer under the Lucknow Commissionerate claimed (20 February 2020) refund of the accumulated ITC of ₹ 1.84 crore on export of goods/services without payment of tax for the period July to August 2019. Provisional refund of ₹ 1.66 crore was paid on 5 March 2020. The proper officer issued Show Cause Notice (SCN) on 7 April 2020 for the ITC shown in GSTR 2A on which the suppliers of the taxpayers had not paid the GST amount, indicating that they were not genuine. The taxpayer did not respond to the SCN, and the adjudicating authority passed the order rejecting ITC of ₹ 18.41 lakh and recovery of ITC of the remaining refund amount of ₹ 18.41 lakh (10 per cent of sanctioned amount).

⁹³ Report of the High power Committee, October 2014 (Driving information system for holistic tax initiatives)

Audit examined the refund claim along with the details of invoices, included in Annexure A, on which the refund of ITC of ₹ 1.83 crore was claimed by the taxpayer. Audit noticed that the taxpayer had taken ITC of ₹ 1.83 crore pertaining to 572 invoices having purchase value of ₹ 36.52 crore. The GSTR 3B of the suppliers of the taxpayer, however, showed supplies of only ₹ 1.38 crore. Surat Commissionerate, on enquiry, intimated Audit (August 2021) that two suppliers were not found at the principal place of business, and the registration of the third supplier had been cancelled in January 2019. The proper officer failed to disallow this amount, recovery for which needs to be implemented by the Department. .

When Audit pointed this out (July 2021/December 2021), the Ministry stated (February 2022) that the recovery proceeding in the matter shall be initiated once the Show Cause Notice issued gets adjudicated. Ministry's reply is, however, silent on the reasons as to why the Department failed to disallow the excess refund amount claimed. Even a cursory verification and cross-check with the GST Portal by the sanctioning authority would have resulted in the detection of the fake claim of the taxpayer as the registration of three major suppliers had been cancelled even before submission of claims by the taxpayer.

5.6.1.2 Sanction of Refunds on the basis of incomplete documents leading to fraudulent claims

Application of Refund in Form RFD 01A should include statement (Form Annexure A) of supplier invoices on which ITC is availed for, the relevant tax period for which refund is claimed in the format prescribed in Circular⁹⁴. Refunds are to be made by the Department after ensuring that the taxpayer has uploaded Annexure A along with refund on GST portal.

Under the Faridabad Commissionerate, six tobacco suppliers filed (December 2018 to June 2019) refund claims of ₹ 27.38 crore and the Department sanctioned (March 2019 to July 2019) refunds/provisional refunds amounting to ₹ 26.43 crore:

⁹⁴ Circular dated 4 September 2018

Table 5.3: Details of refunds claimed on incomplete documents

Sl. No.	Category	Date of sanction	Amount sanctioned (in ₹ crore)
1	EXPWOP ⁹⁵	18-03-2019	4.96
2	EXPWOP	27-06-2019	6.11
3	INVITC ⁹⁶	15-07-2019	4.16
4	EXPWOP	08-08-2019	2.58
5	SEZWOP ⁹⁷	29-11-2019	4.33
6	EXPWOP	18-07-2019	4.29
Total			26.43

Audit examination revealed that the claimants were new registrants and had applied for refunds within a few days after taking GST registration without uploading the mandatory Annexure A, which requires details of inputs invoices and ITC availed thereon. Refunds were sanctioned by the Department without ensuring submission of this Annexure. Thus, due diligence was not exercised by the Department before sanctioning refunds.

After disbursement of refunds, it came to the notice of the Department through physical verification of Director General of GST Intelligence (DGGI) that these claimants had applied for refunds on fake documents. The refund claims were processed without diligent scrutiny which led to payment of refund/provisional refund to fraudulent claimants.

When Audit pointed this out (December 2021), the Ministry stated (February 2022) that in the case of one taxpayer, notice for recovery of refund amount had been issued to the taxpayer. The remaining five cases were under investigation by DGGI.

One such case is illustrated below:

A taxpayer, an alleged habitual offender, was issued SCN for operating a fake firm and passing fake ITC of ₹ 26.53 crore⁹⁸. Department cancelled its registration on 1 June 2018. The taxpayer, in his statements dated 7 June 2018 and 6 July 2018 before *Directorate of Revenue Intelligence (DRI)*, admitted to be the owner of a fake and non-existing firm in the name of his mother as dummy proprietor. He had also admitted that he defrauded the Department by forming different firms and opening different bank accounts with two different PAN numbers. He also received drawback by forging Certificate of origin for which the SCN was issued in March 2019. Despite such antecedents of the taxpayer, the registration granted to his sole proprietary concern

⁹⁵ Export without payment of tax

⁹⁶ Inverted Duty Structure

⁹⁷ Special Economic Zone without payment of tax

⁹⁸ PIB press note dated 10 February 2021.

(on 4 March 2018) was not revoked in July 2018 and provisional refund of ₹ 20.07 crore was released during May 2019. The final refund of ₹ 1.55 crore was paid during the period April 2019 to June 2019 even after it became evident that the person was involved in claiming drawback on forged documents. This indicated lack of proper coordination between various wings of CBIC. Lack of intelligence sharing had led to individuals exploiting the system and getting refunds on fake ITC.

When pointed out (December 2021), the Ministry stated (February 2022) that the issue was being examined.

5.6.1.3 Refunds granted to taxpayer who went untraceable after fraud

In order to curb fly-by-night operators who take advantage of easy registration system (three working days and no field inspection) and to stop impersonation and check bogus billing through ‘laptop shops⁹⁹’, Notification¹⁰⁰ dated 23 March 2020 was issued which provided for Aadhar authentication in which (a) an individual; (b) authorised signatory of all types; (c) Managing and Authorised partners of a partnership firm; and (d) Karta of an Hindu undivided family shall undergo authentication, of Aadhaar number, as specified in Rule 8 of the CGST Rules, 2017, in order to be eligible for registration. Section 25 (6) was amended with effect from 1 January 2020 to provide that every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number.

Prior to this notification, registrations were granted without verification of the Aadhar or e-KYC documents which led to registration of unscrupulous elements. Subsequently, by the time Department detected (through data analytics or anti-evasion activities) fraudulent claims by such elements, they would become untraceable. Thus, recovery of fraudulent refund was not possible in most of these cases. One such illustrative case of fraudulent claim is detailed below:

A proprietary concern was registered on 1 October 2019 under the Delhi West Commissionerate. The proprietor mentioned his legal name as “Monu”. The Aadhar card and e-KYC of this proprietary concern was not verified by the Department. Three refund claims amounting to ₹ 89.28 lakh were filed in March and April 2020, and the refund was obtained under the category of Inverted Duty Structure for supply of footwear. The taxpayer had purchased goods from seven suppliers, all of whom had registered themselves in January 2020.

⁹⁹ NACIN presentation dated 22 August 2020.

¹⁰⁰ Notifications dated 23 March 2020

Audit scrutiny revealed that only one supplier was active. The registrations of five suppliers had been cancelled *suo moto* and one supplier's registration had been suspended by the Department (between January 2020 and December 2020). The taxpayers stopped filing returns from July 2020. Thus, it is apparent that the refund claims were based on fake ITC invoices.

On this being pointed out in audit (February 2021 and April 2021/December 2021), the Ministry stated (February 2022) that the matter was under investigation by Anti Evasion Branch. Further, letters to all three banks of the taxpayer had been sent for providing bank account statements and KYC details.

5.6.1.4 Non-recovery of refund amounts in the absence of mechanism to monitor the realisation of export proceeds

The Joint Committee on Business Process¹⁰¹ for refund application in its Report of August 2015 recommended that, as per the Reserve Bank of India (RBI) guidelines, the exporter has a time of one year from the date of export, within which the export proceeds are required to be remitted into India. Bank Realisation Certificate (BRC) will not be available till the time export proceeds are realized. It was recommended that submission of BRC may not be insisted upon at the time of filing of refund application and post facto verification can be carried out by the tax authorities. The refund in such cases should be subject to submission of BRC details within a period of maximum one year or such period as extended by RBI from the date of export. If such details are not submitted at the portal at which the refund application was made, the portal should generate an alert/report for the concerned tax authorities to take up appropriate action.

In case of any short receipt of export receipts, necessary action for recovery of proportionate refunded amount may be taken. BRC, however, may be verified at the time of exports itself if the payment has already been received in advance. It was also recommended that e-BRC module may be integrated in the Refund process under GST.

Rule 96B of the CGST Rules inserted vide Notification dated 23 March 2020 inter alia provides that where a claimant has received the refund of unutilised input tax credit on account of export of goods but the sale proceeds in respect of such export goods have not been realised in India within the period allowed under the Foreign Exchange Management Act, 1999 (i.e. 180 days), the claimant shall deposit the refunded amount to the extent of non-realisation of sale proceeds, along with applicable interest, failing which the amount

¹⁰¹ An empowered committee was constituted under the co-convenorship of Additional Secretary (Revenue) to give recommendations on refund process in GST regime.

refunded shall be recovered in accordance with the provisions of Section 73 or 74 of the Act alongwith interest.

The GSTN¹⁰² signed (October 2016) a Memorandum of Understanding (MOU) with Director General of Foreign Trade (DGFT) for sharing foreign realisation (e-BRC) and Import-Export Code. e-BRC is issued by a bank as confirmation that the exporter has received payment from the buyer against the export of goods or services. The DGFT implements the e-BRC platform, which allows banks to electronically upload information pertaining to foreign exchange realisation related to exports on the DGFT server. This information is transmitted through a digital certificate – the e-BRC.

Audit examination revealed that no verification system was implemented to ascertain the receipt of proceeds from exports after grant of refund. Although GSTN had access to the e-BRC, it was not integrated with the GST system as recommended by the Joint Committee on Business Process. The details of receipt of foreign exchange were also not obtained from the taxpayers for *ex-post facto* verification. Linking of e-BRC is an important tool for identifying fake exporters, exporters who get refunds but not realising export proceeds and cases where the export proceeds are lower than the amount shown in the tax invoice.

Export Outstanding Statement (XOS) of RBI as of December 2020 was cross-verified in two Commissionerates and it was observed that in three cases¹⁰³, the export proceeds of ₹ 2.24 crore against five shipping bills were pending realization. Despite this, neither had the claimants deposited refund amount related to such exports nor was any action initiated by the Department to recover such amount from the claimant. This resulted in non-recovery of refunded amount of ₹ 44.79 lakh.

On this being pointed out in audit (February 2021/December 2021), Ministry (February 2022) accepted the observation and intimated recovery of ₹ 0.57 lakh in two cases. Ministry further stated that there was no system from where officers could identify that the sale proceeds in respect of exported goods have not been realised. Ministry's reply in respect of one case is awaited (February 2022).

Recommendation 2: The e-BRC module may be integrated with GSTN and cases where export proceeds have not been received within the prescribed

¹⁰² PIB press note dated 28-October-2016 10:22 IST that GSTN signed MoU with DGFT for sharing of foreign exchange realisation data

¹⁰³ Jaipur Commissionerate

time may be examined for overpayment of refund. This will also help prevent possible frauds by identifying taxpayers who sought refunds on fake exports.

Recommendation 3: A robust red flag system may be introduced by linking various systems such as ICEGATE, e-BRC and XOS statement etc. to alert proper officers in respect of non-compliant taxpayers for blocking their refunds and initiating recovery of ineligible refunds already sanctioned.

Ministry, with respect to audit recommendations, stated (February 2022) that the matter would be taken up with GSTN and DG (Systems).

5.6.2 Incorrect order of sanction due to non-compliance with Board's instructions for priority to IGST over CGST/SGST

CBIC Circular dated 4 September 2018 provides for debit of the refund amount of accumulated ITC by the claimant from its electronic ledger 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 electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger.

Audit examination revealed that in 188 cases pertaining to 14 Commissionerates¹⁰⁴, the claimants had filed refund claims of ₹ 230.39 crore without debiting the Electronic Credit Ledger (ECL) in the aforesaid prescribed manner despite having sufficient balance in the respective heads.

Thus, non-observance of Board's circular resulted in incorrect order of sanction of refund and belated allocation of funds under IGST head to CGST/SGST head.

When Audit pointed this out (January and February 2021), Department termed (January, 2021 & March, 2021) it a procedural lapse stating that refund was sanctioned as per law and there was no revenue effect. Further, it was stated that the aforesaid circular itself stated that its non-compliance should not be viewed seriously. The Ministry informed (February 2022) that its view would be submitted shortly.

Audit noticed that even after a passage of more than three years and making refund process fully automated, the Department had not ensured that the

¹⁰⁴ Coimbatore, Kochi, Kozhikode, Thiruvanthapuram, Salem, Ranga Reddy, Tiruchirapalli, Chennai Outer, Pune I, Goa, Bhiwandi, Kolhapur, Mumbai East, Guntur

system validated and accepted the debits in ECL in the prescribed order as intended by the Board.

Recommendation 4: The Department may consider introducing requisite validations in the refund module to ensure that the eligible amounts are debited in the prescribed order.

Ministry, with respect to audit recommendation, stated (February 2022) that the matter of introducing validation regarding order of debit from electronic credit ledger for filing refund in refund module would be taken up with GSTN.

5.6.3 Double payment of GST refunds on cross jurisdictional claims

Section 6(1) of the CGST Act, 2017 specifies that the officers appointed under the State Goods and Services Tax Act (SGST) or Union Territory Goods and Services Tax Act (UTGST) are authorized to be the proper officers for the purpose of this Act, subject to such conditions as the Government shall, on the recommendations of the GST Council, by notification specified. In this regard, Notification dated 13 October 2017 authorizes officers appointed under SGST Act/UTGST Act to be the authorized officers for the purposes of sections 54 and 55 of the said Act, who shall act as proper officers for the purpose of sanctioning of refunds under these sections except for Rule 96 of CGST Rules (Exports of goods with payment of IGST).

Based on the above provisions, the officers appointed under SGST/UTGST Act are empowered to sanction refund of the CGST or IGST components of claims in respect of taxpayers coming under their respective jurisdiction. Similarly, the proper officer under the CGST Act¹⁰⁵ is empowered to sanction refund of SGST/UTGST components of the claims pertaining to the taxpayers under his jurisdiction. The Chief Controller of Accounts in his office memorandums¹⁰⁶ addressed to Pr. Chief Commissioners of GST, Commissioners of GST, Chief Controller of Accounts and PAO advised divisional authorities to maintain proper records to minimise the risk of re-issuance and reconcile the refunds on monthly basis with PAO citing incidents of refund orders and payment advices being issued more than once.

The PFMS through which the payment of refund is initiated allows for download of the data of disbursement in Excel format which can be analysed for identifying cases of double payment. This can then be corroborated with

¹⁰⁵ Section 6 (1)

¹⁰⁶ Pr. CCA/CBEC/GST-IT/ePAO Refunds/33/2017-18 dated 4 June 2018 and Pr. CCA/CBEC/GST-IT/ePAO Refunds/33/2017-18/656 dated 28 December 2018.

the sanction orders attached with the bills to confirm whether the payments relate to the same sanction order.

Audit analysed the data of PFMS relating to GST refunds pertaining to the period from July 2017 to September 2019 (Pre-automation) received from 34 Commissionerates¹⁰⁷ and followed it up with substantive audit of the payment process. Audit noticed 410 instances of double payments amounting to ₹ 13.73 crore, out of which in 19 cases, the department recovered ₹ 1.03 crores after it was pointed out in audit.

In this regard, Audit observed the following lapses:

- In these cases, either the sanction orders were received twice from the State jurisdictional offices or payments were initiated twice on the same base documents. In one case, both the Central and State Authorities refunded the amount to the same taxpayer for the same period without due verification. In some cases, the payment for the same period was released based on different sanction orders.
- In respect of 23 cases, the taxpayers had suo moto returned ₹ 17.10 crore received by them twice.

Although the taxpayers intimated the Department of double payment, there was nothing on record to show that the Department investigated and analysed the reasons for double payments so that corrective measures to improve the system be initiated. This reflected a control deficiency in the manual payment process pertaining to cross-jurisdictional claims of CGST and IGST components in these Commissionerates. One illustrative cases in this regard are as follows:

(a) A taxpayer assigned to the jurisdiction of State GST Department, had claimed refund for January, February and March 2018 both with the State and Central jurisdictions. Both the jurisdictional authorities sanctioned the payment. Sanctioning the claim by the central tax authorities was contrary to the instructions of CBIC. This resulted in excess payment of ₹ 1.74 crore.

Further, the taxpayer was sanctioned provisional refund of CGST worth ₹ 62.73 lakh and IGST worth ₹ 59.95 lakh by the State tax authorities on 11 June 2019. Bengaluru North Central Tax Commissionerate generated the bills twice for payment of CGST/IGST amounts on two different dates without

¹⁰⁷ Agra, Ahmedabad North, Ahmedabad South, Belgaum, Bengaluru East, Bengaluru North, Bengaluru North West, Bengaluru South, Bengaluru West, Bhavnagar, Chennai North, Chennai Outer, Chennai South, Coimbatore, Gandhinagar, Ghaziabad, Jodhpur, Kanpur, Kochi, Kozhikode, Kutch, Madurai, Mumbai East, Mumbai West, Mysuru, Mangalore, Noida, Pune I, Salem, Surat, Thiruvananthapuram, Tiruchirapalli, Vadodara-I and Vadodara-II.

proper verification before transmitting them to the Pay and Accounts Officer (PAO) for payment. This resulted in excess payment of ₹ 1.23 crore.

Audit pointed this out in February 2021 and December 2021. Ministry, for the refund claims pertaining to January 2018, February 2018 and March 2018, stated (February 2022) that the entire amount was recovered from the assessee well before the intervention of Audit. Further, the assessee had also paid the interest amount on the erroneously sanctioned refund amount in January 2022. Regarding refund claims for the period October 2018 and November 2018, Ministry stated that double refund was sanctioned due to oversight. However, the erroneously sanctioned amount was recovered from the assessee immediately.

(b) Audit noticed in Ahmedabad South Commissionerate that a taxpayer was issued refund twice on three occasions amounting to ₹ 7.72 crore, which they returned *suo moto*. Similarly, another taxpayer was given refund of ₹ 43.74 lakh twice in September 2019 which they returned in December 2019 *suo moto*.

The Department neither noticed the double payment nor took immediate action to reconcile refund bills with that of PFMS data, even when the taxpayers were returning the refunds twice paid to them. The Department also did not take suitable steps to improve and correct the system lapse to avoid recurrence of such double payments. Audit came across 10 occasions of double payments amounting to ₹ 12.20 crore, out of which ₹ 8.16 crore was returned *suo moto* by the taxpayers, while ₹ 6.44 lakh was recovered after it was pointed out in audit and in three cases, recovery of ₹ 4.07 crore was pending.

When pointed out (December 2021), the Ministry stated (February 2022) that the reply would follow.

Recommendation 5: A comprehensive verification of PFMS data relating to the pre-automaton period may be undertaken in all Commissionerates to identify double payment cases that may have occurred due to lack of reconciliation.

Ministry, with respect to audit recommendation, stated (February 2022) that the issue would be taken up with the field formations for necessary action. Advisory was being issued to field formations for checking the double payment cases.

5.6.4 Delay/non-conduct of post-audit of refund claims

Internal audit is an independent management function, which involves a continuous and critical appraisal of the functioning of an entity. Internal Audit, being an integral part of the internal control system, has an important role to play in ensuring compliance with prescribed rules, regulations and guidelines.

According to CBIC Circular¹⁰⁸, refund orders are subject to post-audit based on extant guidelines of the erstwhile Central Excise Laws, which requires all refund claim papers be sent by the Divisional Deputy/Assistant Commissioner to the Commissionerate Headquarters for post-audit within a week of payment irrespective of the amount involved. As per guidelines, post-audit should be completed before the expiry of three months from the date of payment. Audit examination revealed the following shortcomings:

- Detailed instructions and guidelines for post-audit of refund cases have not been formulated by the Department after roll out of GST.
- Proper documentation of refund cases sent for post-audit and the current status of post-audit is not maintained in the CBIC field formations.
- Analysis of 8,448 pre-automation cases disclosed that 4,414 cases were not sent for post-audit. As for 449 cases, Audit could not ascertain whether the cases were sent for post-audit or not, as no details were available on the file.

In 2,363 cases, there were delays up to 649 days in carrying out the post-audit.

In respect of the post-automation period, none of the cases were post-audited by the Department. Besides contravention of Board's instructions, non-conduct/delayed conduct of post-audit has the risk of over-payment remaining undetected or getting time-barred.

On this being pointed out in audit (December 2020 to September 2021), Department accepted the audit observation in 426 cases pertaining to 23 Commissionerates.

In one case, the Department did not accept the observation and contended that the audit observation was raised on the basis of date of issue of sanction order and not on the basis of date of issue of payment advice. The reply is not acceptable, as the Department neither furnished the date of payment nor the reason for inordinate delay in issuing the payment advice. In the remaining 1,144 cases, pertaining to 45 Commissionerates, the replies are awaited (February 2022).

¹⁰⁸ Circular dated 15 November 2017

In Mumbai West Commissionerate, out of the 3,051 cases of refunds processed for payment of ₹ 638.11 crore, only 104 cases were sent for post-audit. None of the post-automation cases were sent for post-audit, despite the instructions (January 2020) of the Chief Commissioner of GST, Mumbai that all the refund orders should be reviewed by the Commissioner as well as post-audited as per extant rules. However, Audit noticed that none of the cases were reviewed by the Commissioner.

In reply, the Commissionerate stated that all cases pertaining to 2017-18 have been sent for post-audit and for subsequent period, files were being sent. They further added that for audit of post-automation cases, no guidelines have been specified and the GST system has no option for the Divisional Officer to transfer the task to the post-audit section. The GST system is not linked to review section for review.

This indicated that even after four years of implementation of GST, a proper system of review and post-audit had not been effectively institutionalized so that the Department may rectify mistakes in time.

Recommendation 6: A robust post-audit system based on detailed codified manual of instructions, checklist and SOP may be put in place. A proper module for post-audit of refunds may be introduced in the GST system for effective monitoring.

Ministry, with respect to audit recommendation, stated (February 2022) that field formations had been instructed vide Circular dated 15 November 2017 to conduct post-audit of the refund claims as per the extant guidelines i.e. the guidelines issued under pre-GST regime. Guidelines regarding post-audit of refund orders in the automated regime were under preparation. Ministry further informed that the matter had also been taken up with DG (Systems) to operationalize the post-audit module under the review module in the system.

5.7 Compliance issues

Audit examined compliance in individual sampled cases to the provisions of the CGST Act, associated rules, procedures, etc. related to refund of GST by the Central tax authorities. Audit noticed 522 cases where excess/inadmissible refund of ₹ 185.28 crore was sanctioned due to incorrect computation of Adjusted Total Turnover, consideration of ineligible accumulated ITC, claims which were time barred etc. Audit also noticed delays at various stages of processing of refunds that led to delay in sanction of refunds. The interest for delayed refunds was also not paid in the majority of cases. The details regarding the nature of audit observations and the extent of deviations are

included in **Table 5.4** (pre-automation period) and **Table 5.5** (post- automation period):

Table 5.4: Compliance deviations noticed during pre-automation period

Sl. No.	Nature of observation	Pre-automation				
		Cases audited		Audit observation in the sample audited ¹⁰⁹		Deviation rate (as a percentage of number of cases)
		No.	Amt. (in ₹ crore)	No.	Amt. (in ₹ crore)	Percentage
1	Delay in issue/non-issue of acknowledgement	5,451	6,320	374	468	6.86
2	Refund orders not sanctioned or paid in time	5,451	5,771	412	401	7.56
3	Provisional refund on account of zero-rated supply not sanctioned in time/not issued at all	3,237	4,500	281	360	8.68
4	Irregular sanction of refund under Inverted Duty Structure	1,345	1,060	46	21	3.42
5	Irregular grant of provisional refund to ineligible taxpayer	2,214	1,271	30	25	1.36
6	Sanction of refund without submission of copy of GSTR-2A along with refund application by taxpayer	4,486	5,456	21	53	0.47
7	Excess grant of refund due to non-reversal of ITC on exempted supplies	4,486	5,406	54	3	1.21
8	Irregular grant of refund on inadmissible input tax credit	4,486	5,406	29	2	0.65
9	Excess refund due to adoption of incorrect adjusted turnover	4,486	5,406	26	12	0.58

¹⁰⁹ Row No. 4 to 9 in the table 5.4 depict the compliance deviations as pointed out in para 5.7

Table 5.5: Compliance deviations noticed during post-automation period

Sl. No.	Nature of observation	Post-automation				
		Cases processed by Centre		Audit observation in the sample audited ¹¹⁰		Deviation rate (as a percentage of number of cases)
		No.	Amount (in ₹ crore)	No.	Amount (in ₹ crore)	Per cent
1	Delay in issue/non-issue of acknowledgement	90,888	32,008	11,683	4,472	12.85
2	Refund orders not sanctioned or paid in time	86,506	24,685	12,289	4,436	14.21
3	Provisional refund on account of zero-rated supply not sanctioned in time/not issued at all	30,534	17,221	20,050	9,360	65.66
4	Irregular sanction of refund under Inverted Duty Structure	2,180	2,051	31	3	1.42
5	Sanction of refund without checking status of filing of returns	86,506	24,685	13,589	2,229	15.71
6	Sanction of refund without submission of copy of GSTR-2A along with refund application by taxpayer	2,938	155	74	40	2.52
7	Sanction of refund when ITC shown was more than GSTR-2A	31,173	27,405	2,656	6,122	8.52
8	Delay in Issue of deficiency memo	53,926	17,003	9,001	4,682	16.69
9	Delay in disbursement of refunds beyond 15 days of sanction.	78,895	23,742	2535	1,972	3.21
10	Irregular grant of refund on inadmissible input tax credit	5,064	172	19	3	0.38
11	Excess refund due to adoption of incorrect adjusted turnover	5,064	172	58	13	1.15

¹¹⁰ Row No. 4 to 7 and 10 to 11 in the table 5.5 depict the compliance deviations as pointed out in para 5.7

5.7.1 Delays at various stages of refund processing

5.7.1.1 Delay in issue of acknowledgement

Pre-automation

Sub-rule (1) and (2) of Rule 90 of the CGST Rules provide that the acknowledgment shall be issued within fifteen days of filing of refund claim with 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 specified documents.

Audit examined 5,451 refund cases pertaining to the pre-automaton period and observed delays and omissions in 485 cases (nine *per cent*) under 53 Commissionerates as detailed below:

- In respect of 83 cases under 14 Commissionerates, wherein the refund claim was ₹ 68.34 crore, no acknowledgement had been issued, while there were delays in issue of acknowledgement in 291 cases ranging up to 369 days. In 49 cases, there was delay of more than 60 days. The delays and non-issue of acknowledgement constituted 6.99 *per cent* of the sample checked.
- In respect of 16 cases, Audit could not ascertain whether the acknowledgement was issued or not as records were not made available. In 32 Commissionerates, Audit could not ascertain the date of manual submission of application in 95 cases involving refund claim of ₹ 110.81 crore as proper records were not maintained for monitoring the receipt of applications.

In response to the audit observation (December 2020 to September 2021), the Department accepted the observation in 113 cases under 21 Commissionerates.

In 41 cases under 10 Commissionerates¹¹¹, the Department did not accept the observation and contended that there was delay in issue of acknowledgement due to late submission or short submission of documents by the tax payers. The reply is not acceptable as the Department had to either issue acknowledgement or if the documents were not complete, deficiency memo was to be issued within 15 days. In the remaining 248 cases under 28 Commissionerates, the replies were awaited (February 2022).

Two such cases are illustrated below:

¹¹¹ Delhi South and Raipur Commissionerate.

(a) A taxpayer under the Gurugram Commissionerate filed a refund application for zero-rated supply on 10 June 2019 followed by manual submission of application along with documents on 14 August 2019. A Deficiency memo was issued on 4 September 2019 and rectified application was submitted by the taxpayer on 5 November 2019. The Department issued acknowledgement on 26 May 2020 after a delay of more than 187 days from the receipt of completed application, and issued the sanction order for ₹ 10.11 crore on the same day.

When pointed out (August 2021/December 2021), the Ministry stated (February 2022) that due to Covid pandemic vide Notification dated 3 April 2020, issued under Section 168A of the CGST Act, the time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action was extended upto the 30th day of June 2020. Thus, there was no delay in sanctioning of above refund claim; however, the audit objection is agreed.

Ministry's reply is not acceptable in view of the fact that the taxpayer had originally submitted the refund application in August 2019. In reply to deficiency memo of November 2019, the taxpayer had submitted the revised refund application on 6 February 2020. Thus, the department was required to issue acknowledgment within 15 days from 6 February 2020 i.e. 21 February 2020. The lockdown, owing to Covid-19, was imposed from 23 March 2020. i.e. after more than a month of receipt of the revised refund application.

(b) A taxpayer under Haldia Commissionerate filed an application claiming refund of ₹ 65.56 lakh and submitted the documents physically on 28 January 2019. Acknowledgement was issued after 309 days on 3 December 2019 instead of within 15 days. The provisional refund of ₹ 59 lakh was granted on the same day and final refund of ₹ 6.55 lakh was granted on 19 December 2019.

When Audit pointed this out (January 2021/December 2021), the Ministry admitted the audit observation and stated (February 2022) that in future such issues would be dealt more cautiously. Further, efforts were being made to ensure maximum facilitation of taxpayers.

Post-automation

Analysis of the post-automation GSTN data during the period September 2019 to July 2020 disclosed that in 11,683 out of 90,888 cases, constituting about 13 per cent of cases, acknowledgments were issued with delays ranging up to

147 days. Consequently, the refunds in 3,724 cases were sanctioned beyond the stipulated period of 45 days¹¹² as detailed below:

Table 5.6: Delay in sanction of refund claim due to delay in acknowledgment (post- automation)

Delay in sanction of refund	Number of Cases	Amount Sanctioned (in ₹ crore)
1 day to 15 days	2,634	1,176
16 days to 45 days	933	420
46 days to 75 days	110	32
Beyond 75 days to 230 days	47	21
Total	3,724	1,649

Source: Compiled based on the data furnished by GSTN.

During detailed audit of 554 post-automation cases in 72 Commissionerates, Audit noticed delays in issue of acknowledgment up to 170 days with claim amount of ₹ 567 crore.

On this being pointed out in audit (December 2020 to April 2021), the Department accepted the observation in 197 cases and replied that the technical glitches and errors had resulted in delays. The Department contended in two cases, pertaining to two Commissionerates, that remote access was not provided during the Covid 19 pandemic. In 10 cases under one Commissionerate, the Department accepted the delay but did not elaborate on the reasons for the delay. Replies regarding 325 cases, under 52 Commissionerates, were awaited.

Recommendation 7: In case of issue of acknowledgement after 15 days, the proper officer should specify the reasons for such delay and the same should be monitored online by the Department.

Ministry, in response to audit recommendation, stated (February 2022) that issuance of acknowledgement was just a step in processing of refund and not the final step determining the payment of refund. However, instructions were being issued to the field formations of CBIC for strict adherence of the timelines for issuance of acknowledgement and deficiency memo.

¹¹² Circular dated 18 November 2019- The tax authorities were advised to issue the final sanction and payment order within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days.

5.7.1.2 Delay in sanction of refunds

Section 54 (5) and 54 (7) of CGST Act, 2017 provide that the proper officer shall issue sanction order within sixty days from the date of receipt of application complete in all respect. Wherever a deficiency memo (GST-RFD-03) is issued, the period of 60 days is counted from the date of receipt of reply to the said deficiency memo.

Section 56 of the CGST Act, 2017 provided that if any tax ordered to be refunded under sub-section (5) of Section 54 to any applicant is not refunded within sixty days from the date of receipt of application under subsection (1) of that section, interest at such rate not exceeding six *per cent*, shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax.

The Board held that interest has to be calculated from the date immediately after the expiry of sixty days from the date of receipt of the application till the date the amount is credited to the bank account of the applicant. The tax authorities were advised to issue the final sanction and payment order within 45 days of the date of generation of ARN so that the disbursement is completed within 60 days¹¹³.

Government extended the due date for issue of notice, sanction or approval etc. falling between 20 March 2020 and 30 August 2020 to 31 August 2020¹¹⁴ owing to Covid-19 pandemic. Time limit was also extended for issuance of order where the SCN was issued between 20 March 2020 and 29 June 2020, to fifteen days after the receipt of reply to the SCN or 30 June 2020 whichever was later¹¹⁵.

The notifications were primarily meant to take care of extraordinary circumstances of pandemic. The officials were granted remote access to the GSTN from 5 April 2020 so that officials could work from home. Hence, for any delay in sanction or issue of an order, there needed to be cogent recorded reasons.

Pre-automation

Audit examined 5,451 cases and noticed delays in issue of sanction orders/payment advice beyond 60 days from the date of receipt of completed applications in 412 cases constituting about 8 *per cent* of the total cases

¹¹³ Circular dated 18 November 2019

¹¹⁴ On 27 June 2020

¹¹⁵ In 9 June 2020

examined. Interest of ₹ 2.25 crore was not paid in these cases. The details are given in **Table 5.7** below:

Table 5.7: Delay in sanction of refund (pre-automation)

Delay in sanction of refund	Number of Cases	Amount Sanctioned (₹ in crore)	Interest payable (₹ in crore)
Up to 60 days	226	218	0.69
61 to 120 days	87	43	0.51
Beyond 120 days	99	140	1.05
Total	412	401	2.25

On this being pointed out in audit (December 2020 to September 2021), the Department accepted the observation in 149 cases under 18 Commissionerates, and stated that delays occurred due to heavy work load and shortage of staff. In three cases pertaining to Madurai Commissionerate, Department intimated payment of interest against the delayed refund.

In 52 cases under 11 Commissionerates, the Department did not accept the observation and contended that the delay in sanction of refund was due to late submission or short submission of documents by taxpayers. In six cases, the Department stated that the delay was due to delayed/intermittent replies by the taxpayers to the SCNs issued. The Department further stated that no interest has been demanded by the taxpayers. In the remaining 233 cases, under 25 Commissionerates, replies were awaited.

The Department's reply regarding non-payment of interest is not acceptable as the interest amount is to be paid *suo moto* by the Department. There is no requirement in the Rules that the taxpayers have to formally demand payment of interest.

An illustrative case is given below:

A taxpayer under Ahmedabad North Commissionerate, claimed refund of ₹ 19.40 crore on 8 October 2018. The acknowledgement was issued on 26 October 2018 and provisional refund of ₹ 17.46 crore was sanctioned on 12 November 2018. An SCN was issued after eleven months on 18 October 2019. After receipt of reply to the SCN on 26 October 2019, the final refund of ₹ 1.84 crore was paid on 22 November 2019, after excluding inadmissible amount of ₹ 9.36 lakh, resulting in inordinate delay in sanction/payment of final refund amount of about one year. Further, the Department did not pay interest to the taxpayer despite delayed payment of refund.

When Audit pointed this out (December 2021), the Ministry informed (February 2022) that the delay was due to implementation of GST, heavy work load, shortage of staff and vigorous /in depth verification of claims.

Ministry's reply is not acceptable as the refund application pertained to October 2018 whereas GST was implemented in July 2017, i.e. more than 15

months before the receipt of the refund application. Further, the reply of the Ministry is silent on the aspect of non-payment of interest on delayed payment of refund.

Post- automation

During the post-automation period, Audit observed that in respect of 86,506 cases, sanction orders for refunds amounting to ₹ 24,684.91 crore were issued. In 15,631 cases, constituting about 18 *per cent* involving sanctioned amount of ₹ 6,249.72 crore, the sanction orders were issued beyond the stipulated period of 45 days. In respect of 12,289 cases constituting about 14 *per cent*, the refund amount of ₹ 4,434.63 crore was paid beyond 60 days of the date of application. Further, the Department was required to pay an interest of ₹ 7.67 crore for delayed payments, but interest of only ₹ 12.38 lakh was paid.

Table 5.8: Delay in sanction of refund (post-automation)

Delay in sanction of refund	Number of Cases	Amount Sanctioned (in ₹ crore)	Amount paid through PFMS (in ₹ crore)	Amount of interest payable (in ₹ crore)	Interest paid (in ₹ crore)
1 to 60 days	10,544	3,850	3,849	3.82	0.01
60 days to 120 days	1,145	432	432	1.79	0.03
Beyond 120 days	600	154	154	2.06	0.08
Total	12,289	4,436	4,435	7.67	0.12

Source: Compiled based on data furnished by GSTN.

During detailed audit of 6,482 cases in 107 Commissionerates, Audit noticed delayed payment of refund in 186 cases amounting to ₹ 192.06 crore in 56 Commissionerates in which interest of ₹ 38.46 lakh was payable. However, interest of only ₹ 8,504 was paid in 11 cases.

On this being pointed out (February 2021 to August 2021), the Department attributed (January to May 2021) delays mainly to technical glitches, claim not shown in the task list, heavy workload, shortage of staff, delay in crediting the amount to the claimant's bank account despite issue of sanction order in time etc. In two cases, the Department replied that the delay occurred due to late submission of replies to show cause notices by the claimants and none of the taxpayers had demanded the interest. In the remaining 122 cases under 35 commissionerates, replies were awaited.

The reply of the Department in one case was not acceptable as the show cause notice itself was issued after 60 days of the ARN date, and in another case, sanction was delayed by 57 days. The law provides that the taxpayer has to

furnish the reply within 15 days of receipt of the show cause notice. The Department, therefore, could have sanctioned the refund claim after excluding the amount covered under SCN after 15 days of issue of SCN. In the remaining 122 cases under 35 commissionerates, replies were awaited (February 2022).

Two illustrative cases are given below:

(a) A taxpayer under Hyderabad Commissionerate, applied on 27 September 2019 for refund (supplies to SEZ without payment of tax) of ₹ 4.94 crore for the period of September 2017 to March 2018. The acknowledgment was issued on 10 October 2019, while the final payment of ₹ 4.94 crore was sanctioned on 2 March 2020, that is, after a delay of 97 days. Despite delay, Interest of ₹ 0.79 lakh due to the taxpayer was not paid.

In another case of the same taxpayer, the refund of ₹ 18.30 crore for the period of April 2018 to March 2019 was submitted on 30 September 2019. The acknowledgment was issued on 10 October 2019. The final payment of ₹ 18.30 crore was sanctioned on 2 March 2020, that is, after a delay of 94 days (2 March 2020). The Department was liable to pay interest of ₹ 2.83 lakh, which was not paid.

On this being pointed out in audit (February 2021/December 2021), the Department stated (July 2021) that the sanction order (RFD 06) was not issued as the taxpayer's bank accounts were shown as invalid; hence, there was no lapse on the part of the Department. The office as well as the taxpayer had taken up the matter through numerous emails with Saksham Seva and CBIC Mitra. The reply is not acceptable as the sanction order gets generated even if the bank accounts were invalid and only the Payment Advice does not get generated. In this case, the Sanction order itself was not issued within the stipulated time.

When Audit pointed this out (December 2021), Ministry stated (February 2022) that the reply would follow.

(b) A taxpayer under the Varanasi Commissionerate applied for refund of Cess worth ₹ 9.66 crore for the period of September 2019 on 4 January 2020. Acknowledgment was issued on 15 January 2020. However, provisional sanction order for ₹ 8.69 crore was issued on 17 February 2020 and the Payment advice was issued on 1 March 2020 after a delay of 38 days.

However, the final refund was pending disbursement even after a lapse of 547 days (2 September 2021).

When Audit pointed this out (May 2021/December 2021), the Ministry admitted that there was a delay of 38 days in sanction of provisional refund.

Ministry's reply, however, is silent on the reasons for the pending disbursement of final refund even after a lapse of 547 days.

Recommendation 8: The provisions regarding payment of interest on delayed refunds need to be amended to exclude the period of delays that is attributable to the taxpayers such as delay in reply to SCN or incorrect bank details for payment.

Ministry, in response stated (February 2022) that the audit recommendation had been noted for placing before the Law Committee of GST Council.

Recommendation 9: The GST system may be modified to automatically calculate the interest amount payable to the claimant in case of delay in processing of refunds beyond the prescribed time limit. Reasons for non-payment of interest may be mandatorily captured in the system and monitored.

Ministry, in response to audit recommendation, stated (February 2022) that the matter would be taken up with GSTN and DG (Systems).

5.7.1.3 Provisional refund on account of zero-rated supply not sanctioned in time

Rule 91 (1) of the CGST Rules, 2017 provides that provisional refund in accordance with the provisions of sub-section (6) of section 54 shall be granted subject to the condition that the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds two hundred and fifty lakh rupees. Sub rule (2) further provides that the proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund under sub-rule (1) is due to the applicant in accordance with the provisions of sub-section (6) of section 54, shall make an order in **FORM GST RFD 04**, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days from the date of the acknowledgement under sub-rule (1) or sub-rule (2) of rule 90.

Pre-automation

Audit examined 3,237 cases of zero-rated supplies of goods and services for the pre-automation period, in which provisional refund was payable. In 281 cases, provisional refund was not paid within seven days of acknowledgement. In 234 out of 284 cases, the entire claim was refunded at once without

payment of provisional refund. In 134 such cases, the sanction amount of ₹ 160.68 crore was paid beyond 60 days of the date of manual submission of documents.

In 47 cases, where provisional refund was paid separately, there were delays in sanction of provisional refund up to 187 days. In five cases, there was delay of more than 60 days in sanction of provisional refund.

On this being pointed out in audit (December 2020 to September 2021), the Department accepted the observation in 24 cases under eight Commissionerates. In 32 other cases under eight Commissionerates, the Department did not accept the observation and contended that there was delay in issuing provisional refund either due to detailed verification or issue of SCN to the taxpayer.

In the remaining 222 cases (27 Commissionerates), replies were awaited (February 2022).

Post-automation

In post- automation cases, provisional refund of ₹ 17,220 crore was required to be granted in respect of 30,534 cases under the category of zero-rated export of goods and services. However, provisional refund of ₹ 7,652.06 crore was granted in only 10,080 cases constituting 33.33 *per cent* of the cases, despite issue of acknowledgement in the balance 20,454 cases. Consequently, there was no justification for the Department to skip provisional refund and grant refund after a delay of more than 22 days in 4,308 cases involving refund of ₹ 2251.72 crore.

In addition, Audit noticed delays in issue of provisional refund in 2,914 applications as detailed in **Table 5.9**:

Table 5.9: Delay in sanction of provisional refund (post-automation)

Description	Maximum delay in days	Number of Cases	Amount claimed (in ₹ crore)	Provisional refund (in ₹ crore)
Delay in both issue of Acknowledgement and Provisional refund	119	510	340	281
Delay in issue of Provisional refund where acknowledgement was issued within prescribed time.	119	1,619	1,349	1,071
Acknowledgment issued beyond 15 days though the provisional refund was issued within 7 days of acknowledgement.	134	785	643	448
Total		2,914	2,332	1,800

Source: Compiled based on data furnished by GSTN.

During detailed audit in 46 Commissionerates, Audit noticed that in 429 cases, provisional refund was not paid within seven days of the acknowledgement. In 337 out of 429 cases, the entire claim was refunded at once beyond the seven days of acknowledgment by skipping payment of provisional refund.

When these delays were pointed out (between December 2020 and September 2021), the Department accepted the audit observation in 64 cases under 16 Commissionerates and cited human omission and shortage of manpower as the reasons. In one case, the Department attributed the delay to system failure and in three other cases, it stated that the manpower was not conversant with the online process of refund. In four cases the delay was attributable to non availability of remote access.

In cases where provisional refunds were not sanctioned, the Department in respect of one case contended that it was not mandatory to sanction provisional refund. In nine cases under one Commissionerate, the Department¹¹⁶ stated that the claim was sanctioned within the prescribed time-limit of 60 days. In two cases under one Commissionerate, the Department accepted the audit observation and in one case, the Department attributed the delay to late submission of BRC. In the remaining 317 cases, replies were awaited.

In cases where the Department did not agree with the audit observation, it would be worthwhile to underline that the final refund (after skipping payment of provisional refund) was not sanctioned within seven days from the date of acknowledgment. The Department was required to sanction the provisional refund in view of the statutory provisions of Section 54 (6) of the Act read with Rule 91(2) of the Central Goods and Service Tax, 2017 where the word “shall” has been used which makes it mandatory to sanction the provisional refund once the proper officer is prima facie satisfied that the amount claimed as refund under sub-rule (1) is due to the applicant in accordance with the provisions of sub-section 6 of Section 54.

5.7.1.4 Delay in Issue of deficiency memo

An acknowledgment for receipt of refund application should be issued within 15 days if the documents are complete¹¹⁷ and in case of any shortcoming in refund application, a deficiency memo in RFD-03 has to be issued.

In pre-automation cases, the taxpayer had to resubmit the application after rectifying the deficiencies intimated by the Department. The date of resubmission was considered as the date of receipt of completed application.

¹¹⁶ Vadodara I Commissionerate

¹¹⁷ Rule 90 of CGST Rules

The Application Reference Number (ARN) generated at the time of online submission of application remained unchanged.

In the post-automation period, once a deficiency memo is issued, the refund application would not be further processed, and a fresh application had to be filed after rectification of deficiencies. This application would have a new ARN.

Delhi High Court¹¹⁸ had held that allowing the proper officer to issue a deficiency memo beyond the timelines would amount to enabling processing of the refund application beyond the statutory timelines. This could then also be construed as rejection of the petitioner's initial application for refund as the petitioner would thereafter have to file a fresh refund application after rectifying the alleged deficiencies. This would not only delay the taxpayer's right to seek refund, but also impair assessee's right to claim interest from the relevant date of filing of the original application for refund as provided under the Rules. The proper officer has lost the right to point out any deficiency, in the petitioner's refund application, at this belated stage.

Pre-automation

Audit examination revealed that in 26 cases under 13 Commissionerates, deficiency memos were issued with delays of two to 34 days. Besides non-observance of the aforesaid provisions, this delayed the taxpayers' right to seek refund.

When Audit pointed this out (December 2020 to March 2021), the Department accepted the delay in 18 cases (seven Commissionerates) and attributed (December, 2020 to March, 2021) the delays to shortage of staff. In two cases, the Department did not accept the observation and cited technical glitches and delayed submission of documents by the taxpayer as the reasons for delay. In six cases, replies were awaited (February 2022). Reply of the Ministry to the above observations was awaited (February 2022).

Post-automation

In the post-automation period, the Department had issued 53,926 deficiency memos. In 9,001 cases, constituting 17 *per cent*, the deficiency memos were issued beyond the stipulated period of 15 days with delays ranging up to 211 days. Analysis of delays are as follows:

¹¹⁸ JIAN INTERNATIONAL versus COMMISSIONER OF DELHI GOODS AND SERVICES TAX [2020] 117 taxmann.com 968

Table 5.10: Delay in issue of Deficiency memo (post-automation)

Delay in days	Number of Cases	Amount Claimed (in crore)
1 to 15 days	7,328	4,113
16 days to 30 days	965	253
30 days to 45 days	505	244
Beyond 45 days	203	72
Total	9,001	4,682

Source: Data compiled on the basis of information provided by GSTN

Recommendations 10: The Department needs to put in place an effective monitoring mechanism to ensure timely issue of deficiency memos in case of deficiency in the refund claims.

Ministry, with respect to audit recommendation, stated (February 2022) that instructions were being issued to the field formations of CBIC for strict adherence to the timelines for issuance of acknowledgement and deficiency memo.

Ministry's reply, however, is silent on the monitoring mechanism to ensure timely adherence to the extant instructions by the field formations.

5.7.1.5 Delay in disbursement of refunds

On receipt of the payment advice in Form RFD-05, the GST System generates a consolidated statement comprising all RFD-05 files at the end of the day. This statement is transmitted to PFMS electronically which validates the bank account details with the taxpayers' Master file. The designated Drawing and Disbursing Officer (DDO) thereafter prepares the electronic bill in the PFMS system, affixing his digital signature and forwards it to e-PAO (Refund) of Pr. CCA (CBIC). The e-PAO issues Payment authorization to the accredited bank¹¹⁹.

Audit analysed PFMS data pertaining to the period 26 September 2019 to 31 July 2020, and noticed that payments were made after lapse of 15 days from the date of issue of sanction order in 2,535 provisional/final refund cases out of 78,795 (3.21 per cent). Age-wise analysis of delays is detailed below:

¹¹⁹ Single authority refund disbursement process: concept document issued by GSTN on 24 September 2019.

Table 5.11: Delay in payment of refunds through PFMS

Delay in days	Provisional refund		Final payment	
	Number of Cases	Amount Claimed (in ₹ crore)	Number of Cases	Amount Claimed (in ₹ crore)
15 days to 45 days	599	454	1,735	1,376
45 days to 60 days	54	43	57	28
Beyond 60 days	74	69	16	3
Total	727	565	1,808	1,407

Source: Compiled based on data furnished by GSTN

The Department attributed the delays to delay in issue of payment advice, bank validation failure etc.

The delays are indicative of the fact that after sanction of claim, the Department did not ensure timely credit of the amount to the taxpayer's account in several cases.

5.7.1.6 Delayed disbursement of refund sanctioned by State Tax Authorities

During the pre-automation period, CBIC vide its circular ¹²⁰ specified that the refund order issued either by the Central tax authority or the State tax/UT tax authority shall be communicated to the concerned counterpart tax authority within seven working days for the purpose of payment of the relevant sanctioned refund amount of tax or cess, as the case may be. It must be ensured that the timelines specified under Section 54 (7) of the CGST Act and Rule 91(2) of the CGST Rules for the sanction of refund are adhered to.

Audit verified the records maintained in six Commissionerates¹²¹ and noticed that out of 5,451 cases test checked, sanction orders (RFD-06) in respect of 95 cases, involving refund amount of ₹ 23.89 crore, were communicated by the State tax authorities to Central tax authorities after delays ranging between two to 134 days.

In 47 cases, taxpayers received the payment of ₹ 8.75 crore after a delay ranging from 9 days to 749 days from the date of sanction by the State Authorities. Audit could not identify the authority (Central or State) that was responsible for the delay as the requisite details of receipt from State tax authorities were not available. Audit observed that even though interest was

¹²⁰ CBIC circular dated 21 December 2017.

¹²¹ Gandhinagar, Agra, Ranchi, Jamshedpur, Kozhikode, Thiruvananthapuram

payable at the time of the issue of payment advice (Form RFD 05) by the Central tax authority considering the total delay from the date of submission of application as per the provisions of 94 of the CGST Rules, no interest was worked out and included in the payment advice.

On this being pointed out in audit (December 2020), the Department attributed (January to March 2021) the delay to the State tax authority in communicating refund orders. As regards non-payment of interest in RFD-06, the Department stated that the refund claim papers were not available with the Central tax authorities, and the claimants had not claimed interest. In one case, the Department stated that there was no mention of disbursing interest amount in the refund sanction issued by the State GST Offices.

The contention of the Department is not acceptable, as payment of interest was a statutory requirement and the claimant was not required to claim it separately. Further, interest is payable at the time of Payment Advice (RFD 05) and not at the time of sanction. Once there is a delay in payment of refund beyond 60 days, the disbursing officer ought to include the interest in the Payment advice. In none of the cases, the date of receipt of refund orders from the State nodal officers were recorded by the Central authorities. Further, in respect of 14 cases, where the refund orders were forwarded by the Central nodal officers to the Commissionerates on the same day, payments were made to the claimants after a lapse of 32 days to 687 days.

In one case, where the delay in disbursement from the date of receipt of sanction order was 687 days, the Department stated that when RFD-06 from the state nodal officer was received, the taxpayer was not reflected in the All-in-ones (AIO) system of the jurisdiction of division office. Subsequently, when the taxpayer approached (January 2020) for the refund claim, RFD-05 was issued (January 2020) as the taxpayer was then reflecting under their jurisdiction.

The reply is not acceptable as the Department did not follow up the matter by intimating (May 2018) the discrepancy to the nodal officer. The refund was processed (January 2020) only when the claimant approached the Department after 585 days, indicating lack of monitoring/ follow up by the Department.

One such case is given below as illustration:

A taxpayer was sanctioned refund of ₹ 99.08 lakh on 25 October 2019 by the State tax authority. Records were not maintained by the Gandhinagar Commissionerate regarding the date of receipt of the sanction order from the

State authorities and by the Central nodal officer, and the date of forwarding the same to the Divisional officer for disbursement. The taxpayer finally received the payment of IGST of ₹ 99.08 lakh on 8 January 2020 *i.e.*, after 88 days from the issue of sanction order by the State authorities. Audit observed that the interest payable for the delayed refund was not included in the payment advice for payment to the taxpayer.

When Audit pointed this out (January 2021/December 2021), the Ministry stated (February 2022) that the delay in refund was due to delay in receipt of sanction orders from the SGST authority. Moreover, there were no specific instructions for payment of interest on delay by the SGST authority. Accordingly, this office had not calculated and paid interest to the taxpayer. Ministry also stated that the concerned taxpayer had not claimed any interest for the instant refund claim.

Ministry's reply is not acceptable in view of the fact that section 56 of the CGST Act, 2017 makes it mandatory for the interest to be paid in cases of delayed refund orders without making it contingent upon claim by the taxpayer.

5.7.2 Excess refund due to adoption of incorrect Adjusted Total Turnover

As per Rule 89(4) of the CGST Rules, in case of zero-rated supply of goods or services or both without payment of tax, refund of credit shall be granted as per the following formula:

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

Similarly, Rule 89(5) provides that in case of the inverted duty structure, refund of input tax credit shall be granted as per the following formula:

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} – tax payable on such inverted rated supply of goods and services

“Adjusted Total Turnover” (ATT) means the turnover in a State or a Union territory, as defined under sub-section (112) of Section 2, excluding the value of exempt supplies other than zero-rated supplies, during the relevant period.

Audit examination revealed that in respect of 84 refund cases under 35 Commissionerates, the incorrect amount of the Adjusted Total Turnover was considered by the Department while sanctioning the refund. This resulted in excess sanction of refund of ₹ 24.90 crore.

On this being pointed out in audit (December 2020 to September 2021), the Department accepted the audit observation in 22 cases with irregular refund of ₹ 2.49 crore (14 Commissionerates) and intimated recovery of ₹ 1.56 crore in 12 cases (10 Commissionerates). In the remaining 47 cases (19 Commissionerates), replies were awaited.

A few illustrative cases are discussed below:

(a) A taxpayer under Bengaluru South Central Tax Commissionerate claimed refund of ₹ 4.59 crore for the period April 2019 to June 2019 under 'Inverted Duty Structure' category. The Adjusted Total Turnover declared by the taxpayer in the claim was ₹ 11.90 crore. However, GSTR-3B for the relevant period indicated Adjusted Total Turnover of ₹ 14.76 crore. The incorrect adoption of Adjusted Total Turnover resulted in excess refund of ₹ 1.15 crore.

When Audit pointed this out (July 2021/December 2021), the Ministry contested the audit observation and stated (February 2022) that the values of GSTR-3B do not reflect the actual outward taxable supplies for the period but is reflected by GSTR-1 only.

Ministry's reply is not acceptable as Rule 89 (4) (E) of the CGST Rules, 2017 does not specify any particular return, i.e. GSTR-1 or GSTR-3B for determining the adjusted total turnover. However, GSTR-3B is a monthly summary return which captures the details of outward and inward supplies, separately, in table 3.1. Further, the tax liability of the taxpayer is also determined on the basis of the turnover declared in the GSTR-3B. Therefore, turnover declared in GSTR-3B can be a basis for determining the adoption of Adjusted Total Turnover.

(b) A taxpayer under Tirupati Commissionerate was sanctioned refund of ₹ 4.67 crore for the period October 2019 to December 2020 under the category of 'Exports without payment of tax'. While processing the refund, tax authorities incorrectly excluded the export of ₹ 31.53 crore from Adjusted Total Turnover. This resulted in excess grant of refund of ₹ 1.23 crore.

When Audit pointed this out (April 2021/December 2021), the Ministry accepted the audit observation and informed (February 2022) that the excess paid refund amount of ₹ 1.23 crore along with interest ₹ 24.22 lakh had been recovered from the taxpayer.

(c) A taxpayer, under the Chennai South Executive was sanctioned refund of IGST of ₹ 5.51 crore (April 2020) for the tax period April 2018 to September 2018. The Adjusted Total Turnover of outward supply as per GSTR-1 was ₹ 1,806.02 crore, whereas while processing the refund, Adjusted Total Turnover of ₹ 1,199.07 crore was adopted from GSTR 3B. Incorrect adoption of Adjusted Total Turnover resulted in excess refund of ₹ 2.27 crore.

When Audit pointed this out (December 2020/December 2021), the Ministry accepted the audit observation and informed (February 2022) that the excess paid refund amount of ₹ 1.43 crore along with interest of ₹ 37.16 lakh had been paid by the taxpayer.

5.7.3 Irregular grant of refund on inadmissible input tax credit

5.7.3.1 Irregular refund on ineligible credits in case of Zero-rated supplies without payment of tax

Section 17(5) of CGST Act stipulates that ITC is not available on supplies like food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, services of general insurances, goods, or services or both used for personal consumption.

In respect of 48 claims pertaining to 'Export Without Payment of GST' (EXWOP) under 19 Commissionerates, Audit noticed that the taxpayers had claimed refund of ITC on ineligible goods and services and credits which did not pertain to the period of claim amounting to ₹ 4.76 crore. However, the Department granted refund in these cases in contravention of the aforesaid provisions.

On this being pointed out in audit (December 2020 to September 2021), the Department accepted the audit observation in 10 cases under eight Commissionerates and intimated recovery of ₹ 2.72 lakh in three cases under the three Commissionerates. In three cases, under three Commissionerates, the Department did not accept the observation. In the remaining 35 cases (13 Commissionerates), replies were awaited (February 2022).

An illustrative case is given below:

A taxpayer under the Bengaluru North Central Tax Commissionerate, had claimed refund of the unutilized ITC for the period from October 2018 to March 2019 (May 2020). The net ITC claimed by the taxpayer included supplies of taxable value of ₹ 11.12 crore on which ITC credit of ₹ 1.85 crore was availed relating to Sodexo Facilities Management Service which had issued food coupons for the personal benefit of the employees. However, the Department granted refund of ₹ 1.85 crore resulting in excess refund on account of ineligible ITC, in contravention Section 17(5)(b) for the CGST Act, 2017.

When Audit pointed this out (July 2021/December 2021), the Ministry accepted the audit observation and informed (February 2022) that an SCN of ₹ 90.39 crore for the period April 2018 to March 2020 had been issued.

5.7.3.2 Irregular refund due to inclusion of inadmissible credit and ineligible input services under Inverted Tax Category

The term “Net ITC” used in the formula that is used to determine the amount eligible for refund in case of Inverted Duty Structure is defined under Explanation to Rule 89(5) to mean “input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rule 89(4A) or 89(4B) or both”.

Madras High Court in case of Tvl Transtonnelstroy Afcons Joint Venture vs Union of India held (September 2020) that the refund was a statutory right, and the extension of the benefit of refund only to the unutilised credit that accumulated on account of the rate of tax on input goods being higher than the rate of tax on output supplies by excluding unutilised input tax credit that accumulated on account of input services was a valid classification and a valid exercise of legislative power. This decision was upheld by the Supreme Court in its judgement dated 13 September 2021. Further, Section 17 (5) of CGST Act stipulates that ITC is not available on supplies like food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, services of general insurance, goods, or services or both used for personal consumption.

During detailed audit of 3,525 refund cases under Inverted Duty Structure category, Audit noticed 77 cases under 31 Commissionerates where the Commissionerates included ITC availed on input services and other ineligible ITC while granting refund. The omission to exclude the ITC availed on input services and other ineligible input tax credits resulted in irregular refund of ₹ 23.92 crore.

When Audit pointed this out (December 2020 to September 2021), the Department accepted the audit observation in 41 cases (19 Commissionerates), out of which recovery of ₹ 46.67 crore was made in 32 cases (16 Commissionerate). In the remaining cases, replies were awaited (February 2022).

Two illustrative cases are given below:

(a) A taxpayer under Jabalpur Commissionerate, got refund amounting to ₹ 20.70 crore, in case of four ARNs under the category of accumulated ITC due to Inverted Duty Structure. In all these cases, refund was sanctioned without disallowing inadmissible ITC on input services, capital goods and on the invoices not pertaining to the relevant period from “Net ITC”. Further, in three refund cases (except refund dated 8 February 2019), the Department sanctioned the refund considering Adjusted Total Turnover (ATT) shown in the refund application instead of ATT as per monthly returns (GSTR-01/GSTR-3B).

Lapse in disallowing ineligible ITC coupled with adoption of lower value of ATT resulted in excess refund of ₹ 18.81 crore.

When Audit pointed this out (March 2021/December 2021), the Ministry intimated (February 2022) reversal of ₹ 45.72 crore (pertaining to all nine months from July 2017 to March 2018). Ministry further informed that an SCN for recovery of interest and penalty was being issued.

(b) A taxpayer under Bengaluru Northwest Central Tax Commissionerate, claimed refund of accumulated ITC of ₹ 1.85 crore under Inverted Duty Structure. The “Net ITC” included credit of capital goods and input services amounting to ₹ 2.98 crore, which were not eligible. The omission to exclude the same resulted in excess sanction of refund amounting to ₹ 1.29 crore.

When Audit pointed this out (August 2021/December 2021), the Ministry stated (February 2022) that the reply would follow.

5.7.3.3 Irregular refund of ITC availed on capital goods

Rule 89(4) of CGST Rules prescribes the formula for refund of accumulated ITC in case of zero-rated supply of goods or services or both without payment of tax. The “Net ITC” means input tax credit availed on input goods and input services during the relevant period. It does not include ITC availed on capital goods.

Further, as per Rule 89(5) of CGST Rules, in case of refund on account of Inverted Duty Structure, “Net ITC” does not include ITC availed on Capital Goods and Input Services.

Audit examination revealed that in respect of 25 cases of refunds under the category of ‘Export without payment of tax’ and ‘Inverted Duty Structure’, under 13 Commissionerates, the ‘Net ITC’ used while calculating the refund amount included the ITC availed on capital goods resulting in excess refund of ₹ 1.83 crore, in contravention of the aforesaid provisions.

When pointed out in audit (December 2020 to September 2021), the Department accepted the observation in 16 cases (8 Commissionerates) and made a recovery of ₹ 84.07 lakh. In 3 cases, the Department (2 Commissionerate), while not accepting the observation, contested that ITC on capital goods was eligible for refund. The reply is not acceptable since “input” means any goods other than capital goods in view of the Rule 89(4). CBIC Circular¹²² of November 2017 also clarified that ITC on capital goods was not refundable. In the remaining six cases (5 Commissionerates), replies were awaited.

¹²² CBIC circular dated 16 November 2017

Two illustrative cases are mentioned below:

(a) A taxpayer under Kochi Commissionerate, was issued refund of ₹ 34.03 crore vide four sanctioned orders during December 2019 to January 2019 under Inverted Duty Structure category. It was noticed during audit that the “Net ITC” included inadmissible ITC claimed on capital goods resulting in excess refund of ₹ 56.23 lakh.

When Audit pointed this out (May 2021/December 2021), the Ministry intimated (February 2022) recovery of ₹ 56.23 lakh and interest of ₹ 14.52 lakh in June 2021.

(b) A taxpayer under the Guntur Commissionerate was sanctioned refund of ₹ 74.98 lakh for the period from October 2018 to December 2018 under the Inverted Duty Structure category. While calculating the refund amount as per the formulae under Rule 89 (5) of CGST Rules, the ITC of ₹ 1.03 crore availed on capital goods was incorrectly included in the Net ITC. The incorrect inclusion of ITC on capital goods resulted in excess sanction of refund of ₹ 46.70 lakh.

When Audit pointed this out (March 2021/December 2021), the Ministry stated (February 2022) that it was very difficult to distinguish ITC on capital goods or input services out of total ITC for the relevant tax period. To obviate the difficulties experienced by the proper officer, the Board had instructed (March 2020) to mention type of ITC availed in Annexure-B while filling the refund application. Ministry further stated that an SCN had been issued to the taxpayer.

5.7.3.4 Excess grant of refund due to non-reversal of ITC on exempted supplies

Section 17 (2) of the GST Act stipulates that when a registered person supplies partly taxable supplies and partly exempted supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies. If a supplier does not reverse the ITC pertaining to exempt supplies, ITC in ECL gets inflated which results in excess sanction of refund. The procedure for calculating the ITC attributable to exempt supplies is prescribed under Rule 42 of CGST Rules.

In 54 cases under 18 Commissionerates¹²³, Audit noticed excess grant of refund of ₹ 2.93 crore due to non-reversal of ITC on exempted supplies in contravention of the aforesaid provisions.

On this being pointed out in audit (December 2020 to September 2021), the Department accepted the audit observation in three cases and intimated recovery of ₹ 14.81 lakh in three cases. In three cases¹²⁴, the Department contented that exempted supply shown in GSTR-1 return was not on account

¹²³ Under the category of Export without payment of duty and Inverted rate of tax

¹²⁴ Coimbatore, Jaipur and Ludhiana

of provision of any supply of goods or services, but it was on account of sale of Merchandise Export from India Scheme (MEIS) License. Thus, reversal under rule 42 of CGST rule was not applicable in the instant case.

The reply is not acceptable as MEIS is a duty credit scrip which attracts nil rate of GST under Sl. No. 122A of the Notification dated 28 June 2017, as clarified by the Board vide Circular dated 01 March 2018. Hence, in view of definition of 'exempt supplies' under Section 2(47) of the CGST Act, the sale of licence is an exempt supply. Accordingly, the claimant was liable to reverse ITC.

An illustrative case is given below:

A taxpayer under Gurugram Commissionerate had applied for refund amounting to ₹ 83.08 lakh for the period of October 2018, and the divisional office had sanctioned the refund of ₹ 66.83 lakh under the category exports without payment of tax in April 2019. Audit noticed that the taxpayer had nil rated/exempted supply of ₹ 63.60 lakh but the taxpayer had not reversed the ITC of ₹ 8.83 lakh as per Rule 42, which was not noticed by the Department. This resulted in excess grant of refund of ₹ 7.02 lakh.

When pointed this out (April 2021), the Department accepted the observation and reported recovery of ₹ 7.02 lakh.

Post-automation

Analysis of data pertaining to 9,970 cases involving refund amount of ₹ 7,242.66 crore revealed that although the taxpayers had shown exempted supplies in GSTR-3B returns, they had not reversed the requisite ITC amount in 8,482 cases (85 per cent) involving refund of ₹ 3,781.57 crore. There is a risk of not only grant of excess refund in these cases but also leakage of revenue due to excess claim of ITC by the taxpayers who are mandated under the law to reverse the ITC attributable to exempted supplies.

During detailed audit of 54 cases in 16 Commissionerates, Audit noticed that the excess grant of refund due to non-reversal of ITC was ₹ 3.32 crore.

Recommendation 11: A system may be put in place to identify and monitor taxpayers with significant amount of non-taxable/exempted supplies to ensure timely reversal of ITC by them so that the same is not utilised or claimed as refund.

Ministry, in respect of audit recommendation, stated (February 2022) that it had been observed that initially, some of the taxpayers were not claiming ITC pertaining to exempt or nil rated supplies and therefore, they were not reversing any ITC as they have not availed any ITC in this regard. However, the

same had been addressed through auto-population of GSTR-3B returns from GSTR-2B, which would require the taxpayer to reverse the ITC attributable to exempt and nil rated supplies. Further, DGARM is issuing a red flag report since September 2021 in respect of such cases of non-reversal of ITC where taxpayer is making both taxable and exempt/Nil rated supplies.

5.7.3.5 Irregular refund due to inclusion of lapsed credit in 'Net ITC'

CBIC Notification dated 26 July 2018 allowed refund on account of Inverted Duty Structure in respect of goods falling under Harmonised system of nomenclature (HSN) 5516 (Textile and textile articles) received on or after 1 August 2018. It was clarified that the accumulated ITC lying unutilised in the ECL after payment of tax for the month of July 2018 on the inward supplies, received up to 31 July 2018, shall lapse. Board also clarified vide circular dated 24 August 2018 that ITC availed on inputs alone would lapse and not on input services and capital goods.

Audit noticed irregular refund payment of ₹ 15.41 lakh due to non-reversal of lapsed credit under Inverted Duty Structure in one case under Hyderabad Commissionerate. In three other cases, Audit noticed that though the taxpayer had reversed the lapsed credit, the Department did not adjust the interest payable of ₹ 60.27 lakh on the belated reversal of lapsed credit before releasing the refund amount.

On this being pointed out in audit (December 2020 to September 2021), the Department intimated recovery of ₹ 32.47 lakh in three cases (3 Commissionerates). Reply in the remaining cases was awaited (February 2022).

An illustrative case is given below:

A taxpayer under Coimbatore Commissionerate had unutilised balance of ITC of ₹ 66.81 lakh on account of Inverted Duty Structure. The refund included accumulated ITC of ₹ 63.65 lakh, pertaining to the period prior to July 2018 which had lapsed. The omission to exclude lapsed credit had resulted in excess grant of refund of ₹ 68.64 lakh, which was recoverable with interest of ₹ 31.40 lakh.

When Audit pointed this out (April 2021/December 2021), the Ministry accepted (February 2022) the observation and stated that two SCNs for ₹ 66.81 lakh for the lapsed credit and ₹ 68.64 lakh for the erroneous refund sanctioned to the taxpayer alongwith appropriate interest and penalty had been issued.

5.7.3.6 Excess refund due to non-consideration of ITC as per GSTR-2A

As per Section 54(4) (a) of the CGST Act, 2017, the application of refund shall be accompanied by such documentary evidence as may be prescribed to establish that a refund is due to the applicant. Initially during the manual processing of refunds of accumulated ITC, the taxpayers were required to file photo copies of invoices.

CBIC vide circular dated 4 September 2018 instructed that the proper officer shall not insist on submission of invoices, if details of invoices are present in GSTR-2A. If the invoices are not reflected in GSTR-2A, the proper officer may call for the hard copies of such invoices for examination. With the intention of curbing the practice of issue of fake invoices, a sub-clause (4) to Rule 36 of CGST Rules was inserted vide notification dated 9 October 2019 according to which ITC in respect of invoices/debit notes that were not uploaded by the supplier were restricted to specified percentage (20% - between 9 October 2019 and 25 December 2019, 10% - between 26 December 2019 and 31 December 2020, and 5 per cent from 1 January 2021) of eligible credit as per GSTR-2A.

The Board vide Paragraph 36 of Circular dated 18 November 2019 provided that self-certified copies of invoices in relation to which the refund of ITC is being claimed and which are declared as eligible for ITC in Annexure – B, but which are not populated in FORM GSTR-2A, shall be uploaded by the applicant along with the application in FORM GST RFD 01.

Subsequently, CBIC vide circular dated 31 March 2020 clarified that the refund of accumulated ITC shall be restricted to the ITC as per the invoices, the details of which are uploaded by the supplier in Form GSTR-1, and are reflected in the Form GSTR-2A of the applicant.

Audit examination revealed that in 20 refund applications filed after 31 March 2020 in 11 Commissionerates, the net ITC for the relevant refund period had not been restricted to the ITC reflected in GSTR-2A even after issue of aforesaid Circular mandating reflection of invoices in GSTR-2A. The excess refund due to deviation from the instructions amounted to ₹ 60.42 lakh.

On this being pointed out in audit (December 2020 to September 2021), the Department intimated recovery of ₹ 11.26 lakh in two cases. Reply in the remaining cases was awaited (February 2022).

Replies of the Ministry were awaited (February 2022).

5.7.3.7 Excess refund as ITC pertained to time barred invoices

Sub-section 4 of Section 16 of the CGST Act provides that a registered person shall not be entitled to take input tax credit on an invoice or debit note for supply of goods or services or both after the due date of furnishing the return by September following the end of the financial year to which such invoice or debit note pertains or furnishing of the relevant annual returns, whichever is earlier.

Audit noticed that in five cases, taxpayers had claimed refund of ITC taken on time-barred invoices. The Input tax credit on these invoices was allowed and the credit was irregularly refunded to the extent of ₹ 74.59 lakh.

An illustrative case is given below:

A taxpayer under the Bengaluru North-West Central Tax Commissionerate, had claimed refund for the period January 2020 to February 2020. The net ITC considered for refund included input tax credit availed on time-barred invoices that were more than one year old. This resulted in excess refund of ₹ 16.41 lakh.

Audit pointed this out in March 2021. Reply of the Department was awaited (February 2022).

5.7.3.8 Irregular Refund of ITC to units placed in SEZ

Section 16 (3) of Integrated Goods and Services Tax Act, 2017 stipulates that only the supplier of goods or services or both to SEZ Developer or SEZ Co-Developer or SEZ Units is eligible for claim of refund and thus, there is no provision for granting of refund to the SEZ unit in the IGST Act, 2017.

Rule 89 of CGST Rules, 2017 requires that SEZ unit/developers shall not avail input tax credit on the supplies received by them from non-SEZ suppliers and refund would be claimed only by the suppliers to the SEZ unit/developer. Thus, SEZ unit cannot avail Input Tax Credit.

A taxpayer under the Chennai South Executive Commissionerate, filed three claims for refund of IGST of ₹ 58.41 crore paid on export of services. Audit observed that the taxpayer had paid the IGST utilizing irregularly availed/inadmissible ITC of ₹ 83.60 crore. The Department sanctioned the refund during May 2020 to June 2020 in disregard of the aforesaid provisions.

When Audit pointed this out (December 2020/December 2021), the Ministry accepted (February 2022) the audit observation and issued SCN for ₹ 58.41 crore on erroneous refunds. The details of reversal of irregularly

accumulated/availed credit of ₹ 25.19 crore, however, were awaited from the Ministry.

5.7.4 Issue of refund despite deficiencies in refund applications

5.7.4.1 Sanction of refund without submission of requisite documents

Sub-rule (2) of Rule 89 of CGST Rules stipulates the list of documents to be accompanied with the refund application. Where the documents are not complete, a deficiency memo shall be issued by the Department as per provisions of Rule 90 (3) of CGST rules.

It was noticed in audit that refund of ₹ 93.26 crore was sanctioned in 95 cases by 17 Commissionerates¹²⁵ although mandatory documents such as GSTR-2A, Annexure-B and other documents were not filed by the taxpayers.

When Audit pointed this out (December 2020 to September 2021), the Department accepted the observation in 68 cases under 10 Commissionerates¹²⁶. In ten cases under four Commissionerates¹²⁷, the Department did not accept the observation and stated that Annexure-B containing details of HSN-wise summary was obtained from the taxpayers and no discrepancy was found on verification by the jurisdictional officer. In one case, Department stated (March 2021) that the claimant submitted the documents offline which were compared with the GSTR-2A online on the All-in-one (AIO) portal. The Department further stated that the claimant could not upload the document online due to system error. In the remaining 16 cases under seven Commissionerates, replies were awaited (February to May 2021).

The reply is not convincing, as the tax payers had not submitted details of HSN/Service Accounting Codes (SAC) of the goods/services in the modified Annexure-B during uploading of refund application on the portal. Further, offline submission of documents due to inability to upload documents in post-automation period indicated that the system had not stabilised even after lapse of two years. Further, acceptance of requisite documents offline does not leave any audit trail, besides being contrary to the instructions of the Board.

Reply of the Ministry was awaited (February 2022).

¹²⁵ Coimbatore, Faridabad, Panchkula, Palghar, Shimla, Alwar, Jaipur, Kolkata South, Udaipur, Ahmedabad South, Jodhpur, Guntur, Chennai South, Surat, Jalandhar, Mumbai Central, Kolkata North

¹²⁶ Ahmedabad South, Alwar, Coimbatore, Faridabad, Jaipur, Jodhpur, Kolkata South, Mumbai Central, Surat, Udaipur Commissionerates

¹²⁷ Coimbatore, Panchkula, Ahmedabad South and Udaipur Commissionerates

5.7.4.2 Irregular sanction of refund without ascertaining debit in electronic credit ledger (ECL)

Rule 89 (3) of CGST Rules, 2017 provides that where a registered person has claimed refund of any unutilized ITC from the Electronic Credit Ledger (ECL) in accordance with the provisions of Section 54 of the CGST Act, 2017, the amount to the extent of the claim shall be debited in the said ledger. Non-compliance to the provision would entail risk to Government revenue as the taxpayer may get refund even when there is no balance or lack of sufficient balance in the ECL.

In two cases under two Commissionerates¹²⁸, Audit noticed that although the taxpayers had submitted the requisite ITC ledger along with the refund application, debit of ₹ 4.17 crore, for which refund was claimed, was not available in the ITC ledger.

Audit pointed this out during December 2020 to September 2021. Reply of the Department was awaited (February 2022).

5.7.4.3 Sanction of refund without checking status of filing of returns

Section 54 (10) of the CGST Act provides that if a claimant has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, the proper officer may withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be and deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

The refund is required to be withheld to ensure that the taxpayer has paid all the dues before the refund is sanctioned and if any tax is due it is recovered from the refund amount. If the refund is granted without filing of the returns by taxpayers, there is a risk of non-recovery of dues from the defaulting taxpayer.

Audit analysed the GSTN data of post-automation cases and observed that 35,519 taxpayers were sanctioned refund of ₹ 3,546.85 crore even though both GSTR-1 and GSTR-3B were not filed for the earlier periods. 16,561 taxpayers were sanctioned refund of ₹ 1,422.89 crore even though they had not filed the GSTR-1 (though GSTR-3B was filed). 4,793 taxpayers were sanctioned refund of ₹ 1,444.49 crore even though they had not filed GSTR-3B (only GSTR-1 was filed) of the earlier periods.

¹²⁸ Mumbai Central and Nagpur-

Detailed audit in four Commissionerates¹²⁹ revealed that in 11 refund cases, although the GSTR-1/3B returns had not been filed by the taxpayers, the Department sanctioned refunds of ₹ 8.51 crore in contravention of the extant provisions. In six of the above cases, in two Commissionerates¹³⁰, the claimants had filed some of the due returns after the refund was sanctioned. The Department, therefore, sanctioned the refunds of the claimants without ensuring that the due returns were filed by the claimants.

On this being pointed out in audit (December 2020 to September 2021), Department accepted the audit observation in three cases and intimated recovery of ₹ 0.10 lakh (late fee) in respect of one case. In eight other cases, pertaining to two Commissionerates, the Department did not accept the observation and contended that, due to technical glitch, many times it so happened that the updated returns were not visible in the portal-and as such, there was no other option but to place trust on the claimant that the returns would have been filed in time before applying for refund.

The reply is not acceptable as the Department should have expeditiously addressed the technical issues to ensure adherence to the statutory provisions for safeguarding government revenue.

Reply of the Ministry was awaited (February 2022).

5.7.5 Irregular sanction of refund under Inverted Duty Structure

3,625 cases of refund under the Inverted Duty Structure category were examined in audit. The observations regarding excess refunds due to inclusion of ineligible credits in “Net ITC” and consideration of incorrect Adjusted Total Turnover have been included in para 5.7.2 of this report. Other audit observations relating to Inverted Duty Structure are discussed in the subsequent paras.

5.7.5.1 Ineligible refund under ‘Inverted Duty Structure’ on traded goods

Section 54 (3) of CGST Act stipulates that a registered person may claim refund of any unutilized ITC at the end of any tax period where accumulation of credit is on account of rate of tax on inputs being higher than the rate of tax on output supplies, subject to the conditions prescribed. CBIC in its circular dated 31 March 2020 had clarified that refund of accumulated ITC would not be applicable in cases where the input and the output supplies are the same (traded goods). Thus, where the inputs and output supplies were same and

¹²⁹ Ahmedabad North, Ahmedabad South, Bhavnagar and Dhimapur

¹³⁰ Ahmedabad North and Ahmedabad South

carried the same tax rate, there was no inverted duty structure and hence, were not eligible for refund.

Audit observed lack of a mechanism to differentiate the turnover of supply, where input and output were same, from the turnover of actual inverted rated supply or to make a self-declaration in this regard in the refund application, for the purpose of exclusion of such turnover while calculating the admissible refund. The findings are discussed in the succeeding paragraphs:

It was noticed in 17 cases that there was excess refund of ₹ 1.19 crore under 'Inverted Duty structure' due to inclusion of turnover where input and output supplies were the same.

On this being pointed out in audit (December 2020 to September 2021/December 2021), the Ministry informed (February 2022) that in one case, SCN was being issued. Replies in the remaining cases were awaited (February 2022).

An illustrative case is detailed below:

A taxpayer under Thiruvananthapuram Executive Commissionerate, was sanctioned a refund of ₹ 11.73 crore in eight refund applications. The turnover considered for computing maximum eligible refund irregularly included outward supply of 'Natural Rubber' having GST rate of 5 per cent. The rate of tax on inputs in this case was also 5 per cent. Since the inward and outward supplies were the same, inclusion of turnover of outward supply of natural rubber in the turnover of inverted rated supply was incorrect. The omission to disallow this amount in the turnover resulted in excess sanction of refund of ₹ 97.29 lakh excluding interest.

When Audit pointed this out (February 2021/December 2021), the Ministry accepted the audit observation and stated (February 2022) that an SCN would be issued in due course.

5.7.5.2 Irregular refund under Inverted Duty Structure on exports with payment of IGST

Rule 89(5) of CGST Rules, 2017 provides that in the case of inverted duty structure, refund of input tax credit shall be granted as per the following formula:

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} – tax payable on such inverted rated supply of goods and services

In four cases processed by Daman Commissionerate, the turnover of inverted supply considered by the Department included *exports with payment of tax*. The incorrect adoption of turnover resulted in excess sanction of refund of ₹ 1.12 crore.

On this being pointed out in audit (March and April 2021), the Department intimated (April and May 2021) recovery of ₹ 25.98 lakh along with interest of ₹ 6.53 lakh in two cases. Replies in the remaining two cases were awaited (July 2021).

5.7.5.3 Sanction of refund of inverted rate supply without ensuring export of goods within the prescribed period by merchant exporter

Refund of accumulated ITC on account of inverted rate is sanctioned under Section 54(3) of the CGST Act. Notification dated 23 October 2017 provides for supply of taxable goods at the rate of 0.1 *per cent* by a registered supplier to a merchant exporter registered with an Export Promotion Council or a recognized Commodity Board for export subject to conditions that the exporter shall export the goods within 90 days from the date of issue of invoice; copy of purchase orders placed by the merchant exporter to the supplier is provided to the jurisdictional tax officer of the supplier; and the goods shall be moved from the place of registered supplier directly to the Port or place of exportation.

Audit noticed in three cases processed by two Commissionerates¹³¹, that the claimants were granted refund of ₹ 3.07 crore in respect of inverted supplies made to merchant exporters under the aforesaid notification without verifying the fulfilment of above conditions. This resulted in irregular sanction of refund of inverted rate supply.

On this being pointed out in audit (February to May 2021), the Department stated (February to March 2021) that the proof of exports was not submitted by claimants, as it was not required under Section 54 (3) of the CGST Act or under Circular dated 18 November 2019. They further added that the requisite records have been called for submission to Audit.

The reply is not acceptable in view of the fact that although the said records were not required under Section 54(3) of the CGST Act, the relevant documents viz. shipping bill or bill of export containing details of GSTIN and tax invoice of the registered supplier along with proof of export general manifest are required as per notification dated 23 October 2017. The fact that the same were being now called from the claimant indicates that these documents were not submitted and verified by the Department before sanctioning the refunds.

¹³¹ Ahmedabad South and Surat

Reply of the Ministry was awaited (February 2022).

5.7.5.4 Irregular refund of compensation cess under Inverted Duty Structure category

CBIC in its Circular dated 30 May 2018 clarified that the refund of accumulated ITC of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking is available even if the exported product is not subject to levy of cess. The benefit of granting refund of compensation cess was not extended to any other category of refunds.

In three cases¹³², Audit noticed that the output supplies were exempt from compensation cess and hence, its accumulation was not refundable. The Department, however, incorrectly refunded the compensation cess of ₹ 3.20 lakh in contravention of the aforesaid provisions.

On this being pointed out in audit (January 2021 and March 2021), the Department intimated (March 2021) recovery of ₹ 2.60 lakh in one case. Replies in two cases were awaited (February 2022).

5.7.5.5 Sanction of refund without verifying the nature of outward supply

Services classified under Service Accounting Code (SAC) 9954 (Construction services) have varying tax rates as per the service provided. The tax rates for earth work to Government, construction related to oil exploration, works contract services, and construction services are 5, 12, 12 and 18 *per cent*, respectively. Refund of accumulated ITC on construction services is not admissible, as it is taxable at 18 *per cent* while refund is available for works contract services which are taxed below 18 *per cent*. Hence, it is difficult to ascertain whether the accumulated ITC was on account of inverted supplies unless additional documents/tax invoices are verified to ascertain the nature of service.

A taxpayer under Ahmedabad South Commissionerate was supplying services under SAC code 995428 (General construction services of other civil engineering works nowhere else classified). Audit noticed that the taxpayer while claiming refund had not submitted any documents to ascertain whether the service provided was construction service or works contract service. The Department sanctioned refund claim of ₹ 5.00 crore under the inverted duty structure category without verifying the actual rate of GST payable on the output supplies.

¹³² Kutch and Udaipur

When Audit pointed this out (March 2021/December 2021), the Ministry stated (February 2022) that SCN demanding erroneous refund of ₹ 11.06 lakh with interest/penalty under CGST Act, 2017 had been issued to the taxpayer.

5.8 Other Issues

5.8.1 Irregular acceptance of time-barred refund claims

Section 54 of the CGST Act prescribes that the refund can be claimed before the expiry of two years from the relevant date. In the case of refund of accumulated ITC on account of inverted rate supply, the relevant date is the due date for furnishing of return under Section 39 for the period in which such claim for refund arises¹³³. Similarly, in the case of export of goods without payment of tax where the goods are exported by sea or air, the relevant date is the date on which the ship or aircraft in which such goods are loaded, leaves India. A proviso was included vide notification dated 18 May 2021 in Rule 90(3) to exclude the time period between the date of filing the refund application and the issuance of Deficiency Memo for the calculation of two years.

Audit noticed irregular refund of ₹ 28.16 crore in respect of 41 cases under 23 Commissionerates where the claims were filed after the relevant date resulting in irregular sanction of refund.

On this being pointed out in audit (December 2020 to September 2021), the Department, while accepting the audit observation in 16 cases (8 Commissionerates) intimated recovery of ₹ 39.71 lakh in five cases (4 Commissionerates). In eight cases (six Commissionerates), the Department replied that the refund claim was filed within the stipulated time period of two years. In the remaining 17 cases, replies were awaited (February 2022).

Illustrative cases are discussed below:

(a) A taxpayer under Ahmedabad Commissionerate had filed a refund claim for ₹ 14.10 lakh on 5 May 2020 for the period July 2017 to March 2018, which was time-barred. The omission to disallow the same resulted in irregular sanction of refund to that extent of ₹ 14.10 lakh.

When Audit pointed this out (March 2021/December 2021), the Ministry stated (February 2022) that an SCN had been issued to the taxpayer (July 2021).

(b) A taxpayer under Bengaluru Northwest Central Tax Commissionerate, had claimed refund of accumulated ITC amounting to ₹ 2.05 crore on account of Inverted Duty Structure for the period July 2017 to March 2018 on 26 May

¹³³ As per amendment wef 1 February, 2019.

2020. The claim was refunded on 28 May 2020. The claim for the period from July 2017 to January 2018 was time barred as the relevant date for filing the GSTR 3B return for the period up to January 2018 was 10 March 2020. In this case, the taxpayer had preferred the claim on 26 May 2020. Hence, the refund sanctioned for the period up to January 2018 was irregular. The irregular refund sanctioned in this case amounts to ₹ 2.05 crore.

When Audit pointed this out (April 2021/December 2021), the Ministry stated (February 2022) that the claim was well within the time limit in view of Notification dated 3 April 2020, wherein the time limit for compliance of any action which falls within the period from 20 March 2020 to 29 June 2020 stands extended to 30 June 2020. Reply of the Ministry is not tenable as the due date for filing refund for the period up to January 2018 had expired on 10 March 2020 itself by virtue of Section 23 of the CGST (Amendment) Act 2018. Thus, the taxpayer was not eligible for refund for the period from July 2017 to January 2018.

(c) A taxpayer under Noida Commissionerate, had filed four refund applications during January 2020 to March 2020 for amount of ₹ 21.29 crore pertaining to the period September 2017 to November 2017 under the Inverted Duty structure category. Audit examination revealed that in view of the amendment w.e.f. 1 February 2019, which inserted an explanation (2) below Section 54 that the relevant date was considered from “the due date of furnishing the return under section 39 for the period in which such claim arises”, the entire claim had become time barred as the application was submitted after the amendment.

On being pointed out in audit, the Department replied that the change in time limit for filing refund claim cannot have retrospective effect and thus, the party had filed refund claim within the time limit.

The Department’s reply is not acceptable as the taxpayer had filed the refund claim after the amendment and, therefore, the claim should have been considered as time barred.

Reply of the Ministry in this regard was awaited (February 2022).

5.8.2 Irregular grant of provisional refund to ineligible taxpayer

Section 54 (6) of the CGST Act 2017 provides for sanction of refund on a provisional basis in case of refund on account of zero-rated supply of goods or services or both. Provisional refund cannot be granted in case of any claim on account of ITC accumulated due to Inverted Duty Structure (INVITC) or ‘Excess Balance in Cash Ledger’ (EXBCL).

Audit noticed that provisional refund of ₹ 23.73 crore was irregularly granted in 26 cases in 12 Commissionerate under the Inverted Duty Structure category. In four cases, provisional refund of ₹ 1.19 crore was irregularly granted under the category “Excess Balance in Cash Ledger” by four Commissionerates¹³⁴ in contravention of the aforesaid GST Act/Rules.

On this being pointed out in audit (December 2020 to September 2021), the Department accepted the observation in respect of 14 cases pertaining to six Commissionerates¹³⁵. In two cases (one Commissionerate¹³⁶), the Department stated that the provisional refund was admissible under the category of ‘Excess Balance in the Cash Ledger’ as per circular dated 15 November 2017, which is incorrect.

In two other cases under two Commissionerates, the Department stated that the proper procedure was being followed in sanctioning refund claims. The reply is not acceptable as section 54 (6) of the CGST Act stipulates for grant of provisional refund only in case of zero-rated supply. In the remaining 12 cases, reply of the Department was awaited.

Reply of the Ministry was awaited (February 2022).

5.8.3 Erroneous sanction of refund on deemed export

Refund of taxes paid on deemed exports can be claimed only if the procedure laid down in the Circular dated 6 November 2017 is substantively followed. The circular provides that the recipient Export Oriented Unit (EOU)/ Electronics Hardware Technology Park (EHTP)/ Software Technology Park (STP)/ Bio-Technology Park (BTP) unit has to furnish to the supplier as well as the jurisdictional GST officers in charge of the supplier the “Form-A”, duly approved by the Development Commissioner mentioning therein the goods that have to be procured from the Domestic Tariff Area. Commissioner (Appeal), in case of M/s. Mega Jewels Pvt. Ltd. [2020 (42) GSTL 353], held that refund was not admissible to the appellant EOU which had received supplies, since it failed to comply with provisions of the CBIC Circular.

A taxpayer under the Gandhinagar Commissionerate had filed a refund claim as recipient of goods. The taxpayer had not issued the requisite prior intimation in Form-A for purchase of goods despite which the claim of ₹ 1.12 crore was sanctioned by the Department.

¹³⁴ Alwar, Bolpur, Jabalpur and Noida

¹³⁵ Alwar, Bhopal, Faridabad, Jabalpur, Kolkata North and Palghar

¹³⁶ Bolpur

When Audit pointed this out (January 2021/December 2021), the Ministry stated (February 2022) that a Show Cause Notice for recovery of erroneous refund had been issued.

5.8.4 Non-credit of ITC in the ECL after rejection of refund

Where any amount claimed as refund is rejected under Rule 92 of the CGST Rules, 2017, the amount debited to the extent of rejection shall be re-credited to the electronic credit ledger by an order made in FORM GST PMT-03. A refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal. Also, where any deficiencies have been communicated in FORM GST RFD-03, the amount debited under sub-rule (3) of Rule 89 shall be re-credited to the electronic credit ledger.

Audit examination revealed that in 22,163 cases of post-automation period, an amount of ₹ 5,085.66 crore was considered as inadmissible and the sanction amount was reduced by that extent. Audit noticed that PMT-03 was issued only in 3,686 cases involving inadmissible amount of ₹ 244.21 crore. Therefore, in 18,477 cases involving inadmissible amount of ₹ 4841.35 crore, PMT-03 was not issued resulting in the taxpayers not getting the re-credit of the amount that was reduced from their claims.

During detailed audit in 16 Commissionerates, it was noticed that in 67 cases, PMT 03 was not issued for re credit of ₹ 91.13 lakh. On this being pointed out (December 2020 to September 2021), the Department accepted the audit observation in three cases (three Commissionerates).

In 52 cases, Department (14 Commissionerates) while not accepting the audit observation contended that for issue of PMT 03, the claimants were required to reinitiate the process by filing a declaration that they would not file an appeal, and that there was no time limit for issuing the PMT 03. In the remaining 12 cases (six Commissionerates), replies were awaited.

The reply of Department is not acceptable in view of the fact that although there was no prescribed time-limit, the taxpayer gets a maximum period of 120 days to file an appeal against the order. Once the taxpayer had not filed an appeal within the prescribed time, it could be construed that the taxpayer had accepted the sanction order and the Department was bound to issue PMT 03 and credit the amount to the taxpayer's Credit Ledger. Further, once the claimant agreed with the rejected amount in its reply in RFD-09, the claimant itself lost the ground to go on appeal against the rejected amount. Thus, it fulfilled the requirement of law and the PMT-03 was required to be issued.

Reply of the Ministry was awaited (February 2022).

Recommendation 12: Department may consider introducing a system regarding timely re-credit of rejected refund amount to ECL. In the event of an appeal by taxpayer and the final decision going in favour of the taxpayer, the amount shall be refunded back subject to debiting the same to ECL.

Ministry, in respect of audit recommendation, stated (February 2022) that the matter would be taken up with GSTN.

5.8.5 Other cases

In addition to the foregoing audit observations, Audit noticed other irregularities in 74 cases with money value of ₹ 4.44 crore. The irregularities are in the nature of incorrect allowance of refund on exports to SEZ without prescribed endorsement, non-payment of interest on delayed refund, non-issue of show cause notice, non-issue of DRC-07¹³⁷, etc.

On this being pointed out in audit (December 2020 to September 2021), the Department accepted audit observations in 18 cases (nine Commissionerates) and reported recovery of ₹ 6.42 lakh in six cases (five Commissionerates). In 18 cases, the Department (11 Commissionerates) did not accept the audit observation. Reply of the Department was awaited in the remaining 38 cases (February 2022).

5.9 Impact on State Goods and Services Tax

GST refunds involve various components of GST such as CGST, IGST, SGST, etc. The refund applications processed either by the Centre or State tax authority will impact the revenue of both Union and the States. For the audit observations highlighted in this chapter, the monetary impact of findings on the revenue of the States/UTs is given in **Appendix-IV**.

5.10 Conclusion

Timely refund process facilitates the taxpayers by providing much needed liquidity and cash inflows. During the course of examination of records, Audit observed systemic and compliance issues in relation to grant of refund by the Department, which need to be addressed.

Systemic weaknesses included deficiencies in the automated refund module, sanction of suspicious refunds to taxpayers without proper scrutiny, sanction of refund without complete documents, absence of mechanism to monitor the realisation of export proceeds in cases of export of goods/services, and instances of double payment of GST refunds. As regards the effectiveness of

¹³⁷ Digital summary of a demand order in GST

the internal control system in processing and payment of refund cases, it was observed that post-audit of refund cases needed to be strengthened.

On the compliance side, Audit noticed significant number of refund cases where the Department did not adhere to the prescribed timelines for processing of refunds leading to instances of delay in issue of acknowledgement, deficiency memo and sanction of refund orders. Further, in the majority of cases, the department did not pay interest to the taxpayers in case of delayed refunds. In addition, instances of irregular/excess refund in violation of the statutory provisions were also observed.

Out of 12 audit recommendations, included in this Chapter, Ministry accepted nine recommendations and stated that matter would be taken up with GSTN/DG(Systems) in respect of eight recommendations. In respect of one recommendation, Ministry stated that the matter would be taken up with the field formations and advisory was being issued. Further, the Department has accepted audit observations with money value of ₹ 92.08 crore and recovered ₹ 52.93 crore at the instance of audit.

5.11 Summary of Recommendations

1. A comprehensive profiling of the taxpayers needs to be implemented by integrating data from both internal and external systems such as Income Tax, Directorate General of Foreign Trade, and Ministry of Corporate Affairs. A system of real time/near real time red-flagging of high-risk taxpayers/refunds may be implemented in the refund related modules to avoid refunds of fake ITC.
2. The e-BRC module may be integrated with GSTN and cases where export proceeds have not been received within the prescribed time may be examined for overpayment of refund. This will also help prevent possible frauds by identifying taxpayers who sought refunds on fake exports.
3. A robust red flag system may be introduced by linking various systems such as ICEGATE, e-BRC and XOS statement etc. to alert proper officers in respect of non-compliant taxpayers for blocking their refunds and initiating recovery of ineligible refunds already sanctioned.
4. The Department may consider introducing requisite validations in the refund module to ensure that the eligible amounts are debited in the prescribed order.
5. A comprehensive verification of PFMS data relating to the pre-automaton period may be undertaken in all Commissionerates to

identify double payment cases that may have occurred due to lack of reconciliation.

6. A robust post-audit system based on detailed codified manual of instructions, checklist and SOP may be put in place. A proper module for post-audit of refunds may be introduced in the GST system for effective monitoring.
7. In case of issue of acknowledgement after 15 days, the proper officer should specify the reasons for such delay and the same should be monitored online by the Department.
8. The provisions regarding payment of interest on delayed refunds need to be amended to exclude the period of delays that is attributable to the taxpayers such as delay in reply to SCN or incorrect bank details for payment.
9. The GST system may be modified to automatically calculate the interest amount payable to the claimant in case of delay in processing of refunds beyond the prescribed time limit. Reasons for non-payment of interest may be mandatorily captured in the system and monitored.
10. The Department needs to put in place an effective monitoring mechanism to ensure timely issue of deficiency memos in case of deficiency in the refund claims.
11. A system may be put in place to identify and monitor taxpayers with significant amount of non-taxable/exempted supplies to ensure timely reversal of ITC by them so that the same is not utilised or claimed as refund.
12. Department may consider introducing a system regarding timely re-credit of rejected refund amount to ECL. In the event of an appeal by taxpayer and the final decision going in favour of the taxpayer, the amount shall be refunded back subject to debiting the same to ECL.