

**CHAPTER – II**  
**TAXATION DEPARTMENT**



## CHAPTER-II TAXATION DEPARTMENT

### 2.1 Tax Administration

The Taxation Department is responsible for the administration of taxes on sales, trade, *etc.*, in the State. The collection of tax is governed by the provisions of the Meghalaya Value Added Tax (MVAT) Act, 2003; the MVAT Rules, 2005; the Central Sales Tax (CST) Act, 1956; the CST Rules, 1957; the Meghalaya Sales of Petroleum and Petroleum Products (including Motor Spirit) and Lubricants Taxation (MSL) Act, 1972, *etc.* With the introduction of Goods & Services Tax (GST) on 01 July 2017, CST Act and MVAT Act have been repealed.

The Principal Secretary/Commissioner and Secretary to GoM, Excise, Registration, Taxation and Stamps (ERTS) Department holds the overall charge of the Taxation Department at the Government level. The Commissioner of Taxes (CoT) is the Head of the Department and is responsible for administration of all taxation measures, for general control and supervision over the zonal offices, unit offices and over the staff engaged in collection of taxes, and also to guard against evasion of taxes. The CoT is also the authority for disposing of revision petitions under all taxation acts and laws besides providing clarifications under the MVAT Act, 2003. The CoT is assisted by Joint Commissioner of Taxes (JCT), Assistant Commissioners of Taxes (ACTs), Superintendents of Taxes (STs) and Inspectors of Taxes both at the Headquarters and zonal/unit levels. At the district level, 17 Superintendents of Taxes (STs) have been entrusted with the work of registration of dealers, scrutiny of returns, collection of taxes, levy of interest and penalty, issue of road permits/ declaration forms, enforcement and supervision.

### 2.2 Results of Audit

Test-check of records of 14 units and four units during 2020-21 and 2021-22 respectively revealed non-levy/short levy of taxes, loss of revenue, other irregularities, *etc.*, in 116 and 53 cases involving an amount of ₹ 1,068.34 crore and ₹ 354.71 crore respectively, which fall under following categories:

**Table 2.2.1: Results of Audit**

| Sl. No.      | Category                    | 2020-21      |                 | 2021-22      |               |
|--------------|-----------------------------|--------------|-----------------|--------------|---------------|
|              |                             | No. of cases | Amount          | No. of cases | Amount        |
| 1.           | Loss of revenue             | 6            | 31.42           | -            | -             |
| 2.           | Evasion/Non-payment of tax  | 24           | 74.92           | 15           | 156.38        |
| 3.           | Concealment                 | 15           | 8.34            | -            | -             |
| 4.           | Non-levy/ Short levy of tax | 13           | 28.20           | 2            | 34.88         |
| 5.           | Other irregularities        | 58           | 925.46          | 36           | 163.45        |
| <b>Total</b> |                             | <b>116</b>   | <b>1,068.34</b> | <b>53</b>    | <b>354.71</b> |

(₹ in crore)

During the years 2020-21 and 2021-22, the Department accepted under-assessment and other deficiencies to the tune of ₹ 16.21 crore and ₹ 290.10 crore in 23 cases and 40 cases respectively. Recovery of ₹ 2.73 crore and ₹ 0.07 crore in 13 cases and two cases were made at the instance of audit during 2020-21 and 2021-22 respectively.

This chapter contains a Subject Specific Compliance Audit on '*Transitional Credit Under GST*' having financial impact of ₹ 51.70 crore as discussed in **Paragraph 2.3**.

## **2.3 Subject Specific Compliance Audit (SSCA) on Transitional Credit under GST**

### **2.3.1 Introduction**

Goods and Services Tax (GST) is a significant reform in the field of indirect taxation in our country, which replaced multiple taxes levied and collected by the Centre and the States. To ensure the seamless flow of input tax credit from the existing laws to the GST regime, a 'transitional arrangement for input tax credit (ITC)' was included in the GST Act, 2017. Section 140 of the MGST Act, 2017 enables taxpayers to carry forward the ITC earned under the existing laws to the GST regime. The Section, read with Rule 117 of the MGST Rules, 2017, envisaged that all registered taxpayers, except those opting for payment of tax under the composition levy scheme, are eligible to claim transitional credit by filing TRAN-1 returns within 90 days from the appointed day<sup>6</sup>. The time limit for filing TRAN-1 returns was extended initially till 27 December 2017 which was further extended to 31 March 2020<sup>7</sup> for taxpayers who could not file TRAN-1 due to technical difficulties and for those cases recommended by the GST Council.

The organisational set up of the Taxation Department is given at **Appendix 2.3.1**.

### **2.3.2 Audit objectives**

The Subject Specific Compliance Audit (SSCA) on transitional credit claimed under GST was carried out with the following audit objectives with a view to seeking an assurance on whether:

- the mechanism envisaged by the Department for verification of transitional credit claims was adequate and effective (systemic issues); and
- the transitional credit carried over by the taxpayers into the GST regime were valid and admissible.

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<sup>6</sup> 01 July 2017.

<sup>7</sup> Vide CBIC order No. 01.2020-GST dated 07 February 2020. However, the Taxation Department, Meghalaya has not issued a notification to this effect.

### 2.3.3 Audit scope

The scope of audit comprised a review of transitional credit claim returns, both TRAN-1<sup>8</sup> and TRAN-2<sup>9</sup>, filed by the taxpayers under the transitional arrangements for input tax provided for under Section 140 of the MGST Act and covered the period from 01 July 2017 to 31 March 2020.

The audit commenced with entry conference on 08 April 2021 wherein the audit objectives, scope, criteria and methodology were explained. Following the completion of the field work an exit meeting was held on 30 September 2021 wherein the audit findings were discussed. Departmental replies obtained during the exit meeting were incorporated in the Report appropriately. The draft inspection report was issued to the Department on 11 November 2021.

Audit verification involved the scrutiny of process and outcomes of Departmental verifications along with detailed independent verification of selected claims. Verification of individual transitional credit claims entails the examination of MVAT credit claimed by taxpayers in the last six-monthly returns filed under existing laws, immediately preceding the appointed date, along with documentary evidence in support of such claims. Further, verification of input tax claimed pertaining to materials held in stock involves examination of necessary accounting details, documents or records evidencing purchase of such goods.

### 2.3.4 Audit methodology and audit criteria

Audit verified transitional credit claims of selected taxpayers through data analysis and verification of records under MVAT regime available with 16 taxation circles as well as the Commissionerate. The tabular representation of the audited quantum and the transitional credit amount involved therein is given below:

**Table 2.3.1: Quantum of transitional credit claims audited and amount objected**

(₹ in crore)

| No. of transitional claims audited | Amount audited | No. of cases objected in Audit | Amount of transitional credit claims objected in Audit (₹ in crore) |
|------------------------------------|----------------|--------------------------------|---|
| 143                                | 27.89          | 75                             | 21.91   |

The criteria against which the audit objectives were benchmarked were based on the provisions of Section 140 of the MGST Act, 2017 read with Rules 117 of the MGST Rules, 2017, Meghalaya VAT Act, 2003 and Rules framed thereunder and notifications/circulars issued by the Central and State GST Commissionerate from time to time.

<sup>8</sup> Every registered dealer who was entitled to carry forward ITC from earlier regime to GST regime required to submit declaration in TRAN-1 electronically.

<sup>9</sup> TRAN-2 was used to avail the credit in electronic cash ledger for the eligible duties and taxes paid earlier under pre-GST regime by the registered taxpayers who registered from GST but were not registered under the old regime. The dealers who did not have a VAT or excise invoice of the stock held on 30th June 2017 can fill this form.

### 2.3.5 Audit sample and non-production of records

For the purpose of this audit, 146 out of 250 transitional claims<sup>10</sup> having money value of ₹ 27.89<sup>11</sup> crore were selected<sup>12</sup> for detailed check, of which, 143 cases having money value of ₹ 27.89 crore were produced to audit by the Taxation Department. Records pertaining to the remaining three cases/dealers<sup>13</sup> with a total money value of ₹ 0.001 crore<sup>14</sup> were not produced. The Commissioner of Taxes (CoT) stated (August 2021) that these dealers were not found registered under the MVAT Act.

### AUDIT FINDINGS

As against 143 cases valued at ₹ 27.89 crore which includes SGST of ₹ 24.40 crore, verified in audit, instances of non-compliance were observed in 75 cases (52.45 per cent) involving excess/wrong availment of transitional credit of ₹ 21.91 crore. Other amounts objected in audit amount to ₹ 29.79 crore and the total amount objected to was ₹ 51.70 crore. The audit findings on transitional credit claims under GST are grouped under two categories viz., (i) Systemic issues (objective-1) and (ii) Compliance issues (objective-2) as discussed in the succeeding paragraphs. The extent of deficiencies noticed in audit is given in **Table 2.3.2** below:

**Table 2.3.2: Extent of deficiencies noticed (deviation)**

(₹ in lakh)

| Nature of Audit Observation<br>(indicative only)  | Audit Sample |          | Number of deficiencies noticed |          | Deficiencies as percentage of sample |        |
|---|--------------|----------|--------------------------------|----------|--------------------------------------|--------|
|   | Number       | Amount   | Number                         | Amount   | Number                               | Amount |
| Excess carry forward of input tax credit (Paragraphs 2.3.7.1, 2.3.7.2, 2.3.7.4, and 2.3.7.5)                                  | 143          | 2,788.79 | 46                             | 797.00   | 32.17                                | 28.58  |
| Irregular claim of transitional credit on stock entered in books of accounts after the permissible period (Paragraph 2.3.7.7) | 143          | 2,788.79 | 5                              | 6.31     | 3.50                                 | 0.23   |
| Irregular availment of transitional credit on exempted goods (Paragraph 2.3.7.8)  | 143          | 2,788.79 | 8                              | 16.41    | 5.59                                 | 0.59   |
| Irregular availment of transitional credit without filing MVAT return (Paragraph 2.3.7.3)                                     | 143          | 2,788.79 | 6                              | 50.99    | 4.19                                 | 1.83   |
| Inadmissible carry forward of transitional credit on negative turnover (Paragraph 2.3.7.9)                                    | 143          | 2,788.79 | 1                              | 1,284.00 | 0.70                                 | 46.04  |

<sup>10</sup> Out of 21,958 dealers, 250 dealers claimed transitional credit under GST from 01 July 2017 to 31 March 2020.

<sup>11</sup> 146 cases having a total money value of ₹ 27,88,78,665.

<sup>12</sup> Based on high risk/ representative sample pertaining to the state.

<sup>13</sup> Three cases could not be verified by Audit as the Department stated that the dealers were not registered under the Taxation Department under the MVAT Act. They include (i) Indian Bank – GSTIN 17AAACI1607G1Z0; (ii) M/s Entertainment Network (India) Limited – GSTIN 17AAACE7796G1ZA; and (iii) M/s RD Enterprise – GSTIN 17ANNPD0504E1ZK.

<sup>14</sup> Out of the 146 selected cases, records of three cases (M/s Indian Bank, M/s Entertainment Network (India) Limited and M/s RD Enterprise) having a total money value of ₹ 13,663/- were not produced by the Department. Hence, only 143 cases with a total money value of ₹ 27,88,65,002.2/- were audited.

A summary of the claims of transitional credit as well as the amount accepted by the Taxation Department and the amount recovered at the instance of Audit is given in **Table 2.3.3:**

**Table 2.3.3: Details of Transitional credit claimed as well as the amount accepted by the Taxation Department, etc.**

(₹ in crore)

| Total transitional credit claimed | Amount of transitional credit objected in Audit | Other amounts objected in Audit | Total objected amount | Amount accepted by Department | Amount recovered |          |
|-----------------------------------|---|---------------------------------|-----------------------|-------------------------------|------------------|----------|
|                                   |   |                                 |                       |                               | Tax              | Interest |
| 33.02 <sup>15</sup>               | 21.91   | 29.79                           | 51.70                 | 16.47                         | 0.62             | 0.11     |

Source: Information furnished by the SsT, Taxation Department, Government of Meghalaya.

The total amount objected in Audit includes amount of differential tax liable to be paid by dealers who had claimed inter-state sales and inter-state stock transfer without furnishing all the requisite 'C' and 'F' declaration forms. Against an actual tax rate of five *per cent* these dealers paid tax at only two *per cent* and were thus liable to pay the differential tax amount of three *per cent*. Hence, the amount objected in Audit is greater than the actual amount of transitional credit claimed.

### 2.3.6 Systemic issues

The systemic issues pertain to the adequacy and effectiveness of the mechanism envisaged by the Department for verification of transitional credit claims as follows:

#### 2.3.6.1 Absence of laid down mechanism for verification of transitional credit claims and non-verification of transitional credit claims

Rule 121 of the MGST Rules, 2017 states that the amount credited into the Electronic Credit Ledger (ECL) of the dealer may be verified and in cases where any credit has been wrongly availed, whether wholly or partly, proceedings shall be initiated against the dealer under Section 73 or Section 74 (as the case may be) of the MGST Act, 2017.

The Central Board of Indirect Taxes and Customs (CBIC) had issued instruction<sup>16</sup> to the CGST offices for verification of transitional credit of CGST irrespective of whether the taxpayer is allotted to the Central Government or the State Government for the purpose of GST.

Audit observed<sup>17</sup> that the State Taxation Department had neither notified a mechanism for verification of transitional credit claims of the dealers, nor were any instructions issued to the Superintendents of Taxes (SsT) to verify the transitional credit claims of the dealers in line with the CBIC's instructions *ibid*. The reason for the same was not stated.

<sup>15</sup> This amount is inclusive of SGST claims amount of ₹ 26.19 crore.

<sup>16</sup> D.O.F. No. 267/8/2018-CX.8 dated 14 March 2018. However, similar instruction has not been issued by the Taxation Department, Meghalaya till date.

<sup>17</sup> As per Rule 121 of the MGST Rules, 2017 which provides for verification of all amounts credited into the Electronic Credit Ledger of a dealer, including transitional credit.

Scrutiny of records of the Taxation Department pertaining to transitional credit claims revealed that as on 31 March 2020, 21,958 dealers have been registered under the State GST department, of which, 250 dealers had claimed transitional credit during the period from 01 July 2017 to 31 March 2020, amounting to ₹ 33.02 crore as given in **Table 2.3.4**.

**Table 2.3.4: Statement of transitional credit claims and status of verification**

(₹ in crore)

| Total No. of registered dealers under State GST jurisdiction | Total No. of dealers who claimed transitional credit | Amount of transitional credit claimed | No. of transitional credit claims verified by the Department (%) | Amount of transitional credit claims verified (%) | Ineligible credit detected based on verification |        | Amount recovered |
|--|--|---------------------------------------|--|---|--|--------|------------------|
|  |  |                                       |  |   | Cases  | Amount |                  |
| 21,958   | 250  | 33.02                                 | 19 (8)   | 1.32 (4)  | 03   | 0.38   | 0.02             |

Source: Information furnished by the Superintendents of Taxes (SsT), Circle I to XVI.

As can be seen from the table above, 19 out of 250 transitional credit claims (eight per cent of total claims) involving ₹ 1.32 crore had been verified by the Department out of which approximately one-sixth cases were found inadmissible. The Department detected inadmissible claims worth ₹ 0.38 crore (28.79 per cent of total claims verified), out of which ₹0.02 crore was recovered. The remaining 231 cases (92 per cent) involving an amount of ₹ 31.70 crore have not been verified by the Department. The taxation circle-wise position is given at **Appendix 2.3.2**.

Non-verification of the transitional credit cases to the extent of 92 per cent of all such claims poses a potential risk of excess claim/excess carry forward of transitional credit and resultant loss to the State Exchequer.

On this being pointed out (November 2021), the ST, Circle VIII stated (January 2022) that in respect of 20 dealers<sup>18</sup> under his jurisdiction, action has been taken to verify the case records of the dealers or to requisition case records of dealers that are not present within the Circle. Out of these, four dealers<sup>19</sup> have had their transitional credit claims verified by the ST. However, replies from the SsT in respect of the other 111 unverified transitional credit claim are yet to be received (December 2022).

**Recommendation:** The Department should put in place a mechanism to identify high value-high risk transitional credit claims and carry out their verification on priority.

<sup>18</sup> (1) M/s Entertainment Network (2) M/s Bharti Hexacom (3) M/s Vodafone Mobile Services Ltd (4) M/s Madhuri Singh (5) M/s Deepak Gupta (6) M/s Gauri Bhattacharya (7) M/s Manajit Dhar (8) M/s HLL Lifecare Ltd (9) M/s NK Trading Company (10) M/s Necon Power & Infra Ltd. (11) M/s Forever Living India (12) M/s Ess Bee Enterprises (13) M/s North East Store Pvt. Ltd (14) M/s HV Airconditioning Systems (15) M/s Kone Elevator India Pvt. (16) M/s Manoj Jain (17) M/s KB Singh (18) M/s Genemi Enterprise (19) M/s SG Enterprise (20) M/s Fahrenheit.

<sup>19</sup> (1) M/s Ess Bee Enterprise (2) M/s KB Singh (3) M/s Genemi Enterprise (4) M/s SG Enterprise.



### 2.3.7 Compliance issues

Audit observations on compliance issues are based on cross-verification of records of sampled 143 transitional claims under Forms TRAN-1 and TRAN-2 with the respective invoices/challans/TDS certificates/VAT returns/assessment orders of taxpayers of 16 Taxation Circles<sup>20</sup>.

#### 2.3.7.1 Excess claim of transitional credits on the assessed/scrutinised cases

Rule 121 of the MGST Rules, 2017 provides that the amount credited in the ECL may be verified by the proper officer and proceedings may be initiated in respect of any credit wrongly availed, whether wholly or partly. Further, Section 73 (1) of MGST Act, provides that where input tax credit has been wrongly availed or utilised by any person, he should pay the amount along with interest. Furthermore, Section 50 (1) of MGST Act provides that if every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, fails to pay the tax or any part thereof to the Government within the period for which the tax or any part thereof remains unpaid, he shall pay interest at such rate, not exceeding 18 *per cent*, as may be notified by the Government.

Audit observed that 13 sampled dealers (out of 93 cases of claims under **Table 5c**<sup>21</sup> from the 143 cases examined) had availed excess transitional credit amounting to ₹ 2.35 crore (out of the total sample of ₹ 27.89 crore) in **Table 5c** by filing Form TRAN-1. However, as evident from the assessment/scrutiny orders (June 2017/January 2018) of Assessing Authorities, there was also a due demand of ₹ 0.75 crore against these dealers. This resulted in excess carry forward of transitional credit claim to the tune of ₹ 3.10 crore (₹ 2.35 crore + ₹ 0.75 crore). Thus, the amount of ₹ 3.10 crore needed to be reversed/recovered along with interest amounting to ₹ 1.82 crore (**Appendix 2.3.3**).

On being pointed out (August 2021), five STs reported recovery of excess claim in seven cases amounting to ₹ 0.42 crore, along with interest of ₹ 0.04 crore. In five cases, no action was taken. In respect of one case, the ST, Ri Bhoi Circle stated that owing to the defects of the GST system the amount was only partially credited to the SGST head. The details are given in the following table:

#### Transitional Credit Claim of M/s BSC – C&C ‘JV’

In October 2017, M/s BSC – C&C ‘JV’ (GSTIN 17AADFB8115G2Z) under the jurisdiction of the ST, Ri Bhoi, claimed transitional credit amounting to ₹ 1.09 crore which was credited to the dealer’s Electronic Credit Ledger in the same month. Audit scrutiny (August 2021) revealed that the dealer had Input Tax Credit (ITC) balance of the same amount as per his MVAT returns for the period ending June 2017. However, as per his assessment order (January 2018) for the period ending June 2017,

<sup>20</sup> Superintendents of Taxes Circle-I, II, III, IV, V, VI, VII, VIII, XIII (Non-Resident Circle), ST Jowai, Khliehriat, Nongpoh, Nongstoin, Tura Circle I, Tura Circle II and ST Williamnagar.

<sup>21</sup> Table 5c gives details of inputs/capital goods sent to job worker and subsequently supplied from premises of job worker, and losses and wastes.

the dealer was allowed only ₹ 0.74 crore as ITC. This resulted in excess carry forward of transitional credit by the dealer amounting to ₹ 0.35 crore.

On this being pointed out by Audit (August 2021) the Department stated (March 2022) that the dealer had been issued a showcause notice, to which the dealer responded by stating that the excess amount of ₹ 0.35 crore had been reversed. However, due to the defects in GST system the amount of ₹ 0.35 crore was divided equally between the CGST and SGST heads instead of being credited wholly to SGST head under which the amount was liable to be paid.

Audit recommends that the Taxation Department may pursue the matter with GSTN for rectification.

#### **Transitional Credit Claim of M/s Rainbow Electricals**

Similarly, in the case of M/s Rainbow Electricals, (GSTIN 17ACNPB3823D1ZZ) under the jurisdiction of the ST, Tura Circle - I, Audit observed that the dealer had availed transitional credit amounting to ₹ 23.02 lakh which was credited to his Electronic Credit Ledger in December 2017. However, this dealer had a due demand of ₹ 1.12 crore as per the assessment order. Thus, there was excess carry forward of transitional credit by the dealer amounting to ₹ 1.36 crore, on which interest amounting to ₹ 0.90 crore at the rate of 18 *per cent* per annum is also leviable.

The matter was pointed out by Audit in September 2021; however, till date (December 2022) no reply has been furnished by the Department.

#### **Transitional Credit Claim of M/s NCC Ltd.**

Audit also observed in the case of M/s NCC Ltd. (GSTIN 17AAACN7335C1ZQ) under the jurisdiction of the ST, Circle – VII, that the dealer had transitional credit amounting to ₹ 0.56 crore as per his last MVAT return. Although the dealer did not avail any transitional credit, Audit nevertheless observed that he had a due demand of ₹ 1.03 crore pending against him as per assessment order. This led to excess carry forward of transitional credit amounting to ₹ 1.03 crore, which was credited in his Electronic Credit Ledger in October 2017. This amount of transitional credit is inadmissible and is recoverable from the dealer along with interest amounting to ₹ 0.73 crore at the rate of 18 *per cent* per annum.

The matter was pointed out by Audit in September 2021; however, till date (December 2022) no reply has been furnished by the Department.

Taxation circle wise replies is given at **Appendix 2.3.3 (A)**.

**Non-detection of ineligible claims made by dealers with due demand of tax still outstanding against them indicates failure to exercise proper checks on the part of the Tax Assessing Authority thus leading to retention of ineligible transitional credit claims by these dealers contrary to the provisions of the MGST Act and MGST Rules.**

Further reply is awaited (December 2022).

### 2.3.7.2 Transitional credit claims over and above the last MVAT returns

Section 140 (1) of the MVAT Act states that a registered person, other than a person opting to pay tax under Section 10<sup>22</sup>, shall be entitled to take in his Electronic Credit Ledger credit of the amount of Value Added Tax carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law, not later than ninety days after the said day, in such manner as may be prescribed.

Scrutiny of records of 16 (sixteen) Taxation Circles revealed that five dealers (out of 93 cases of claims under **Table 5c** from the 143 cases examined) availed transitional credit amounting to ₹ 1.48 crore in **Table 5c** by filing Form TRAN-1 against the balance available in their last MVAT returns (June 2017) of ₹ 1.26 crore. This has resulted in excess carry forward of transitional credit claim of ₹ 0.22 crore. The amount of ₹ 0.22 crore needs to be reversed/recovered along with interest amounting to ₹ 0.12 crore at 18 per cent per annum (**Appendix 2.3.4**).

On being pointed out (August 2021), two STs reported recovery of excess claim in two cases amounting to ₹ 0.03 crore, along with interest of ₹ 0.03 crore. In three other cases, no action was taken by the STs (**Appendix 2.3.4(A)**).

Further reply is awaited (December 2022).

### 2.3.7.3 Claim of transitional credit without filing the last six months' returns

As per Section 140 (1) (ii) of the MGST Act, 2017, a registered person/dealer shall not be allowed transitional credit if he did not furnish all the returns required under the existing law for the period of six months immediately preceding the appointed date.

Scrutiny of records of four Taxation Circles revealed that six dealers (out of 93 cases of claims under **Table 5c** from the 143 cases examined) availed transitional credit amounting to ₹ 0.51 crore in **Table 5c** by filing Form TRAN-1 without filing the last six months' returns under MVAT regime. This resulted in irregular carry forward of transitional credit amounting to ₹ 0.51 crore. The transitional credit amounting to ₹ 0.51 crore availed by the dealers in violation of extant rules is liable to be reversed along with interest of ₹ 0.35 crore. (**Appendix 2.3.5**).

On being pointed out (September 2021), one ST reported partial recovery of excess claim in one case amounting to ₹ 0.08 crore. In one case, further action after issuance of showcause notice was yet to be intimated by the ST. In two cases, the ST informed that the case records are not available in the Circle and in two other cases, no action was taken by the STs (**Appendix 2.3.5(A)**).

Further reply is awaited (December 2022).

<sup>22</sup> Section 10 of the MGST Act 2017 prescribes the rate of tax payable by a registered person whose turnover did not exceed ₹ 50 lakh in a year.

#### **2.3.7.4 Excess carry forward of transitional credit of Input Tax Credit (ITC) without invoices**

Section 11 (4) of MVAT Act, 2003 provides that no input tax credit under this section shall be allowed to a registered dealer against his purchases, unless the amount of tax has been separately charged and shown in the tax invoice issued to him by a registered dealer from whom purchases of such goods have been made.

Scrutiny of records of Taxation Circles revealed that 15 dealers (out of 93 cases of claims under **Table 5c** from the 143 cases examined) availed transitional credit amounting to ₹ 4.78 crore in **Table 5c** by filing Form TRAN-1. Further scrutiny of MVAT returns of the taxpayers for the last three quarters (December 2016 to June 2017) revealed that the taxpayers had availed ITC amounting to ₹ 2.92 crore during the aforesaid period, against which the taxpayers had provided invoices valued at ₹ 0.03 crore only. Thus, inadmissible ITC amounting to ₹ 2.92 crore availed by the taxpayers during the period needs to be reversed (**Appendix 2.3.6**).

On being pointed out (September 2021), five STs furnished replies in respect of nine cases. In respect of seven other cases, no replies were furnished by the STs. Till date (December 2022) report of further action taken as well as recovery of excess claim was yet to be furnished by the Department. (**Details in Appendix 2.3.6(A)**).

Further reply is awaited (December 2022).

#### **2.3.7.5 Transitional credit claims without supporting TDS certificates/TDS challans**

Section 106 (1) of the MVAT Act, 2003 and Rule 39 of the MVAT Rules, 2005 stipulates that every person working in any Government Department including companies, corporations *etc.* wholly or substantially owned by the Government, responsible for making payments in respect of any sale or supply of goods or transfer of the right to use goods or works contract must deduct tax at source while making such payments and credit the same to the account of the Government within ten days from the expiry of the month to which such deduction relates. Further, Section 106(4) of the MVAT Act provides that the person making any deduction of tax under sub-section (1) and paying it to the account of the State Government shall issue a certificate of tax deduction to the payee in such manner, in such form and within such time as may be prescribed.

Scrutiny of records of Taxation Circles revealed that 13 taxpayers (out of 93 cases of claims under **Table 5c** from the 143 cases examined) availed transitional credit amounting to ₹ 2.87 crore in **Table 5c** by filing Form TRAN-1. Further scrutiny of the MVAT returns of the taxpayers for the period from October 2016 to June 2017 revealed that the taxpayers claimed TDS amounting to ₹ 2.25 crore in their legacy returns against the actual TDS certificates/payment challans of ₹ 0.52 crore only. Thus, inadmissible TDS amounting to ₹ 1.73<sup>23</sup> crore claimed by the taxpayers needs to be reversed (**Appendix 2.3.7**).

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<sup>23</sup> ₹ 2.25 crore - ₹ 0.52 crore = ₹ 1.73 crore.

On being pointed out (April 2021), the Department reported recovery of ₹ 0.006 crore in one case, along with ₹ 0.006 crore interest (**Appendix 2.3.7 (A)**).

Further reply is awaited (December 2022).

### **2.3.7.6 Transitional credit claims without submission of declaration forms under the Central Sales Tax (CST) Act, 1956**

Section 8 (4) of the CST Act, 1956 states that the provisions of sub-section (1)<sup>24</sup> shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority.

Further, Rule 12 (1) of the Central Sales Tax (Registration and Turnover) Rules, 1957 states that the declaration and certificate referred to in sub-section (4) of Section 8 shall be in Forms 'C' and 'D' respectively. Rule 12 (5) then states that the declaration in sub-section 6A shall be in Form F.

Additionally, the explanation to Section 140 (1) of the MGST Act provides that so much of the said credit attributable to any claim of the CST Act 1956, that is not substantiated in the manner and period prescribed in Rule 12 of the CST (Registration and Turnover) Rules 1957, shall not be eligible to be credited to the ECL.

Also, as per Section 142 (7) (a) of the MGST Act, 2017, where in pursuance of assessment or adjudication proceedings, any amount of tax, interest or fine becomes recoverable from a person, the same shall be recovered as an arrear of tax under the MGST Act and this recovered amount is not admissible as Input Tax Credit under the MGST Act 2017.

Furthermore, Rule 121 of the MGST Rules, 2017 provides that the amount credited in the ECL may be verified by the proper officer and proceedings may be initiated in respect of any credit wrongly availed, whether wholly or partly. Further, Section 73 (1) of MGST Act, provides that where ITC has been wrongly availed or utilised by any person, he should pay the amount along with interest. As per Section 50 (1) of MGST Act, if any person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, fails to pay the tax or any part thereof to the Government within the period prescribed, he shall for the period for which the tax or any part thereof remains unpaid, pay on his own, interest at such rate, not exceeding 18 *per cent* as may be notified by the Government.

Scrutiny of records of Taxation Circles revealed the following irregularities:

#### **A. Non-submission of declaration 'C' Forms**

Two dealers (out of 93 cases of claims under **Table 5c** from the 143 cases examined) availed transitional credit amounting to ₹ 0.35 crore in **Table 5c** by filing Form GST TRAN-1.

<sup>24</sup> Sub-section (1) prescribes the rate of tax payable by dealers under the CST Act, 1956.

Scrutiny of the CST returns of 10 other dealers for the period from April 2015 to June 2017 revealed that these 12 dealers, inclusive of the two claimants of transitional credit, declared inter-State sales amounting to ₹ 875.40 crore during the period against which 'C' forms amounting to ₹ 127.89 crore were provided. The dealers paid tax at a concessional rate of two *per cent* on sales turnover amounting to ₹ 747.50 crore against the actual tax liability of five *per cent*. The dealers are liable to pay the minimum differential tax liability at three *per cent* amounting to ₹ 22.43 crore along with interest amounting to ₹ 15.26 crore (**Appendix 2.3.8**).

On being pointed out (September 2021), the Department stated that action was initiated in some cases. However, no report of recovery of differential tax was made by any of the STs. (Details in **Appendix 2.3.8 (A)**).

**Thus, failure of the Department to ensure submission of all 'C' forms pertaining to the transitional credit availed by dealers against inter-state sales led to excess carry forward of transitional credit amounting to ₹ 0.35 crore and short recovery of balance legacy Central Sales Tax (CST) on which 'C' forms were not provided, along with interest applicable thereon.**

Further reply is awaited (December 2022).

#### **B. Non-submission of declaration 'F' Forms**

Scrutiny of records in four circles revealed that seven dealers had declared inter-state stock transfer amounting to ₹ 349.73 crore during the period from April 2015 to June 2017, but no 'F<sup>25</sup>' forms were submitted by the dealers. Thus, the whole amount was liable to be considered as actual sale by the dealers and tax amounting to ₹ 17.49 crore (at a minimum tax rate of five *per cent*) was required to be recovered from the dealers along with interest amounting to ₹ 12.10 crore under the provisions of Section 142 (7) (a) of the MGST Act, 2017 and this recoverable amount is no longer admissible as Input Tax Credit under GST (**Appendix 2.3.9**).

#### **Case of M/s Star Cement Meghalaya Limited and M/s Star Cement Limited**

A dealer, M/s Star Cement Meghalaya Limited (GSTIN 17AAECM7979B1Z7) under the ST, Khliehriat, disclosed inter-state stock transfer of ₹ 93.70 crore during the period April 2015 to June 2017 for which no 'F forms were provided. Hence, the amount may be considered as actual sale by the dealer although no tax was paid by him. Non-furnishing of declaration forms by the dealer under the CST Act results in tax liability of five *per cent* on the entire value of inter-state stock transfer and thus the tax amount of ₹ 4.68 crore may be recovered from the dealer under the provisions of section 142 (7) (a) of the MGST Act, 2017.

<sup>25</sup> Form 'F' is issued to the importing dealer by the Taxation Authority of the State where the stock is being transferred. The importing dealer furnishes this 'F' form to the exporting dealer, who in turn submits the same to the Taxation Authority of the exporting State for claiming tax exemption.

Likewise, another dealer M/s Star Cement Limited (GSTIN 17AACCC1465A1Z8) under the same Taxation Circle had likewise disclosed inter-state stock transfer of ₹ 137.63 crore during the same period without furnishing 'F' forms or paying tax on the amount. Hence, the amount may also be considered as actual sale by the dealer on which he is liable to pay five *per cent* tax amounting to ₹ 6.88 crore, which is recoverable from the dealer under the provisions of the Act *ibid*.

On being pointed out by Audit (August 2021), the ST, Khliehriat stated (February 2022) that assessment of the dealers is ongoing and any amount of inter-state stock transfer not matched with 'F' forms will be treated as sale and normal rate of tax applied thereon.

On this being pointed out (August 2021), the STs furnished replies in respect of five of the seven dealers. Though the non-recovery of tax pointed out in Audit is in August 2021, two of the four STs did not furnish replies. The ST, Ri Bhoi stated that two dealers under his jurisdiction have been subjected to assessment and notices served to them for production of their accounts (Details in **Appendix 2.3.9(A)**).

Further reply is awaited (December 2022).

#### **2.3.7.7 Transitional credit claims on stock in transit without supporting documents**

Section 140 (5) of the MGST Act, 2017 states that a registered person shall be entitled to take, in his Electronic Credit Ledger, the credit of value added tax in respect of inputs received on or after the appointed day but the tax in respect of which has been paid by the supplier under the existing law subject to the condition that the invoice or any other tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day. If sufficient cause is shown, the Commissioner may extend the period of thirty days by a further period not exceeding thirty days. Provided further that the said registered person may furnish a statement in the manner prescribed,

Scrutiny of records of Taxation Circles revealed that five dealers (out of 143 cases) availed transitional credit amounting to ₹ 0.06 crore in **Table 7b<sup>26</sup>** of Form GST TRAN-1. However, no records were made available to ascertain that the invoices or any other tax paying documents of the dealers were recorded in the books of account of such persons within a period of thirty days from the appointed day. This resulted in excess carry forward of transitional credit claims of ₹ 0.06 crore. The transitional credit availed by the taxpayers in violation of extant rules needs to be reversed along with interest amounting to ₹ 0.05 crore under Section 73 (1) of the MSGT Act, 2017 (**Appendix-2.3.10**).

On this being pointed out (September 2021), the STs furnished replies in respect of four of the five dealers. However, recovery of tax was made only in respect of one dealer (M/s Ess Bee Enterprise) who reversed his inadmissible claim of transitional credit amounting to ₹ 0.05 crore. (Details in **Appendix 2.3.10(A)**).

<sup>26</sup> Table 7b is used for claiming taxes paid in the earlier regime but goods/services are received in GST regime.

Thus, the fact remained that due to failure of the Department to verify that invoices or any other tax paying documents of the dealers were recorded in the books of account of such persons within a period of thirty days from the appointed day resulted in excess carry forward of transitional credit claims of ₹ 0.06 crore. However, at the instance of Audit there was recovery of ₹ 0.05 crore as tax.

Further reply is awaited (December 2022).

#### **2.3.7.8 Irregular claim of transitional credit of stock on ineligible goods**

Section 140 (3) of the MGST Act, 2017 states that a registered person, who was not liable to be registered under the existing law or who was engaged in the sale of exempted goods or goods which have suffered tax at the first point of their sale in the State and the subsequent sales of which are not subject to tax in the State under existing law but are liable to tax under this Act, shall be entitled to take, in his Electronic Credit Ledger (ECL), credit of the Value Added Tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

Section 140 (4) (b) of the Act *ibid* also states that a registered person, who was engaged in the sale of taxable goods as well as exempted goods under the existing law but which are liable to tax under this Act, shall be entitled to take, in his ECL, the amount of credit of the Value Added Tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods in accordance with the provision of sub-section (3).

Further, Rule 121 states that the amount credited into the ECL may be verified and proceedings initiated in respect of any credit wrongly availed, whether wholly or partly.

Scrutiny of records of Taxation Circles revealed that eight dealers (out of 143 cases) claimed transitional credit amounting to ₹ 0.16 crore on stock in **Table 7c** of Form GST TRAN-1. However, the details of goods/invoices were not available in TRAN-1. In the absence of invoices/records, transitional credit availed by the dealers amounting to ₹ 0.16 crore was irregular and liable to be reversed along with interest of ₹ 0.11 crore (**Appendix 2.3.11**).

On this being pointed out (June 2021), three STs reported recovery of ₹ 0.04 crore in four cases, along with interest of ₹ 0.04 crore. In respect of one case, the ST reported non-compliance by the dealer. In respect of three other cases, no action was taken by the STs (Details in **Appendix 2.3.11(A)**).

Further reply is awaited (December 2022).

#### **2.3.7.9 Inadmissible carry forward of transitional credit on negative turnover**

As per Section 106 (5) of the MVAT Act, 2003, any tax deducted under sub-section 1<sup>27</sup> of the Act *ibid* and paid to the account of the State Government shall, on production of

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<sup>27</sup> This sub-section refers to deduction of tax at source.



the certificate of tax deduction under sub-section 3<sup>28</sup>, be deemed to be tax paid by the payee for the relevant period and shall be given credit in his assessment accordingly.

Scrutiny of records of ST, Ri Bhoi Circle revealed that out of 24 dealers<sup>29</sup>, a dealer, M/s Ramky Infrastructure<sup>30</sup> availed transitional credit amounting to ₹ 12.84 crore in **Table 5c** by filing GST Form TRAN-1 in December 2017. However, the dealer disclosed nil turnover between September 2013 and June 2017. Further scrutiny of records revealed that the transitional credit availed by the dealer related to TDS claim of ₹ 2.46 crore (June 2013) and negative turnover of ₹ 10.65 crore (March 2013). The dealer was issued notice (July 2013) by the Assessing Authority (AA) seeking explanation for declaring negative turnover. However, no records were made available to Audit showing that the dealer had replied to the notice calling for explanation for such declaration. The dealer was issued notice by the AA for scrutiny of returns on two occasions (November 2016 and November 2017); however, it was seen that neither scrutiny of returns nor assessment had been carried out by the AA.

Further, no documentary evidence was made available in support of the claim of transitional credit availed by the dealer. This resulted in excess carry forward of transitional credit claim of ₹ 12.84 crore by the dealer in violation of the extant rules which needs to be reversed.

On this being pointed (September 2021), ST, Ri Bhoi Circle stated (October 2021) that notices issued to the dealer had been returned by the Post Office due to non-delivery to the dealer's address. Further the ST stated that the Commissioner of Taxes had been requested to conduct assessment under Section 55 (1) (c) and (d) of the MVAT Act, however the Commissioner had not acceded to the request.

Thus, failure of the Taxation Department to verify the dealer's claim of negative turnover and scrutinise his transitional credit claim thereon led to excess carry forward of transitional credit claim of ₹ 12.84 crore.

Further reply is awaited (September 2022).

### 2.3.8 Conclusion

Audit test-check has revealed that the Department did not verify the transitional credit claims in 92 *per cent* of cases even after lapse of four years since introduction of GST. Further, the dealers have claimed transitional credit over and above the admissible amount as per last VAT return/assessment order. Incorrect transitional credit has been claimed by the dealers without submission of invoices/TDS certificates/C forms/F forms and without submitting previous six months returns under MVAT regime. Dealers were also permitted to claim transitional credit on stock of ineligible goods. Additionally, transitional credit was also claimed on stock-in-transit without producing

<sup>28</sup> This sub-section refers to tax deduction under sub-section 1 being paid to the account of the State Government.

<sup>29</sup> Out of the 143 audited dealers from the audit sample.

<sup>30</sup> Having GSTIN 17AAACR9627B1ZH and TIN 17091558014.

documents evidencing recording of goods within the stipulated period in the books of accounts.

Altogether, out of the 143 cases of transitional credit claims amounting to ₹ 27.89 crore which were examined by audit, 75 cases of non-compliance with a total money value of ₹ 21.91 crore were noticed. Additionally, legacy tax under CST Act amounting to ₹ 29.79 crore was recoverable from fourteen dealers. Hence, out of the total audited quantum, 52.45 *per cent* of all cases involving 78.56 *per cent* of the audited amount were observed to have deficiencies against them ranging from excess claim of transitional credit to claim of transitional credit without proper documentation.

However, at the instance of Audit there was recovery of ₹ 0.62 crore as tax and ₹ 0.11 crore as interest, amounting to a total of ₹ 0.73 crore, indicating a recovery rate of tax amounting to only 2.22 *per cent* of the money value of the entire audit sample of ₹ 27.89 crore.

### **2.3.9 Recommendations**

- *The Department should put in place a mechanism to identify high value-high risk transitional credit claims and carry out their verification on priority.*
- *The Department may take steps to verify the discrepancies pointed out by Audit to ensure that only eligible ITC claims are carried over to the GST regime.*