

## **CHAPTER II**

### **Audit of Transactions: State Government Departments**



## CHAPTER II

### Audit of Transactions: Government Department

Audit of transactions of the government departments brought out instances of lapses in management of resources and failures in the observance of the norms of regularity, propriety and economy as detailed below:

#### Home Department

##### 2.1 Functioning of Maharashtra State Excise Department

###### 2.1.1 Introduction

State Excise Duty is a sumptuary tax on alcoholic liquors for human consumption, intoxicating drug or hemp, Opium, or any other excisable article when imported, exported, transported, possessed, manufactured or sold in or from the State.

The main function of State Excise Department is to issue various licences, recover excise duty on the potable liquor<sup>1</sup> and implement various controls as per the Maharashtra Prohibition Act, 1949 (The Act). Even after implementation of Goods and Services Tax Act, 2017, State Excise duty has not been subsumed in Goods and Services Tax (GST).

The State Excise receipts mainly comprise excise duty leviable on Indian Made Foreign Liquor (IMFL), Foreign Liquor, Country Liquor, Beer, Wine, licence fees on manufacturers, wholesalers, retailers, bars and clubs for sale of alcoholic beverages in licensed premises, privilege fees for transfer of licences from one name to another, admission/retirement of a partner and from one site to another, supervision charges for deployment of excise officials in the premises of manufacturers and wholesalers and transport fees for transport of rectified spirit, Extra neutral Alcohol, IMFL and Beer. The major portion of excise revenue comes from excise duty and licence fee.

###### 2.1.2 Organizational Setup

The Additional Chief Secretary (ACS) (State Excise), Home Department is the administrative authority at the Government level for the implementation of the Act. The Commissioner of State Excise (Commissioner) is the functional head of the department and exercises overall control on the functioning of the Department and enjoys appellate powers under the Act. The Commissioner is assisted by one Additional Commissioner, Director (Enforcement and Vigilance), one Chief Accounts Officer, two Joint Commissioners, four Deputy Commissioners and four Assistant Commissioners. There are eight<sup>2</sup> divisions headed by Divisional Deputy Commissioner (DDC). At the District level, the provisions of Acts and Rules are administered by 36 Superintendents

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<sup>1</sup> As per section 2(m) of the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules, 1966, "Potable liquor" means brandy, whisky, rum, gin or any other liquor manufactured either by the process of distillation, or by compounding or blending spirit with essence, colouring and flavouring substances.

<sup>2</sup> Earlier six divisions and two new divisions created vide GR dated 05.01.2022 but became operational after 31.03.2022.

of State Excise (SSE) under these eight divisions. The Excise supervision in each distillery is entrusted to the Excise Officers posted there.

### **2.1.3 Audit Objectives**

The Subject Specific Compliance Audit (SSCA) on the Functioning of Maharashtra State Excise Department was conducted to ascertain whether:

1. Provisions of the Maharashtra Prohibition Act, 1949 and various Rules made thereunder were followed;
2. The revenue collection was optimum by ensuring proper enforcement of the applicable Acts and Rules;
3. The arrears of revenue were pursued and recovered according to the provisions of law; and
4. There is an effective internal control system including internal audit in the Department.

### **2.1.4 Audit Criteria**

The Audit criteria for the SSCA have been derived from the provisions of following Acts and Rules:

- The Maharashtra Prohibition Act, 1949 (The Act)
- The Bombay Prohibition (Privileges Fees) Rules, 1954 (Rules, 1954)
- Maharashtra Potable Liquor (Periodicity and Fees for Grant, Renewal or Continuance of Licences) Rules 1996 (Rules, 1996)
- The Maharashtra Potable Liquor (Fixation of Maximum Retail Prices) Rules, 1996 (MPL Fixation Rules, 1996)
- The Maharashtra Manufacture of Beer and Wine Rules, 1966 (Rules, 1966)
- The Maharashtra Country Liquor Rules, 1973 (Rules, 1973)
- The Bombay Foreign Liquor Rules, 1953 (Rules, 1953) and
- Notifications/Circulars *etc.* issued by the Government/ Commissioner from time to time.

### **2.1.5 Sampling Methodology and scope of audit**

Out of 36 districts of Maharashtra, there was total prohibition on alcohol in three districts<sup>3</sup>. Audit has selected 13 districts<sup>4</sup> (39 *per cent*) of the remaining 33 districts by stratifying the districts in High/Fair/Low Risk strata apart from two apex units i.e. the ACS, the administrative authority at the Government level and the Commissioner, the functional head of the department.

Audit inspected the records for a period of five years from the year 2017-18 to 2021-22. Entry conference was held on 13.05.2022 and exit conference was held on 23.02.2023. Field audit was conducted from 30 May 2022 to 26 August 2022 by scrutiny of records at selected offices.

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<sup>3</sup> Chandrapur (prohibition was annulled from June 2021), Gadchiroli and Wardha.

<sup>4</sup> Aurangabad, Nashik, Pune, Ahmednagar, Raigad, Nagpur, Satara, Palghar, Mumbai suburban, Mumbai City, Kolhapur, Buldhana, Jalgaon

### 2.1.6 Audit Findings

Detailed audit findings on short/non-levy of licence fees, supervision charges and privilege fees, irregular waiver of excise duty, short raising of demand of duty are discussed in the succeeding paragraphs:

#### 2.1.6.1 Short/Non-recovery of Licence Renewal Fees from manufacturers, wholesalers/retailer

As per Section 53 of the Act, all licences, permits, passes or authorizations shall be granted on payment of licence/licence renewal fees notified by Commissioner through a notification issued every year.

Further, as per Section 114(1) of the Act *ibid*, in case of default in payment of dues, interest at the rate of two *per cent* per month is chargeable on the amounts from the date they became due.

Audit noticed (May to August 2022) that there were cases of short recovery of licence renewal fees during the period of audit in selected districts amounting to ₹ 0.15 crore and interest of ₹ 0.22 crore on delayed payment thereof as given at **Appendix 2.1.1 and Appendix 2.1.2**.

Instances of adjustment of short payment of licence renewal fees of earlier period with later period, incorrect application of production slab and incorrect computation of licence fees were also noticed in ten cases as shown in Appendix 2.1.1 and 2.1.2.

On being pointed out, the Government accepted (June 2023) the objection in respect of all the cases.

#### 2.1.6.2 Short recovery of Supervision charges from manufacturers, wholesalers/retailer

As per the provisions of Section 58(A) of the Act, the State Government may by general or special order direct that all transactions relating to the receipts, manufacture, storage, transport, export, *etc.* of excisable goods are required to be supervised by the State excise staff<sup>5</sup> and the cost of deputing the staff at the premises of the licensee is recoverable at the rates prescribed by the Commissioner from time to time. The supervision charges comprise of pay, dearness allowance (DA), City Compensatory Allowance (CCA), House Rent Allowance (HRA) (in case accommodation is not provided), leave salary & pension contribution. The rates of supervision charges are revised as and when revision in the pay scale/DA is notified by the Finance department. Thus, the aforesaid provision provides for recovery of cost of deputing staff at the premises of the licensee.

Section 114 of the Act, provides that the cost of the supervising staff appointed under section 58A, if not paid within the due date or the prescribed period, the same shall be recovered with simple interest at the rate of two *per cent* per month from the due date.

Audit noticed (June to August 2022) that there was short recovery of supervision charges of ₹ 1.01 crore and interest of ₹ 0.19 crore on delayed

<sup>5</sup> Dy. Superintendent, Inspector, Sub-Inspector, Assistant Sub-Inspector and Constable.

payment thereof in respect of 13 out of 26 selected manufacturing units in five districts due to non-application of revised rates as notified by the Finance department and circulated by the Commissioner as shown in **Table 1**.

**Table 1: Short recovery of Supervision charges during July 2019 to June 2022**

(₹ in lakh)							
Sl. No.	Name of the Office	No. of units	Period involved	Supervision charges Due	Supervision charges recovered	Short payment of supervision Charges (Col. 5-6)	Interest on delayed payment at two per cent
1.	2.	3.	4.	5.	6.	7.	8.
1	SSE, Aurangabad	6	Jan 2020 to June 2022	318.42	270.03	48.38	4.33
2	SSE, Kolhapur	1	July 2021 to June 2022	38.83	33.95	4.88	0.24
3	SSE, Nashik	2	July 2019 to June 2022	160.20	143.81	16.38	2.65
4	SSE, Pune	1	July 2019 to March 2022	82.39	71.73	10.66	2.03
5	SSE, Satara	3	July 2019 to June 2022	143.89	123.34	20.55	9.43
	<b>Total</b>	<b>13</b>		<b>743.73</b>	<b>642.86</b>	<b>100.85</b>	<b>18.68</b>

*Source: Departmental records.*

On being pointed out, the Government stated (May 2024) that ₹ 0.71 crore towards supervision charges and interest of ₹ 0.04 crore have been recovered in nine units leaving a balance of ₹ 0.29 crore and interest of ₹ 0.14 crore in remaining four units.

**Recommendation 1: Department may ensure compliance with the provisions of the Act and rules for recovery of appropriate fees and supervision charges.**

### **2.1.6.3 Irregular waiver of Excise Duty on obsolete Stock of Beer**

As per sub-Section (d1) of Section 139(1) of the Act, the State Government may, by general or special order, remit or refund wholly or partially any excise or countervailing duty or fee leviable under this Act. Further, as per Section 59(1) of the Act, notwithstanding the fact that the period during which any licence, permit, pass or authorization is to be in force has not expired, the Commissioner may direct the holder thereof to dispose off his stock of intoxicant, denatured spirituous preparation, or hemp or *mhowra* flowers before such date as may be specified in the order.

Audit noticed (August 2022) that,

- The Commissioner permitted (May 2019) disposal of obsolete stock of 5,13,612 bottles<sup>6</sup> of beer pertaining to the period from April 2015 to July 2017 and allowed waiver of excise duty of ₹ 1.97 crore to a licensee of potable liquor.
- In four similar cases, obsolete stock of beer was allowed to be disposed off, however, Excise Duty was ordered to be recovered thereon.
- Further, as per Section 139 of the Act only the State Government is empowered to remit excise duty, hence, grant of waiver of Excise Duty in earlier case by the Commissioner was irregular.

<sup>6</sup> 650ml-506148 bottles and 330ml-7464 bottles.

The Government stated (May 2024), that a Committee had been formed to bring uniformity in disposing off the obsolete stock of beer and other liquors and decision would be taken on the basis of recommendation of the Committee.

**2.1.6.4 Short raising of demand for differential duty on failed sample of mild beer**

As per sub-rule (6)(2)(c) of Rule 3 of the Bombay Foreign Liquor Rules, 1953, 'Fermented liquor' includes beer, having alcoholic strength exceeding 8.75 *per cent* of proof spirit and a 'Mild Liquor' means a mild beer having alcoholic strength not exceeding 8.75 *per cent* of proof spirit i.e. 5 *per cent* alcohol by volume(v/v). As per notification issued (October 2017) by the Home department, the rate of excise duty on mild beer is 175 *per cent* of the manufacturing cost or ₹ 42, whichever is higher and that of fermented liquor is 235 *per cent* of the manufacturing cost or ₹ 80, whichever is higher.

Further, as per Rule 9(1) of the Maharashtra Manufacture of Beer and Wine Rules, 1966, read with licence condition No. 6(a) for the Breweries units on completion of the manufacture of beer or wine, the Brewery Officer shall permit the licensee to take free sample for analysis in the licensee's laboratory and declaration of the true strength of alcohol in a register in Form BR-III. The samples so drawn are given to Brewery Officer who shall send one set of samples at once to the Chemical Analyser and the duplicate sample of beer/wine which is intended exclusively for replacement of the original sample or repetition of its analysis, when necessary.

As per licence condition No. 6(e), when the Chemical Analyser reports that the strength of beer/wine varies beyond the margin of 0.5 of the strength declared by the licensee, the beer/wine shall be dealt with according to the orders of the Commissioner. The Commissioner instructed (September 1995) that, if the alcoholic strength of the sample is beyond the permissible limit, differential duty<sup>7</sup> should be demanded immediately.

(i) Audit noticed (August and December 2022) that:

- A licensee at Taloja, District- Raigad, took 219 samples manufactured during the period from December 2016 to October 2020, from various batches of production of mild beer and declared the alcoholic strength for each of them.
- The department sent these samples to the Government Laboratory for chemical analysis. However, on receipt of the alcoholic strength on these 219 samples, the department while calculating differential duty considered the alcoholic strength of all the 219 samples as 8.75 *per cent* proof spirit and further added a margin of 0.5 of the strength. This was irregular as this margin of 0.5 strength should have been added to the strength determined in the laboratory of the Licensee as per licence condition No. 6(e).
- The department issued demand notice (December 2019 and December 2020) amounting to ₹ 23.25 crore in 52 samples only instead of considering the alcoholic strength declared by the Licensee in all 219

<sup>7</sup> Difference in rates of fermented beer and mild beer\*Volume of the Batch.

samples. This resulted in short raising of demand by ₹ 73.18 crore as shown in **Table 2**.

**Table 2: Short raising of demand on failed samples on Mild Beer**

(₹ in crore)

Sr. No.	Date of Demand letter date	As per Audit		As per Department		Short raising of demand
		No. of samples failed based on declared alcohol strength + allowed margin	Demand should be raised	No. of samples failed based on standard norms + allowed margin	Demand raised	
1	31.12.2019	147	64.27	19	8.32	55.95
2	28.12.2020	72	32.16	33	14.93	17.23
	<b>Total</b>	<b>219</b>	<b>96.43</b>	<b>52</b>	<b>23.25</b>	<b>73.18</b>

*Source: Departmental records.*

- Then the Licensee applied (December 2019 and February 2021) for testing of 52 second sample which was permitted by Commissioner (October 2022), after a delay of ranging between 34 and 21 months.
- The 52 samples were not accepted by the Government Laboratory (15 December 2022) stating that they were very old, not properly sealed, having fungus, labels were not legible/mutilated and had the possibility of reduction in the strength of alcohol.
- The department then sent (28 December 2022) these 52 second samples of beer to a laboratory authorised by the Department, where 51 out of 52 samples were found to be within the prescribed limit i.e. 5 per cent alcohol by volume (v/v).

Thus, instead of correcting the calculation methodology while calculating differential duty as this was pointed out by audit in August 2022, the department had not taken action in this regard and permitted the testing of 52 second sample after a delay of ranging between 34 and 21 months. Even after, taking into account the recovery notices issued by department in 52 cases, the department had not taken any action in remaining 167 cases. This resulted in short raising of demand for differential duty amounting to ₹ 73.18 crore.

In reply the Government stated (May 2024) that remedial action would be taken in the matter.

***Recommendation 2: Department may ensure consistent and timely action on issuing orders for waiver of excise duty on obsolete stock of beer and testing of samples and adherence to the prescribed procedure to avoid loss of revenue.***

**2.1.6.5 Inconsistency in levy of Privilege fees for change in ownership of a company vis-à-vis sole proprietor/partnership firm**

As per sub-rule (a) and (b) of Rule 6 *ibid*, privilege fee is chargeable at four and half times in case of admission and fifty per cent in case of withdrawal of partner or partners of a licensee of potable liquor of the fee chargeable for grant or renewal or continuance of such licence whichever is higher. Further, as per sub-rule (e) of Rule 6 *ibid*, in case of Brewery the rate of privilege fee chargeable is fifty per cent in case of either admission or withdrawal of partner or partners of a licensee. However, there is no provision in the Rules

*ibid*, to levy privilege fees in case of major change (51 *per cent* or more) in the shareholdings of a licensee who is a private/public limited company as compared to a sole proprietor/partnership firm. Rule 8 *ibid*, provides for charging a nominal privilege fee of ₹ 10 in case of change in the directors of a private/public limited company.

As per Section 47 of the Companies Act, 2013, voting rights of a member of Company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and his voting right on a poll shall be in proportion to his share in its paid up equity share capital of the company. Further, as per Section 152(2), every Director shall be appointed by the Company in general meeting. Thus, in case of a Public Limited Company any individual shareholder or holding majority of shares, get dominant right in the appointment of Directors and holds prominence in decision making in any general meeting of shareholders. Hence, acquiring/selling majority of shares should be interpreted as admission or withdrawal of partners because they possess dominant right in managing the day-to-day affairs and hence, can be treated as owners of that Company. Audit has illustrated a sample case below for more clarity.

Audit observed (August and September 2022) that initially (May 2013) a group had acquired only 10 *per cent* shares in a licensee unit which was raised to 54.8 *per cent* (September 2014) by acquiring additional shares. Similarly in case of another licensee initially (2008) held 37.5 *per cent* shares in the earlier licensee unit which was raised to 61.5 *per cent*. Thus, the action of acquisition of majority of shares was akin to admission and withdrawal of partners, hence, privilege fees at the rate of licence renewal fees for the year 2021-22 was required to be levied on said licensees but due to absence of provision to levy privilege fees in such cases in the Bombay Prohibition (Privileges Fees) Rules, 1954, privilege fees of ₹ 26.92 crore (**Appendix 2.1.3**) & (**Appendix 2.1.4**) was foregone.

On being pointed out the department stated that (May 2024) the present rule covers transfer/change of ownership of a licence/a firm as any change in the Directors does not amount to change in the ownership of a Company, hence, only amendment fees are recovered thereon.

Reply is not tenable as audit brought out the illustrative case of absence of provision to levy privilege fee in case of change in the shareholders of a Company as provided in the Companies Act, 2013.

***Recommendation 3: Department may review the provision in the Rules for levy of privilege fees in case of a private/public limited company effecting major change (51 per cent or more) in its shareholdings.***

**2.1.6.6 Absence of provision to check the manufacturing cost declared by the manufacturer/importer**

As per explanation (iii) below Section 105 of the Act, 1949, excise duty may be imposed according to the manufacturing cost of the excisable article, declared in writing, by the manufacturer or the exporter to the State, to the

prescribed authority and authenticated by that authority<sup>8</sup>. However, the definition of 'Manufacturing cost' has neither been given under the Act, 1949 nor under any Rules made thereunder. As per Cost Accounting Standard-4 issued by the Institute of Cost Accountants of India, Manufacturing cost or Cost of production of a product consists of cost of materials consumed, Direct Wages and Salaries, direct expenses, works overheads, quality control costs, research and development costs, packing costs, administrative overheads relating to production.

However, there is no provision in the excise law to declare the details of manufacturing cost (i.e. components like raw material, labour and overheads). In exercise of powers conferred under Rule 6 of the Maharashtra Potable Liquor (Fixation of Maximum Retail Prices) Rules, 1996, the Commissioner issued instructions (October 1996) that any State Excise officer would not be responsible for checking the manufacturing cost declared by the licensee, while giving authentication by the department. Had there been a provision to check the manufacturing cost, government would have got additional revenue to that extent as discussed below in some illustrative cases.

Audit observed that:

- a) Out of 39 licences of units manufacturing IMFL/beer in selected districts, in five units of four districts IMFL/beer were manufactured for Civil supplies as well as for Canteen Stores department (CSD) of Ministry of Defence, Government of India. Audit noticed that the manufacturing cost in respect of 11 products/brands of these five units, for supply to CSD, was much lower than the manufacturing cost of identical brands for Civil supplies manufactured in the same unit resulting in foregoing the excise duty of ₹ 38.34 crore due to undervaluation (**Appendix 2.1.5**). If there had been a provision to check the manufacturing cost, undervaluation could have been avoided and government would have got additional revenue to that extent.
- b) In case of licensees (FL-1) importing IMFL from out of India, cost of acquisition (equivalent manufacturing cost as per CAS-4) of such imported liquor was found to be more than the declared manufacturing cost<sup>9</sup> during the period from August 2018 to March 2022 resulting in excise duty foregone of ₹ 11.48 crore as shown in **Table 3 and Appendix 2.1.6** due to undervaluation.

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<sup>8</sup> As per sub-rule (1) of Rule 3 of the Maharashtra Potable Liquor (Fixation of Maximum Retail Prices) Rules, 1996 every manufacturer shall, by statement in quadruplicate, declare his manufacturing cost and maximum retail price of every pack of Potable Liquor to the Superintendent of State Excise of the District in which his manufactory or Brewery licence is located. The Superintendent shall authenticate all the four copies and return one copy of the declaration to the manufacturer, retain remaining copies for his record and for sending to the Officer in-charge of Trade and Import licence concerned. Similar procedure is prescribed for Trade and Import licensee in Form FL-I, under sub-rule 3 of Rule 3 of the above mentioned Rules.

<sup>9</sup> under sub-rule 3 of Rule 3 of the Maharashtra Potable Liquor (Fixation of Maximum Retail Prices) Rules, 1996.

**Table 3: Short payment of Excise Duty due to undervaluation of manufacturing cost in case of imported liquor (Overseas)**

(₹ in crore)

Sr. No.	District	No. of Importers	No. of Brands	Quantity imported (in Bottles)	Period involved	Excise Duty foregone
1	Mumbai City	01	04	5580	August 2018 to October 2018	0.53
2	Kolhapur	03	07	26400	January 2022 to March 2022	0.75
3	Raigad	02	06	32256	May 2021 to December 2021	1.43
4	Nashik	04	07	22740	January 2022 to March 2022	0.76
5	Mumbai Suburban	05	11	189252	March 2021 to March 2022	7.48
6	Pune	01	02	5892	February 2022 to March 2022	0.52
	<b>Total</b>	<b>16</b>	<b>37</b>	<b>282120</b>		<b>11.48</b>

*Source: Departmental records.*

Similarly, audit noticed that, in case of 12 licensees (FL-1) importing IMFL from other States (out of Maharashtra) in three selected districts, cost of acquisition (equivalent manufacturing cost as per CAS-4) was found to be more than its declared manufacturing cost during the period from May 2017 to March 2022. This resulted in foregoing of excise duty of ₹ 2.89 crore due to undervaluation as shown in **Table 4 and Appendix 2.1.7**. Had there been a provision to check the manufacturing cost, the government would have got additional revenue to that extent.

**Table 4: Short payment of Excise duty due to under valuation of manufacturing cost in case of IMFL (other State)**

(₹ in crore)

Sr. No	District	No. of Importers	No. of Brands	Quantity imported in Bottles	Period involved	Excise Duty foregone
1	Kolhapur	05	10	172560	May 2017 to August 2021	0.29
2	Raigad	01	05	8736	October 2021 to March 2022	1.07
3	Pune	06	11	108060	July 2020 to March 2022	1.53
	<b>Total</b>	<b>12</b>	<b>26</b>	<b>289356</b>		<b>2.89</b>

*Source: Departmental records.*

On being pointed out (June to August 2022), the Government stated (February 2023) that the department will set some benchmark and thumb rule for deciding the manufacturing cost.

In reply, Government (May 2024) by referring the discussion held during the Exit Conference regarding the manufacturing cost stated that the increase in sales leads to increase in government revenue and there is no loss of revenue.

Reply (May 2024) is not tenable as the issue of manufacturing cost raised in audit is not addressed properly. If some benchmark for deciding the manufacturing cost is set, department may fetch additional amount of excise duty.

**Recommendation 4: Department may review the Maharashtra Potable Liquor (Fixation of Maximum Retail Prices) Rules, 1996 to provide for declaration of the details of manufacturing cost as per CAS-4 for ensuring levy of appropriate excise duty.**

#### 2.1.6.7 Non-pursuance of arrears of revenue

As per Section 57 of the Act, department has power to attach the licence granted to licensee for recovery of arrears of state excise revenue.

Audit noticed that department had arrears of revenue as shown in **Table 5** below:

**Table 5: Arrears of revenue**

(₹ in crore)				
Sr. No.	Year	Revenue Demanded	Revenue Received	Revenue Due
1	2016-17	1.41	0.97	0.44
2	2017-18	23.23	0.38	22.85
3	2018-19	118.95	0.12	118.82
4	2019-20	21.12	0.00	21.12
5	2020-21	2.84	0.00	2.84
6	2021-22	2.39	0.00	2.39
	<b>Total</b>	<b>169.94</b>	<b>1.47</b>	<b>168.46</b>

*Source: Information furnished by the department.*

It may be seen from the above table that out of total outstanding arrears of revenue of ₹ 168.46 crore, an amount of ₹ 118.80 crore (71 per cent) pertained to eight wineries for which demand was raised during 2018-19 is still pending for recovery. Out of this ₹ 118.80 crore, ₹ 115.89 crore (97.5 per cent) solely pertained to a licensee at Nashik was outstanding. Similarly, demand notice of ₹ 21.09 crore was issued (April 2019) to a licensee at Kolhapur but thereafter no pursuance was made for recovery by the department.

In reply, Government stated (May 2024) that action for recovery of arrears was being taken.

**Recommendation 5: Department may ensure prompt recovery of arrears of revenue applying relevant provisions in the Act.**

Internal audit wing comprised of one team at Apex level (Commissioner Office) and one team at divisional level under the control of each Divisional Dy. Commissioner.

Audit observed shortfall in conduct of internal audit, slow rate of settlement of internal audit paras. Further, there was poor rate of conviction in offence cases booked by Inspection divisions/Flying squad due to lack of monitoring, as discussed in the succeeding paragraphs:

#### 2.1.6.8 Shortfall in conduct of Internal Audit of manufacturing/trading units by DDC and by Joint Director (Accounts)

I. Internal audit wing at the Divisional level was created (August 1989) with an objective of checking the records of the Distilleries, manufacturers of country and foreign liquor, beer, wine, spirits, wholesale and retail traders of liquor. As per the circular issued (October-November 2015) by Commissioner office, the DDC is required to send a report on the internal audit conducted by them to the Joint Director (Accounts) in the Commissioner office.

As per data collected (February 2022) from the Commissioner office, the position of internal audits by six DDCs<sup>10</sup> for the period from 2017-18 to 2021-22 was as detailed in **Table 6** below:

**Table 6: Shortfall in conduct of internal audits by DDCs**

Year	No. of units planned for audit	No. of units audited	Shortfall	Percentage shortfall in audit
2017-18	597	430	167	27.97
2018-19	678	356	322	47.49
2019-20	707	308	399	56.43
2020-21	769	547	222	28.87
2021-22	598	330	268	44.81

*Source: Information furnished by the Department*

Out of the overall internal audits carried out by DDCs during 2017-18 to 2021-22, the percentage of shortfall in inspection ranged between 27.97 *per cent* and 56.43 *per cent*, hence, it could be seen that a proper watch on the internal audits and its effect was not being conducted.

At DDC level, the percentage shortfall in overall settlement of paras ranged between 0.07 *per cent* to 41.64 *per cent* during the period 2017-2022. The highest pendency in settlement of paras was in DDC, Kolhapur followed by DDC, Thane and DDC, Nagpur.

In reply, Government stated (May 2024) that a separate cell is being established for the purpose of internal audit.

**II.** Further, as per circular issued (June 2015) by the Commissioner, Internal Audit Wing headed by the Joint Director (Accounts) functioning under him was entrusted with the task of conducting internal audit of the records of all the offices of the DDC and district SSE. However, periodicity of conducting such audit has not been prescribed till date.

Audit observed that (March 2022/May 2023) out of 33 District Superintendents and six DDC offices, except interim inspection (two days) of SSE of Mumbai Sub-urban district, no internal audit was conducted by Internal Audit Wing of Commissioner office for the period from 2017-18 to 2021-22. In respect of SSE of Mumbai Suburban district, only interim inspection of the records of 2017-18 and 2018-19 was done for only two of six planned days and inspection for four days was not done.

In reply, Government stated (May 2024) that internal audit could not be conducted till 2020 due to shortage of manpower and outbreak of Covid-19. Thereafter regular audit was being conducted by the audit team of the Divisional Deputy Commissioner. Further, the accounting work was only being done by the accounts branch of the Commissioner office.

<sup>10</sup> Aurangabad, Kolhapur, Nagpur, Nashik, Pune and Thane.

Reply is not tenable as no internal audit was conducted during the audit period.

***Recommendation 6: Department may ensure that internal audit is conducted regularly.***

**2.1.6.9 High rate of acquittal in offence cases due to lack of monitoring**

Under Section 65 of the Act, for detection of offences, 140 inspection divisions and 38 flying squads are working in the State at each district level. Apart from this, there are seven flying squads, one each at six Divisional level and one at State level under the overall control of Director (Enforcement and Vigilance).

Audit noticed that,

- 1,53,481 offence cases were detected and admitted in the Court of law
- Judgment received in 17401 cases
- Accused were acquitted in 17366 (99.80 *per cent*) cases and
- Only in 35 (0.20 *per cent*) cases, accused were convicted by the Court.

To analyse the reason for acquittal of the accused, audit test checked 1,420 offence cases in selected districts. In 684 cases (48.17 *per cent*) it was found that the acquittal was due to failure of the department in producing Chemical Analysis Report<sup>11</sup> before the court and in 732 (51.55 *per cent*) cases, it was due to failure of the department in producing the accused before the court of law for cross-examination.

On being pointed out (December 2022) the Government stated (February 2023) that there were procedural lapses in submission of chemical analyser's report and clear instructions have been issued to the field offices. Government stated (May 2024) that information on this issue has already been furnished.

***Recommendation 7: Department may ensure the timely submission of chemical analyser's report and production of accused in the court.***

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<sup>11</sup> Chemical Analysis Report is the report of assessment of alcoholic strength of Liquor.

## GOODS AND SERVICES TAX DEPARTMENT

### 2.2 Department's Oversight on GST Payments and Returns Filing for the Year 2017-18

#### 2.2.1 Introduction

Introduction of Goods and Service Tax (GST) has replaced multiple taxes levied and collected by the Centre and States. GST, which came into effect from 01 July 2017, is a destination-based consumption tax on the supply of goods or services or both levied on every value addition. The Centre and States simultaneously levy GST on a common tax base. Central GST (CGST) and State GST (SGST) /Union Territory GST (UTGST) are levied on intra state supplies, and Integrated GST (IGST) is levied on inter-state supplies.

Section 59 of the Maharashtra Goods and Services Tax Act, 2017 (MGST, Act) stipulates that every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under Section 39.

The GST returns must be filed online regularly on the common GST portal, failing which penalties will be payable. Even if, the business has no tax liability during a particular tax period, it must file a 'nil' return mandatorily. Further, Section 61 of the Act read with rule 99 of MGST Rules stipulate that the proper officer may scrutinize the return and related particulars furnished by taxpayers, communicate discrepancies to the taxpayers and seek an explanation.

This Subject Specific Compliance Audit (SSCA) was taken up considering the significance of the control mechanism envisaged for tax compliance and the oversight mechanism of the Goods and Service Tax Department (Department), Maharashtra in this new tax regime.

#### 2.2.2 Audit objectives

This audit was oriented towards providing assurance on the adequacy and effectiveness of systems and procedures adopted by the Department with respect to tax compliance under GST regime. Audit of 'Department's oversight on GST Payments and Return filing' was taken up with the following audit objectives to seek an assurance on:

- i. Whether the rules and procedures were designed to secure an effective check on tax compliance and were being duly observed by taxpayers; and
- ii. Whether the scrutiny procedures, internal audit and other compliance functions of the Charge<sup>12</sup> were adequate and effective.

#### 2.2.3 Audit methodology and scope

This SSCA was predominantly conducted based on data analysis, which highlighted risk areas and red flags pertaining to the period July 2017 to March 2018. Through data analysis a set of 13 deviations were identified

<sup>12</sup> Charge is the lowest departmental unit functioning under the Division. The Charge are responsible for scrutiny of returns and audit of taxpayers under section 65 of the Act.

across the domains of Input Tax Credit, Discharge of tax liability, Registration and Return filing. Such deviations were followed up through a Centralized Audit<sup>13</sup>, whereby these deviations were communicated to the relevant jurisdictional Charge and action taken by the jurisdictional Charge on the identified deviations was ascertained without involving field visits. The Centralised Audit was supplemented by a Detailed Audit involving field visits for verification of records available with the jurisdictional field formations. Returns and related attachments and information were accessed through the Back End Services application - the back-end system of the Department application as much as feasible to examine data/documents relating to taxpayers (*viz.* registration, tax payment, returns and other departmental functions). The Detailed Audit also involved accessing relevant granular records from the taxpayers such as invoices through the respective field formations. This apart, compliance functions of the departmental formation such as scrutiny of returns were also reviewed in selected Charge.

The scrutiny of returns by the Department and verification of taxpayers records covered the year 2017-18, and the audit of the functions of selected Charge covered the period 2017-18 to 2020-21. The SSCA covered only the state administered taxpayers. The field audit was conducted from October 2022 to November 2022.

Entry conference of this SSCA was held on 4 January 2022 with the Commissioner of State Tax, Maharashtra in which the audit objectives, sample selection, audit scope and methodology were discussed. The Exit conference held on 28 August 2023. The Secretary (Financial Reforms), the Commissioner of State tax and other senior officers of the Department attended the meeting. The replies given during the exit conference and at other times have been appropriately included in the relevant paragraphs. Audit observations as discussed in succeeding paragraphs are based on sample selection. Department may carry out similar exercise for remaining cases.

#### **2.2.4 Audit sample**

A data-driven approach was adopted for planning, as also to determine the nature and extent of substantive audit. The sample for this SSCA comprised a set of deviations identified through data analysis for Centralised Audit that did not involve field visits; a sample of taxpayers for Detailed Audit that involved field visits and scrutiny of taxpayer's records at departmental premises; and a sample of Charges for evaluating the compliance functions of the same.

There were three distinct parts of this SSCA as under:

##### **(i) Part I- Audit of Charges**

Ten Charges<sup>14</sup> with jurisdiction over more than one selected sample of case for Detailed Audit were considered as the sample of Charges for evaluation of their oversight functions.

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<sup>13</sup> Centralised Audit did not involve seeking taxpayer's granular records such as financial statements related ledger accounts, invoices, agreements etc.

<sup>14</sup> Mumbai-LTU-547, Mandvi-504, Mumbai-LTU-515, Malad-East-707, Mumbai-LTU-518, Mumbai-LTU-503, Mumbai-LTU-531, Pune-LTU-509, Pune-LTU-519 and Fort-702.

**(ii) Part II – Centralised Audit**

The sample for Centralised Audit was selected by identification of high-value or high-risk deviations from rules and inconsistencies between returns through data analysis for evaluation of the adequacy and effectiveness of the scrutiny procedure of the Department. Accordingly, a sample of only 405 deviation cases involving 391 taxpayers was selected for Centralised Audit under this SSCA.

**(iii) Part III-Detailed Audit**

It was conducted by accessing taxpayers' records through Charges for evaluation of the extent of tax compliance by taxpayers. The sample of taxpayers for Detailed Audit was selected on the basis of risk parameters such as Excess ITC, Tax Liability mismatch, Disproportionate exempted turnover to total turnover and Irregular ITC reversal. The 84 taxpayers selected for Detailed Audit comprised of Large<sup>15</sup>, Medium<sup>16</sup> and Small<sup>17</sup> strata taxpayers as well as taxpayers selected randomly.

**2.2.5 Audit criteria**

The source of audit criteria comprised the provisions contained in the MGST Act, IGST Act and Rules made thereunder. The significant provisions are given as under:

**Table 1: Source of criteria**

Sl. No.	Subject	Act and Rules
1	Levy and collection	Section 9 of MGST Act
2	Reverse Charge Mechanism	Section 9(3) of MGST Act and Section 5 (3) of IGST Act
3	Availing and utilizing ITC	Sections 16 to 21 under Chapter V of MGST Act ; Rules 36 to 45 under Chapter V of MGST Rules
4	Registrations	Section 22 to 25 of MGST Act ; Rules 8 to 26 of MGST Rules
5	Supplies	Section 7 and 8 of MGST Act ; Schedule I, II and III of MGST Act
6	Place of supply	Section 10-13 of IGST Act
7	Time of Supply	Section 12 to 14 of MGST Act
8	Valuation of supplies	Section 15 of MGST Act; Rules 27-34 of MGST Rules
9	Payment of Tax	Sections 49 to 53 under Chapter X of MGST Act; Rules 85 to 88A under Chapter IX of MGST Rules
10	Filing of GST Returns	Sections 37 to 47 under Chapter IX of MGST Act ; Rules 59 to 68 and 80 to 81 under Chapter VIII, Part B of MGST Rules prescribes format of returns
11	Zero-rated supplies	Section 8 of IGST Act
12	Assessment and Audit functions	Sections 61, 62, 65 and 66 under Chapter XII & XIII of MGST Act; Rules 99 to 102 under Chapter XI of MGST Rules.

<sup>15</sup> First category strata comprising large taxpayers – top two *per cent* of taxpayers based on turnover.

<sup>16</sup> Second category strata comprising medium taxpayers –next eight *per cent* of taxpayers based on turnover.

<sup>17</sup> Third category strata comprising the small tax payer – remaining 90 *per cent* of taxpayers based on turnover.

In addition, the notifications and circulars issued by the Department relating to filing of returns, notifying the effective dates of filing of various returns, extending due dates for filing returns, rates of tax on goods and services, payment of tax, availing and utilizing ITC, scrutiny of returns and oversight of tax compliance and Standard Operating Procedures (SoP) containing instructions to departmental officers on various aspects related to filing returns, scrutiny of returns, cancellation of registrations etc. also formed part of the audit criteria.

### **2.2.6 Audit findings**

The audit findings may be categorized into the following three categories:

- a. Audit of Charges
- b. Centralised Audit
- c. Detailed Audit

### **2.2.7 Audit of Charges**

A Return is a statement of specified particulars relating to the business activity under taken by a taxpayer during a prescribed period. Every taxpayer is legally obligated to furnish a complete and correct return regarding the tax liability for a given period and taxes paid within the stipulated time. In a self-assessment regime, the significance of monitoring return filing by taxpayers acquires greater significance as the returns are the first mode of information about taxpayers and their respective business activities.

#### **2.2.7.1 Cancellation of Registration**

Section 29(1) of MGST Act, 2017 stipulates that the proper officer may, either on his own motion or on application filed by registered person or his legal heir cancel the registration having regard to circumstances where the business has been discontinued, change in constitution of business or the taxable person is no longer liable to be registered.

Section 29(2) of the MGST Act, 2017 allows for *suo moto* cancellation of the registration of taxpayer by tax officer on the grounds of contravention of the Acts or Rules by the taxpayer, composition taxpayers not filing return for three consecutive tax periods, normal taxpayers not filing return for continuous period of six months, registered persons not commencing business within six months from date of registration and registration obtained by means of fraud, willful misstatement or suppression of facts.

Rule 22 (1) of MGST Rules, prescribes that where proper officer has reasons to believe that registration of a person is liable to be cancelled under Section 29, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of seven working days, from the date of serving of such notice, as to why his registration should not be cancelled.

Audit called for information<sup>18</sup> from 10 selected Charges for cases of cancellation of registration both, requested by taxpayers and cancelled *suo*

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<sup>18</sup> Date of submission of application (REG 16), Date of submission of REG 17, Date of reply to REG 17, Date of Cancellation Order (REG 19) in respect of cancellation of registration.

*moto* by the Department. The information provided by 10 Charges is tabulated below:

**Table 2: Cancellation of registration**

Sr. No.	Charge	Division	No. of cancelled cases		Total	Information in respect of cancellation provided
			<i>Suo moto</i>	On application		
1.	Fort-702	Fort	60	45	105	No
2.	Mumbai-LTU-547	Mumbai-LTU-4	1	0	1	No
3.	Mandvi-504	Mandvi	6	14	20	Yes
4.	Mumbai-LTU-515	Mumbai-LTU-2	1	3	4	Yes
5.	Mumbai-LTU-518	Mumbai-LTU-2	2	3	5	Yes
6.	Malad-East-707	Goregaon	125	152	277	No
7.	Mumbai-LTU-503	Mumbai-LTU-1	1	6	7	No
8.	Mumbai-LTU-531	Mumbai-LTU-3	0	0	0	Not Applicable
9.	Pune-LTU-509	Pune-LTU-1	0	0	0	Not Applicable
10.	Pune-LTU-519	Pune-LTU-2	0	0	0	Not Applicable
<b>Total</b>			<b>196</b>	<b>223</b>	<b>419</b>	

Table shows that only three charges provided the requisite information whereas three Charges provided 'Nil' information in regard to cancelled cases of both *suo moto* as well as on application of taxpayer. Four Charges did not provide the requisite information due to which Audit could not derive assurance regarding implementation of above mentioned provisions by the department.

#### **2.2.7.2 Inadequate follow up on non-filing of GSTR 10**

Section 45 of MGST Act, stipulates that every registered person who is required to furnish a return under sub-section (1) of section 39 and whose registration has been cancelled shall furnish a final return within three months of effective date of cancellation or date of order of cancellation, whichever is later.

Section 46 of the MGST Act read with rule 68 of the MGST Rules, 2017 requires issuance of a notice in Form GSTR-3A to a registered person who fails to furnish return under section 39 or section 44 or section 45. If the taxpayer still fails to file the final return within 15 days of the receipt of notice, then an assessment order in form ASMT-13 under Section 62 of the MGST Act, 2017 read with Rule 100 of the MGST Rules, 2017 shall have to be issued to determine the liability of the taxpayer under sub-section (5) of Section 29 (i.e., debit ITC equivalent to inputs, and inputs contained in semi-finished and finished goods held in stock or capital goods or the output tax payable on such goods whichever is higher). If the taxpayer files the final return within 30 days from the issue of order ASMT-13, then the said order shall be deemed to have been withdrawn. However, the liability for payment of interest and late fee shall continue.

Information was called for in respect of follow up action by the Department after cancellation of registration. Out of 10, three Charges (Mumbai-LTU-503, Mumbai-LTU-515 and Mumbai-LTU-518) did not provide information in respect of filing of GSTR-10. Three Charges (Mumbai-LTU-531, Pune-LTU-509 and Pune-LTU-519) provided the information about cancellation of registration as 'Nil'. One Charge (Fort-702) provided information regarding action taken by issuing GSTR 3A in 73 cases. Further three Charges (Mumbai-LTU-547, Mandvi-504 and Malad-East-707) have not taken any action after cancellation of registration.

Out of 419 cases of cancellation of registration, in 340 cases taxpayers did not file GSTR-10. Only one Charge Fort-702 under Fort division issued notice (GSTR-3A) (**Appendix-2.2.1**).

***Recommendation 1: Department may issue instructions to departmental officers for proper follow up of cancellation of registrations and monitor the action taken for protection of revenue.***

### **2.2.8 Inconsistencies in GST Returns**

Audit analyzed GST returns data pertaining to 2017-18 as made available by GSTN. Rule-based deviations and logical inconsistencies between GST returns filed by taxpayers were identified on a set of 13 parameters, which can be broadly categorized into two domains - ITC and Tax payments.

Out of the 13 prescribed GST returns<sup>19</sup>, the following basic returns that apply to normal taxpayers were considered for the purpose of identifying deviations, inconsistencies and mismatches between GST returns/data:

- GSTR 1: monthly return furnished by all normal and casual registered taxpayers making outward supplies of goods and services or both and contains details of outward supplies of goods and services.
- GSTR 3B: monthly summary return of outward supplies and input tax credit claimed, along with payment of tax by the taxpayer to be filed by all taxpayers except those specified under Section 39(1) of the Act. This is the return that populates the credit and debits in the Electronic Credit Ledger and debits in Electronic Cash Ledger.
- GSTR 6: monthly return for Input Service Distributors providing the details of their distributed input tax credit and inward supplies.
- GSTR 8: monthly return to be filed by the e-commerce operators, who are required to deduct TCS (Tax collected at source) under GST, introduced in October 2018.

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<sup>19</sup> GSTR 1, GSTR 3B, GSTR 4 (taxpayers under the Composition scheme), GSTR 5 (non-resident taxable person), GSTR 5A (Non-resident OIDAR service providers), GSTR 6 (Input service distributor), GSTR 7 (taxpayers deducting TDS), GSTR 8 (E-commerce operator), GSTR 9 (Annual Return), GSTR 10 (Final return), GSTR 11 (person having UIN and claiming a refund), CMP-08, and ITC 04 (Statement to be filed by a principal/job-worker about details of goods sent to/received from a job-worker).

- **GSTR 9:** annual return to be filed by all registered persons other than an Input Service Distributor (ISD), Tax Deductor at Source/Tax Collector at Source, Casual Taxable Person and Non-Resident taxpayer. This document contains the details of all supplies made and received under various tax heads (CGST, SGST and IGST) during the entire year along with turnover and audit details for the same.
- **GSTR 9C:** annual audit form for all taxpayers having a turnover above ₹ 5 crore in a particular financial year. It is basically a reconciliation statement between the annual returns filed in GSTR 9 and the taxpayer's audited Annual Financial Statements (AFS).
- **GSTR 2A:** a system-generated statement of inward supplies for a recipient. It contains the details of all B2B transactions of suppliers declared in their Form GSTR 1/5, ISD details from GSTR 6, details from GSTR 7 and GSTR 8 respectively by the counterparty and import of goods from overseas on bill of entry, as received from ICEGATE Portal of Indian Customs.

### 2.2.8.1 Centralised audit

The pan-Maharashtra data analysis pertaining to state jurisdiction on the 13 identified parameters and extent of deviations/inconsistencies observed are summarised as under:

**Table 3: Summary of audit observation on pan state data analysis**

(₹ in crore)				
Sl. No.	Parameter	Algorithm used	Number of deviations	Amount
1	Mismatch in availing of ITC	ITC available as per GSTR 2A with all its amendments was compared with the ITC availed in GSTR 3B {Table 4A(5)} (accrued on domestic supplies) considering the reversal in Table 4(B) (2) but including the ITC availed in subsequent year 2018-19 from Table 8(C) of GSTR 9.	41	1,882.61
2	Mismatch in availing of ITC under Reverse Charge Mechanism (RCM)	RCM payments in GSTR 3B Table 6.1(B) was compared with ITC availed in GSTR 9 Table (6C+6D+6F). In cases where GSTR 9 was not available, checks was restricted RCM liability in GSTR3B Table 6.1(B) was compared with GSTR3B Table {4(A)(2) + 4(A) (3)}.	40	165.54
3	Mismatch in availing of ITC under RCM without payment	RCM liability declared in GSTR 9 Table 4G was compared with ITC availed in GSTR 9 Table (6C+6D+6F). In cases where GSTR 9 was not available, RCM liability in GSTR 3B Table 3.1(d) was compared with GSTR 3B {4(A)(2) + 4(A) (3)}.	8	25.04
4	Mismatch in turnover between Annual Return and Financial Statements (Table 5R of GSTR 9C)	Negative figure in GSTR 9C Table 5R.	45	NMV
5	Mismatch in taxable turnover	Negative figure in GSTR 9C Table 7G.	18	NMV

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Sl. No.	Parameter	Algorithm used	Number of deviations	Amount
	between Annual Return and Financial statement (Table 7G of GSTR 9C)			
6	Mismatch in tax paid between books of account and Annual Return (Table 9R of GSTR 9C)	Negative figure in GSTR 9C Table 9R.	41	214.51
7	Mismatch in ITC availed between Annual Return and Financial Statement (Table 12F of GSTR 9C)	Positive figure in GSTR 9C Table 12F.	36	438.82
8	Reconciliation between ITC declared in Annual Return with expenses in Financial Statement (Table 14T of GSTR 9C)	Positive figure in GSTR 9C Table 14T.	39	4,385.65
9	Cases where GSTR 3B not filed but GSTR 1 or GSTR 2A available	Taxpayers who had not filed GSTR 3B but filed GSTR 1 or where GSTR 2A available, indicating taxpayers had carried the business discharging the tax.	40	67.78
10	Undischarged tax liability	Greater of tax liability between GSTR 1 (Table 4 to 11) and GSTR 9 (Table 4N, 10 & 11) was compared with tax paid details declared in Tables 9 and 14 of GSTR 9. In cases where GSTR 9 was not available, tax paid details declared in Table 3.1 (a) and 3.1(b) in GSTR 3B was compared with GSTR 1 liability. The amendments and advance adjustments declared in GSTR 1 and GSTR 9 were duly considered.	35	1,472.79
11	Non /Short payment of interest	Interest calculated at the rate of 18 <i>per cent</i> on cash portion of tax payments on delayed filing of GSTR 3B vis-à-vis interest declared in GSTR 3B Table 6.1.	50	85.20
12	Composition taxpayers also availing e-commerce facility	E-commerce GSTR 8 became effective from 01.01.2018 when TCS provision became effective. GSTINs declared in GSTR 8 who are also filing GSTR 4 under composition scheme.	9	0.11
13	Stop Filer	Non-furnishing returns (GSTR 1, 3B etc.) for a continuous period of six months.	3	0
		<b>Total</b>	<b>405</b>	<b>8738.05</b>

Based on responses received from the Department, the extent to which each of the 13 parameters translated into compliance deviations is summarized as under:

Table 4: Summary of deficiencies

(₹ in crore)

Audit Dimension	Cases where reply received		Department reply accepted by Audit					
			Data entry errors		Action taken before query		Other valid explanations	
	No.	Amt	No.	Amt	No.	Amt	No.	Amt
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Mismatch in availing of ITC	41	1,882.61	8	364.11	0	0	10	334.18
Mismatch in availing of ITC under Reverse Charge Mechanism (RCM)	40	165.54	23	128.13	1	1.45	5	13.97
Mismatch in availing of ITC under RCM without payment	8	25.04	3	11.55	0	0	0	0
Mismatch in turnover between Annual Return and Financial Statements (Table 5R of GSTR 9C) <sup>20</sup>	45	NMV	5	NMV	1	NMV	25	NMV
Mismatch in taxable turnover between Annual Return and Financial statement (Table 7G of GSTR 9C) <sup>21</sup>	18	NMV	1	NMV	0	0	11	NMV
Mismatch in tax paid between books of account and Annual Return (Table 9R of GSTR 9C)	41	214.51	4	67.94	3	7.81	11	62.64
Mismatch in ITC availed between Annual Return and Financial Statement (Table 12F of GSTR 9C)	36	438.82	3	25.38	3	35.83	15	174.68
Reconciliation between ITC declared in Annual Return with expenses in Financial Statement (Table 14T of GSTR 9C)	39	4,385.65	2	85.63	0	0	27	3,204.45
Cases where GSTR 3B not filed but GSTR 1 or GSTR 2A available	40	67.78	1	0.66	1	13.04	10	7.15
Undischarged tax liability	35	1,472.79	13	482.04	0	0	9	762.41
Non/Short payment of interest	50	85.20	0	0	28	56.45	10	11.16
Composition taxpayers also availing e-commerce facility	9	0.11	0	0	0	0	2	NMV
Stop Filers	3	0	0	0	0	0	2	NMV
<b>Total</b>	<b>405</b>	<b>8738.05</b>	<b>63</b>	<b>1,165.44</b>	<b>37</b>	<b>114.58</b>	<b>137</b>	<b>4570.64</b>

<sup>20</sup> The dimension is based on turnover. Therefore, tax liability under this dimension was not quantified. Total unreconciled turnover (TO) in Table 5R of GSTR 9C in 45 cases is ₹ 26,262.42 crore out of which in 25 cases involving unreconciled TO of ₹ 21,605.97 crore valid explanation was provided by the Department, in one case involving ₹ 132.43 crore action was taken before Audit query, into two cases involving ₹ 401.91 crore, ASMT 10 was issued. Data entry error was observed in five cases involving ₹ 1,298.40 crore, in three cases of ₹ 703.03 crore department was examining the query, the compliance in nine cases involving ₹ 2,120.67 crore not supported with documentary evidences.

<sup>21</sup> The dimension is based on taxable turnover. Therefore, tax liability under this dimension was not quantified. Total unreconciled taxable turnover (TTO) in Table 7G of GSTR 9C in 18 cases is ₹ 2,987.11 crore, out of which in 11 cases involving unreconciled TTO of ₹ 1,275.56 crore valid explanation was provided by the Department, in two cases involving ₹ 662.24 crore ASMT 10 was issued, Data entry error was observed in one case involving ₹ 64.94 crore, in one case DRC 07 of ₹ 748.15 crore was issued to the taxpayer, the department was examining the query in one case involving ₹ 78.32 crore. The compliance in two cases involving ₹ 157.89 crore was not supported with documentary evidences.

Accepted by Dept. including cases where action is yet to be initiated <sup>22</sup>								Total		Deptt. reply not furnished with appropriate documentary evidence		Deptt. Stated they are examining the AQ	
Recovered		ASMT-10 <sup>23</sup>		SCN issued DRC(01/01A/07)		Under correspondence with taxpayer		No	Amt.	No	Amt.	No	Amt.
No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.						
(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)
0	0	1	21.95	5	383.32	5	294.73	11	700.00	3	75.50	9	408.84
0	0	1	1.27	5	4.74	0	0	6	6.01	3	13.69	2	2.27
0	0	1	4.65	2	7.93	0	0	3	12.58	0	0	2	0.90
0	0	2	NMV	0	0	0	0	2	NMV	9	NMV	3	NMV
0	0	2	NMV	1	NMV	0	0	3	NMV	2	NMV	1	NMV
4	11.58	1	3.29	3	4.05	7	20.62	15	39.54	5	30.76	3	5.82
0	0	1	5.24	1	47.54	4	42.23	6	95.01	7	88.95	2	18.98
0	0	1	71.25	1	0.47	1	44.10	3	115.82	2	298.56	5	681.19
1	0.13	1	0.45	14	28.74	6	10.02	22	39.34	5	7.35	1	0.26
2	2.03	3	89.84	0	0	2	39.31	7	131.18	1	1.67	5	95.48
1	0.49	0	0	6	7.67	3	8.14	10	16.30	0	0	2	1.29
1	0.006	0	0	2	0.11	3	NMV	6	0.11	0	0	1	NMV
0	0	0	0	0	0	0	0	0	0	1	NMV	0	0
<b>9</b>	<b>14.24</b>	<b>14</b>	<b>197.94</b>	<b>40</b>	<b>484.57</b>	<b>31</b>	<b>459.15</b>	<b>94</b>	<b>1,155.89</b>	<b>38</b>	<b>516.48</b>	<b>36</b>	<b>1215.03</b>

### Summary of Centralised Audit

Audit noticed deviations from the provisions of the Act in 94 cases (Col. No. 10, 12, 14, 16) involving a mismatch of tax of ₹ 1,155.89 crore (Col. No. 11, 13, 15 and 17) constituting 23.21 *per cent* of the 405 inconsistencies/mismatches in data, for which the Department provided responses. Relatively higher rates of deviations were noticed in risk parameters such as mismatch in availing of ITC, undischarged tax liability, Reconciliation between ITC declared in Annual Return with expenses in Financial Statement, Mismatch in ITC availed between Annual Return and Financial Statement etc.

In 237 cases (Col. No. 4, 6 and 8), constituting 58.52 *per cent*, where the Department's reply was acceptable to Audit, data entry errors by taxpayers comprised 63 cases (Col. No. 4) involving amount of ₹ 1,165.44 crore (Col. No. 5), the Department had proactively taken action in 37 cases (Col. No. 6) involving amount of ₹ 114.58 crore (Col. No. 7) and 137 cases (Col. No. 8) involving amount of ₹ 4,570.64 crore (Col. No. 9) had other valid explanations.

In 36 cases (Col. No. 22), constituting 8.88 *per cent*, the Department stated that it was examining the underlying deviation of ₹ 1,215.03 crore (Col. No. 23). In the remaining 38 cases (Col. No. 20) constituting 9.38 *per cent*

<sup>22</sup> The amount in above Table under 'Recovered' and 'SCN issued' category is as per recoveries made and amount of SCN issued by the Department irrespective of the amount pointed out by Audit.

<sup>23</sup> Notice for intimating discrepancies issued in Form ASMT 10 after scrutiny of returns.

involving amount of ₹ 516.48 crore (Col. No. 21), though the Department did not accept the deviations pointed out by Audit, however, its contention was not supported by evidence and was thus, not amenable to verification by Audit.

Top case for each dimension of Centralized audit (for compliance deviation pertaining to cases of recovery, ASMT 10, SCN issued and under correspondence with taxpayer) is tabled below:

**Table 5: Top case for each dimension (for compliance deviation)**

(₹ in crore)

Sl. No.	Dimension	GSTIN of the taxpayer	Jurisdiction	Mismatch	Action taken
1	Mismatch in availing of ITC	2XXXXXXXXXXXXXXW	Pune-LTU-1	310.00	DRC-01 issued
2	Mismatch in availment of ITC under Reverse Charge Mechanism (RCM) than tax paid	2XXXXXXXXXXXXXXG	Mazgaon	2.52	DRC-07 <sup>24</sup> issued
3	Mismatch in availment of ITC under Reverse charge mechanism (RCM) without payment	2XXXXXXXXXXXXXXH	Mumbai-LTU-1	7.93	DRC-07 issued
4	Mismatch in turnover between Annual Return and Financial Statements (Table 5R of GSTR 9C)	2XXXXXXXXXXXXXX2	Sakinaka	NMV	ASMT-10 issued
5	Mismatch in taxable turnover between Annual Return and Financial statement (Table 7G of GSTR 9C)	2XXXXXXXXXXXXXXU	Mumbai-LTU-3	NMV	SCN issued
6	Mismatch in tax paid between books of account and Annual Return (Table 9R of GSTR 9C)	2XXXXXXXXXXXXXXH	Mumbai-LTU-2	10.62	Recovery
7	Mismatch in ITC availed between Annual Return and Financial Statement (Table 12F of GSTR 9C)	2XXXXXXXXXXXXXXF	Mumbai-LTU-2	47.54	DRC-01 issued
8	Reconciliation between ITC declared in Annual Return with expenses in Financial Statement (Table 14T of GSTR 9C)	2XXXXXXXXXXXXXXY	Mumbai-LTU-2	71.25	ASMT-10 issued
9	Cases where GSTR 3B not filed but GSTR 1 or GSTR 2A available	2XXXXXXXXXXXXXX6	Thane City	17.78	DRC-07 issued
10	Undischarged tax liability	2XXXXXXXXXXXXXX2	Mumbai-LTU-4	48.05	ASMT-10 issued
11	Non/Short payment of interest	2XXXXXXXXXXXXXXM	Aurangabad	5.28	Under correspondence with taxpayer
12	Composition taxpayers also availing e-commerce facility	2XXXXXXXXXXXXXXT	Thane city	0.09	DRC-07 issued

<sup>24</sup> Notice for Demand and Recovery issued in Form DRC 07 (Demand & Recovery Forms).

**Illustrative cases are discussed below:**

**(i) Dimension –Mismatch in availing of ITC**

GSTR 2A is a purchase related dynamic tax return that is automatically generated for each business by the GST portal, whereas GSTR 3B is a monthly return in which summary of outward supplies along with ITC declared and payment of tax are self-declared by the taxpayer.

To analyze the veracity of ITC utilization, relevant data were extracted from GSTR 3B and GSTR 2A for the year 2017-18 and the ITC paid as per suppliers' details were matched with the ITC credit availed by the taxpayer. The methodology adopted was to compare the ITC available as per GSTR 2A with all its amendments and the ITC availed in GSTR 3B in Table 4A (5)<sup>25</sup> considering the reversals in Table 4B (2)<sup>26</sup> but including the ITC availed in the subsequent year 2018-19 from Table 8C of GSTR 9.

Audit observed that in case of a taxpayer under Pune-LTU-1 Division, the ITC available as per GSTR 2A was ₹ 118.17 crore and the ITC availed in GSTR 3B was ₹ 134.04 crore (Table 4A (5) of GSTR 3B was ₹ 131.50 crore and ₹ 2.54 crore in Table 8C of GSTR 9). This resulted in mismatch of ITC availed amounting to ₹ 15.87 crore, which was communicated to the Department (May 2022).

The Department replied (October 2023) that DRC-01 (September 2023) was issued for ₹ 310 crore to the taxpayer. Further progress in this regard is awaited (June 2024).

**(ii) Dimension - Mismatch in availing of ITC under RCM**

As per the Reverse Charge Mechanism (RCM) the liability to pay tax is fixed on the recipient of supply of goods or services instead of the supplier or provider in respect of certain categories of goods or services or both under Section 9(3) or Section 9(4) of the MGST Act, 2017 and under sub-section (3) or sub-section (4) of Section 5 of the IGST Act, 2017.

To analyse the veracity of ITC availed on tax paid under RCM for the year 2017-18, the datasets pertaining to GSTR 3B and annual return GSTR 9 were compared to check whether the ITC availed under RCM was restricted to the extent of tax paid. The methodology adopted was to compare the RCM payments in GSTR 3B Table 3.1(d)<sup>27</sup> with ITC availed in GSTR 9 Table 6C<sup>28</sup>, 6D<sup>29</sup> and 6F<sup>30</sup>. In cases where GSTR 9 was not available, the check was restricted within GSTR 3B where the tax discharged part in GSTR 3B Table 3.1(d) was compared with the ITC availing part of R3B 4A (2)<sup>31</sup> and 4A (3)<sup>32</sup>.

Audit observed that in case of a taxpayer under Mazgaon Division, the ITC available in Table 3.1(d) of GSTR 3B was ₹ seven thousand and the ITC

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<sup>25</sup> All other eligible ITC

<sup>26</sup> Other ITC reversed.

<sup>27</sup> Inward supplies (liable to reverse charge).

<sup>28</sup> Inward supplies received from unregistered persons liable to reverse charge.

<sup>29</sup> Inward supplies received from registered persons liable to reverse charge.

<sup>30</sup> Import of services.

<sup>31</sup> Import of services.

<sup>32</sup> Inward supplies (liable to reverse charge).

availed in GSTR 9 was ₹ 1.09 crore (including Table 6(C) ₹ Nil, 6(D) ₹ seven thousand and 6(F) ₹ 1.09 crore of GSTR 9) resulting in mismatch of ITC amounting to ₹ 1.09 crore, which was communicated to the Department (April 2022).

The Department replied (August 2023) that DRC-07 was issued (June 2022) for ₹ 2.52 crore including interest and penalty.

**(iii) Dimension - Mismatch in availing of ITC under RCM without payment**

The extent of availing of ITC under RCM for the year 2017-18 without discharging equivalent tax liability or, in other words, short payment of tax under RCM was analysed by comparing the datasets pertaining to GSTR 3B and annual return GSTR 9 to check whether the tax has been discharged fully on the activities/transactions under RCM. In cases where GSTR 9 was filed, the RCM liability in Table 4G<sup>33</sup> was compared with ITC availed in Table 6C, 6D and 6F. In cases, where GSTR 9 was not available, RCM liability in GSTR 3B Table 3.1(d)<sup>34</sup> was compared with GSTR 3B 4(A) (2)<sup>35</sup> + 4A (3)<sup>36</sup>.

Audit observed that in case of taxpayer under Mumbai-LTU-1 Division, the RCM liability in Table 4G of GSTR 9 was ₹ 0.04 crore and the ITC availed in Table (6C+6D+6F) of GSTR 9 was ₹ 1.18 crore. This resulted in mismatch of ITC under RCM without payment of tax amounting to ₹ 1.14 crore, which was communicated to the Department (April 2022).

The Department replied (September 2022) that DRC-07 for ₹ 7.93 crore including interest and penalty was issued in July 2022.

**Dimension of Mismatch with Annual Financial Statements (AFS)**

The certified reconciliation statement submitted by the taxpayer as required under rule 80(3) of MGST Rules in Form GSTR 9C for the year 2017-18 was analysed to review the extent of identified mismatch in turnover reported in the Annual Return *vis-à-vis* the AFS. The unreconciled amount in cases, where the turnover declared in Annual Return is less than the financial statement indicates non-reporting, under-reporting, short-reporting, omission, error in reporting of supplies leading to evasion or short payment of tax. It could also be a case of non-reporting of both taxable and exempted supplies.

**(iv) Dimension - Mismatch in turnover between Annual Return and Annual Financial Statements (Table 5R of GSTR 9C)**

Table 5 of GSTR 9C is reconciliation of turnover declared in audited AFS with turnover declared in annual turnover (GSTR 9). Column 5R of this table captures the unreconciled turnover between the annual return GSTR 9, and that declared in the AFS for the year after the requisite adjustments.

Audit query was issued on un-reconciled turnover of ₹ 224.05 crore in Table 5R of GSTR 9C (tax amount is not quantified) in respect of taxpayer under Sakinaka Division and communicated to the Department (April 2022).

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<sup>33</sup> Inward supplies on which tax is to be paid on reverse charge basis.

<sup>34</sup> Inward supplies (liable to reverse charge).

<sup>35</sup> Import of services.

<sup>36</sup> Inward supplies liable to reverse charge other than Import of Goods and Services.

The Department replied (September 2022) that notice in ASMT-10 was issued (June 2022). Further progress in this regard was awaited (June 2024).

**(v) Dimension - Mismatch in taxable turnover between Annual Return and Annual Financial statement (Table 7G of GSTR 9C)**

Table 7 of GSTR 9C is the reconciliation of taxable turnover. Column 7G of this table captures the unreconciled taxable turnover between the annual return GSTR 9 and that declared in the AFS for the year after the requisite adjustments.

Audit query was issued on un-reconciled turnover of ₹ 1,102.79 crore in Table 7G of GSTR 9C (tax amount is not quantified) in respect of taxpayer under Mumbai-LTU-3 Division and communicated to the Department (June 2022).

The Department replied (January 2024) that DRC-07 was issued for ₹ 748.15 crore to the taxpayer in December 2023.

**(vi) Dimension - Mismatch in tax paid between books of account and Annual Return (Table 9R of GSTR 9C)**

The certified reconciliation statement submitted by the taxpayer, as required under rule 80(3) of CGST/SGST Rules in form GSTR 9C for the year 2017-18, was analysed at data level to review the extent of identified mismatch in tax paid between the Annual Return and the books of account. Table 9 of GSTR 9C attempts to reconcile the tax paid by segregating the turnover rate-wise and comparing it with the tax discharged as per annual return. The unreconciled amounts could potentially indicate tax levied at incorrect rates, incorrect depiction of taxable turnover as exempt or *vice-versa* or incorrect levy of MGST/IGST. There can also be situations, wherein supplies/tax declared are reduced through amendments (net of debit notes/credit notes) in respect of the 2017-18 transactions carried out in the subsequent year from April 2018 to September 2018. Consequential interest payments - both short payments and payments under incorrect heads - also need to be examined in this regard.

Unreconciled payment of tax declared in Table 9R of GSTR 9C, amounting to ₹ 8.01 crore in case of the taxpayer under Mumbai-LTU-2 Division was communicated to the Department (April 2022).

The Department replied (August 2023) that, the taxpayer has paid the dues of ₹ 10.62 crore including interest vide DRC-03 (June 2022 and December 2022).

**(vii) Dimension - Mismatch in ITC availed between Annual Return and Annual Financial Statement (Table 12F of GSTR 9C)**

Table 12 of GSTR 9C reconciles ITC declared in GSTR 9 with ITC availed as per audited AFS or books of accounts Column 12F of this table deals with unreconciled ITC.

The certified reconciliation statement submitted by the taxpayer as required under the rule 80(3) of MGST Rules in Form GSTR 9C for the year 2017-18 was analysed at data level to review the extent of identified mismatch in ITC declared in the Annual Return with the AFS.

Unreconciled ITC of ₹ 9.34 crore declared in Table 12F of GSTR 9C, being ITC availed in GST returns in excess of eligible ITC based on AFS, in case of the taxpayer under Mumbai-LTU-2 Division was communicated to the Department (April 2022).

The Department replied (August 2023) that DRC-01A had been issued for ₹ 47.54 crore in August 2023. Further progress in this regard was awaited (June 2024).

**(viii) Dimension - Reconciliation between ITC declared in Annual Return with expenses in Annual Financial Statement (Table 14T of GSTR 9C)**

Table 14 of GSTR 9C reconciles ITC declared in GSTR 9 with ITC availed on expenses as per audited AFS. Column 14T of this table deals with unreconciled ITC.

The certified reconciliation statement submitted by the taxpayer as required under rule 80(3) of MGST Rules in Form GSTR 9C for the year 2017-18 was analysed at data level to review the extent of identified mismatch in ITC declared in the Annual Return with the expenses reported in the AFS.

Unreconciled ITC of ₹ 71.25 crore declared in Table 14T of GSTR 9C, being ITC availed in GST returns in excess of eligible ITC based on expenses reported in AFS, in case of the taxpayer under Mumbai-LTU-2 Division, was communicated to the Department (April 2022).

The Department replied (September 2022) that ASMT-10 had been issued. Further progress in this regard was awaited (June 2024).

**(ix) Cases where GSTR 3B are not filed but GSTR 1 or GSTR 2A available**

The availability of GSTR 1 and 2A and non-filing of GSTR 3B indicates that the taxpayers had undertaken/carried on the business during the period but have not discharged their tax liability.

Audit observed that in case of a taxpayer under Thane City Division had not filed GSTR 3B in 2017-18. The non-filing of the GSTR 3B and consequent non-discharge of tax liability of ₹ 8.32 crore as per GSTR 1 was communicated to the Department (April 2022).

The Department replied (January 2024) that registration of the taxpayer was cancelled in December 2019 and DRC-07 was issued for ₹ 17.78 crore in December 2023. Further progress in this regard was awaited (June 2024).

**(x) Dimension - Undischarged tax liability**

GSTR 1 depicts the monthly details of outward supplies of Goods or Services. These details also assessed by the taxpayer and mentioned in annual return GSTR 9 in the relevant columns. Further, taxable value and tax paid thereof also shown in GSTR 3B.

To analyse the undischarged tax liability, relevant data were extracted from GSTR 1 and GSTR 9 for the year 2017-18 and the tax payable in these returns was compared with the tax paid as declared in GSTR 9. The amendments and

advance adjustments declared in GSTR 1 and GSTR 9 were also considered for this purpose.

For the algorithm, Tables 4 to 11 of GSTR 1 and Tables 4N, 10 and 11 of GSTR 9 were considered. The greater of the tax liability between GSTR 1 and GSTR 9 was compared with the tax paid declared in Tables 9 and 14 of GSTR 9 to identify the short payment of tax. In the case of GSTR 3B, Tables 3.1(a)<sup>37</sup> and 3.1(b)<sup>38</sup> were taken into account.

Audit observed that in case of taxpayer under Mumbai-LTU-4 Division, the tax payable declared in Table 4N, 10 and 11 of GSTR 9 was ₹ 546.25 crore and the tax paid declared in Table 9 and 14 of GSTR 9 was ₹ 498.20 crore. This resulted in mismatch of tax liability and tax paid of GSTR 9 amounting to ₹ 48.05 crore, which was communicated to the Department (April 2022).

The Department replied (February 2023) that ASMT-10 had been issued in January 2023. Further progress in this regard was awaited (June 2024).

#### **(xi) Dimension – Non/Short payment of interest**

Section 50 of the MGST Act stipulates that every person liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay interest at the rate notified.

The extent of short payment of interest on account of delayed remittance of tax was identified using the tax paid details in GSTR 3B and the date of filing of the GSTR 3B. Only the net tax liability (cash component) had been considered to work out the interest payable.

Audit observed that in case of taxpayer under Aurangabad Division, wherein the returns (GSTR 3B) pertaining to the months of July 2017 to March 2018 involved tax liability amounting to ₹ 33.82 crore were filed after a delay of 190 days to 390 days. However, interest on delayed filing of returns has not paid by the taxpayer. This resulted in non-payment of interest amounting to ₹ 5.28 crore, which was communicated to the Department (April 2023).

The Department replied (July 2023) that demand of ₹ 3.78 crore has been made through ADT 02 in May 2023. Further progress in this regard was awaited (June 2024).

#### **2.2.8.2 Analysis of causative factors- Centralised Audit**

Considering the Department's response to 405 cases about data deviations/inconsistencies/mismatches the factors that caused the data deviation /mismatches are as follows:

##### **I. Cases accepted or action initiated by the Department**

Out of the 405 deviations summarized in **Table 4** above, the Department had accepted the audit observations or initiated examination in 94 cases with tax effect/mismatch amount of ₹ 1,155.89 crore (**Appendix 2.2.2**). Out of these cases, the Department had recovered ₹ 14.24 crore in nine cases, issued SCN

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<sup>37</sup> Outward taxable supplies (other than zero rated, nil rated and exempted).

<sup>38</sup> Outward taxable supplies (Zero rated).

in 40 cases for ₹ 484.57 crore, issued notice conveying discrepancies to the taxpayer in Form ASMT 10 in 14 cases for ₹ 197.94 crore and was in correspondence with the respective taxpayers in 31 cases involving tax effect of ₹ 459.15 crore.

One case is illustrated below:

Audit observed that in case of taxpayer under Mumbai-LTU-2 Division, the ITC available as per GSTR 2A was ₹ 296.71 crore and the ITC availed in GSTR 3B was ₹ 465.26 crore. This resulted in mismatch of ITC availed amounting to ₹ 168.55 crore, which was communicated to the Department (April 2022).

The Department replied (September 2022) that notice in ADT 01 (December 2020) for conducting Audit was issued to the taxpayer. The Department further stated (June 2024) that ADT 02 was issued (June 2023) for tax liability amounting to ₹ 171.33 crore which included audit observation in respect of excess availment of ITC.

## II. Action taken before issue of Audit Queries

As summarized in **Table 4** above, the Department had already taken action in 37 cases involving amount of ₹ 114.58 crore, constituting 9.13 *per cent* of the 405 responses received.

## III. Data entry errors by taxpayers

The data entry errors constituted 15.55 *per cent* (63 cases involving amount of ₹ 1,165.42 crore) of the total responses received. These data entry errors did not have any revenue implication. The list of such data entry errors are indicated in (**Appendix 2.2.3**).

A case is being illustrated below:

Audit observed that in case of taxpayer under Raigad Division, the ITC available as per GSTR 2A was ₹ 350.87 crore and the ITC availed ₹ 490.07 crore (Table 4A (5) of GSTR 3B was ₹ 440.21 crore and ₹ 49.86 crore in Table 8C of GSTR 9). This resulted in mismatch of ITC availed amounting to ₹ 139.20 crore, which was communicated to the Department (April 2022).

The Department replied (June 2022) that the taxpayer has wrongly shown import IGST ITC of ₹ 146.72 crore in Table 4A5 as 'All other ITC' instead of Table 4A1 as 'Import of Goods' in the GSTR 3B filed. The taxpayer has shown ITC claimed from import of goods in the Table 8G of GSTR 9 which is of ₹ 386.08 crore. Hence the difference is due to wrongly shown import ITC as All other ITC instead of ITC on import of Goods in the GSTR 3B filed.

***Recommendation 2: Department needs to develop a robust system to conduct a regular data analytics exercise on GST return data to find out rule based devolution and logical inconsistencies.***

***Recommendation 3: The Department may take up the matter with the GST Council to insert adequate validation control in the GST Portal to curb data entry errors, enhance taxpayers compliance and facilitate better scrutiny.***

### 2.2.9 Detailed Audit

In a self-assessment regime, the onus of compliance with law is on the taxpayer. The role of the Department is to establish and maintain an efficient tax administration mechanism to provide oversight. With finite level of resources, for an effective tax administration, to ensure compliance with law and collection of revenue, an efficient governance mechanism is essential. An IT driven compliance model enables maintaining a non-discretionary regime of governance on scale and facilitates a targeted approach to enforce compliance.

From an external audit perspective, Audit also focused on a data-driven risk-based approach. Thus, apart from identifying inconsistencies/deviations in GST returns through pan-Maharashtra data analysis, a detailed audit of GST returns was also conducted as a part of this SSCA. A risk-based sample of 84 taxpayers was selected for this part of the review. The methodology adopted was to initially conduct a desk review of GST returns and AFS filed by the taxpayers as part of the GSTR 9C and other records available in the back-end system to identify potential risk areas, inconsistencies/deviations and red flags. Desk review was carried out in field audit office. Based on desk review results, a detailed audit was conducted in field formations by requisitioning corresponding granular records of taxpayers such as financial ledgers, invoices *etc* to identify causative factors of the identified risks and to evaluate compliance by taxpayers.

Detailed audit involved a desk review of GST returns and other basic records to identify risks and red flags, which were followed up by field audit to identify the extent of non-compliance by taxpayers and action taken by the field formations. Non-compliance by taxpayers at various stages ultimately impacts the veracity of returns filed, utilisation of ITC and discharge of tax payments.

Audit findings relating to GST return filed by a sample of 84 taxpayers disclosed that, Non/Short payment of interest on Late Filing of GSTR 3B, Mismatch in availing of ITC between GSTR 9 and GSTR 2A, between GST Returns and AFS, Non/Short reversal of ITC in respect of Exempted Goods/Services Mismatch in Turnover GSTR 9C and AFS, Mismatch in tax liability between GSTR 3B, GSTR 9 with GSTR 1, Mismatch between GSTR 9 and AFS and Mismatch in tax paid under RCM are brought out below:

#### 2.2.9.1 Scope limitation (non-production of records)

During the desk review of taxpayers' records available in the back-end system, audit identified the risks related to excess ITC and tax liability mismatches for detailed examination. On the ITC dimension, the mismatches were identified by comparing with GSTR 9 and GSTR 2A and the declarations made in Table 12 and 14 of GSTR 9C. On the tax liability dimension, the mismatches were identified by comparing GSTR 3B with GSTR 1 and GSTR 9 and the declarations in Table 5, Table 7 and Table 9 of GSTR 9C. However, out of 84 sampled cases of 30 Divisions, 17 divisions did not produce corresponding granular records in 37 cases out of 62 cases pertaining to these divisions such as the invoices *etc.* required for examining the causative factors for mismatches of ITC and tax liability. Audit requisitioned these granular records

of the taxpayers through the respective Charges. The case-wise listing of non-production is given in **Appendix 2.2.4**. The jurisdiction-wise non-production of records is summarized as under.

**Table 6: Non-production of records by 17 divisions**

Jurisdictional Division	Sample	Number of cases where records were not provided
Aurangabad	2	1
Bandra	2	1
Fort	4	3
Mandvi	2	2
Mazgaon	7	2
Mumbai-LTU-1	8	6
Mumbai-LTU-3	6	1
Mumbai-LTU-4	5	1
Nanded	1	1
Nashik	3	2
Pune East	2	2
Pune-LTU-1	2	2
Pune-LTU-2	2	2
Pune South	3	4
Pune West	3	3
Raigad	6	1
Santacruz	4	3
<b>Total</b>	<b>62</b>	<b>37</b>

Due to non-production of records, audit could not correlate the returns with the corresponding financial ledgers and was unable to work out the accurate evasion of tax.

### **2.2.9.2 Non-payment of interest on late filing of GSTR 3B**

As per section 50 of the MGST Act, (1) every person who is liable to pay tax in accordance with the provisions of this Act or the rules made there under, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen *per cent* as may be notified by the Government on the recommendations of the Council provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under Section 73 or Section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.

The extent of short payment of interest on account of delayed remittance of tax was identified using the tax paid details in GSTR 3B and the date of filing of the GSTR 3B. Only the net tax liability (cash component) had been considered to work out the interest payable.

Audit observed that three taxpayers did not pay interest amount to ₹ 0.32 crore on late filing of GSTR 3B (**Appendix 2.2.5**).

On this being pointed out between (September 2022 and October 2022), in one case<sup>39</sup>, the Department stated (August 2023) that the amount (₹ 0.19 crore) was paid through DRC-03. In one case<sup>40</sup>, the Department stated (September 2022) that as per notification No. 23/2017, dated 17 August 2017 as amended by notification No. 24/2017 dated 21 August 2017 taxpayer was eligible to file GSTR 3B return for the extended dates *i.e.* by 28 August 2017.

The reply is not acceptable as the notification also required the taxpayer to file TRAN 1 on or before 25 August 2017 and the TRAN 1 was filed by the taxpayer on 27 December 2017, hence, interest is attracted on late filing of GSTR 3B. In one case<sup>41</sup>, the Department stated (October 2022) the reply will be submitted in due course.

One case is illustrated below:

Audit observed that the taxpayer of Mumbai-LTU-521 Charge under Mumbai-LTU-2 Division had filed GSTR 3B for the months of July 2017, August 2017, September 2017, November 2017, February 2018 and March 2018 with delay of 196 days to 400 days, thus attracting interest amounting to ₹ 0.19 crore which was not paid.

On this being pointed out (October 2022), the Department stated (August 2023) that the interest of ₹ 0.19 crore had been paid through DRC-03 by the taxpayer (January 2023).

### **2.2.9.3 Mismatch in availing of ITC between GSTR 9 and GSTR 2A**

As per Section 16(1) of MGST Act, every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of Goods and Services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the Electronic Credit Ledger of such person.

To check whether the ITC paid as per supplier's details matched with the ITC credit availed by the taxpayer, ITC available in GSTR 2A was compared with ITC availed in GSTR 9.

It was observed that in 16 cases, there was mismatch of ₹ 26.63 crore between ITC availed as per GSTR 9 and ITC available as per GSTR 2A (**Appendix 2.2.6**).

On this being pointed out (May 2022 to October 2022), in one case<sup>42</sup>, the Department stated that ADT-02 was issued (August 2023), however details of ADT-02 was awaited. In two cases<sup>43</sup>, ASMT-10 was issued (October 2022 and August 2022). In two cases<sup>44</sup>, DRC-07 was issued (October 2022 and

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<sup>39</sup> Mumbai-LTU-521 charge under Mumbai-LTU-2 Division.

<sup>40</sup> Mumbai-LTU-541 charge under Mumbai-LTU-4 Division.

<sup>41</sup> Vadgaon-Sheri-707 charge under Pune South Division.

<sup>42</sup> Mumbai-LTU-521 charge under Mumbai-LTU-2 Division.

<sup>43</sup> Karjat-701 charge under Nashik Division and Fort-702 charge under Fort division.

<sup>44</sup> Mumbai-LTU-540 charge under Mumbai-LTU-4 and Sanpada-506 charges under Raigad Division.

July 2022). In one case<sup>45</sup>, the Department stated (December 2022) that the case was transferred to investigation branch.

In another case<sup>46</sup>, the Department furnished (March 2023) the copy of compliance submitted by the taxpayer who stated that there is no excess ITC as per Table 8A of GSTR 9. However, comment of the Charge is awaited (June 2024).

In three<sup>47</sup> cases, the Department submitted interim compliance such as sought more time for submission of compliance (August 2023). In six cases<sup>48</sup>, the reply of the Department is awaited (June 2024).

One case is illustrated below:

The taxpayer of Mumbai-LTU-503 Charge under Mumbai-LTU-1 Division had filed GSTR 9. As per the returns, the ITC available was ₹ 26.85 crore (Table 6B ₹ 14.90 crore - Table 7H of ₹ 2.41 crore + Table 8C ₹ 14.36 crore). However, the ITC available as per GSTR 2A was ₹ 14.46 crore which resulted in mismatch amounting to ₹ 12.39 crore.

On this being pointed out (October 2022), the Department stated (December 2022) that the case is transferred to investigation branch and after completion of investigation proceedings, Investigation report will be communicated. Further progress is awaited (June 2024).

#### **2.2.9.4 Non/short reversal of ITC in respect of exempted Goods/Services**

As per Rule 42 of MGST Rules, the input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the prescribed manner.

Audit observed that in case of three taxpayers there was short reversal of ITC amounting to ₹ 8.02 crore on account of reversal of ITC for the declaration of exempted supplies in GSTR 9 (**Appendix 2.2.7**).

On this being pointed out (October 2022), in one case<sup>49</sup>, the Department stated (December 2022) that DRC-07 was issued.

In one case<sup>50</sup>, the Department stated (August 2023) that exempt turnover in 2017-18 is for interest income. For the purpose of Rule 42 interest income is not considered as exempt in terms of explanation inserted vide notification No.3/2018, dated 23/01/2018.

<sup>45</sup> Mumbai-LTU-503 charge under Mumbai-LTU-1 Division.

<sup>46</sup> Mumbai-LTU-514 charge under Mumbai-LTU-2 Division.

<sup>47</sup> Delisle-Road-603 charge under Mazgaon Division, Mandvi-504 charge under Mandvi Division and Mumbai-LTU-503 charge under Mumbai-LTU-1 Division.

<sup>48</sup> Charges are Khamgaon-602 under Amravati Division, Sillod-701 under Aurangabad Division, Bhosari-501 under Pune East Division, Pune-LTU-501 under Pune-LTU-1 Division, Bibvewadi-502 under Pune North Division and Kothrud -503 under Pune South Division.

<sup>49</sup> Parel-702 charge under Mazgaon Division .

<sup>50</sup> Vidyanagari-701 charge under Santacruz Division.

The reply is not acceptable as the explanation in notification is applicable to banking company or a financial institution.

In another case<sup>51</sup>, the Department attached (February 2023) the compliance of the taxpayer, however, comment of the Charge with appropriate documentary evidence is awaited.

#### **2.2.9.5 Mismatch in turnover between GSTR 9C and Annual Financial Statement**

Table 5 of GSTR 9C is reconciliation of turnover declared in audited AFS with turnover declared in annual turnover (GSTR 9). Column 5R of this table captures the unreconciled turnover between the annual return GSTR 9, and that declared in the AFS for the year after the requisite adjustments.

The certified reconciliation statement submitted by the taxpayer as required under rule 80(3) of MGST Rules in Form GSTR 9C for the year 2017-18 was analysed to review the extent of identified mismatch in turnover reported in the Annual Return *vis-à-vis* the AFS. The unreconciled amount in cases, where the turnover declared in Annual Return is less than the AFS indicates, non-reporting, under-reporting, short-reporting, omission, error in reporting of supplies leading to evasion or short payment of tax. It could also be a case of non-reporting of both taxable and exempted supplies.

To derive assurance from the returns and the AFS, Table 5A of GSTR 9C was compared with the turnover in AFS.

Audit observed that in four cases, there was mismatch between turnover declared in Table 5A of GSTR 9C and turnover as per AFS (**Appendix 2.2.8**).

On this being pointed out (July 2022 to October 2022), in two cases<sup>52</sup>, the Department stated (October 2022 and December 2022) that the action shall be taken after intervention of Economic Intelligence Unit (EIU). In two cases<sup>53</sup>, the reply was awaited (June 2024).

One case is illustrated below:

The taxpayer of Mandvi-601 Charge under Mandvi Division had declared an amount of ₹ 3.58 crore in Table 5A of GSTR 9C that did not match with the amount of ₹ 3.89 crore shown in AFS resulting in mismatch of turnover ₹ 0.31 crore.

On this being pointed out (August 2022) the Department stated (December 2022) that as the procedure laid down, the EIU selects cases based on certain parameters and monetary criterion. As this case was not selected by EIU, therefore this office is not in position to take action in this case on its own.

The reply is not acceptable as Charge is required to take action on all cases of irregularities came to the notice of the Department.

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<sup>51</sup> Mazgaon-702 under Mazgaon Division.

<sup>52</sup> Mandvi-601 charge under Mandvi Division and Karvenagar-503 charge under Pune West Division.

<sup>53</sup> Kalbadevi-612 charge under Fort Division and Bibvewadi-502 charge under Pune-North Division.

**2.2.9.6 Mismatch between tax liability in GSTR 1 or GSTR 9 with tax paid in GSTR 9 or GSTR 3B**

GSTR 1 depicts the monthly details of outward supplies of Goods or Services. These details are also assessed by the taxpayer and mentioned in annual return GSTR 9 in the relevant columns. Further, taxable value and tax paid thereof are also shown in GSTR 3B.

To analyse the undercharged tax liability, relevant data were extracted from GSTR 1 and GSTR 9 for the year 2017-18 and the tax payable in these returns was compared with the tax paid as declared in GSTR 9 or GSTR 3B.

The greater of the tax liability between GSTR 1 and GSTR 9 was compared with the tax paid declared in GSTR 9 or GSTR 3B to identify the short payment of tax.

Audit observed that in case of a taxpayer of Belapur-501 Charge under Raigad Division had shown supplies in their GSTR 1 for 2017-18 having tax liability of ₹ 0.77 crore and tax liability as per GSTR 9 of ₹ 1.01 crore while tax discharged as per GSTR 9 was ₹ 0.72 crore. Tax liability as per GSTR 9 is greater than tax paid as per GSTR 9. Thus, there was a mismatch in tax liability of ₹ 0.29 crore.

On this being pointed out (October 2022) the Department stated (December 2022) that Audit of taxpayer was conducted and ADT-02 was issued to the taxpayer (October 2022) for ₹ 0.23 crore. The amount was paid by the taxpayer through DRC-03 (November 2022).

**2.2.9.7 Mismatch between turnover in GSTR 9 and in Annual Financial Statement**

The certified reconciliation statement submitted by the taxpayer as required under Rule 80(3) of MGST Rules in form GSTR 9C for the year 2017-18 was analysed at data level to review the extent of identified mismatch in turnover reported in the Annual Return vis-à-vis the Financial Statements. Table 5R of the form 9C captures the unreconciled turnover between the annual return GSTR 9, and that declared in the Financial Statements for the year after the requisite adjustments.

The unreconciled amount in cases where the turnover declared in GSTR 9 is less than the AFS indicates non-reporting, under-reporting, short-reporting, omission, error in reporting of supplies leading to evasion or short payment of tax. It could also be a case of non-reporting of both taxable and exempted supplies.

The turnover in the above returns was matched with the Annual Return submitted by the taxpayer in GSTR 9/9C and the mismatches are highlighted.

It was observed that in six cases, there was mismatch of ₹ 230.74 crore between turnover as per GSTR 9 and the turnover as per AFS (**Appendix-2.2.9**).

On this being pointed out (July to October 2022) the Department in two cases<sup>54</sup>, stated (October 2022) that the Audit query will be verified and action will be intimated. In the remaining four cases<sup>55</sup>, reply of the Department is awaited (June 2024).

One case is illustrated below:

The taxpayer in Pune-LTU-501 Charge under Pune-LTU-1 Division during 2017-18 had shown turnover of ₹ 59.04 crore in GSTR 9, while turnover as per AFS was ₹ 76.50 crore resulting in mismatch of ₹ 17.46 crore.

We pointed this out (October 2022), reply of the Department was awaited (June 2024).

#### **2.2.9.8 Mismatch in tax paid under RCM**

As per Section 2 (98) of MGST Act “reverse charge” means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act.

To derive assurance that no RCM transactions are left undischarged under GST, expenses shown in the AFS liable to RCM were matched with the tax paid under RCM in GST Returns.

It was observed that in three cases<sup>56</sup>, there was mismatch of ₹ 26 crore between tax paid under RCM as per Table 6.1 of GSTR 3B and the tax payable under RCM as per the financial records of the taxpayer (**Appendix-2.2.10**).

We pointed this out (September 2022), the reply was awaited (June 2024).

One case is illustrated below:

The taxpayer in Mumbai-LTU-544 Charge under Mumbai-LTU-4 Division had shown items of expenditure amounting to ₹ 96.16 crore in their financial records towards payment to foreign parties for importing their services such as Product Content Charges, Technical Service Charges, Royalty Expenses and Bank Interest as also payment for Director’s Remuneration, Auditor’s Fees, Payment for Forward Contract, Insurance Claims and Write Back of Royalty etc. These transactions attract GST under RCM amounting to ₹ 17.31 crore, while RCM paid as per Table 6.1 of GSTR 3B was ₹ 2.18 crore. This resulted in mismatch of ₹ 15.13 crore in tax paid under RCM between AFS and GSTR 3B.

We pointed this out (September 2022), the reply of the Department was awaited (June 2024).

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<sup>54</sup> Shaniwarpeth-601 charge under Pune West Division and Lonavala-701 Charge under Pune West Division.

<sup>55</sup> Marol-501 Charge under Andheri Division, Mandvi-504 Charge under Mandvi Division, Pune-LTU-516 charge under Pune-LTU-2 Division and Pune-LTU-501 charge under Pune-LTU-1 Division.

<sup>56</sup> Mazgaon-702 charge under Mazgoan Division, Mumbai-LTU-548 charge under Mumbai-LTU-4 Division and Mumbai-LTU-544 charge under Mumbai-LTU-4 Division.

**Recommendation 4: The Department may initiate remedial action for all the compliance deviations brought out in this report before they get time barred.**

### **2.2.10 Conclusion**

This SSCA was predominantly based on data analysis, which highlighted risk areas, red flags and in some cases, rule-based deviations and logical inconsistencies in GST returns filed for 2017-18. The SSCA entailed assessing the oversight functions of State jurisdictional formation at two levels – at the data level through global data queries and at the functional level with a deeper detailed audit of both Charge and of the GST returns, which involved accessing taxpayer records.

A review of the functions of 10 Charges disclosed that there were deficiencies in oversight functions of Charges such as cancellation of registration and non filing of GSTR 10 resulting in non-determination of final tax liability.

Further, out of the 405 high value data inconsistencies identified by Audit, the Department responded in all 405 cases. Of these, 94 cases constituting 23.21 *per cent*, turned out to be compliance deficiencies with mismatch of ITC/tax liability/turnover of ₹ 1,155.89 crore. Relatively higher rates of deviations were noticed in risk parameters such as mismatch in availing of ITC, undischarged tax liability, Reconciliation between ITC declared in Annual Return with expenses in Financial Statement, Mismatch in ITC availed between Annual Return and Financial Statement etc.

Detailed audit of GST returns also suggested significant non-compliance. At the outset, essential records in 37 cases out of 84 cases such as AFS, and granular records such as supplementary financial ledgers, invoices, agreement copies etc. were not produced, which constituted a significant scope limitation. These cases represent potential risk exposure towards identified mismatches in ITC availment and tax payments. Out of the 84 cases, Audit observed 36 compliance deficiencies consisting of mismatches of ₹ 61.26 crore.

From a systemic perspective, the Department needs to strengthen the institutional mechanism in the Charges to establish and maintain effective oversight on return filing, taxpayer compliance, tax payments, cancellation of registrations and recovery of dues from defaulters.

**STAMP DUTY AND REGISTRATION DEPARTMENT**

**2.3.1 Short levy of Stamp Duty due to undervaluation of property in Development Agreement**

***Development Agreement-Revenue Sharing***

Article 5 (g-a) of Schedule-1 of the Maharashtra Stamp Act, 1958 (MS Act) provides that, in case of an instrument relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on, development of or, sale or transfer (in any manner whatsoever) of, any immovable property, that Stamp Duty as is leviable on a conveyance under clause (b) or (c) as the case may be, of Article 25 of the Schedule-1 of Act, on the Market Value of the property or consideration, whichever is higher, which is the subject matter of transfer.

Further, as per Valuation Guideline (VG) No. 33 of Annual Statement of Rates (ASR), 2016-17 and 2017-18, in case of development agreement for revenue sharing, the Market Value shall be derived by calculating Owner's share (sale price of the area allotted to land owner x 0.85 plus consideration in any form and interest at the rate of ten per cent on refundable security deposit) and valuation of whole land at the rate of land mentioned in the ASR. The higher of these, should be considered as market value. Further, as per VG No.31 of ASR 2016-17 and 2017-18, in case of development agreement for constructed area sharing/revenue sharing, the Market Value of land where Transfer of Development Right (TDR) will be used, the rate of land is to be increased by 25 per cent for calculating Market Value.

Audit observed short levy of Stamp Duty amounting to (₹ 35.49 lakh + ₹ 23 lakh + ₹ 40.31 lakh = ₹ 98.80 lakh) in three cases<sup>57</sup> due to not working out the correct Market Value of property or consideration as per the applicable provisions of Annual Statement of Rates in the development agreements involving sharing of revenue as elaborated below:

**2.3.1 (a) Short levy of Stamp Duty due to undervaluation of property**

Scrutiny of records (Document No. 5031/2017) of the Office of the Joint Sub-Registrar (JSR), Class-II, Haveli-X, District Pune revealed (February 2019) that a Joint development agreement was executed (March 2017) between Developer and Owners for development of land total admeasuring 3750 sqm situated at Survey No. 166/3 (1200 sqm), 166/4 (1200 sqm) and 166/5 (1350 sqm) of *Mouza*: Hadapsar within the limits of Pune Municipal Corporation. The Department worked out the Market Value of ₹ 6.82 crore and consideration was shown as nil. The Department recovered Stamp Duty of ₹ 34.13 lakh on the Market Value of the property. The details of calculation based on which the valuation of property arrived at, was not available on records.

Audit observed (February 2019) that, as per paragraph '1-C' of the recitals, the said property is located in special commercial zone requiring minimum 40 per cent of its net permissible FSI to be used for commercial purpose.

<sup>57</sup> Case-1 Document No. 5031/2017 of JSR Haveli-X, Pune, Case-2 Document no.9888/2017 of JSR Haveli-XVIII, Pune and Case -3 Document No 293/2019 of JSR Haveli-II, Pune.

Further, as per paragraph “3-a and b” of the recital, in consideration of the developmental rights, the developer has agreed upon to give to the owners the gross sale proceeds of the 43 *per cent* of the saleable area in Residential-cum-Commercial constructions and 50 *per cent* of saleable area in shops to be constructed on the ground floor. The developer’s share is gross sale proceeds of the balance area i.e. 57 *per cent* of residential cum commercial constructions and 50 *per cent* of saleable area in shops to be constructed on the ground floor.

Accordingly, Audit worked out the Market Value (Developer’s share) by applying VG No. 31 of ASR 2016-17 at ₹ 9.84 crore and Consideration (Owner’s share) at ₹ 13.92 crore (this also included Interest on security deposit of ₹ 1.40 crore for four years) by applying VG No. 33 of ASR 2016-17. As the consideration is higher, the Stamp Duty was to be levied on consideration (owner’s share) i.e. ₹ 13.92 crore at the rate of five *per cent*. This amounted to ₹ 69.62 lakh. However, the Department levied Stamp Duty of ₹ 34.13 lakh only. This resulted in short levy of Stamp Duty to the extent of ₹ 35.49 lakh (**Appendix-2.3.1**).

On being intimated (November 2021 and September 2023), the Office of the Inspector General of Registration and Controller of Stamps (IGR), Pune accepted (January 2022) the short levy of Stamp Duty to the tune of ₹ 35.49 lakh and stated that Collector of Stamps, Pune city has been directed to recover the amount. However, IGR office has later intimated (September 2023) that as JDR Pune has not accepted the observation, the same has been sent to Joint Director of Town Planning, Pune, for verifying technical aspect and valuation. The opinion of Joint Director of Town Planning, Pune is still not received. The same will be intimated to audit as soon as it is received.

However, action taken by IGR in this regard or recovery made has not been communicated so far (September 2024).

The matter was brought to the notice of the Government (October 2022, August 2023 and October 2023), their reply is awaited (September 2024).

**2.3.1 (b) Short levy of Stamp Duty due to incorrect determination of consideration**

Scrutiny of records (Document No. 9888/2017) of the Office of Joint Sub Registrar, Haveli-XVIII, Pune revealed (October 2018) that a Joint Venture Agreement was executed (June 2017) between Owners and Developer for development of land admeasuring 5550 sqm (5150+200+200) situated at *Gat* No. 752 and 1651 of *Mouza*: Chikhali within Pimpri Chinchwad Municipal Corporation limits. The Department worked out consideration at ₹ 7.64 crore and the Market Value of the properties was determined at ₹ 7.97 crore. The Department recovered Stamp Duty of ₹ 39.84 lakh on market value. The details based on which the Market Value was arrived at by the Department was not available on records.

As per clause 9 of the Joint Venture Agreement, 34,000 sqft. i.e. 3158.67 sqm. would be the share of owners in newly built flat scheme and the responsibility rests with the developer to sell the Owners share to third party. Hence, this agreement is of revenue sharing instead of sharing of construction area.

Audit worked out (October 2018) the Developer's share (Market Value of the whole land) at ₹ 6.31 crore and Owner's share (Consideration) at ₹ 12.57 crore applying VG No. 33 of ASR. Thus, the Owner's share being more should have been treated as Market Value and Stamp Duty at the rate of five *per cent* under Article 25 of the MS Act amounting to ₹ 62.83 lakh was leviable as against ₹ 39.84 lakh recovered by Department. This resulted in short levy of Stamp Duty of ₹ 23 lakh (**Appendix-2.3.2**).

On this being pointed out (October 2018), the Joint District Registrar and Collector of Stamps, Pune City accepted (December 2021) the short levy of Stamp Duty for ₹ 23 lakh. The matter was intimated (December 2021) to the Office of the Inspector General of Registration and Controller of Stamps, Pune. The Inspector General of Registration and Controller of Stamps, Pune accepted (February 2022) the audit observation. However, IGR office has later intimated (September 2023) that as JDR Pune has not accepted the observation, the same has been sent to Joint Director of Town Planning, Pune, for verifying technical aspect and valuation. The opinion of Joint Director of Town Planning, Pune is still not received. The same will be intimated to audit as soon as it is received.

However, action taken by IGR in this regard or recovery made has not been communicated so far (September 2024).

The matter was brought to the notice of the Government (October 2022, August 2023 and October 2023), their reply is awaited (September 2024).

### **2.3.1(c) Short levy of Stamp Duty due to incorrect calculation of owner's share**

Scrutiny of records (Document No. 293/2019) of Joint Sub Registrar, Haveli II, Pune revealed (January 2020) that, a joint venture development agreement was executed (January 2019) between owners and developers for development of land admeasuring 3365.69 sqm out of Survey No. 5, *Hissa* No. 7 and 1687.92 sqm out of Survey No. 5, *Hissa* No. 8 (Total land admeasuring 5053.61 sqm) situated at Village- Dighi, *Taluka*- Haveli, within the limits of Pimpri Chinchwad Municipal Corporation (PCMC). Earlier, this joint venture development agreement was adjudicated vide Case No. 245/18/8219/18 by Joint District Registrar (CI-1) and Collector of Stamps, Pune City. The department had worked out the Market Value of the property as ₹ 9.67 crore and recovered Stamp Duty amounting to ₹ 48.35 lakh on market value. The details based on which the Market Value was arrived at by the Department was not available on records.

Audit observed (January 2020) that the parties have determined to share the 'gross sale proceeds' received from the sale of the flats/ units/other structures and from all saleable areas including covered parking, terrace and any other areas and additional amount of ₹ 1,00,000 per unit in the ratio 42:58 i.e. 42 *per cent* to Owner and 58 *per cent* to Developer. Further, it was observed that the Department worked out the Market Value of the property by considering 1 (one) FSI i.e. 5053.61 sqm of the total land. However, as per sanctioned building plan approved by Joint City Engineer, Building Permission Department, PCMC, Pimpri, Pune vide Sanction No. B.P./Dighi/10/2021 dated 12/03/2021, the total Built Up area of 9724.31 sqm comprising

167 tenements has been sanctioned. Accordingly, the value of owner's share comes to ₹ 17.73 crore, on which Stamp Duty of ₹ 88.66 lakh at the rate of five *per cent* was leviable. However, the Department recovered Stamp Duty of ₹ 48.35 lakh only. This resulted in short levy of Stamp Duty of ₹ 40.31 lakh as detailed in **Appendix 2.3.3**.

After being pointed out by the audit, the Joint District Registrar, Pune City (December 2021) stated that the case was referred to Inspector General of Registration and Controller of stamps, Pune under Section 53A<sup>58</sup>. The matter was intimated to the Office of the Inspector General of Registration and Controller of Stamps, Pune (August 2022, November 2022 and September 2023). In reply, Inspector General of Registration and Controller of stamps, Pune stated (April 2023 and September 2023) that the case has been received under Section 53 A of the Act and appropriate action would be taken after final decision in the matter.

The matter was brought to the notice of the Government (February 2023 and October 2023), their reply is awaited (September 2024).

**2.3.2 Short Levy of Stamp Duty due to under valuation of property in Supplementary agreement - Sharing of fungible Floor Space Index (FSI)<sup>59</sup>**

Article 5 (g-a) of Schedule-1 of MS Act, provides that, in case of instrument relating to giving authority or power to a promoter or a developer, by whatever name called, for construction on, development of or, sale or transfer (in any manner whatsoever) of, any immovable property, Stamp Duty as is leviable on a conveyance under clause (b) or (c) as the case may be, of Article 25 of Schedule-1 of the MS Act on the Market Value of the property or consideration, whichever is higher, which is the subject matter of transfer is leviable. Further, as per the definition under Section 2 (na), of the MS Act, "market value" in relation to any property, which is the subject matter of an instrument means the price which such property would have fetched, if sold in open market on the date of execution of such instrument, or the consideration stated in the instrument, whichever is higher.

A development agreement was executed (November 2005) between society and developer duly registered at JSR Kurla 3 office under serial No. BDR-13/08 of 2005. The developer had constructed five multi storied buildings. The Development Control Regulations, 1991 was amended on 6 January 2012 as a result of which it was possible to avail additional FSI known as Compensatory Fungible FSI. Accordingly, both the parties got 3765.76 sqm of Fungible FSI. Hence, they executed this supplementary agreement (in addition to said redevelopment agreement of 2005) to record the additional commercial undertakings and additional terms and conditions. Both the parties agreed that out of 3765.76 sqm (Fungible FSI), the society would consume 1137.5 sqm (568.75 + 568.75) and remaining 2628.26 Fungible FSI would be utilized by Developer.

<sup>58</sup> Section 53A of the MS Act, empowers the CCRA to review the order of COS/JDR within a period of six years from the date of order of JDR.

<sup>59</sup> "Fungible FSI" means any built-up area permitted over and above the admissible FSI by a special permission of the Commissioner.

Scrutiny of records (Document No. 2543/2015) of the Office of the Joint Sub Registrar, Kurla –V, Mumbai Suburban District revealed (June 2019) that a Supplementary Agreement was executed on 02/07/2015 between the Society and the Developer to record the commercial understanding and the additional terms and conditions which included commercial understanding of fungible FSI admeasuring 3765.76 sqm of CTS No. 8 (part) situated at village-Borla, Taluka-Kurla, Mumbai Suburban district. Earlier, this instrument was adjudicated at Collector of Stamps, Kurla office vide Adj case No. Adj/1100901/953/15/K (July 2015). The consideration is given in the instrument as ₹ 3.11 crore, whereas the Department worked out Market Value (Developer share) of ₹ 6.26 crore and levied Stamp Duty of ₹ 31.33 lakh. The details of calculation based on which the valuation of property arrived at, was not available on records.

Audit observed (June 2019) that as per clarification letter dated 04/06/2015 of an Architect regarding settlement of fungible area (page 26 to 30 of agreement), developer has to pay premium of ₹ 9.96 crore. Accordingly, by deducting the premium paid by developer, audit determined the Market Value (Developer's share) at ₹ 9.49 crore (₹ 19.45 crore – ₹ 9.96 crore) on which Stamp Duty of ₹ 47.46 lakh was leviable. However, department levied Stamp Duty of ₹ 31.33 lakh. This resulted in short levy of Stamp Duty of ₹ 16.13 lakh (**Appendix-2.3.4**).

On being pointed out (December 2021), the office of the Inspector General of Registration and Controller of Stamps, Pune, stated (December 2021 and September 2023) that the matter is under consideration under Section 53A of the MS Act, and appropriate action would be taken after final decision in the matter.

The matter was brought to the notice of the Government (October 2022, and October 2023), their reply is awaited (September 2024).

### **2.3.3 Short levy of Stamp Duty due to misclassification on zone of property in Conveyance deed**

As per Article 25 of Schedule-I of MS Act, in conveyance deed, Stamp Duty is leviable under clause (a), (b) or (c) as the case may be, on the Market Value of the property. Further, as per the definition under Section 2 (na) of MS Act "market value" in relation to any property which is the subject matter of an instrument, means the price which such property would have fetched, if sold in open market on the date of execution of such instrument, or the consideration stated in the instrument whichever is higher.

As per VG No. 23 (a) of ASR 2018-19, where any agriculture land in rural area is being sold and if such land is converted into non-agricultural purpose, the said land/the plot comprising in such land should be valued on VG Guideline No.16(c) *vis-a-vis* the bare land.

As per VG No.16 (c) where only one or more plots under the sanctioned layout, excluding the roads, open spaces, amenity area etc. are sold, the direct NA rate should be taken into consideration for the valuation of such areas/ consolidated areas.

Scrutiny of records (Document No. 1937/2019) of the Office of Joint Sub Registrar, Haveli-XI District-Pune (July 2019) that a Sale deed was executed (December 2018) between Vendor and Purchaser for land admeasuring 17,700 sqm, of Survey No. 220 situated at Village- Fursungi, Taluka-Haveli District-Pune within the limits of Pune Municipal Corporation for a consideration of ₹ 3.60 crore. The department assessed the Market Value of the property at ₹ 10.44 crore and levied Stamp Duty of ₹ 62.70 lakh at the rate of six *per cent*.

Audit observed (July 2019) that the NA permission for the aforesaid land was accorded by Collector, Pune vide order dated 04/06/2008. The Revised Building Plan was sanctioned by the Collector, Pune vide order dated 26/09/2014 and Revised Building Plan was granted for 17700 sqm excluding area under roads, *Nalah* and common well, out of total 19800 sqm area of the land as rights of property (7/12) *i.e.* records of right of property.

Though the survey No.220 was converted for non-agriculture purpose in June 2008, it is still classified in the ASR under zone No.11.4 as Land having probable NA potential with Land rate of ₹ 7780 instead of NA rate of ₹ 11460, which was to be applied while calculating Market Value under NA Zone No. 9.2. As per VG No. 23 (A) of ASR 2018-19 read with VG No.16(c) NA, rates under NA Zone No. 9.2, was required to be applied.

However, department while calculating the Market Value levied land rate *i.e.* at ₹ 5900 even lesser than the rate for NA potential land *i.e.* at ₹ 7780.

Audit worked out the Market Value at ₹ 20.28 crore by applying the rate ₹ 11460 under NA Zone No. 9.2 and Stamp Duty leviable at ₹ 1.22 crore as against the Department levied Stamp Duty of ₹ 62.70 lakh. This resulted in short levy of Stamp Duty amounting to ₹ 59.00 lakh (**Appendix-2.3.5**).

On being intimated (February 2022), the Office of the Inspector General of Registration and Controller of Stamps, Pune accepted the audit observation (July 2022), and stated that, Joint District Registrar, Pune City under Art. 32 A, accepted the audit observation and initiated action for recovery of the objected amount of ₹ 59.00 lakh. Further IGR office has also directed the Joint District Registrar, Pune City for recovery of the objected amount.

IGR office has stated (September 2023) that JDR Pune city has partly accepted the observation for ₹ 31.29 lakh and also recovered the amount vide challan dated January 2023.

Further IGR office in September 2024 stated that Deputy Inspector General of Registration and Controller of Stamps while disposing of appeal classified the land under Zone 9.4 of ASR 2018-19 instead of zone 9.2 stating that land is outside the *Gaothan*.

The reply of the IGR is not acceptable as the said Survey No. is also classified in Zone 10.2 which is within *Gaothan* for unauthorized NA land. This land being NA land should be classified under Zone 9.2 which is for remaining land within *Gaothan* area other than land in front of highway.

The matter was brought to the notice of the Government October 2022, and October 2023), their reply is awaited (September 2024).

**PUBLIC WORKS DEPARTMENT**

**2.4 Undue benefit to Concessionaire due to breach of road maintenance obligations**

The Public Works Department, Government of Maharashtra through the Executive Engineer (EE), Public Works Division No. 1, Chandrapur communicated (October 2010) acceptance of bid for the tender of project highway<sup>60</sup> on Design, Build, Finance, Operate and Transfer (DBFOT) basis with road maintenance to a Concessionaire. The Department executed (February 2011) a Concession Agreement (CA) with the Concessionaire. All works forming part of project highway were completed and it was declared fit (June 2012) for commercial operations. The toll collection commenced (July 2012) with agreed toll rights.

Clause 17.1.1 of the CA provided that the Concessionaire, during the period of operation, shall maintain the project highway. The obligation of the Concessionaire included carrying out regular and preventive maintenance, undertaking major maintenance such as resurfacing of pavements and repairs to structures. Clause 17.8.1 of the CA provided that if the Concessionaire failed to repair or rectify any defect or deficiency set forth in the maintenance requirement, within the period specified therein, it shall be deemed to be in breach of agreement. The Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of 0.5 *per cent* of average daily fee<sup>61</sup> and 0.1 *per cent* of the cost of such repair or rectification as estimated by the Independent Engineer (IE). Clause 17.9.1 of the CA provided that, in the event, the Concessionaire does not maintain and/or repair the Project Highway and fails to commence remedial works within 15 days of receipt of the notice in this behalf from the Authority, the Authority shall undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20 *per cent* of such cost shall be paid by the Concessionaire to the Authority as damages. Further, Clause 17.9.2 provided that the authority shall have the right to recover the costs and Damages specified in Clause 17.9.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses.

Scrutiny of records (August 2019 and December 2021) revealed that EE observed that road surface was deteriorating, and the Concessionaire was not taking efforts to maintain the project highway. EE instructed (January 2018) the Concessionaire to carry out the assessment of the road, and accordingly, carry out repair or rectification of the road and take up necessary bituminous overlay work. In response, Concessionaire stated (January 2018) that they had conducted a Roughness Index Test (RIT) in October 2017 and found that the road roughness was well within limits. EE issued (March 2018) letter to the Concessionaire to repair the road. Meanwhile, PWD also evaluated (August 2018) the road condition through Maharashtra Engineering Research Institute, Nashik and the results showed the roughness value of the roads

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<sup>60</sup> Work of four lane of Jam-Warora-Chandrapur-Rajura-Asifabad Road, State Highway No.-264 in kilometres 0/00 to 40/00 in Chandrapur district.

<sup>61</sup> Average daily collection of toll.

exceeded the limits specified in the CA. Schedule K of the CA provides time limit of 180 days to repair/rectify the road roughness. As such, the Concessionaire should have repaired the road within prescribed time limit of 180 days *i.e.* September 2018. However, the Concessionaire did not repair/rectify the road even after notices were issued on 12 occasions between March 2018 and September 2018. EE then served (October 2018) notice to the concessionaire stating that it failed to fulfill the operation & maintenance obligations as per clause 17, which is default on behalf of concessionaire and liable for recovery of damages in terms of Clause 17.8.1.

The EE then informed (August 2019) the Concessionaire that the repairs to the road surface would be taken up at their 'Risk and Cost' and prepared an estimate for ₹ 14.32 crore for rectification of the road. Concessionaire informed (September 2019) the Secretary, PWD about its decision to commence the road overlay treatment after 10 October 2019 and thereafter completed (July 2021) the repair works of road.

Thus, it is evident that there was lack on the part of the department to take action as per clause 17.9.1 of the CA for remedial measures at the risk and cost of the concessionaire immediately after lapse of 15 days from the receipt of notice (October 2018), and to recover its cost from the concessionaire and no correspondence was made for nine months after issuing notice in October 2018. This led to inconvenience to commuters and favoring the concessionaire despite having the right to recover the costs and Damages directly from the Escrow Account.

Moreover, PWD did not recover damages amounting to ₹ 14.13 crore from concessionaire in terms of clause 17.8.1 of the CA [₹ 1.43 lakh per day *i.e.* higher of 0.5 *per cent* of the average daily collection of toll (₹ 0.76 lakh) and 0.1 *per cent* of the estimated repairs cost (₹ 1.43 lakh<sup>62</sup>) for 988<sup>63</sup> days].

The Government stated (May 2023) that point raised in this instance have merit. The Government further stated (June 2024) that there is no denying the fact that the public faced inconvenience for the period pointed out by audit and penalty amount as finalised after deliberation has to be recovered.

In so far as the delay on the part of the EE to undertake such remedial measures at the risk and cost of the Concessionaire as per clause 17.9.1, the matter has been referred to the Government (August 2024), reply of which is awaited.

## **MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION**

### **2.5 Irregular revenue waiver of ₹ 71.07 crore in toll collection contract for Mumbai Pune Highway**

Mumbai Pune Expressway Limited (MPEL), a Government Company owned and controlled by M/s Maharashtra State Road Development Corporation Ltd. (MSRDC), entered (28 February 2020) into a sub-concession agreement

<sup>62</sup> The estimate (₹ 14.32 crore) for repairs or rectification of road sanctioned by Superintendent Engineer, PWD, Circle Chandrapur was considered as the tenure of Independent Engineer (IE) concluded after the completion of construction of the project.

<sup>63</sup> From the date of notice (22/10/2018) by EE, Public Works Division No.1 Chandrapur till the date of completion of repair work by the Concessionaire (06/07/2021).

(Agreement) for the period from 1 March 2020 to 30 April 2030 with the concessionaire M/s IRB MP Expressway Private Limited (IRB), for ‘Tolling, Operation, Maintenance and Transfer’ (TOT)<sup>64</sup> of Mumbai-Pune highway<sup>65</sup> with effect from 01 March 2020<sup>66</sup> for a sub-concession fee of ₹ 8262 crore. The upfront amount payable by IRB to the MPEL was ₹ 6500 crore (due on 01 March 2020 with interest 9.5 *per cent* per annum, if delayed) while the balance ₹ 1762 crore was payable in next three<sup>67</sup> years. The toll collection commenced from 01 March 2020 and the contract is in progress.

Article 25.1 of the Agreement prescribed that IRB shall effect and maintain suitable insurance cover at its own cost to cover third party claims and *force majeure* events<sup>68</sup> including non-political events. As per Article 27.2 non-political event includes act of god, epidemic, earthquake, flood, landslide, cyclone, strikes/boycotts, any court orders, geological conditions and similar circumstances of nature. Further, Article 27.7.2 of the Agreement provides that any losses arising due to occurrence of such non-political events, the parties shall bear their respective *force majeure* cost and neither party shall be required to pay to the other party any cost thereof. IRB, however, did not insure its business for *force majeure* events.

Government implemented lockdown from 23 March 2020 in response to contain the epidemic of COVID-19, which disrupted the toll collection and this constituted a non-political *force majeure* event in terms of Article 27.2. IRB requested (24 March 2020) MPEL to bear the losses of toll revenue and grant a waiver in the sub-concession fee. MPEL rejected (09 April 2020) the claims citing the relevant clauses pertaining to non-political *force majeure* events.

Thereafter, upon continued requests from IRB to consider their case for suitable compensation, the Board of Directors of MPEL (Board) in its meeting (20 April 2020) agreed to provide compensation based on computation of revenue loss for 25 days in toll collection. The amount of compensation was worked out to ₹ 71.07 crore, as prescribed by the Board, was effected by reduction (18 June 2020) in first instalment of concession fee received. The decision of the MPEL for payment of compensation of ₹ 71.07 crore to IRB for a non-political *force majeure* event was not in compliance with Article 27.2 and 25.1 of the Agreement. In the instant case, the Concessionaire had to maintain such insurance, as per Article 25.1 of the Agreement, to cover the *force majeure* events including non-political event. Further, Article 27.7.2 (a) of the Agreement provided that upon occurrence of a non-political event, the parties shall bear their respective *force majeure* cost and neither party shall pay to the other party any cost thereof. As such, IRB should have borne the

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<sup>64</sup> In TOT model, the right of collection and appropriation of Fees for selected operational Highway projects constructed through public funding shall be assigned for a pre-determined concession period to concessionaires against upfront payment of a lump-sum amount.

<sup>65</sup> Yeshwantrao Chavan Expressway and National highway NH-48 (old NH-4).

<sup>66</sup> From 01 March 2020 to 30 April 2030.

<sup>67</sup> ₹ 850 crore was payable on 01 March 2021, ₹ 850 crore was payable on 01 March 2022 and ₹ 62 crore was payable on 01 March 2023.

<sup>68</sup> Clause 27.1 of the Agreement, *force majeure* event shall mean occurrence in India of any or all of non-political event, indirect political event and political event as defined in the Agreement.

*force majeure* cost. Thus, payment of *force majeure* cost of ₹ 71.07 crore by MPEL to IRB was in contravention to provisions of the Agreement and undue favour to IRB to the said extent.

When the matter was brought to the notice of the Government (September 2022), the IRB disputed the demand and invoked dispute resolution under Article 37 of the Agreement. The Independent Engineer (IE) conducted (24 August 2023) mediation in terms of Article 37 of the Agreement and advised, through mediation report (13 October 2023) to IRB to remit the amount of ₹ 71.06 crore to MPEL. The Government stated (December 2023) that recovery of ₹ 71.07 crore has been initiated. The Government further stated (August 2024) that MSRDC has been directed to recover ₹ 71.06 crore from the contractor within three months.



**(DATTAPRASAD SHIRSAT)**  
**Accountant General (Audit-II),**  
**Maharashtra**

**Nagpur**  
**The 27 March 2025**

**Countersigned**



**(K. SANJAY MURTHY)**  
**Comptroller and Auditor General of India**

**New Delhi**  
**The 28 March 2025**

