

CHAPTER – II

AUDIT OF TRANSACTIONS: STATE GOVERNMENT DEPARTMENTS

CHAPTER II

Audit of Transactions: Government Departments

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.

PUBLIC WORKS DEPARTMENT

2.1 Buildings and Roads Deposit Works undertaken by PWD

Inadequate release of funds by the user department led to stalling of the works and creation of liability for the Public Works Department (PWD). Huge amount of scarce government funds remained unutilized with the PW divisions even after completion of deposit works. The user departments could not utilize the constructed buildings/infrastructure for the intended purpose, for want of electrification, water supply and non-handing over of the completed buildings by the PWD. Instances of inadequate survey and improper estimation resulting in avoidable extra items and excess quantities were observed. Deficiencies in adhering to specified quality control norms were noticed. Instances of diversion of funds, generation of multiple IDs for same work and non-display of status of work in the DCMS were also noticed. Lack of monitoring and control on deposit works led to scarce financial resources of GoM remaining unutilized or blocked on account of incomplete works.

2.1.1 Introduction:

The Public Works Department (PWD) Government of Maharashtra (GoM) is responsible for construction and maintenance of roads, bridges and Government buildings in the state. It also executes the construction works entrusted by other Government and semi-Government departments or organizations as 'Contribution and Deposit works' (Deposit Works). The works to be executed as deposit works are administratively approved by the Government and semi-Government departments or organizations termed as user department/agency, which release fund for this purpose to the divisions of the PWD. The technical sanction (TS) for the works is given by the PWD before tendering and executing these works. The accounting of the funds so received from the user agencies is being carried out since December 2017 through the "Deposit Contribution Monitoring System (DCMS)" developed by the National Informatics Centre, Pune.

The PWD in Maharashtra is headed by an Additional Chief Secretary and assisted by two Secretaries of Roads and Works wings. The execution of various deposit works of roads and buildings is carried out under the technical control of seven¹ regional Chief Engineers (CEs), assisted by 31 Superintending Engineers (SEs) at circle level, who in turn are assisted by 157 Executive Engineers (EEs) at division level. The divisions are responsible for the construction and maintenance of deposit works.

¹ Amravati, Aurangabad, Konkan, Mumbai, Nagpur, Nashik and Pune.

The Compliance Audit was conducted to derive an assurance that:

- (i) Funds received from the user departments/agency were in consonance with the requirement assessed by the divisions for execution of works and its utilization was in accordance with prescribed technical and financial norms/standards and as per requirement of user department.
- (ii) Tendering and contract management was fair, transparent, competitive and consistent with sectors' best practices, and contract variations and payments were managed efficiently as per provisions of agreements and financial rules; and
- (iii) An adequate and effective monitoring system was in place to ensure timely execution of works in accordance with the quality control norms.

Details of deposit works of roads and buildings in respect of 105 Public Works divisions for the period 2018-2021 were available on DCMS. Audit selected 26 Divisions (25 per cent) and seven CEs and 15 SEs as detailed in **Appendix 2.1.1** for detailed scrutiny. In view of the Covid-19 situation and restrictions thereon, nine out of 17 divisions (50 per cent) from Nagpur region, two divisions from Mumbai region (being smallest region) and three divisions each from the remaining five regions were sampled using IDEA software based on the total expenditure incurred during the period 2018-2021. In the 26 divisions, 385 works out of total 7184 deposit works were selected for audit² scrutiny.

The audit findings were communicated (November 2021) to the Government and discussed with Secretary (works), PWD, GoM during the exit conference (December 2021). The replies of the department have been suitably incorporated in the report.

Audit findings

2.1.2 Financial Management

PWD developed (December 2017) a "Deposit contribution Monitoring System (DCMS)" through NIC, Pune for monitoring the expenditure on deposit works. All transactions pertaining to deposits shall be carried out through the DCMS from (4.12.2017). The details of the funds received and expenditure incurred on deposit works during the period 2018-2021 through DCMS for the entire state and 26 sampled divisions is given in **Table 2.1.1**.

Table 2.1.1: Funds received and expenditure incurred on deposit works

Year	Funds received		Expenditure incurred	
	State	Sampled divisions	State	Sampled divisions
2018-19	3402.13	742.34	2858.69	481.38
2019-20	3014.02	911.43	3649.29	703.69
2020-21	2319.97	605.80	2929.83	535.02
Total	8736.12	2259.57	9437.81	1720.09

Source: Information furnished by department

² The quality control Circles and Electrical divisions for the sampled works were also audited on need basis.

2.1.2.1 Short release of funds by user departments

Para 301 and 303 of the MPW manual prescribes that the outlay on the deposit works must be limited to the amount of deposit received and the deposit amount must also be realized before creating any liability on account of such works. It is also stipulated that the necessary funds for the execution of the work must be realized and paid into the Government treasury.

Audit observed in 16³ divisions that 13 user departments, against the requirement of ₹ 331.16 crore, released ₹ 158.12 crore only for execution of 1240 deposit works resulting in short release of ₹ 173.04 crore as shown in the **Appendix 2.1.2**. This short-release of funds by the user departments had delayed the progress of the works as discussed in succeeding paragraphs.

State Government while accepting the facts stated (December 2021) that efforts were being made to receive funds from the user department.

Recommendation 1: The Government may ensure that the user departments deposit the funds in time to PWD so that works are executed without delay.

2.1.2.2 Non-refund of unspent balance in respect of completed deposit works

The GoM, guidelines (April 2017) on execution of deposit works provided that if total expenditure incurred on completion of the work is less than the deposit amount received, unspent balance need to be refunded to the user department.

Audit observed that in 11⁴ divisions, an amount of ₹ 22 crore pertaining to 151 deposit works was lying with these divisions for a period ranging from two months to 58 months from completion of these works. This resulted in blocking of Government money, which could have been utilized for execution of other works.

State Government stated (December 2021) that the deposit was lying for onward liabilities of work in progress and assured to verify and refund unspent balance, if any, after completion of work. Reply is not acceptable as the unspent balance should have been refunded as and when the works were completed.

2.1.2.3 Blocking of funds due to non-execution of works

Audit observed that 14⁵ PW divisions delayed execution of 270 deposit works, for periods ranging from one month to 67 months from the date of deposit of funds of ₹ 43.19 crore by the user departments as discussed in subsequent

³ PWD Amravati, Arvi, Aurangabad, Bhandara, Buldhana, Hingoli, Kolhapur, Nashik, Palghar, Pune, Wardha, Integrated Unit Medical (PW) Nagpur, PWD No.1 Chandrapur, PWD No.2 Gondia, PWD No.2 Nagpur and PWD No.2 Yavatmal.

⁴ PWD Amravati, Arvi, Aurangabad, Bhandara, Hingoli, Kolhapur, Sangamner, Integrated (M) Unit Nagpur, PWD No.1 Chandrapur, PWD No.2 Gondia, and PWD Presidency Mumbai.

⁵ PWD Amravati, Arvi, Aurangabad, Bhandara, Bhokar, Kolhapur, Malegaon, Sangamner, PWD No.1 Chandrapur, PWD No.2 Gondia, PWD No.2 Nagpur, PWD Presidency Mumbai, PWD (South) Pune and PWD No.2 Yavatmal.

paragraph 2.1.3.2 (i). This resulted in blocking up the huge amount of Government fund.

Government assured (December 2021) to review the works and instructed the CEs to take necessary action or otherwise refund the balance amount. Further progress was awaited (March 2022).

2.1.2.4 Irregular transfer of budget funds to the deposit head to avoid lapse of grant

The GoM Budget Manual prohibits retention of any excess amount by the Controlling Officers to meet the excess expenditure on any particular head or to keep the unspent grant in anticipation of any new work to be taken up in subsequent year out of such funds and any unspent amount within the financial year should be immediately returned to the Administrative Department of the Government. Further, the GoM, Finance department instructed (01.04.2019) to return unspent grant to government treasury else the amount lapses to the Government.

Audit observed that four⁶ PW divisions transferred ₹ 22.50 crore of the budgeted works to the Electrical divisions in the month of March of the financial year (March 2016, March 2018, March 2019 & March 2020). An amount of ₹ 14.24 crore was returned to these PW divisions after a period ranging from 80 days to 813 days by the Electrical divisions. The PW divisions credited this amount to the Deposit Contribution Monitoring System contravening the above manual provisions and Finance department's instructions. Thus, the budget funds were irregularly retained under deposit head to avoid lapse of grant instead of returning it to the Government account.

Further, in three budgeted⁷ works of two divisions, Arvi and Palghar, expenditure of ₹ 104.78 crore was booked under deposit head (MH 8443) to avoid lapse of grant during 2018-2021 as shown in **Table 2.1.2:**

Table 2.1.2: Details of budgeted works booked under deposit heads

(₹ in crore)					
Sr No.	Name of the Division	Name of the work and year	Major head	Amount	Expenditure till March 2021
1	Arvi	Basic public amenities of Newly established Nagar Panchayat at Karanja and Ashti, Year 2018-19	2217-9492	6.00	4.00
2	Palghar	Land acquisition for Railway Over Bridge (ROB), Year 2020-21	3054-0238	125.53	100.78
Total				131.53	104.78

Source: Information furnished by department

Thus, it can be seen that the budget grant was not only treated as deposit grant, but the works were executed as deposit works.

Further, out of ₹ six crore grant received by the Arvi division, there was a saving of ₹ two crore and the division refunded ₹ one crore to the Chief Officer, Nagar Parishad, Karanja, instead of remitting it into the Government

⁶ PWD Amravati, Aurangabad, Pune and PWD No.1 Chandrapur.

⁷ The estimates of expenditure embodied in the annual financial statement required to meet expenditure treated as charged upon the consolidated fund of state.

account before 31st March. Moreover, ₹ one crore was lying with the department.

Government accepted (December 2021) the facts and stated that care would be taken that no extra funds are transferred to avoid lapse of grant.

2.1.2.5 Irregular utilization of fund

Audit observed that PW division No.1 Chandrapur, received ₹ 13.76 crore between June 2010 and April 2011 from Karnataka EMTA Coal Mines Ltd. (KECML), Nagpur, a public sector company of Government of Karnataka, for construction of diversion road. However, this work was executed under 'Design-Build-Finance-Operate and Transfer' (DBFOT)⁸ arrangement through a concessionaire in 2014.

The division retained the deposit amount and instead of refunding it to KECML utilized it for another road work (improvement of Jam-Warora-Rajura-Asifabad Road km 86/100 to 88/00) part of which was proposed under Central Road Fund (CRF) works. This had resulted in irregular utilization of the deposit amount for carrying out the work not related to the purpose for which it was received.

Government stated (December 2021) that the matter was referred to the user department for the utilization of funds; however there was no response from them. Hence, the amount was utilized. The deposit amount was paid as part of Viability Gap Funding (VGF) to concessionaire thereby saving the share of the State government. Reply is not acceptable since the amount should have been refunded to the user department during the year 2014 when the road was constructed under DBFOT as prescribed under the guidelines or remitted to the Government account as lapsed deposit.

2.1.2.6 Diversion of funds

The PW manual, para 305, provides that at the written request of the user department the contribution on account of one work may, if there are savings, be utilized in meeting outlay on account of another work, the contributions for which may be in arrears.

Audit observed that in seven⁹ divisions, funds amounting to ₹ 5.07 crore allotted for 49 different works, were diverted from one work to another work within the same user department without prior consent and also across the user departments. This resulted in irregular diversion of funds without the consent of the user department.

Government stated (December 2021) that necessary permission from the user department would be obtained. Further progress was awaited (March 2022).

2.1.3 Preparation of estimates and execution of deposit works

The deposit works are executed by PWD under the provisions of MPW manual and GoM instructions issued from time to time.

⁸ By the PWD No.1 Chandrapur.

⁹ PWD Nashik, Malegaon, PWD No.1 Chandrapur, PWD No.2 Gondia, PW Presidency Mumbai, PWD No.2 Nagpur, and PW (South) Pune.

2.1.3.1 Preparation of estimates

The MPW manual provides that in case of works the estimate for which have been sanctioned by the competent authority, no addition or alteration, likely to cause an excess which will not fall within the powers of sanction of that authority, should be permitted without previous approval of a higher authority.

Audit observed that in respect of 15 works under eight¹⁰ out of 26 selected PW divisions quantity of work in excess of 125 *per cent* amounting to ₹ 15.76 crore was executed without prior approval of the competent authorities. This increase in quantities was due to change in the scope of original work such as footing of columns, raft foundation in lieu of RCC foundation, change in site location, demand from the user department *etc.*

Government stated (December 2021) that necessary instructions would be issued to the divisions to obtain prior approval of the competent authority and care would be taken in future.

2.1.3.2 Execution of works

i) Works affected due to land related issues

Para 251 of MPW manual provides that no work should be commenced on land which has not been duly handed over to the responsible civil officer. The land should be clear of all encumbrances before the orders to ‘commence the work’ are issued. Similarly, in respect of buildings to be constructed on Government land, the Sub-divisional officer in charge of the work should personally satisfy himself that the *line-out*¹¹ given is entirely within the Government land as per approved layout. Scrutiny of records revealed that works were taken up without having possession of clear land and as a result the works were either delayed or remained incomplete.

Audit observed that in eight¹² divisions 13 works were adversely affected due to encroachment. This resulted in delay in the completion of work, changes in the scope of work, incomplete works and stoppage of work.

Government stated (December 2021) that the user department did not make encroachment free land available. The reply of the Government is not acceptable, as PWD should not have commenced the work unless clear land was available in terms of provision *ibid.*

ii) Non-completion of works

As per Para 318 of the MPW Manual on completion of an original work on behalf of another department a completion certificate in standard form P.W 561 should be forwarded by the Executive Engineer to the Civil or military authority concerned, who should after signing it return it to the Executive Engineer. Government of Maharashtra PWD vide Resolution No. BDG-2017/CR-50/Bldg-2 dated 06.04.2017 has reiterated the procedure to be followed while executing deposit work. The MPWA Code and the MPW manual provides that outlay on deposit works need to be limited to the deposit

¹⁰ PWD Arvi, Bhandara, Bhokar, Integrated (M) Unit Mumbai, Integrated (M) Unit Nagpur, PWD No.1 Chandrapur, PWD No.2 Gadchiroli, and PWD No.2 Yavatmal.

¹¹ Demarcation.

¹² PWD Buldhana, Kolhapur, Malegaon, Nashik, Integrated (M) Unit Nagpur, PWD No. 2 Nagpur, PWD No.1 Thane and PWD No.2 Yavatmal.

amounts received and the contribution on account of savings on one work can be utilized in meeting outlay on account of another work contributions for which may be in arrears with the consent of user department.

➤ In two divisions, two buildings *i.e.* BC boys hostel Pulgaon, Wardha and BC boys hostel at Chamorshi, Gadchiroli constructed at a cost of ₹ 5.51 crore and ₹ 6.84 crore respectively could not be put to use for 17 and 25 months respectively as the buildings could not be electrified due to paucity of funds at Chamorshi and non shifting of high tension wires at Pulgaon. Lack of coordination between PWD and Electrical Divisions resulted in the buildings remaining unutilized, rendering expenditure of ₹ 12.35 crore as idle.

Government stated (December 2021) that the electrical works would be completed by March 2022.

➤ Audit observed in six works of five divisions, that the works started without receipt of deposit required for completion of the works as shown in **Appendix 2.1.3**.

Government stated (December 2021) that efforts were being made to obtain funds from the user department for completion of the work. The reply is not acceptable, as the work should have been started only after receipt of deposit from the user department.

➤ In Malegaon PW division a deposit work of construction of taluka sports complex was awarded (January 2015) to a contractor at a cost of ₹ 0.92 crore with completion period of 12 months from the date of work order. The contractor had executed work costing ₹ 0.96 crore till November 2016. The physically completed (November 2016) civil work was handed over (January 2021) to the user department. Audit observed that no funds were handed over to the electrical division for electrification work. Although the building was completed in November 2016 the work of electrification was still pending, rendering the entire sports complex non-functional and the entire expenditure of ₹ 0.96 crore unfruitful.

Government stated (December 2021) that the electrical work will be executed as and when the fund for electrification was available. Further progress was awaited (March 2022).

Recommendation 2: Government may ensure timely completion and handing over of the completed works to user departments.

iii) Non-compliance of contractual conditions

➤ **Non-recovery of liquidated damage and fine:** The B-2¹³ and EPC¹⁴ contracts provide for deduction of liquidated damages (LD) from payments due to the contractor in case of delay in completion of work or non-achievement of milestone (as per stipulated time-period) at prescribed rate limited to 10 *per cent* of contract value. Further B-2 contract provides for deduction of fine/penalty from payments due to the contractor for delay in completion of works or not maintaining the desired pace while executing the

¹³ Forms used for schedule contracts where the contractor undertakes to execute works at fixed rates.

¹⁴ Engineering, Procurement and Construction.

work. Audit observed in nine works of six¹⁵ divisions that though the contractors did not maintain the pace of work as per milestones specified in the contract. EEs failed to recover liquidated damages amounting to ₹ 3.09 crore. It was further observed in eight works of four¹⁶ divisions, that the contractors did not maintain the desired pace of work as per stipulated time-period given in the contract and did not submit the revised work programme to the division. However, the EEs failed to deduct the prescribed fine/penalty amounting to ₹ 0.56 crore.

Government stated (December 2021) that detailed reply would be submitted along with supporting documents of valid extension. Further progress was awaited (March 2022).

➤ **Non-recovery of insurance charges:** The Director of Insurance, Maharashtra State instructed (March 2015) that the contractor shall obtain an insurance policy prior to start of work, else one *per cent* of the work value would be deducted from first RA bill of contractor and the same would be remitted into Government account within 30 days from the date of deduction. Further instructions (July 2015) stipulated that the contractor shall obtain insurance policy for extended period of work, else deduction at the rate prescribed for extended period (in month) on the value of work would be deducted from subsequent RA bill of contractor and remitted into Insurance Fund of the Finance Department, GoM.

Audit observed that in nine works out of 385 test checked works executed between December 2014 and September 2020 in six¹⁷ divisions, the contractor had neither submitted the insurance policy nor the division had deducted the prescribed amount of the work value from RA bills of the contractor leading to works remaining un-insured and providing undue benefit to the contractors amounting to ₹ 0.76 crore. Further, in nine works of four¹⁸ divisions the contractors had neither furnished the insurance policy for the extended period nor did the divisions recover the prescribed proportionate insurance cost with reference to the cost of work amounting to ₹ 0.45 crore in these works.

Government stated (December 2021) that the necessary action was being taken to obtain the insurance policy from the contractor.

➤ **Non-recovery of mobilization advance:** In terms of the Engineering, Procurement, Construction (EPC) contract, interest rate of 14 *per cent* per annum to be compounded quarterly would be recovered along with the recovery of advance payment towards mobilization expenses. Audit observed that in five deposit works of Palghar division, mobilization advance of ₹ 1.32 crore was paid to the contractors for machinery, equipment, staging, centering (₹ 0.63 crore) and for establishment of construction of site office, site laboratory, computer, furniture *etc.* (₹ 0.69 crore). However, the mobilization advance along with interest was not deducted from subsequent bills.

¹⁵ PWD Amravati, Malegaon, Sangamner, Wardha, PWD No.1 Chandrapur and Integrated (M) Unit Nagpur.

¹⁶ PWD Amravati, Arvi, Bhandara, PWD No.1 Chandrapur.

¹⁷ PWD Amravati, Aurangabad, Bhandara, Malegaon, Sangamner and PWD No.3 Nagpur.

¹⁸ PWD Arvi, Aurangabad, Palghar and PWD No.1 Chandrapur.

Government stated (December 2021) that the necessary action was being taken to recover the mobilisation advance. Further progress was awaited (March 2022).

➤ **Non-recovery of retention money from contractor's bill:** The contract conditions in respect of B-2 and EPC contracts provide for retention of six *per cent* amount from each bill subject to a maximum of five *per cent* of final contract price till the final completion of work to ensure the fulfilment of the contractual obligation by the contractor. Audit observed that in 13 works in four¹⁹ divisions, the retention money was not recovered from running account (RA) bills of the contractors resulting in undue financial benefit of ₹ 4.29 crore to contractors.

Government stated (December 2021) that action was being taken to recover the retention money from next RA bill of the contractors. Further progress was awaited (March 2022).

➤ **Non-verification of bitumen invoices from refinery:** The GoM, provided (April 2017 and March 2019) for verification of invoices towards purchase of bitumen from refineries and used in the work by the contractors executing road works. The original bitumen invoices were required to be attached along with the Running Account (RA) Bills. This verification needs to be done by the PW divisions on submission of RA bills. Audit observed that in nine works in three²⁰ divisions, payment of ₹ 1.21 crore in respect of bitumen works was made by the divisions without attaching the invoices with bills nor verifying 30 invoices towards purchase of bitumen from refineries.

Government stated (December 2021) that verification of invoices were being made. However, verification reports from the refineries were still awaited.

➤ **Non-recovery of centage charges²¹:** MPW Manual and PWD instructions (October 2003) provided for recovery of centage charges at the rate of five *per cent* of the estimated cost of deposit works. Audit observed that in 22 works, executed during 2018-2021, in five²² divisions, centage charges amounting to ₹ 1.66 crore was not recovered from the Planning, Home, Tribal, Industries & Mining, Social Justice & Special Assistance, Rural Development, Urban Development departments by the divisions.

Government stated (December 2021) that supporting documents for exemption of non-levy of centage charges for some of the user department is being submitted. However, no supporting documents were furnished to audit.

➤ **Non-recovery of maintenance charges:** As per additional condition for materials clauses 30 (i), the contractor shall maintain the finished work for a period mentioned after the completion of work without any extra cost. Five *per cent* amount of the total work done shall be withheld, from the date of actual completion of work, as maintenance charges for maintaining and keeping the road in good condition. Audit observed in PWD Aurangabad that

¹⁹ PWD Aurangabad, Malegaon, Palghar and Sangamner.

²⁰ PWD Arvi, Aurangabad and PWD No.1 Chandrapur.

²¹ It is the charges leviable on works executed by PWD on behalf of non-government organization, other departments of Government, MP/MLA funds and National Highway Authority of India works.

²² PWD Aurangabad, Hingoli, Palghar, PWD No.1 Chandrapur and PWD No.2 Yavatmal.

in two deposit works, maintenance charges were not recovered from RA bills resulting in undue benefit to the contractor amounting to ₹ 0.91 crore.

Government stated (December 2021) that necessary action was being taken to recover the maintenance charges from next RA bill of the contractor. Further progress was awaited (March 2022).

➤ **Irregular payment of secured advance:** The MPWA code prohibits payment of advances to contractors, except in case a contract for a finished work requires an advance on security of material brought on site. For this purpose the contractor must produce document evidencing the purchase of the material. Audit observed that in respect of six works in five²³ divisions, secured advance of ₹ 2.79 crore was paid to the contractors. But, the invoice in support of the material so purchased was not produced by the contractors resulting in irregular payment of secured advance to the contractors.

Government stated (December 2021) that necessary action was being taken to recover secured advance from the RA bills of the contractors.

➤ **Non-recovery of royalty charges from the contractor bills:** GoM issued (May 2015) orders of royalty charges of ₹ 400 per brass (₹ 141.34 per cum) for the items of supply of natural minerals (rubble, metal, sand, *murum etc.*) which were to be used for calculation of rate analysis in estimate. The contractor had to pay these charges directly to revenue department and original challans, shall be produced to the concerned EE. If the contractor failed to produce the documents, the royalty charges were to be recovered from the contractor. Audit observed that during the period 2017-18 to 2020-21 in respect of nine works under four²⁴ divisions, royalty charges of ₹ 2.31 crore were not recovered from RA bills of the contractor resulting in undue benefit to the contractor.

Government stated (December 2021) that the necessary action was being taken to recover royalty charges from RA bills of the contractor.

➤ **Non-recovery of additional performance security:** GoM issued (September 2019) orders that if the contractor intended to quote his offer 14 *per cent* below the estimated cost put to bid then, he should submit additional performance security of five *per cent* of cost put to tender.

Audit observed in three²⁵ divisions comprising four works that additional performance security of only ₹ 5.08 crore was obtained against the requirement of ₹ 7.83 crore. This resulted in short payment of ₹ 2.75 crore by the contractor as additional performance security.

Government stated (December 2021) that necessary action was being taken to recover the additional performance security from RA bills of the contractor.

iv) Non-observance of quality control norms in execution

Additional general condition of contract stipulates the frequency of sample testing to be done for construction material and the percentage of the testing from the field and Government laboratory. As per contract clause, 15 *per cent*

²³ PWD Amravati, Aurangabad, Bhandara, Buldhana and PWD No.1 Chandrapur.

²⁴ PWD Arvi, Aurangabad, Bhandara and PWD No.3 Nagpur.

²⁵ PWD Arvi, Palghar and PWD No.1 Chandrapur.

of the rate shall be withheld and shall be released only after the receipt of the satisfactory test results wherever specified excluding concrete items.

Audit observed that in 14 works of seven²⁶ divisions, the testing of the material was not carried out as per contract conditions. In ten cases the entire amount was paid and in the remaining four cases, 15 per cent of bill amount was deducted and retained by EE. In the absence of test results, the quality material and construction could not be assessed.

Government stated (December 2021) that due care would be taken to follow the quality control norms.

v) Delay in testing of cement concrete cubes: As per the tender conditions the contractor was required to collect the sample of cement concrete at the time of execution and cast at-least three cubes and get them tested from the district testing laboratory at the age of seven days and 28 days. Audit observed that in four works in Buldhana division the contractor had submitted the cubes after the period ranging between 67 and 294 days of its casting as shown in *Appendix 2.1.4*. The exact strength of the cube could not be verified due to testing of the cubes after such long period after its casting.

Government agreed (December 2021) that there was delay in testing of the cement concrete cubes and assured to take necessary steps in future.

vi) Non-establishment of field laboratory: As per special condition of field laboratory, equipment for execution of work under consideration shall be available in the field/plant laboratory. If the contractor fails to establish field/plant laboratory, ₹ five lakh shall be recovered from first RA bill. Audit observed that in one work of PW division, Bhandara and two works of PW division Arvi, contractors had not established field laboratory as per contract norms and the divisions did not recover amount of ₹ 15 lakh for failure to do so.

Government stated (December 2021) that the facts would be verified and necessary records regarding establishment of field laboratories would be furnished in due course. Further progress was awaited (March 2022).

vii) Splitting of works resulted in excess expenditure on work

The MPW manual provides that a group of work or alteration or purchases, the aggregate cost of which exceeds what an officer is empowered to sanction should not be split up to bring them within the power of sanction of that officer. The power prescribed for accepting the tender with the EE, SE and CE is up to ₹ 50 lakhs, from ₹ 50 lakhs to ₹ 2.50 crore and above ₹ 2.50 crore respectively.

The work of providing rock fall protection on Mouje Sinhagad, Golewadi road was administratively approved (June 2017) by the Forest department. Audit observed that instead of preparing and sanctioning a single estimate for the work, Pune division made three separate estimates incorporating different rates for three different chainages. These works were taken up under civil deposit work and Forest department released the entire grant of ₹ 4.26 crore

²⁶ PWD Arvi, Buldhana, Bhokar, PWD No.1 Chandrapur, PWD No.2 Nagpur, PWD No.3 Nagpur and PWD No.2 Yavatmal.

for the above work during 2014-15 to 2018-19. The division accepted the lowest rate of ₹ 9225 per square meter (inclusive of GST) of an agency during 2018-2019 for 0/700 km to 0/800 chainages while in other two chainages, the division called for separate quotations and accepted the quotations at higher rates of the same agency as detailed in **Table 2.1.3**.

Table 2.1.3: Details of excess amount paid due to splitting of work

(Amount in ₹)

Sr. No.	Agreement No.	Chainage	Quantity (sq.m)	Rate (₹/sq. m)	Rate difference	Excess Expenditure	Total amount paid
1	2	3	4	5	6	7(6*4)	8
1	B1/503/2018-19	0/700 to 0/800	1194.53	8118*	-	-	9697194
2	B1/47/2020-21	0/00 to 1/500	574	15551	7433 (15551-8118)	4272282	8926274
3	B1/49/2020-21	2/00 to 2/500	650.25	15551	7433	4833308	10112037
			390.15	15481	7363 (15481-8118)	2872674	6039919
Total Extra cost						11,978,264	
*excluding GST		Source: Information furnished by department					

From above table, it is observed that the division had irregularly split a single work into three different works by preparing separate estimates for three different chainages and tendered the works in different years so as to avoid obtaining of sanction from the SE. The acceptance of higher rates in chainage 0/00 to 1/500 and 2/00 to 2/500 resulted in excess expenditure of ₹ 1.20 crore.

Government stated (December 2021) that funds were received in four installments in April 2018, May 2019, June 2020 and June 2021. Hence, the work was split as and when the funds were received. As it was a tourist spot, the work was taken up in parts. Reply was not acceptable as the division split the work in three parts despite the fact that it had single administrative approval and the entire fund of ₹ 4.26 crore for the above work was available with the department till 2018-19.

2.1.4 Internal Control and Monitoring

Internal Control Mechanism is a tool for financial & operational control and ensuring safeguards against error and fraud. The controls are embodied in various provisions of Codes, Manuals and executive instructions of the Government. An adequate and effective internal control and monitoring mechanism should exist to provide reasonable assurance to ascertain the physical and financial status of deposit works, efficiency, effectiveness of its execution and compliance of applicable rules, regulations, condition of contract *etc.*

Audit findings on internal controls and monitoring mechanism in PWD in respect of deposit works are discussed below:

2.1.4.1 Non-maintenance of deposit register

The MPWA Code provides for maintenance of a deposit register by each division to show month by month, total receipt, adjustment and the closing balance of each deposit item, however, in case of deposit works to be done a single entry for all such deposits would suffice.

Audit observed that in 18²⁷ divisions deposit register was not maintained. Four²⁸ divisions were maintaining deposit register but the registers were not up-to-date.

Government stated (December 2021) that necessary instructions would be issued to the concerned divisions to maintain and update the deposit register.

2.1.4.2 Non-supply of progress of expenditure to user department

As per MPW manual, a statement of expenditure should be supplied by the EE to the depositors every quarter in the format prescribed, when the expenditure is within the contribution received and every month when an excess expenditure on the contribution is anticipated until the excess is regularized.

Audit observed that the statement showing the requisite progress of expenditure was supplied to the concerned user departments only by two²⁹ divisions and 16³⁰ divisions did not supply the same to the user departments.

Government stated (December 2021) that necessary instructions would be issued to the concerned to follow the procedure.

2.1.4.3 Non-submission of progress report of works

As per paragraph 289 of MPW manual, progress report of all works estimated to cost over ₹ 10 lakh should be submitted to the SE every quarter, who may forward it to the CE in respect of works costing more than ₹ 50 lakh. In case the administrative department controlling the funds is different from this department, quarterly progress reports of all works should be submitted to that department, if so directed by it. Audit observed that the said progress report of all works costing over ₹ 10 lakh was submitted to the SE every quarter only by Kolhapur division. In 18³¹ divisions, the said progress report of all works was not submitted to the SE every quarter.

Government stated (December 2021) that necessary instructions would be issued to the concerned to follow the procedure.

2.1.4.4 Non-submission of information of ongoing deposit works

In order to properly implement and keep control over deposit works, GoM prescribed (April 2017) a proforma and timeline for each level of compilation and submission of information in respect of ongoing deposit works. Each division is required to submit the year-wise information (proforma-A) to the concerned circle office on fifth of every month and subsequently the compiled

²⁷ PWD Amravati, Arvi, Aurangabad, Bhandara, Chiplun, Malegaon, Pune, Sangamner, Wardha, PWD No.1 Chandrapur, PWD No.2 Gadchiroli, PWD No.2 Gondia, PWD Presidency Mumbai, PWD No.2 Nagpur, PWD No.3 Nagpur, Integrated (M) Unit Nagpur, PWD No.1 Thane and PWD No.2 Yavatmal.

²⁸ PWD Bhokar, Nashik, Palghar and Integrated (M) Unit Mumbai.

²⁹ PWD Hingoli and Kolhapur.

³⁰ PWD Bhokar, Buldhana, Chiplun, Malegaon, Nasik, Palghar, Pune, Sangamner, Integrated (M) Unit Nagpur, PWD No.2 Nagpur, PWD (South) Pune, PWD No.1 Thane, PWD No.1 Chandrapur, PWD No.2 Gondia, PWD Presidency Mumbai and PWD No.2 Yavatmal.

³¹ PWD Arvi, Aurangabad, Bhokar, Chiplun, Hingoli, Malegaon, Palghar, Pune, Sangamner PWD No.1 Chandrapur, PWD No.2 Gondia, PWD Presidency Mumbai, Integrated (M) Unit Nagpur, PWD No.2 Nagpur, PWD No.3 Nagpur, PWD (South) Pune, PWD No.1 Thane and PWD No.2 Yavatmal.

information (proforma-B) was required to be submitted by each circle office to regional office on tenth of every month. Finally, each CE was required to compile and submit it to the Secretary, PWD. Audit observed that none of the 26 divisions furnished the information of ongoing deposit works to respective circle offices. Hence, the respective SE offices did not submit the required information (proforma-B) to the CE offices.

Government stated (December 2021) that necessary instructions would be issued to the concerned to follow the procedure. Further progress was awaited (March 2022).

2.1.4.5 Deficiencies in ‘Schedule of Deposit works’

The MPWA Code provides for preparation of Schedule of Deposit works in Form-76 which contains important consolidated record of all deposit works of the PW division. Instructions for entries to be taken are also provided in the schedule in Form-76 and an entry of sanction in red ink should be done when a work is included for the first time in the schedule.

The PWD adopted a software module named as Account Management System (AMS), designed and developed by the C-DAC, Pune for preparation of schedule of deposit works (Form-76). The data entry of cashbook was done online and accordingly the schedule was generated automatically and can be extracted through password of respective PW division from AMS module. Following deficiencies were noticed in the system generated Form-76.

i) It was noticed that the system generated schedule did not provide the column for detailed classification of estimate and date/month of completion of work. The details of the unexpended balances, excess expenditure charged to MPW advances and the steps taken for its adjustments are not entered. Thus, newly inserted work as well as completed work could not be distinguished and subsequently the delay, if any, in refund of unspent amount of deposit to the user department could not be monitored. In absence of information on unspent balance and expenditure incurred in excess of deposit received, the amounts involved and steps taken for its adjustments could not be ascertained. This indicated that the format of system generated schedule of deposit works was inadequate for monitoring of the deposit works.

Government stated (December 2021) that the matter had been referred to C-DAC to modify the module. Further progress was awaited (March 2022).

ii) Audit verified deposits received and expenditure incurred on deposit works with reference to utilisation certificates (UCs) on Budget Estimation, Allocation and Management System (BEAMS) to ascertain the correctness of account of deposit works effected during the month. It was observed that in 13³² divisions receipt and expenditure figures of the works depicted in UCs did not match with the corresponding figures shown in Form-76.

Government stated (December 2021) that matter was being referred to C-DAC for updating of the software. Further progress was awaited (March 2022).

³² PWD Amravati, Bhokar, Buldhana, Hingoli, Malegaon, Sangamner, Integrated (M) Unit Nagpur, PWD No.1 Chandrapur, PWD No.2 Gadchiroli, PWD No.2 Gondia, PWD No.3 Nagpur, PWD No.1 Thane and PWD No.2 Yavatmal.

2.1.4.6 Deficiencies in deposit contribution monitoring system

With a view to monitor the Deposit works on real time basis, GoM (PWD) developed a “Deposit Contribution Monitoring System (DCMS)” through NIC Pune. It provides the real-time information of progress of on-going works, funds received, expenditure incurred and the unspent amount. The detailed guidelines for recording of deposit works in DCMS and payment thereof were issued by the GoM (December 2017) to control and monitor the deposit works.

Audit observed following shortcomings in DCMS.

- **Absence of date of completion of work:** DCMS should indicate the date of completion of works so as to identify physical and financial status and consequent timely refund of unspent amount to the user departments. However, no such information was available in the DCMS.
- **Multiple IDs of same work:** Audit observed that in respect of nine deposit works in seven³³ divisions, the deposit IDs were allotted twice. Thus, the possibility of expenditure on the work in excess of the AA or diversion of fund cannot be ruled out due to creation of multiple IDs for the same work.
- **Expenditure or balance shown without receipt of any deposit:** Audit observed in six divisions that no deposit amount was received by the divisions in the case of 44 works. However, expenditure incurred or balance amount was being depicted under deposit against such works. This indicated that the DCMS system depicted the expenditure on the deposit works without receipt of any fund.
- **Negative deposit balances:** Audit observed in 15³⁴ divisions that in case of 158 works, there was a negative balance of ₹ 55.46 crore under deposit.

Government stated (December 2021) that matter was being referred to C-DAC for updating of the software. Further progress was awaited (March 2022).

Recommendation 3: The Government may ensure to streamline the DCMS and strengthen the internal control and monitoring system of deposit works.

PUBLIC WORKS DEPARTMENT

2.2 Undue benefit to the Concessionaire of ₹ 1.44 crore on account of delay in recovery of expenditure incurred by the department on repair works

The Chief Engineer, National Highway (Public Works Department), Government of Maharashtra, Navi Mumbai (CE) issued (15 March 2017 and 13 April 2017) Letters of Acceptance (LoAs) to M/s Gannon Dunkerley & Co.

³³ PWD Aurangabad, Hingoli, Kolhapur, Malegaon, Pune, PWD No.2 Nagpur and PWD No.1 Thane.

³⁴ PWD Amravati, Aurangabad, Bhandara, Buldhana, Chiplun, Malegaon, Nashik, Pune, Sangamner, PWD No.1 Chandrapur, PWD No.2 Gondia, Integrated (M) Unit Nagpur, PWD No.2 Nagpur, PWD No.3 Nagpur and PWD No.2 Yavatmal.

Ltd Mumbai (Concessionaire) for two works³⁵ of Engineering, Procurement and Construction (EPC) agreements amounting to ₹ 151.61 crore and ₹ 145.26 crore respectively. Both the EPC agreements were executed (20 December 2016) between the CE (on behalf of Government of India, Ministry of Road Transport & Highways *i.e.* MoRTH) and the Concessionaire. The stipulated period of completion of the works was 18 months and 24 months respectively, from the issue of LoAs. The Chief Engineer and Regional Officer, MoRTH, Mumbai paid ₹ 127.10 crore (August 2021) and ₹ 70.66 crore (June 2021) to the concessionaire.

The EPC agreements provided that during the construction period, the concessionaire shall maintain, at its cost, the existing lane(s) of the Project Highway so that the traffic worthiness and safety thereof are at no time materially inferior as compared to their condition ten days prior to the date of this Agreement. Further, the Concessionaire shall undertake the necessary repair and maintenance works for this purpose; provided that the concessionaire may, at its cost, interrupt and divert the flow of traffic if such interruption and diversion is necessary for the efficient progress of works and conforms to Good Industry Practice.

Audit observed that the Concessionaire failed to maintain the existing carriageway and traffic worthiness as provided for in the agreement during execution of the work. Thus, the National Highway (Public Works) Division, Nanded carried out (December 2017 and March 2018) maintenance works through 63 contracts of ordinary repairs (ORs) on the same chainage of road incurring expenditure (March 2018) of ₹ 1.76 crore (*Appendix 2.2.1*). As such, the department discharged the liability of the Concessionaire at its own cost. The amount was not recovered subsequently, from the Concessionaire (September 2021) even after the lapse of more than three years.

The Executive Engineer (EE) National Highway (Public Works) Division, Nanded stated (September 2021) that as the Concessionaire failed to maintain the road, OR works were carried out to make the road safe and traffic worthy at the earliest and the amount spent on these works was to be recovered from the Concessionaire. But, the recovery could not be made due to Corona pandemic and recovery would be made before finalization of the EPC work excluding ₹ 0.32 crore recovered (in case of works B1 No.32 to 45 of 2017-18) till date.

The reply is not acceptable as payment on OR works was made in the month of March 2018 and restrictions related to Corona pandemic started from March 2020. As such, there was a gap of two years between the two events and even after a lapse of more than three years only ₹ 0.32 crore has been recovered leaving a balance of ₹ 1.44 crore to be recovered. This resulted in undue benefit to the Concessionaire of ₹ 1.44 crore on account of delay in

³⁵ “Rehabilitation and up gradation of Barasgaon to Rahatee Bu (Mah/AP Border Section of NH-222 in km 558/200 to km 615/000 from existing to two lanes with paved shoulders on EPC basis under NHDP-IV” and “Rehabilitation and up gradation of Kolha to Nasaratpur Section of NH-222 from existing km 444/00 to km 463/545 and km 481/00 to km 513/1300 in the State of Maharashtra to two lanes with paved shoulders on EPC basis under NHDP-IV”.

recovery of expenditure incurred by the department on repair works which in normal case should have been carried by the concessionaire at its own cost.

The matter was referred (November 2021) to Government. Reply is awaited.

PUBLIC WORKS DEPARTMENT

2.3 Avoidable expenditure of ₹ 3.48 crore on widening of a road length notified as National Highway.

Government of India, Ministry of Road Transport and Highways, New Delhi (GoI) notified (January 2017) the State Highway (SH), starting at a junction with NH-47 near Multai (in Madhya Pradesh) connecting Warud, Ashti, Arvi, Pulgaon, Wardha, Sevagram, Sonegaon, Hinganghat, Jamb and terminating at its junction with NH-930 near Warora (in Maharashtra), as national highway. Accordingly, the Secretary, Public Works Department, Government of Maharashtra directed (February 2017) the Chief Engineer (CE), Public Works Region, Nagpur to stop all works immediately on the stretch of roads notified as NHs. It was specified that liability of the Government should not be increased, as excavation of existing roads would soon be done for laying cement concrete roads. It was also directed to keep such roads in trafficable condition by carrying out proper repair and maintenance works until their transfer to concerned NH authorities. The directions were reiterated (March 2017) with the instructions to stop all the ongoing works on these roads after treating the existing carriageway to sustain the monsoon season in that year.

During scrutiny of records in the office of the Executive Engineer (EE), Public Works Division (PWD), Wardha it was observed (September 2019) that the work of widening and improvement to Nachangaon-Deoli-Waigaon-Hinganghat-Nandori-Kora road (SH-322) in km 34/500 to 55/500 in Wardha district was tendered (August 2016) at an estimated cost of ₹ 34.02 crore and the work was awarded³⁶ (January 2017) to a contractor³⁷ at a contract cost of ₹ 26.32 crore with completion period of 18 months.

Similarly, in PW Division, Arvi it was observed (February 2018) that the work of construction of fly-over in Arvi city along with widening to four lane with strengthening and black topping of Pulgaon-Arvi-Talegaon-Durgawasa road (SH-295) in km 59/600 to km 61/800 was awarded (January 2017) to a contractor³⁸ at a cost of ₹ 4.05 crore.

The CE directed (February 2017) EE, PWD, Wardha and EE, PWD, Arvi during inspection (January 2018) to reduce the scope of work and keep these roads in trafficable condition by carrying out proper repair and maintenance work. Accordingly, the scope of these two road works were reduced and completed as detailed below:

³⁶ Agreement No. B-1/523/DL/2016-17.

³⁷ M/s Jaswantsingh Oberai Construction Private Limited, Yavatmal.

³⁸ M/s D K Construction, Arvi.

Name of the PW division and work	Cost and scope of original work	Reduced cost and scope of work	Date of work order and completion
Wardha and work of widening (km 40/500–55/500) and improvement (km 34/500 – 55/500) to part of SH-347A	₹ 26.32 crore for 21 km length Improvement including widening in 15 km length	₹ 8.11 crore for 15 km (km 40/500–55/500) length widening and improvement including 5 km (km 40/500 –45/500) widening part (₹.3.12 crore)	January 2017 and July 2018
Arvi and work of widening and improvement (km 59/600– 61/800) to part of SH-295	₹ 4.05 crore for Improvement including widening work in 2.2 km length	₹ 0.88 crore for 1.7 km (km 59/600–61/300) length improvement and widening in 0.7 km (km 59/600–60/300) part (₹ 0.36 crore)	January 2017 and March 2018

The contractor was paid (September 2019) ₹ 8.11 crore *vide* fifth and final RA bill for the work executed including ₹ 3.12 crore for widening work in Wardha division. The Arvi division paid (August 2018) ₹ 0.88 crore including ₹ 0.36 crore for widening and handed over (July 2018) the road to NH division Nagpur.

The execution of work of widening of the existing roads by these divisions was not compliant with the above said Secretary's directives, which instructed only proper repair and maintenance works of roads declared as NHs until their transfer to NH authorities to be carried out. In spite of this Wardha and Arvi divisions did not initiate any action to follow the Secretary's directives to limit the work to maintenance and incorporated new work of widening the roads. An expenditure on work of widening of road amounting to ₹ 3.48 crore (3.12+0.36 = 3.48) was incurred.

Government stated (July 2022) that in case of work of PWD, Wardha the scope of work was reduced by incurring minimum possible expenditure to maintain the road in trafficable condition during the rainy season of 2017. In case of PWD, Arvi work was executed to maintain the riding quality.

The reply is not acceptable as the reduced scope of work was not limited only to carry out repairs and maintenance of the existing carriageway but the new work of widening the existing road was carried out. Since the road was notified (January 2017) as National Highway for construction of cement concrete road, the entire road was to be excavated for construction of NH. As such, keeping the existing road in trafficable condition was needed but widening the road was avoidable in view of cement concrete road of NH. Thus, the execution of widening works of roads resulted in avoidable expenditure of ₹ 3.48 crore.

REVENUE AND FOREST DEPARTMENT

2.4 Implementation of the scheme of creation of Swargiya Uttamrao Patil Van Udyans in Maharashtra

Out of 67 Bio-diversity Parks, termed as ‘Swargiya Uttamrao Patil Van Udyan’ BDPs, taken up for creation, only 15 BDPs could be completed and handed over (March 2021). The improper selection of sites resulted in unsuccessful plantations and creation of parks on non-government land. There was absence of budgetary and expenditure controls, short release of funds resulted in extension of scheme and majority of parks remained incomplete. Audit observed non-completion of BDPs within stipulated period and deterioration of assets created as there was no provision in the DPR for maintenance of assets formed during creation of BDPs.

2.4.1 Introduction

Revenue and Forest Department (R&FD) of Government of Maharashtra (GoM) launched (June 2015) a state sponsored scheme for creation of Bio-diversity Parks (BDPs) termed as ‘Swargiya Uttamrao Patil Van Udyan’. These BDPs were to be created in 34 districts of the State (excluding Mumbai city and Mumbai Suburban) with two each in a district (total 68 BDPs) along with upgradation of existing National and other parks under Forest Department (FD). The scheme was to be implemented by Social Forestry wing of the Forest Department during the period 2015-2016 to 2018-2019 which was further extended (June 2019) by four years till 2022-2023 with a budget provision of ₹ 134.14 crore.

The objectives of the scheme were to:

- conserve bio-diversity and nature,
- plant, protect and conserve rare and beautiful plants,
- create Upvans (having small group of different variety of plants),
- facilitate public to spend joyful moments with nature,
- make available source of recreation and entertainment,
- create a safe environment for future generation, and
- establish a small library with books highlighting importance of trees and disseminating information of the same.

The BDPs after completion were to be operated and maintained through participation of local people, preferably by the Joint Forest Management Committee (JFMC) wherever it was functioning. Otherwise, a committee consisting of the local people at village level or local body level was required to operate and maintain the same.

Implementation of the scheme was carried out by Divisional Forest Officer, Social Forestry (DFOSF) at the division level under the supervision of six³⁹ Conservators of Forests, Social Forestry (CFSF) at the circle level and headed by Principal Chief Conservator of Forest, Social Forestry, (PCCF, SF), Pune.

³⁹ Amravati, Aurangabad, Nagpur, Nashik, Pune and Thane.

The Compliance Audit (CA) was conducted to ascertain whether the scheme of creation of BDPs was implemented as per the scheme guidelines and monitoring mechanism of the scheme was in place and effective. The Forest Conservation Act 1980, Maharashtra Public Works Manual 1984, Government Resolutions/Orders/Circulars issued by GoM, and Detailed Project Report of the Bio diversity Park were used as criteria.

Fifteen⁴⁰ out of 34 districts (44 *per cent*), where these parks were envisaged to be established, were selected for audit analysis. Owing to COVID-19 pandemic, maximum coverage for test check was planned for nearby circles *viz.*, Amravati (three out of five districts) and Nagpur (five out of six districts). Further, from remaining four circles (Aurangabad, Nashik, Pune and Thane) seven districts out of 23 were selected on the basis of simple random sampling method. Besides test check of records for the period from April 2015 to March 2021 at DFOSFs of the selected districts, audit scrutiny was carried out at four CF (SF) offices (Amravati, Nagpur, Pune and Thane) including the PCCF (SF), Pune. The audit was conducted between October 2020 and September 2021.

Work of creation of 67 BDPs were taken up in the State against 68 BDPs planned to be created at a cost of ₹ 134.14 crore. However, audit noticed that, an expenditure of ₹ 96.52 crore (72 *per cent*) was incurred till March 2021 and only 15 BDPs (22 *per cent*) were completed (March 2021). As on August 2022, 35 BDPs (52 *per cent*) were completed and work in the remaining 32 BDPs was in progress. Further, out of 35 completed BDPs, 21 were handed over (August 2022).

In 15 selected districts 32 BDPs were taken up for creation, which were covered in audit as detailed in **Appendix 2.4.1**.

The audit findings were issued (November 2021) to State Government and discussed in an exit meeting held on 25 November 2021 with Principal Secretary (Forest). Department's views/replies have been incorporated appropriately.

Audit Findings

Out of 32 BDPs taken up for creation in 15 selected districts, only 15 BDPs were completed and work was in progress in 17 BDPs (August 2022).

Reasons for non-achievement of target of BDP creation are brought out in succeeding paragraphs.

2.4.2 Planning and Selection of sites

PCCF (SF) issued (April and June, 2015) instructions regarding site selection and preparation of Detailed Project Report (DPR) of each BDP under the scheme. The said instructions provided that the BDP should be created only on government land (forest/non-forest) adjacent to village which is not in use or land reserved for parks by Universities/Municipal Corporations and Councils.

⁴⁰ Bhandara, Chandrapur, Gondia, Nagpur and Wardha (Nagpur circle), Akola, Amravati and Yavatmal (Amravati circle), Jalna, Nanded, Osmanabad (Aurangabad circle), Dhule, Nashik (Nashik circle) Solapur (Pune circle) and Thane (Thane circle).

The BDP must have area of 5 to 10 hectares (*Ha*) situated within 500 meters of a habitat/village and the land should not be rocky or of inferior quality.

2.4.2.1 BDPs located beyond the prescribed distance

Twelve⁴¹ out of 32 selected BDPs were found to be situated in rural area beyond the prescribed distance of 500 meters and upto five kilometers from the nearest human habitat/village, which was in contravention to instruction issued (April 2015) by PCCF, Pune for creation of BDPs. As the BDPs were located farther than the prescribed distance, possibility of fewer visitors cannot be ruled out, which would defeat the purpose of the scheme of promoting nature conservation amongst public through provision of recreation and environment education facility in their vicinity.

State Government stated (December 2021) that a conscious attempt was made to select BDP sites either next to the main road or near some historical or religious places, where dedicated footfalls of visitors was expected.

However, it is mentioned that out of these 12 BDPs only one (Tirth BDP) was near religious place and four BDPs (Gondpimpri, Kurum, Madlabad and Navatola) were next to the main road and remaining BDPs were located far away from nearby villages which would discourage the number of people visiting to the park.

2.4.2.2 BDPs created in fragmented parts of the land

Audit observed that in three BDPs, as detailed below, the sites selected for creation of BDP were fragmented in two or more parts and these parts were unconnected internally requiring the public to visit each part separately.

- It was observed that the Majiwade BDP (Thane district) having length of 1.10 km along the road was divided into five parts by four nallahs of which only two parts were connected by a bridge. The DPR of this BDP did not have any provision for inter connection of the parts with each other.

State Government accepted the fact and stated (December 2021) that DPR would be revised for inter connection of the unconnected parts

- Rajani BDP of Wardha district, had two separate unconnected parts as the bridge proposed to connect two parts was not constructed for want of funds.

State Government accepted the fact and stated that it would be undertaken on availability of funds.

- In Jamkhel (Dhule district) though area made available was 10 *Ha*, a nallah divided the land and a library room, playing equipment, inspection hut was provided in 0.31 *Ha* portion only at a cost of ₹ 66.77 lakh and in the other portion of the BDP (9.69 *Ha*) only plantation work was done at a cost of ₹ 30.01 lakh. After incurring total expenditure of ₹ 96.78 lakh against the DPR cost of ₹ 2.14 crore, BDP was declared as completed and handed over (May 2020) to Gram Panchayat for

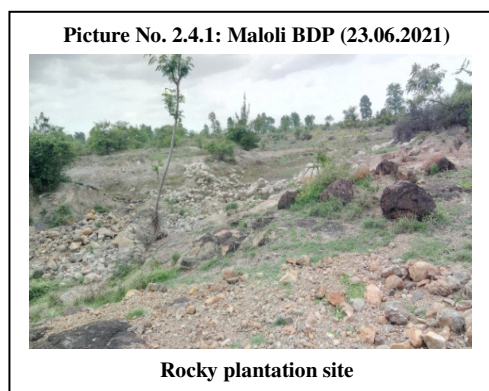
⁴¹ 500 meter to 1 km–3 parks (Upatkhedha, Navatola, Tirth), 1 km to 3 km–5 parks (Garada, Jondhalni, Kalamb, Gondpimpri, Maloli), 3 km to 5 km–1 park (Kurum–4 km), Above 5 km–3 parks (Madlabad, Dongarala, Bondhar).

operation and maintenance. Audit observed that various *components*⁴² executed were much smaller in size as envisaged in the BDP's DPR. Further, equipment *viz.* benches, street lights, animal figurines procured for this BDP were dumped in a room. Thus, the execution of BDP in a smaller area (only 0.30 *per cent* of the total area) of the site had resulted in non-installation of equipment and execution of components in available smaller area. Moreover, the plantation done on bigger area was not accessible to people as there was no pathway or road in that part.

State Government stated (December 2021) that the BDP facilities were restricted to smaller areas and plantations were taken up on the remaining area.

Reply is not acceptable as plantation was taken up on bigger part of site separated by a nallah with no access for people.

2.4.2.3 Unsuitable site of plantation



In case of Maloli BDP in Solapur district, audit observed (June 2021) that plantation on the BDP was not successful (29 *percentage* survival) and only tall grasses were observed as the site selected was rocky which was in contravention of instructions regarding site selection issued (April and June, 2015) by PCCF (SF).

State Government stated (December 2021) that most of the soil in drought prone Solapur district are derived from basalt rock and varies from shallow to moderate depth resulting in poor nutrient availability and stunted growth due to limited moisture availability. Hence, plants and vegetation chosen were suitable to this area. The Government further stated that the survival *percentage* has now increased to 70 *per cent* (December 2021).

However, documents to prove increased survival *percentage* were not furnished to audit (August 2022).

2.4.2.4 Creation of BDPs without any plan for their operation

BDPs were planned for use by general public after their completion and hence it was prescribed that these should be created on government land. Audit observed following deviations, which resulted in non-achievement of the intended benefit from the BDPs:

➤ BDPs created on non-government land

Audit observed that two BDPs of Osmanabad district, Tirth BDP and Dhoki BDP, were completed at expenditure of ₹ 99.01 lakh and ₹ 142.15 lakh respectively on land belonging to two different temple trusts⁴³. Both the BDPs were handed over (June 2020 and July 2020) to concerned trusts after

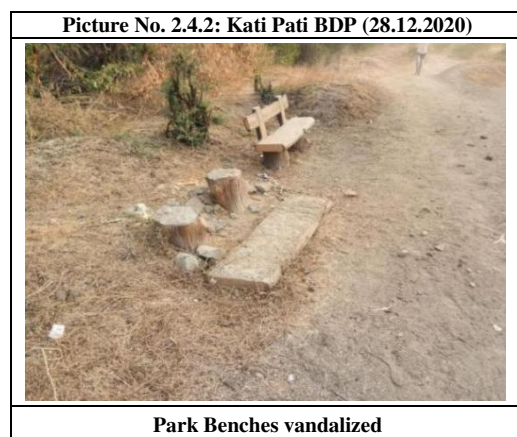
⁴² Playing equipment, Internal roads, Information centre, Library, Fencing etc.

⁴³ Site for Dhoki BDP belongs to a Sugar mill however some part of land is with a temple trust to which the BDP was handed over.

completion. Thus, creation of BDPs on non-government land was in contravention of instructions regarding site selection issued (April and June, 2015) by PCCF (SF).

➤ **BDPs created on land provided for plantation purposes**

Kati-Pati BDP of Akola district was created on a land, which was given (February 2017) to the department by the local Gram Panchayat for three years for plantation work only. Works for creation of BDP started in the year 2018-19 and an expenditure of ₹ 67.41 lakh on execution of 13 components out of total 38 components of the DPR was incurred. However, the remaining works could not be completed due to strong opposition of local people as they wanted the BDP site for grazing their cattle. Without executing the remaining works, the BDP was handed over (July 2020) to the Gram Panchayat for further operation and maintenance. Audit observed (December 2020) during site visit that instead of functioning as a BDP, the area was being utilized as a grazing ground for livestock and it was devoid of any plantation. Created assets within the park viz., the pipeline, sitting benches, etc. were also found vandalized.



Thus, selection of site for taking up of BDP without consent of Gram Panchayat resulted in handover of it to Gram Panchayat in incomplete stage and expenditure incurred rendered wasteful.

State Government stated (December 2021) that Chief Executive Officer, ZP, Akola was instructed to resolve the issue.

2.4.3 Financial Management

An outlay of ₹ 134.14 crore was projected by R&FD during 2015-2019 to create 68 BDPs against which only ₹ 87.83 crore *i.e.* only 65 per cent of the required fund was released during the scheme period of 2015-2019.

It was also observed that during 2019-2021 only ₹ 10.34 crore was released as against required funds of ₹ 46.31 crore to complete the BDPs. Thus, a total of ₹ 98.17 crore was released (March 2021), against which an expenditure of ₹ 96.52 crore was incurred.

Audit observed that out of 67 BDPs taken up for creation against the 68 targeted, only 15 BDPs could be completed (March 2021). As of August 2022, 35 BDPs were completed and 21 BDPs handed over for operation and maintenance.

2.4.3.1 Short release of funds

In 15 selected districts, the funds required, released and expenditure incurred during 2015-2021 was as shown in **Table 2.4.1**.

Table 2.4.1: Fund required, released and expenditure incurred

(₹ in crore)						
Sr. No.	Name of District	Number of BDPs	Fund required as per DPR	Fund Released	Expenditure incurred	Short release of fund
1	Akola	3	9.90	6.10	5.67	3.80
2	Amravati	2	5.48	4.10	4.10	1.38
3	Bhandara	1	2.01	0.93	0.93	1.08
4	Chandrapur	3	6.86	6.62	6.61	0.24
5	Dhule	1	2.14	0.97	0.97	1.17
6	Gondia	4	7.32	4.87	4.87	2.45
7	Jalna	2	3.90	3.10	3.10	0.80
8	Nagpur	1	2.96	1.79	1.79	1.17
9	Nanded	2	4.57	3.35	3.35	1.22
10	Nashik	3	6.05	2.92	2.49	3.13
11	Osmanabad	2	2.79	2.41	2.41	0.38
12	Solapur	2	2.80	2.65	2.65	0.16
13	Thane	2	13.22	11.05	11.05	2.17
14	Wardha	2	3.92	2.28	2.15	1.64
15	Yavatmal	2	2.27	1.95	1.95	0.32
Total		32	76.20	55.10	54.09	21.10

Source:-Information submitted by Department

➤ There was a shortfall of ₹ 21.10 crore (27 per cent) in the funds provided to selected BDPs. Out of 32 BDPs, only 9 BDPs were completed in which three BDPs were declared as completed after execution of partial works (45 per cent) and 23 BDPs were still incomplete (June 2021).

State Government (December 2021) accepted that due to non-availability of funds, the BDPs remain incomplete.

2.4.3.2 Non- utilization of allocated funds

GoM had allocated ₹ 6.33 crore for the scheme during 2019-20 (for all 67 BDPs) out of which ₹ 89.26 lakh was surrendered and ₹ 68.50 lakh lapsed to Government on 31 March 2020 and ₹ 7.99 lakh could not be drawn by DFOSF, Aurangabad due to locking of Budget Distribution System (BDS) since 27 March 2020 till the end of the financial year (31 March 2020). Thus, the amount of ₹ 1.66 crore though available could not be utilized for the scheme during 2019-20.

In Wardha district, an amount of ₹ 10 lakh out of ₹ 70.64 lakh received in 2016-17 was surrendered (January 2017) to PCCF (SF) Pune and in Akola district, funds of ₹ 12 lakh and ₹ 31.16 lakh released in 2015-16 and 2019-20 respectively could not be utilized during these years.

State Government accepted the fact and stated (December 2021) that funds remained unutilized due to delay in e-tendering process of the proposed works.







2.4.4 Creation, operation and maintenance of BDPs







Audit observed that out of 32 BDPs taken up for creation in the selected 15 districts, only 9 BDPs were completed (June 2021) and work in 23 BDPs were in progress. As on August 2022, 15 were completed out of which three were declared as completed at incomplete stage. Out of the 15 completed BDPs, 10 BDPs were handed over to trusts/ local bodies/ forest department for operation and maintenance.

2.4.4.1 Deterioration of assets created in BDPs not yet completed

Audit observed in 12 BDPs in 10 out of 15 selected districts during site visits with officials of concerned DFOSF (between October 2020 and July 2021) of the incomplete BDPs that the assets created had deteriorated, damaged or stolen as shown in **Table 2.4.2**:

Table 2.4.2: Deteriorated/damaged/stolen assets or equipments of incomplete BDPs

Sl. No.	Deterioration/damages noticed	Audit observations						
1.	Plantation not found and long grasses noticed	<p>Jondhalni BDP (Yavatmal): Plantation like Nakshatra van, Mix plantation, 400 Bamboo plants carried out at a cost of ₹ 7.41 lakh were not found and long grasses above height of 6 feet were noticed.</p> <p>Kudwa BDP (Gondia): Plantations carried out in various vans were not in existence which was also confirmed by CF, Nagpur during his visit (February 2019).</p> <p>Dongarla BDP (Bhandara): Nakshatra van, Panchvati van, Rashi van, Navgrah van and medicinal plants were not found at the BDP site except for long grasses.</p> <p>Madlabad BDP (Amravati): Most of the plants in various vans (Melghat van, Medicinal van, Sericulture van, Oil van, Lac van, Bamboo van) were found dead and only long grasses were noticed.</p> <p>Washimba BDP (Akola): Wild grass/shrubs had covered the internal pathways.</p> <p>Kurum BDP (Akola): Wild grass/shrubs had grown in various Vans hampering the growth of plantations.</p> <p>Arjuni-Morgaon, Kudwa, Navatola and Garada BDPs (Gondia): Large grasses were found at all places hampering growth of plants and also making the internal roads unusable.</p> <p>Vena Nimji BDP (Nagpur) and MIDC Wardha BDP: Playing equipment and lavatories had deteriorated and were not usable because of long grasses above height of 6 feet.</p>						
	Sample pictures	<table border="1"> <thead> <tr> <th>Picture No. 2.4.3 Jondhalni BDP (4.12.2020)</th> <th>Picture No. 2.4.4 MIDC Wardha BDP (12.11.2020)</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> </tr> <tr> <td>Grass instead of Nakshatra van</td> <td>Tall grasses all over the BDP</td> </tr> </tbody> </table>	Picture No. 2.4.3 Jondhalni BDP (4.12.2020)	Picture No. 2.4.4 MIDC Wardha BDP (12.11.2020)			Grass instead of Nakshatra van	Tall grasses all over the BDP
Picture No. 2.4.3 Jondhalni BDP (4.12.2020)	Picture No. 2.4.4 MIDC Wardha BDP (12.11.2020)							
								
Grass instead of Nakshatra van	Tall grasses all over the BDP							

2.	Playing equipment and other created assets found damaged	<p>Maloli BDP (Solapur): Reception room and lavatories for the BDP were constructed in a nursery adjacent to the BDP site. Out of 10 solar lights installed at a cost of ₹ 2.38 lakh in park, eight lights (₹ 1.90 lakh) were missing and only two solar lights were found. No fencing to secure the BDP was executed.</p> <p>Kumbhari BDP (Solapur): Farm pond, reception room, toilet, water tank, tree ottas, internal roads and sign boards were damaged and deteriorating due to non-maintenance. Trenching work (at a cost of ₹ 2.69 lakh) was done in 2015-16 to secure the area was rendered wasteful as later in 2017-18, work of chain-link fencing was carried out at a cost of ₹ 10.83 lakh.</p> <p>Dongarla BDP (Bhandara): Garden lawn created at a cost of ₹ 2.99 lakh was not in existence, playing equipment (costing ₹ 2.98 lakh), Pagodas and pathway were damaged.</p> <p>Madlabad BDP (Amravati): Work of chain-link fencing (103 meter) was incomplete, roads/pathways, solar lamps were damaged, and Electricity system installed at ₹ 6.69 lakh was not in working condition.</p> <p>Washimba BDP (Akola): Fountain constructed in a garden at a cost of ₹ 2.53 lakh was not in working condition.</p> <p>Kurum BDP (Akola): Benches and tree ottas (costing ₹ 9.80 lakh) were found damaged.</p> <p>Kandhane BDP (Nashik): Animal figurines, tree ottas, playing equipment, water tank were found damaged.</p> <p>Arjuni-Morgaon, Kudwa, Navatola and Garada BDPs (Gondia): Water tank, playing equipment, ottas and walking track were damaged/deteriorated. Solar lights (costing ₹ 2.83 lakh) were not in working condition.</p> <p>Majiwade BDP (Thane): Pathways, internal roads (paver block) benches and playing equipment was damaged due to movement of machineries for construction of Information Center.</p>						
	Sample pictures	<table border="1"> <tr> <td data-bbox="469 1151 826 1205">Picture No. 2.4.5: Kurum BDP (22.12.2020)</td> <td data-bbox="826 1151 1195 1205">Picture No. 2.4.6 Kurum BDP(22.12.2020)</td> </tr> <tr> <td data-bbox="469 1205 826 1473">  </td> <td data-bbox="826 1205 1195 1473">  </td> </tr> <tr> <td data-bbox="469 1473 826 1496">Deteriorated bench</td> <td data-bbox="826 1473 1195 1496">Damaged tree ottas</td> </tr> </table>	Picture No. 2.4.5: Kurum BDP (22.12.2020)	Picture No. 2.4.6 Kurum BDP(22.12.2020)			Deteriorated bench	Damaged tree ottas
Picture No. 2.4.5: Kurum BDP (22.12.2020)	Picture No. 2.4.6 Kurum BDP(22.12.2020)							
								
Deteriorated bench	Damaged tree ottas							

As the BDPs were incomplete and there was no provision in the DPR for maintenance of assets formed during creation of BDPs, the assets had deteriorated or had damaged or stolen.

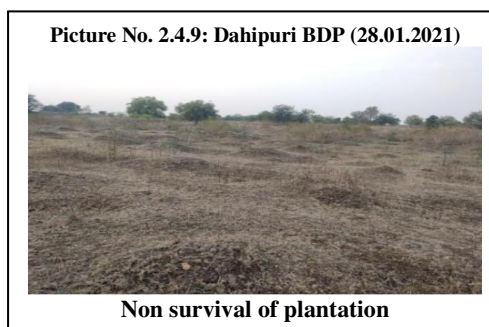
State Government accepted (December 2021) the above facts and stated that paucity of funds, non availability of labour during Covid and restriction on movement of staff adversely affected the infrastructure during last 2 years.

2.4.4.2 Non-handing over of completed BDPs

Audit observed (January 2021) that the BDP at FGTS, Jalna was completed (March 2019) after spending ₹ 2.14 crore, but not handed over to any JMFC or local bodies for operation and maintenance. During site visit (January 2021) audit observed that due to lack of operation and maintenance the BDP was in poor condition and articles like playing equipment, solar lamps, bird nest and dust bins were dumped in a room as shown in the photograph below.



It was also observed (January 2021) that Dahipuri BDP of Jalna district was taken up at sanctioned cost of ₹ 1.91 crore, was declared as completed (March 2019) after execution of only 45 per cent work (of ₹ 0.86 crore) due to opposition from villagers. It could not be handed over for operation and maintenance because the Gram Panchayat was unwilling to take over.



Further, the fencing work which was required to be taken up at the initial stage of creation of BDP for protection of plantations and safeguarding against encroachment was not done resulting in non-survival of entire plantation of 10,170 saplings of various species and 75,500 saplings of Duranta plants at the cost of ₹ 36.14 lakh as shown in adjoining photograph. The pipes, costing ₹ 14.64 lakh installed for drip irrigation of plantation work, were also non-operational and damaged.

Thus, non-handing over of the completed BDPs for further operation and maintenance resulted in deterioration and damaging of asset created in FGTS, Jalna BDP and non survival of plantation in Dahipuri BDP.

State Government stated (December 2021) that in case of FGTS Jalna BDP handing over process was in progress, in case of Dahipuri BDP there was no alternative than to hand over the park to Gram Panchayat. Concerned authorities were instructed to complete the park despite opposition from villagers.

Reply is not tenable as FGTS Jalna BDP was completed in March 2019 and thereafter timely action for handing over the park or maintenance of the park was not taken up by the DFOSF, Jalna. Dahipuri BDP was declared as completed on execution of partial work in March 2019 and thereafter the BDP was neither handed over nor being maintained.

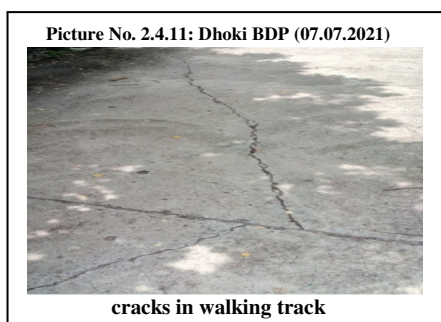
2.4.4.3 Lack of maintenance of handed over BDPs

Scheme guidelines prescribed handing over of the completed BDPs to JFMC, if available and working, or to any Local Body (Gram Panchayat or Municipal Council) for its further maintenance and operation. Levy of entry fee to the BDP was aimed to make the BDPs self-sustainable.



Out of the 10 BDPs, which were handed over to the trusts/local bodies/territorial forest division for operation and maintenance, two BDPs (Tirth and Dhoki) of Osmanabad district, as discussed in **Paragraph 2.4.2.4**, were handed over to temple trusts after completion. During site visit (July 2021) of Tirth BDP audit observed that animal figurines, playing equipment, lavatories, solar lamps and drip irrigation pump were found to be damaged

or deteriorating as shown in photograph.



In Dhoki BDP, audit observed during site visit (July 2021) with Assistant Conservator of Forest, Osmanabad that walking tracks, animal figurines and pagodas were in damaged condition.

The poor condition and inadequate maintenance of Jamkhel BDP of Dhule district, and Kati-pati BDP of Akola

district, which were handed over to respective Gram Panchayats have been discussed in **Paragraphs 2.4.2.2 and 2.4.2.4** respectively.

State Government stated (November 2021) that enquiry will be initiated in the case of three BDPs (Dahipuri in Jalna, Jamkhel in Dhule and Kati-Pati in Akola). State Government further stated (December 2021) that in case of Tirth and Dhoki BDPs, responsibilities of management and protection lay with the authority/agency to which the BDP was handed over and the trusts had been informed to repair the equipment.

2.4.4.4 Irregular award of works to contractors

Maharashtra Public Works Manual, 1984 (MPWM) stipulates that for all works to be given out on contract, tenders should invariably be invited.

In four BDPs (Arjuni Morgaon, Kudwa, Navatola and Garada) of Gondia district, an agency was appointed (September 2016) for the work of providing technical services and Multi-Tasking Staff, without inviting tenders and payment of ₹ 0.55 crore was made to the agency during October 2016 to March 2019.

State Government accepted (December 2021) the lapse and asked CF, Nagpur to fix responsibility and initiate action.

2.4.4.5 Irregular splitting of work

General Administration Department of GoM vide resolution of November 2014 directed that for the tenders costing above ₹ 3 lakh, e-tendering system should be followed. The Maharashtra Public Works Manual, 1984 also specifies that if a single work is split up into smaller works, the officer concerned should obtain prior approval of the authority competent to accept the tender for the whole work.

Audit observed that in five⁴⁴ BDPs, 12 works (total cost of ₹ 1.06 crore) were split up into each work costing less than ₹ 3 lakh. No e-tendering process was followed in respect of these works. Further, this splitting of work by DFOSFs did not have prior approval of the authority competent to accept the tender for the whole work.

State Government accepted (December 2021) the fact and issued instruction to CF, Aurangabad and Thane to fix responsibility and initiate disciplinary action on the officers concerned.

2.4.5 Monitoring Mechanism

Monitoring is crucial for tracking the progress of any scheme, programme or a process with a view to detect deviations for early corrective action and learn lessons for future planning. Audit observed the following inadequacies in monitoring of the scheme.

2.4.5.1 Inspection/monitoring of BDPs

PCCF, SF Pune instructed (October 2015) that CFSFs should visit each BDP during the first year of the scheme. There was no other provision regarding periodical inspection of the BDPs either by the CFSF or DFOSF.

Details of visit by the four CFSFs during 2015-2021 are shown in **Table 2.4.3**

Table 2.4.3: Number of field visits of BDPs by CFSFs

Name of CF	No. of BDPs	Total number of visits	BDPs not visited during first year	BDP never visited	BDPs visited only once
Amravati	11	47	3	1 (Kati-Pati)	0
Nagpur	12	33	10	1 (Arjuni-Morgaon)	2
Thane	10	81	4	0	1
Pune	10	19	9	0	3
Total	43	180	26	2	6

Source: Information submitted by department

From above table it is observed that 26 out of the 43 BDPs under these four CFSFs were not visited by the respective CFSFs during the first year. Further, no details like inspection notes etc. were available on record regarding 180 visits by these CFSFs during 2015-2021 to the BDPs.

State Government stated (November 2021) that updated information of inspection of BDP would be provided to audit.

2.4.5.2 Mid-term evaluation of BDPs

PCCF (SF) instructed (April 2015) that a mid-term evaluation of BDP should be carried out to take necessary corrective actions.

Audit observed that only two DFOSFs (Gondia and Nashik) had conducted (February 2021) a mid-term evaluation of BDPs under them but no evaluation reports or documents were produced to audit for verification. In the remaining 13 districts, no records pertaining to mid-term evaluation were provided to audit.

⁴⁴ Wadeपुरi and Bondhar (Nanded), Majiwade and Kanwinde (Thane) and FGTS (Jalna).

Further, no such mid-term evaluation of the scheme was ever carried out by the PCCF. However, a meeting was called for (May 2017) by the PCCF to discuss guidelines of the scheme in which members of the Maharashtra State Biodiversity Board and Botanical Survey of India were also invited. The recommendations emerging out of this meeting regarding selection of sites, species of plants to be planted and ensuring water availability were forwarded (June 2017) to all the CFs.

State Government stated (December 2021) that due precautions would be taken henceforth to conduct timely evaluation.

Department of Goods and Services Tax

2.5 GST Transitional Credits

Audit observed inconsistency in departmental circular with respect to provisions of MGST Act allowing unavailed credit in respect of capital goods which leads to impede dealers from getting benefits of transitional credit. Audit noticed cases of excess availment of transitional credits amounting to ₹ 26.92 crore due to irregular declaration in GST TRAN-1 by tax payers. Irregular transitional credit amounting to ₹ 7.99 crore was availed by tax payers though they did not file all the prescribed returns. Audit also observed the cases of irregular availment of transitional credit on goods in transit, input contained in work-in-progress/finished goods and amount credited to ECL in excess of TRAN form. Commissioner of State Tax failed to produce the records pertaining to verification of the claims of transitional credits availed by tax payers to Audit for scrutiny inspite of repeated requisitions due to which audit could not verify effectiveness of verification of transitional credit by the Department.

2.5.1 Introduction

Introduction of Goods and Services Tax (GST) is a significant reform in the field of indirect taxes in our country, which replaced multiple taxes levied and collected by the Centre and States. GST is a destination based tax on supply of goods or services or both, which is levied at multi-stages, wherein the taxes will move along with supply. The tax will accrue to the taxing authority, which has the jurisdiction over the place of supply.

Tax is levied simultaneously by the Centre and States on a common tax base. Central GST (CGST) and State GST (SGST)/Union Territory GST (UTGST) is levied on intra-state supplies and Integrated GST (IGST) is levied on inter-state supplies.

On the lines of the Central Goods and Services Tax Act, 2017, to make provisions for levy and collection of tax on intra-State supply of goods or, services or, both in the State of Maharashtra and the matters connected therewith or incidental thereto, the Maharashtra Goods and Services Tax Act, 2017 (MGST Act) was enacted and came into force with effect from 01 July 2017.

2.5.1.1 Transitional Credit:

Input Tax Credit (ITC) of taxes paid on inputs, input services and capital goods by a dealer is available for set-off against the output tax liability is one of the key features of GST. To ensure the seamless flow of ITC from the existing laws (Value Added Tax (VAT) regime) to GST regime, a 'Transitional arrangements for Input Tax' was included in the MGST Act⁴⁵ to provide transitional provisions relating to migration of existing tax payers and arrangements for ITC specifying for the entitlement and manner of claiming input tax in respect of appropriate taxes or duties paid under existing laws. Transitional credit provisions are important for both the Government and business to ensure seamless transition of accumulated credits from the legacy returns (VAT regime), input tax in respect of raw materials, work in progress, finished goods held in stock as on the appointed day as well as unavailed credit in respect of capital goods into the GST regime. The provisions enable taxpayers to transfer such input credits only when they are used in the ordinary course of business or furtherance of business and for taxable supplies under GST.

2.5.2 Process of Transitional Credit

Section 140 of the MGST Act provide that a registered person (other than a person opting to pay tax under section 10) shall be entitled to take transitional credit, which is carried forward in the last return relating to pre-GST regime subject to the following:

- (1) said amount of credit is admissible as input tax credit under this Act ;
- (2) taxpayer furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date;
- (3) credit relates to units entitled to claim set-off under rule 79 of MVAT Rules;
- (4) unavailed ITC in respect of capital goods;

Section 140 of MGST Act envisaged that a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the amount of VAT, and Entry Tax, if any, carried forward in the return relating to the period ending with the day immediately preceding the appointed day⁴⁶, furnished by him under the existing law⁴⁷ by filing declaration electronically in FORM GST TRAN-1.

Tax payers can claim various components of transitional credit, under the relevant sections of the MGST Act, in the appropriate tables of TRAN-1 as mentioned below in **Table 2.5.1**.

⁴⁵ Section 139 to 142 of MGST Act.

⁴⁶ 01 July 2017.

⁴⁷ Maharashtra Value Added Tax Act, 2002 and Maharashtra Value Added Tax Rules, 2005.

Table 2.5.1

Sections of the MGST Act	TRAN-1 Table No.	Transitional credit component
140 (1)	5(b)	Details of statutory forms for the period (01.04.2015-30.06.2017) received for which credit is carried forward
140 (1), 140(4)	5 (c)	Amount of tax credit carried forward to electronic credit ledger as state tax
140(2)	6(b)	Un-availed credit on capital goods
140(3), 140(4)	7(a)B	Credit on duty paid stock-without invoices
140(5)	7(b)	Credit on Input/input service in transit
140(3),140(4),140(6)	7 (c)	Credit on duty paid stock-with invoices
141(4)	9(a)	Details of goods sent as Principal to job-worker
141(4)	9(b)	Details of goods held in stock as job-worker on behalf of the Principal
142 (14)	10(a)	Details of goods held as an agent on behalf of Principal
142(11)(c)	11	Detail of credit availed on VAT paid under works contract
142(12)	12	Details of goods sent on approval basis
<i>Source: Section 140 to 142 of MGST Act</i>		

The transitional credit is a one-time flow of input credit from the legacy regime in to the GST regime.

2.5.3 Audit Scope, Methodology and Sample Selection

All registered taxpayers, except those, who had opted for payment of tax under Composition Scheme⁴⁸ were eligible to claim transitional credit by filing FORM GST TRAN-1 declaration. The records relating to selected cases of transitional credit claims were scrutinized by Audit between April 2021 and September 2021. The methodology for verification of transitional credit claims involved scrutiny of records available with the Assessing Officers and data analysis/verification of information available in SAP⁴⁹ Portal as well as Back Office System of State GST Department. An Entry Conference with Deputy Secretary (Taxation), Finance Department, Government of Maharashtra was held online on MS Teams on 25 February 2021. The six Additional Commissioners and four Joint Commissioners and Dy. Commissioner (Internal Audit) of the State Tax Department attended the entry conference.

Considering the pandemic, out of total 52,669 cases involving total Transitional credit amounting to ₹ 2270 crore, a sample of 1,366 cases involving an amount of ₹ 756.57 crore, was selected by adopting Statistical Random Sampling Method covering major economic hubs/industrial centres located under the jurisdiction of Mumbai, Mumbai-Suburban, Nagpur, Pune and Thane divisions. The physical audit of 124 cases of Nagpur division was conducted from April-June 2021 and online audit of remaining cases from selected divisional offices was conducted between July 2021 and September 2021 with the following audit objectives:

⁴⁸ Section 10 of MGST Act.

⁴⁹ Systems Applications and Products in Data Processing.

2.5.4 Audit objectives

Subject Specific Compliance Audit on GST Transitional Credit was conducted with the objectives to seek an assurance on:

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

2.5.5 Audit criteria

The Audit findings are based on the criteria derived from:

- Section 139-142 of the Maharashtra Goods and Services Tax Act, 2017 (MGST Act);
- Rule 117-119 of the Maharashtra Goods and Services Tax Rules, 2017 (MGST Rules);
- Relevant provisions of Maharashtra Value Added Tax Act, 2002 (MVAT Act);
- Maharashtra Value Added Tax Rules, 2005 (MVAT Rules);
- Notifications/Circulars/Orders issued by Commissioner of State Tax, Maharashtra State, Mumbai.

2.5.6 Responsiveness of the Department

We sought access to records pertaining to 1366 sample cases, the Department provided access to departmental systems through user IDs. During scrutiny, the Audit sought various information and issued various audit memorandums to the test checked Divisional and Controlling Officers. However, responses from the Department remained to be received in most of the audit memorandum till date (August 2022). A draft Subject Specific Compliance Audit Report was issued to the Government in December 2021, wherein Government's comments were sought on the audit findings included in the report. The Exit conference was held in January 2022.

Audit Findings

A sample of 1,366 transitional credit cases was selected for online audit. In test check of 1,095 cases it was observed that in 86 cases there was excess availment of transitional credit against credit carried forward in last return, in eight cases legacy return was not filed while in three cases the tax payers availed irregular/excess credit from previous return/without requisite certificate as detailed in paragraph 2.5.8.1, 2.5.8.2, 2.5.8.3 and 2.5.8.4. Audit observations on irregular availment of Transitional Credit on capital goods, on goods in transit and on inputs contained in semi-finished and finished goods are discussed in paragraph 2.5.8.5, 2.5.8.6, 2.5.8.7 and 2.5.8.8.

A summary of audit observations is given in **Table 2.5.2:**

Table 2.5.2: Extent of deficiencies noticed (Deviation)

(₹ in crore)

Sl. No.	Para No.	Nature of Audit Findings (indicative only)	Audit Sample		Number of Deficiencies noticed		Deficiencies as percentage of Sample	
			Number	Amount	Number	Amount	Number	Amount
1	2.5.8.1	Availment of transitional credit against credit carried forward in the last return of Pre-GST regime	1095	594.35	86	26.92	9.13	9.11
2	2.5.8.2	Transitional credit availed without filing legacy returns			8	7.99		
3	2.5.8.3	Irregular availment of transitional credit from previous legacy returns			2	5.54		
4	2.5.8.4	Excess availment of transitional credit in absence of requisite certificates			1	0.22		
5	2.5.8.5	Inconsistent departmental circular with respect to provisions of MGST Act allowing unavailed credit in respect of capital goods			3	13.51		
6	2.5.8.6	Irregular availment of transitional credit on input services	118	112.57	1	1.57	0.85	1.39
7	2.5.8.7	Irregular availment of transitional credit on inputs contained in work-in-progress or finished goods	210	139.52	12	4.25	5.71	3.05
8	2.5.8.8	Amount credited to ECL in excess of the TRAN amount			1	0.29	0.48	0.21

2.5.7.1 Non-production of information relating to Transitional Credit Verification by the Department

A tax payer is required to avail input tax credit by filing TRAN-1, which was shown in the return filed for the period ending June 2017. On filing TRAN-1 by the dealer, the same is fetched in the GST Electronic Credit Ledger (ECL) of the tax payer. Thus, transition of ITC is trust based. The Economic Intelligence Unit (EIU) of the Department shared this data relating to transitional credit taken to the ECL with the respective Joint Commissioners of State Tax (JCST), who in-turn should share with the respective Nodal Officers for verification of TRAN-1 credit.

The Commissioner of State Tax (CST) directed (January 2018⁵⁰ and September 2018⁵¹) Nodal Officers to complete the verification of the claims of transitional credits taken through TRAN-1 on or before 25 September 2018 and to submit the report by 10 November 2018. It was further directed that all the Additional Commissioner of State Tax (ACST) and concerned JCST shall ensure that the verification of TRAN-1 credit was monitored effectively and ACST shall take weekly review of the said exercise.

⁵⁰ Internal Circular 1A of 2018 dated 01 January 2018.

⁵¹ Internal Circular 23A of 2018 dated 01 September 2018.

In order to ascertain the extent of verification (SGST component of transitional credit allotted to State authorities) done by the Divisional Joint Commissioner and monitoring done by the Zonal Additional Commissioners, as directed by CST, relevant data was called for (July 2021) from the Office of the CST, Maharashtra State, Mumbai.

CST provided details of 9,043 cases involving Transitional credit claims of ₹ 1,970 crore (5,637 pertaining to State jurisdiction and 3,406 of Central jurisdiction) out of total 52,669 cases involving Transitional credit of ₹ 2,270 crore distributed to officers of the State Tax Department for detailed verification only in January 2022. However, details of the cases verified and result thereof was not provided to Audit due to which Audit could not ascertain the adequacy and effectiveness of verification done by the Department.

The Audit observations were communicated to the Government (February 2022 and April 2022). However, their replies are awaited (August 2022).

2.5.7.2 Non-production of invoices / list of invoices

Audit requisitioned (June 2022) the list of invoices and sample invoices for detailed scrutiny in 93 cases where taxpayers were required to provide details of tax invoices in TRAN form, out of selected 255 cases pertaining to four⁵² units. However, in 71 cases the concerned list of invoices and sample invoices were not submitted to Audit.

In reply, the JCSTs concerned replied that the requisitioned records would be obtained from the assesseees and submitted to Audit in due course. However the same are still awaited (August 2022). The matter is brought to notice of Commissioner of State Tax, Maharashtra State (August 2022). The compliance is still awaited.

Due to non-production of requisitioned records, Audit could not assess the correctness of the transitional credits availed in those cases.

Recommendation 1: Department should ensure timely submission of records to Audit.

2.5.8 Compliance Issues

2.5.8.1 Irregular/excess availment of transitional credit against credit carried forward in the last return of pre-GST regime

As per sub-section (1) of section 140 of the MGST Act, a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his ECL, credit of the amount of VAT and Entry Tax, if any, carried forward in the return relating to the period ending with the day immediately preceding the appointed day⁵³, furnished by him under the existing law⁵⁴ in such manner as may be prescribed:

⁵² JCST, Mazgaon, JCST, LTU-I, Mumbai, JCST, LTU-II, Mumbai and JCST, LTU-II, Pune.

⁵³ 01 July 2017.

⁵⁴ MVAT Act and Rules.

As per section 20(4) of the MVAT Act, any person or dealer who, having furnished a return, discovers any omission or incorrect statement therein, may furnish a revised return as regards to the period in respect of which the omission or incorrect statement is discovered, before the expiry of the prescribed period therein.

Vide Para 2 of Internal Circular No.35A of 2019 dated 19 October 2019, the CST clarified four situations where the amount carried forward was wrongly mentioned as 'refund claimed' in the original return for the period ending 30 June 2017 *vis-a-vis* in the 'revised return' is to be considered for allowing transitional credit as shown in **Table 2.5.3**:

Table 2.5.3

Situation	Amount claimed as	Amount claimed in return for the period ending 30.06.2017		Credit to be allowed as Transitional Credit as per CST circular	
		Original (in ₹)	Revised (in ₹)	Instructions	Amount
1	Refund	1,00,000	0	Claimed 'refund' in original return but in revised return same amount was claimed as 'carry forward' instead of refund.	1,00,000
	Carry forward	0	1,00,000		
	Carry forward	0	1,50,000	Claims higher amount as 'carry forward' in revised return instead of 'refund' amount of original return.	1,00,000
	Carry forward	0	80,000	Claims lesser amount as 'carry forward' in revised return instead of 'refund' amount of original return.	80,000
2	Carry forward	1,00,000	1,20,000	Claims higher amount as 'carry forward' in revised return than original return.	1,00,000
3	Carry forward	1,00,000	90,000	Claims lesser amount as 'carry forward' in revised return than original return.	90,000
4	Refund	1,00,000	1,50,000	Claimed 'carry forward' as well as 'refund' both in original return but claims different amount for both in revised return.	1,50,000 (Amount in original or revised returns whichever is less to be allowed)
	Carry forward	2,00,000	1,50,000		

It was also clarified that the Nodal authorities shall ensure that in no case the tax payer is eligible for MVAT refund as well as transitional credit for the same credit. Audit observed that there were availment of excess transitional credits amounting to ₹ 26.92 crore in ECLs of 86 cases out of 1,095 test checked cases (**Appendix 2.5.1**) due to irregular excess declaration in GST TRAN-1 Table-5(c) by tax payers as compared to their respective original and revised VAT returns for the period ended on June 2017.

The Audit observations were communicated to the Assessing Officers concerned (April 2021 to September 2021). In one case⁵⁵, the department took corrective action. An assessment order was passed (February 2022) wherein

⁵⁵ M/s. Bora and Bora Technologies LLP, GSTIN-27AAPFB2057B1ZP, LTU-II, Pune.

the refund claimed by the assessee was rejected. Replies in remaining cases are still awaited. (August 2022).

Illustration:

A dealer⁵⁶ in original VAT return for the month of June 2017 shown VAT credit under carried forward as NIL amount as closing VAT input credit balance in July 2017 and refund of ₹ 1.48 crore under refund column in Table 5(c). The amount of ₹ 0.76 crore was reflected in his ECL on 28 September 2017 and ₹ 0.84 crore on 27 December 2017. Thus, total transitional credit carried forward in ECL was ₹ 1.60 crore. Further, in August 2019, dealer filed revised return for the month of June 2017, wherein Excess credit carried forward to subsequent tax period was again shown as 'NIL' and refund claimed was shown as ₹ 1.61 crore. Hence the dealer did carry forward the credit neither in original nor in revised return. This resulted in irregular availment of transitional credit amounting to ₹ 1.60 crore.

2.5.8.2 Transitional credit availed without filing legacy returns

Proviso (ii) of section 140 (1) provided a precondition, for transition of credit from legacy returns of GST, that the tax payer should file all returns required under the existing law for a period of six months immediately preceding the appointed date.

Audit observed that out of 1,095 cases, in eight cases, irregular transitional credit amounting to ₹ 7.99 crore was availed (*Appendix-2.5.2*) though tax payers did not file all the prescribed returns for a period of six months immediately preceding the appointed date.

Audit communicated the observation in April to September 2021. However, replies thereof are awaited (August 2022).

Illustration:

A tax payer⁵⁷ did not file VAT return for the period of January 2017 to June 2017. However, in the TRAN-1, the tax payer declared a claim of transitional credit amounting to ₹ 2.72 crore under Table 5(c), which reflected in his ECL in November 2017. This resulted in irregular availment of transitional credit of ₹ 2.72 crore

2.5.8.3 Irregular availment of credit from previous legacy returns

Scrutiny of the previous six monthly returns of two tax payers (*Appendix-2.5.3*) revealed that the dealers did not have balance of ITC to be carried forward or have claimed refund in previous return but the amount was carried forward to next return and was taken in ECL as transitional credit. This had resulted in consideration of irregular transitional credit of ₹ 5.54 crore.

The Audit communicated the observation in August to September 2021. However, replies thereof are awaited (August 2022).

⁵⁶ F.D.C. Ltd. having GSTIN: 27AAACF0253H1Z0 under the Mumbai LTU-502 Division.

⁵⁷ M/s Steel Fab Engineering Corporation having GSTIN No. 27AAPFS1542Q1ZH under the Mazgaon Division of Mumbai.

Illustration:

A tax payer⁵⁸ in his monthly VAT return of March 2017 had shown ITC of ₹ 9.31 crore as carried forward to next return viz April 2017 and accordingly, credit was carried forward in June 2017 in ECL. However, scrutiny of Revised Annual Return for the year 2016-17 revealed that the tax payer had shown credit carried forward as 'NIL' and claimed refund of ₹ 1.51 lakh at the end of March 2017. However, the tax payer carried forward ITC of ₹ 4.41 crore. The taxpayer was required to pay the credit of ₹ 4.41 crore, wrongly taken and also to pay the amount based on the revised figures in annual return. Audit reworked amount payable by tax payer for the period from March 2017 to June 2017 as ₹ 4.79 crore.

2.5.8.4 Excess availment of transitional credit in absence of requisite certificates

As per paragraph 3.3 of Internal Circular No. 23A of 2018 dated 01 September 2018, the ITC as attributed to the interstate sales, branch transfer/consignment transfer, or deemed export, sales to Special Economic Zone and where declarations or certificates i.e. Form-C, Form-F, Form-H and Form-I as provided under the Central Sales Tax Act, 1956 has not been received then to such extent, the tax payer is not entitled to take credit of ITC into Electronic Credit Ledger.

Audit observed that a tax payer⁵⁹ availed ITC of ₹ 0.85 crore. Audit found from Chartered Accountant's Audit Report that requisite certificates in Form-C and Form-F involving tax liability of ₹ 0.10 crore and ₹ 0.41 crore respectively were wanting. Thus, credit of ₹ 0.51 crore was inadmissible. The tax payer reversed ITC of ₹ 0.29 crore in November 2019 out of total tax liability of ₹ 0.51 crore. However, the excess credit of ₹ 0.22 crore was not reversed till December 2021 resulting in excess availment of ITC of ₹ 0.22 crore.

Audit communicated the observation in September 2021. However, replies thereof are awaited (August 2022).

2.5.8.5 Inconsistent departmental circular with respect to provisions of MGST Act allowing unavailed credit in respect of capital goods

Section 140(2) of the MGST Act envisaged that a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his ECL, credit of the un-availed input tax credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed.

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as input tax credit before as well as after appointed day.

⁵⁸ Shaman Wheels Pvt Ltd with GSTN No 27AANCS3404N1ZY under LTU-02, Mumbai.

⁵⁹ M/s Consul Neowatt Power Solutions Pvt Ltd with GSTN 27AABCC2553QZC under Thane City Division.

Prior to appointed day, the Rule 52 of MVAT Rules envisaged for grant of a set off of the sum collected separately from the claimant dealer by the other registered dealer by way of tax on the purchases made by the said registered dealer of goods being capital assets.

Further, Rule 54 (a) clarified that purchases of motor vehicles (being passenger vehicles) which are treated by the claimant dealer as capital assets and parts, components and accessories thereof except the claimant dealer is engaged in the business of transferring the right to use (whether or not for a specified period) for any purpose in respect of the said vehicles. Rule 53(11) further clarified that if the claimant dealer is engaged in the business of transferring the right to use (whether or not for a specified period) for any purpose, of passenger motor vehicles, then he shall be entitled to claim set-off of tax paid on the purchase of such motor vehicles only to the extent of tax payable on such transfer of right to use and shall be claimed in the period in which such right to use has been transferred by the claimant dealer.

However, CST Maharashtra vide paragraph 4 of Internal Circular No. 23A of 2018 dated 01.09.2018 stated that the provision of allowing CENVAT credit in a staggered manner in Central Excise Act 1944, are not applicable to MVAT Act as the full set-off/input tax credit in respect of Capital Goods was allowed to be claimed in the month in which such purchases are affected. Therefore, the tax payer would not be entitled to take any MVAT credit into ECL under section 140 (2) of the MGST Act.

(A) We noticed in two cases of dealers engaged in the business of transferring the right to use of passenger motor vehicle, transitional credit of ₹ 13.40 crore (**Appendix 2.5.4**) was availed in ECL as un-availed input tax credit in respect of capital goods which was incorrect in view of Para 4 of Internal Circular 23A of 2018.

On this being pointed out (September 2021), in one case⁶⁰, Joint Commissioner, LTU-2, Mumbai accepted (November 2021) the audit observation and stated that the tax payer, being engaged in providing motor vehicle on lease and treating the same as capital goods, was not entitled to claim TRAN credit of ₹ 9.66 crore and the same is needed to be reversed. While in other case⁶¹, Deputy commissioner, LTU-2, Mumbai stated (November 2021) that in view of the provisions of Notification dated 01 April 2016, the tax payer was entitled to take the balance of ITC available as on appointed day to the tune of ₹ 3.74 crore. Later on, the Joint Commissioner, LTU-2, Mumbai confirmed (January 2022) that the provision of allowing credit relating to the capital goods in staggered manner as was available under Central Excise Act are not applicable to MVAT Act and tax payer would not be entitled to take any MVAT credit into ECL under GST. Accordingly, recovery notice against the claimant was issued (January 2022).

Thus, the right of the claimant for un-claimed portion of ITC which remained to be claimed as on appointed day in view of Rule 53 of MVAT Rules which allows the set off in staggered manner to the extent of taxes payable on

⁶⁰ Orix Auto Infrastructure Services Ltd with GSTN No. 27AACO25631ZI and

⁶¹ Arval India Pvt Ltd with GSTN No. 27AAGCA5212K1ZR.

services actually provided is not now available after appointed day due to the contradictory provision of paragraph 4 of Internal Circular No. 23A of 2018.

The Government may revisit the provisions of internal circular No. 23A of 2018 and issue clarification on un-claimed ITC in such cases.

(B) We noticed that in one case,⁶² the tax payer claimed TRAN credit of ₹ 11.46 lakh on capital goods by filing a declaration in form GST TRAN-1 under table 6(b) and taken in his ECL in the month of November and December 2017 in respect of the purchases effected between January and June 2017, which was contrary to the provisions of paragraph 4 of Internal Circular No. 23A of 2018.

On this being pointed out (September 2021), in reply it was stated (September 2021 and April 2022) that credit was correctly taken by the dealer for goods purchased during January to June 2017. The dealer received the said invoices between July and August 2017 and hence, due to non-availability of tax invoices in time, the tax payer could not prepare a true account thereof and claim the tax credit in VAT return. As the credit thereof remained un-availed under MVAT, the same credit was availed as TRAN credit by filing a declaration in form GST TRAN-1 under table 6(b).

However, as though the dealer paid MVAT on purchase of capital goods and was entitled for un-availed ITC as transitional credit for the same by virtue of provisions of section 140(2) of MGST Act is negated in view of paragraph 4 of Internal Circular No. 23A of 2018 which envisage that full set-off/input tax credit in respect of Capital goods was allowed to be claimed in the month in which such purchases were affected. Thus, the Government may revisit the provisions of internal circular No. 23A of 2018 and issue clarification on such un-availed ITC on capital goods.

Recommendation 2: The Department may revisit the provisions of internal circular No. 23A of 2018 and issue clarification on un-availed ITC on Capital goods

2.5.8.6 Irregular availment of transitional credit on input services in transit

In accordance with the provision of Section 140(5) of MGST Act a registered person shall be entitled to take, in his ECL, credit of VAT and entry tax, if any, in respect of inputs received on or after the appointed day but the tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other taxpaying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day.

Audit noticed that a tax payer⁶³ declared a claim of ₹ 2.20 crore under TRAN 1 Table 7(b) and availed credit of the same in ECL in December 2017. Audit scrutiny of list of inputs revealed that the tax payer had availed credit amounting to ₹ 1.57 crore on input services for which there was no provision

⁶² Pidilite Industries GSTIN No 27AAACP4156B1ZS.

⁶³ M/s Wipro Limited having GSTIN No. 27AAACW0387R1ZN under the LTU-1 Division of Mumbai.

in the MGST Act. Hence, availing transitional credit on input services amounted to irregular excess availment of transitional credit by ₹ 1.57 crore.

Audit communicated the observation in October 2021. JCST LTU-1 Mumbai replied (January 2022) that the show-cause notice (DRC-01) was issued. Further compliance is awaited (August 2022).

2.5.8.7 Irregular availment of transitional credit on inputs contained in work-in-progress or finished goods

As per section 140(6) of the MGST Act, a registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his ECL, credit of VAT in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:

- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act ;
- (ii) the said registered person is not paying tax under section 10 ;
- (iii) the said registered person is eligible for input tax credit on such inputs under this Act ;
- (iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of inputs and
- (v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

Further CST clarified (September 2018)⁶⁴ that the term “inputs” means any goods other than the capital assets. Hence, the terms “inputs” will not include the capital goods and therefore, the Builder and Developer shall not be entitled to claim the credit of VAT in respect of the capital goods that are held in the stock as on 01 July 2017. It was further clarified that Building or the work in progress *i.e.* the “inputs” contained in semi-finished or finished goods, will not get covered under the term “goods” as defined under the MGST Act and therefore, inputs that are in the nature of work-in progress *i.e.* contained in semi-finished and finished goods are not “goods” within the meaning and scope of the MGST Act and tax payer shall not be entitled to claim the VAT credit.

Audit noticed that in 12 out of 210 cases of Builders and Developers, transitional credit of ₹ 4.25 crore (**Appendix 2.5.5**) was declared under Table 7c of TRAN-1 by the tax payers and credit thereof was availed in ECL on inputs contained in semi-finished or finished goods. This resulted in irregular availment of transitional credits amounting to ₹ 4.25 crore.

The Audit communicated the observation from July to September 2021. However, replies thereof are awaited (August 2022).

⁶⁴ Para 8.7 of internal circular No. 23A of 2018 dated 01/09/2018.

Illustration:

A tax payer⁶⁵ had made transitional credit claim of ₹ 81.62 lakh for inputs contained in semi finished goods under Table 7(c) of TRAN-1 and carried forward the same in ECL. As the tax payer was a Builder/Developer, he was not entitled for VAT credit on inputs contained in semi-finished goods. This resulted in irregular availment of transitional credit of ₹ 81.62 lakh.

2.5.8.8 Amount credited to ECL in excess of the TRAN amount

As per section 140 (1) of Maharashtra Goods and Service Tax Act a registered taxable person may take into Electronic Credit ledger (ECL), the amount of ITC carried forward as shown in the Return filed for the period ending June 2017 i.e. before 01 July 2017. The registered taxpayers were required to file a return in prescribed form i.e. TRAN-1 within stipulated date and the amount shown in TRAN-1 towards ITC shall be taken into ECL as Transitional Credit (TC).

Scrutiny of the TRAN-1 filed (October 2017) by M/s. Sylvanus Properties Limited pertaining to LTU-II, Mumbai (GSTIN-27AAJCS9992H1ZI) revealed the credit of ₹ 69.39 lakh under Table 7 C (amount of VAT paid on inputs supported by invoices) and ₹ 14.16 lakh under Table 11 C (credit in terms of section 142 (11) (c)). Thus total credit as per TRAN-1 was ₹ 83.55 lakh. However, audit observed (June 2022) that in ECL, transitional credit of ₹ 1.12 crore under State Tax was credited. This resulted in excess credit of transitional credit by ₹ 28.79 lakh.

In response, the JCST, LTU-02, Mumbai submitted (August 2022) that the case is selected for GST audit for the period 2017-18 on the point of ITC claim in TRAN-1.

Recommendation 3: Department should ensure compliance of all required conditions for availment of transitional credit by tax payer to avoid irregular/excess availment/utilisation of Input Tax Credit by the tax payer.

Recommendation 4: Department needs to initiate action for issue of demand notices to the assessee concerned for recovery of irregular excess availment of transitional credit.

⁶⁵ Bharat Infrastructure and Engineering Private Limited having GSTN 27AABCB3630P1ZJ.

Department of Goods and Services Tax

2.6 GST Refunds

The failure to debit the electronic credit/cash ledger of the tax payer before generation of Application Reference Number of the refund application led to irregular grant of refund. Further, Department failed to ensure the debit the amount of refund claim in the electronic credit/cash ledger of the tax payer before issuance of refund order. Department did not submit data of communication of refund orders to counterpart tax authorities, data relating to conduct of post-audit of refund claims and data of mode of payment of GST refunds to the tax payer for audit scrutiny despite repeated requests. Thus, Audit could not ensure compliance to the codal provisions as well as correctness and timeliness in issuance of refund orders. There were cases of delayed issuance of refund order, thereby, creating liability of payment of interest. Department granted refund on account of zero rated exports without obtaining the proof of exports. Department erred in considering the input tax credit on capital goods and input services for grant of refund wherever applicable. The cases of consideration of incorrect values of components such as Adjusted Total Turnover, Net Input Tax Credit, which resulted in excess refunds, were noticed. On rejection of refund claim of unutilized ITC on account of ineligibility of the said credit, the Department did not ensure re-credit of rejected amount in the Electronic Credit Ledger of the claimant.

2.6.1 Introduction

Goods and Services Tax (GST) is a significant reform in the field of indirect taxes in our country, which replaced multiple taxes levied and collected by the Centre and States. GST is a destination based tax on supply of goods or services or both, which is levied at multi-stages, wherein the taxes will move along with supply. The tax will accrue to the taxing authority, which has the jurisdiction over the place of supply.

Tax is levied simultaneously by the Centre and States on a common tax base. Central GST (CGST) and State GST (SGST)/Union Territory GST (UTGST) is levied on intra-state supplies and Integrated GST (IGST) is levied on inter-state supplies.

The Maharashtra Goods and Services Tax Act, 2017 (MGST Act) was enacted on the lines of the Central Goods and Services Tax Act, 2017 (CGST Act) to make the provisions for levy and collection of tax on intra-state supply of goods or, services or, both in the State of Maharashtra and the matters connected therewith or incidental thereto and came into force with effect from 01 July 2017.

2.6.1.1 Timely refund mechanism constitutes a crucial component of tax administration, as it facilitates trade through release of blocked funds for working capital, expansion and modernization of existing business. The provisions pertaining to refund contained in the GST laws aim to streamline and standardise the refund procedures under GST regime. It was decided by

Maharashtra Government that the claim and sanctioning procedure would be completely online. Due to unavailability of electronic refund module on the common portal, Central Board of Indirect Taxes and Customs (CBIC) issued circulars⁶⁶ in November/December 2017, wherein a temporary mechanism was devised and the detailed procedure was prescribed for GST refunds. In this electronic-cum-manual procedure, the applicant was required to file the refund application in Form GST RFD-01A on the common portal, take a print out of the same and submit it physically to the jurisdictional tax office along with all supporting documents. Further processing of those refund applications, *i.e.* issuance of acknowledgement, issuance of deficiency memo, passing of provisional/final refund orders, payment advice *etc.* were being done manually. In order to make the process of submission of the refund application electronic, CBIC further specified⁶⁷ that the refund applications in Form GST RFD-01A along with all supporting documents had to be submitted electronically. However, various post-submission stages of processing of the refund applications continued to be manual. Between 01.07.2017 to 25.09.2019 (*i.e.* pre-automation period), it could not be made fully electronic due to technical glitches.

2.6.1.2 Complete Automation of Refund Process *i.e.* necessary capabilities for making the refund procedure fully electronic, wherein all the steps from submission of refund application to processing thereof electronically were deployed on the common portal with effect from 26.09.2019. Post-automation, the CBIC in November 2019 issued⁶⁸ fresh set of guidelines in supersession of earlier circulars/guidelines⁶⁹ for electronic submission and processing of refund claims. However, all refund applications filed on the common portal before 26.09.2019 (*i.e.* pre-automation period) continued to be processed manually as were done prior to deployment of new system.

2.6.1.3 Circumstance for GST Refund

A claim for GST refund arose on account of the following:

- (i) Export of goods or services;
- (ii) Supplies to SEZs units and developers;
- (iii) Deemed exports;
- (iv) Refund of taxes on purchase made by UN or embassies *etc.*;
- (v) Refund arising on account of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court;
- (vi) Refund of accumulated Input Tax Credit of GST on account of inverted duty structure/Reverse Charge cases;
- (vii) Finalisation of provisional assessment;

⁶⁶ Circulars No. 17/17/2017-GST dated 15.11.2017 and 24/24/2017-GST dated 21.12.2017.

⁶⁷ Circular No. 79/53/2018-GST dated 31.12.2018.

⁶⁸ Master Circular No.125/44/2019-GST dated 18.11.2019.

⁶⁹ Circulars No. 17/17/2017-GST dated 15.11.2017; 24/24/2017-GST dated 21.12.2017; 37/11/2018-GST dated 15.03.2018; 45/19/2018-GST dated 30.05.2018 (including corrigendum dated 18.07.2019); 59/33/2018-GST dated 04.09.2018; 70/44/2018-GST dated 26.10.2018; 79/53/2018-GST dated 31.12.2018 and 94/13/2019-GST dated 28.03.2019.

- (viii) Refund of balance in electronic cash ledger;
- (ix) Refund of pre-deposit;
- (x) Excess GST payment;
- (xi) Refunds to International tourists of GST paid on goods in India and carried abroad at the time of their departure from India;
- (xii) Refund on account of issuance of refund vouchers for taxes paid on advances against which, goods or services have not been supplied;
- (xiii) Refund of CGST & SGST paid by treating the supply as intra-state supply which is subsequently held as inter-state supply and *vice versa*.

2.6.2 Organisation Set up

Department of Goods and Service Tax functions under the administrative control of the Additional Chief Secretary, Finance Department at Government level. The Commissioner of State Tax, Maharashtra State (CST) heads the Department and is assisted by a Special Commissioner of State Tax, four Additional Commissioners of State Tax (ACST) and 12 Joint Commissioners of State Tax (JCST). Apart from Head Office at Mazgaon, Mumbai, there are five more Zonal Offices headed by ACSTs. There are 13 Divisional offices headed by JCSTs (Admn.) and 39 State Tax Offices (STOs)⁷⁰ spread across 36 districts of the State.

2.6.3 Audit Scope, Methodology and Sample Selection

Pan-India refund data was obtained from GST Network and a sample of refund cases relating to Maharashtra State were extracted for detailed examination. A sample of 1954 cases in 32 GST divisions was selected by Statistical Random Sampling Method covering major economic hubs/ industrial centres located in major districts viz. Mumbai, Mumbai-Suburban, Thane, Pune *etc.* An online Entry Conference was held on 09 December 2020 with Deputy Secretary (Finance), Finance Department, Government of Maharashtra. Three Additional Commissioners (ACSTs), three Joint Commissioners (JCSTs), four Deputy Commissioners and an Assistant Commissioner (Internal Audit) of the State Tax Department attended an Entry conference.

Field work was conducted between December 2020 and September 2021 for detailed examination of the selected refund cases processed during the period from July 2017 to July 2020. During December 2020 to September 2021, physical audit of 886 cases pertaining to pre-automation period and online audit of 1068 cases of post-automation period of all the selected divisions was conducted.

The online Exit conference was held on 04 January 2022. The draft report containing the audit observations were communicated to the Government (December 2021). However, their response is still awaited (August 2022).

⁷⁰ State Tax Offices headed either by Dy. Commissioner of State Tax, Assistant Commissioner of State Tax or State Tax Officer.

2.6.4 Audit objectives

Subject Specific Compliance Audit of GST Refunds was conducted to assess:

- the adequacy of Act, Rules, Notifications, Circulars *etc* issued in relation to grant of refund;
- the compliance of extant provisions by the tax authorities and the efficacy of the systems in place to ensure compliance by taxpayers; and
- whether effective internal control mechanism exists to check the performance of the departmental officials in disposing the refund applications.

2.6.5 Audit criteria

The Audit findings are based on the criteria derived from:

- Section 54 to 58 and section 77 of Maharashtra Goods and Services Tax Act, 2017 (MGST Act);
- Rule 89 to 97A of Maharashtra Goods and Services Tax Rules, 2017 (MGST Rules);
- Section 15, 16 and 19 of Integrated Goods and Services Tax Act, 2017 (IGST Act);
- Notifications/Circulars issued by Central Board of Indirect Taxes and Customs(CBIC) and Commissioner of State Tax of Maharashtra State;

Audit Findings

The audit findings of the draft report are summarized in **Table 2.6.1**:

Table: 2.6.1

(₹ in crores)

Sr. No.	Nature of Audit Findings (indicative only)	Audit Sample		Number of Deficiencies noticed		Deficiencies as percentage of Sample	
		Number	Amount	Number	Amount	Number	Amount
1	Delay in issue of acknowledgement	1954	3117.57	759	--	38.84	--
2	Delay in issue of Refund Orders	1954	3117.57	1091	--	55.83	--
3	Delay in sanction of Provisional Refund on account of Zero-rated Supply	992	2634.86	418	--	42.14	--
4	Irregular refund under Inverted Duty Structure	661	277.58	125	24.16	18.91	8.70
5	Irregular refund in Zero-rated Supply cases	992	2634.86	50	22.73	5.04	0.86
6	Non-production of data of communicating refund orders to counterpart tax authority	Data not provided					
7	Non-production of data of conducting of post audit	Data not provided					
8	Non-production of data of payment of GST refund	Data not provided					

2.6.6 Systemic issues

2.6.6.1 Failure to debit ECL in one case resulted in irregular refunds

CBIC clarified⁷¹ (November 2019) that the Application Reference Number (ARN) will be generated only after the applicant has completed the process of filing the refund application in FORM GST RFD-01 and has uploaded all the supporting documents/undertaking/statements/invoices and where required, the amount has been debited from the electronic credit/cash ledger.

Out of the 1068 cases pertaining to post automation period, Audit observed in one case that a tax payer⁷² deposited an amount of ₹ 0.69 crore in October 2019 on account of CGST liability, whereas his actual CGST tax liability was ₹ 0.02 crore only. This led to excess deposit of ₹ 0.67 crore in his ECL. The tax payer applied for refund of ₹ 0.67 crore and ARN was generated in November 2019. This time, the debit of ₹ 0.67 crore in ECL was required to be affected before generation of ARN. The Department sanctioned refund of ₹ 0.67 crore in January 2020. The same was received by the tax payer in January 2020. However, it was observed that there was no debit of the amount so refunded in ECL of the tax payer. This shows the failure to debit the ECL before generation of ARN. Also, it was failure on the part of the Department to ensure the debit of equal amount in the ECL before issue of refund order. This resulted in irregular grant of refund amounting to ₹ 0.67 crore.

On being pointed out (February 2021), the DCST stated (February 2021) that in the normal course while processing RFD-1, the excess balance amount in electronic ledgers are debited from respective ledgers but in the present case, this did not happen due to technical error or system error. The tax payer filed DRC-3 for debit of ₹ 0.67 crore in electronic cash ledger in February 2021 on persuasion of the Department.

Recommendation 1: Department should ensure debit to the electronic credit/cash ledger before generation of Application Reference Number and issue of refund orders.

2.6.6.2 Excess payment of GST Refund due to issue of double payment advice

As per section 73(1) read with sections 50(1) and 122(2)(a) of the MGST Act, where it appears to the proper officer⁷³ that any tax has not been paid or short paid or erroneously refunded, or where ITC has been wrongly availed or utilised for any reason, other than the reason of fraud or any willful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax, which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised ITC, requiring him to show cause as to why he

⁷¹ Para 4(b) of Circular No. 125/44/2019 – GST dated 18.11.2019.

⁷² M/s. Valvoline Cummins Private Limited having GSTIN No.27AAACW0287A1ZN under jurisdiction of Thane City Division.

⁷³ “proper officer” in relation to any function to be performed under this Act, means the Commissioner or the officer of the Maharashtra tax who is assigned that function by the Commissioner in the Board.

should not pay the amount specified in the notice along with interest at the rate of 18 per cent per annum.

Audit observed (August 2021 to October 2021) that in 22 cases (**Appendix 2.6.1 and 2.6.2**) of GST refund claims, the taxpayers were sanctioned refund on zero-rated supplies of goods/services. However, electronic payment advices thereof by the proper officer were found issued twice. This resulted in excess payment of refund amounting to ₹ 1.83 crore.

On this being pointed out (August 2021 to October 2021), nine⁷⁴ proper officers stated that erroneous double payment advice were issued due to system/technical errors.

In 15 of above 22 cases, the taxpayers repaid the amount of excess refund of ₹ 1.26 crore with interest of ₹ 3.24 lakh (**Appendix-2.6.1**). Interest of ₹ 0.91 lakh was still outstanding. Out of these 15 cases, in two cases⁷⁵ under JCST Mulund, Mumbai and JCST Nashik the amount of ₹ 12.19 lakh had been recovered at the instance of audit.

In remaining seven cases, excess refund of ₹ 0.56 crore was made with interest liability of ₹ 0.16 crore. Out of these, recovery of ₹ 0.26 lakhs with interest was made only in one⁷⁶ case (**Appendix-2.6.2**), in three cases, recovery was stated to have been made but no proof thereof was provided to Audit. Replies still awaited in balance two cases.

Illustration:

A tax payer⁷⁷ had filed an application (05.10.2019) for refund of ITC of ₹ 0.24 crore for the month of May 2019 for which acknowledgement was issued in RFD-02 on 07.10.2019. The taxpayer was sanctioned provisional refund order on 14.10.2019 for ₹ 0.22 crore.

However, Department issued payment advice thereof twice vide No. ZA2701200610539 & ZA270120060996 on 23.01.2020 electronically which resulted in excess payment of refund of ₹ 0.22 crore. The same is still not refunded by the tax payer till date (October 2021) on which interest recoverable amounted to ₹ 0.06 crore.

On this being pointed out (September 2021), the Department did not submit any reply till date.

2.6.7 Compliance issues

2.6.7.1 Delay in issue of acknowledgment of refund application

As per Rule 90(2) and 90(3) of MGST Rules, where the refund application is related to claim for refund other than claim for refund from Electronic Cash Ledger, it shall be forwarded to the proper officer who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its

⁷⁴ JCST, Nodal V, Bandra; JCST, Ghatkopar; JCST, Mandvi; JCST, Nodal XIII, Mulund; JCST, Nashik; JCST, Nodal-I, Pune (East); JCST, Thane City; JCST, Nagpur; JCST Kandivali.

⁷⁵ M/s Amit Bangles of Mulund & Sona Sikka Fabrics of Nashik.

⁷⁶ S.R. Neje of Kolhapur Division.

⁷⁷ M/s Chemocid Impex Private Limited having GSTN No. 27AAACC2243C1ZB under Kandivali Division of Mumbai.

completeness and where the application is found to be complete, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically. Otherwise, if any deficiency is noticed, a proper officer shall communicate the same to the applicant in FORM GST RFD-3 through the common portal electronically, requiring applicant to file a fresh refund application after rectification of such deficiency.

Out of 1954 test checked cases, in 759 refund cases (38.84 per cent) pertaining to refund from other than Electronic Cash Ledger that there was delay in issue of acknowledgements (*Appendix 2.6.3 and 2.6.4*) by the Department ranging between one day and 585 days as detailed in **Table 2.6.2**:

Table 2.6.2

Period	No. of cases with range of delay in months			Total	Appendix
	Up to 3 months	3-6 months	More than 6 months		
Pre-Automation period (01.07.2017 to 25.09.2017)	348	55	43	446	2.6.3
Post-Automation period (26.09.2017 to 31.07.2020)	307	6	0	313	2.6.4
Total	655	61	43	759	

On this being pointed out in audit (December 2020 to September 2021), the JCSTs concerned accepted in 271 cases that during pre-automation period, it happened in the initial stage of implementation of GST. It was further submitted that the delay was due to non-submission of all required documents by the tax payer. In remaining 175 cases, the reply is still awaited (August 2022).

In respect of post-automation period, in 157 cases, JCSTs concerned cited (January-November 2021) various reasons such as encountering technical problem in introduction of new taxation system, existing delegation of powers, fire broke out in GST building which took several days to settle down, delay in shifting as well as lockdown due to Covid-19 delayed the process of acknowledgement. Reply in respect of remaining 156 cases is still awaited.

Replies were not acceptable as deficiency memo could have been issued by the Department under Rule 90(3) of MGST Rules for obtaining fresh application from refund claimant where delay was due to non-submission of all required documents by the tax payer.

Illustration:

Pre-automation: A tax payer⁷⁸ filed application for GST Refund of ₹ 2.93 lakh on 27.10.2018 for the month of September 2017. However, acknowledgement was issued on 18.06.2020 with a delay of 585 days.

Post-automation: A tax payer⁷⁹ filed application for GST Refund for the month of June 2019 amounting to ₹ 1.51 crore on 24.10.2019. However, acknowledgement was issued on 20.04.2020 with a delay of 164 days.

⁷⁸ M/s. Jalaram Exports having GST No. 27AAAFJ3818M1Z6 and ARN No. AC2709172066370 under Nodal-4 Mazgaon Division.

⁷⁹ M/s. Blue Star Limited having GST No. 27AAACB4487D1Z5 and ARN No. AA271019092898H under LTU-02 Division, Mumbai.

2.6.7.2 Delay in issue of provisional refund order

Section 54(6) of the MGST Act read with Rule 91(2) of MGST Rules provide for grant of refund on account of zero rated supply of goods or services, on a provisional basis, at 90 *per cent* of the total amount so claimed excluding the amount of ITC provisionally accepted, within a period of seven days from the date of the acknowledgement.

Audit observed delay in 418 (42.14 *per cent*) cases (**Appendix 2.6.5 and 2.6.6**). Out of 992 test checked cases, ranging between one day and 364 days, as detailed in **Table 2.6.3**:

Table- 2.6.3

Period	No. of cases with range of delay			Total	Appendix
	Up to 3 months	3-6 months	More than 6 months		
Pre-Automation period (1.07.2017 to 25.09.2019)	219	5	3	227	2.6.5
Post-Automation period (26.09.2019 to 31.07.2020)	185	6	0	191	2.6.6
Total	404	11	3	418	

On this being pointed out (December 2020 to September 2021), regarding Pre-automation period, in 133 cases, the JCSTs concerned stated (December 2020 to September 2021) that the delay in sanctioning provisional refund during pre-automation period was due to various reasons such as technical difficulties faced in operating new system/portal, delay in submission of relevant document by the tax payers, delay in verification of shipping bills on ICEGATE⁸⁰ and non-production of required documents for verification due to lockdown. Replies in respect of 94 cases are still awaited.

Regarding Post-automation period, JCSTs concerned in 89 cases stated (January-November 2021) various reasons such as non-availability of electricity and net connectivity, incomplete/delayed submission of records by the tax payers, delay in verification of invoices on ICEGATE owing to its improper functioning, delay in verification of invoices of ITC, fire in GST Bhawan, *etc.* Replies in remaining 102 cases are still awaited.

Replies were not acceptable as in case of incomplete information, deficiency memo could have been issued by the Department under Rule 90(3) of MGST Rules for obtaining fresh application from refund claimant where delay was due to non-submission of all required documents by the tax payer.

Illustration:

Pre-automation: A tax payer⁸¹ filed an application for GST Refund of ₹ 12.35 crore for the month of November 2018 on 11.03.2019. Acknowledgement in RFD-02 was issued on 15.04.2019. However, the provisional refund was sanctioned with a delay of 240 days.

⁸⁰ Indian Customs and Maharashtra Excise Electronic Commerce/Electronic Data Interchange (ED/ECI) Gateway.

⁸¹ M/s. Tata Consultancy Services Limited having GST No. 27AAICS0137P1ZZ and ARN No. B2711180530859 under LTU-03 Division, Mumbai.

Post-automation: A tax payer⁸² filed an application for GST Refund amounting to ₹ 2.93 crore on 02.12.2019 for the month of January 2019. Acknowledgement in RFD-02 was issued on 19.12.2019. However, the provisional refund was sanctioned with a delay of 167 days on 10.06.2020.

2.6.7.3 Delay in issue of final refund order

As per section 54(7) of the MGST Act, on receipt of application of refund, if the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may issue an final refund order within sixty days from the date of receipt of application and the amount so determined shall be paid to the applicant. For delayed refund, interest at the rate of six *percent*⁸³ per annum shall be payable for the period after expiry of sixty days from the date of receipt of such refund application, as provided in Section 56 of MGST Act.

Audit observed 5614 cases (March 2021) of GST refund claims of ₹ 2584.29 crore were pending for issue of sanction/rejection order, of which 3485 cases were pending for less than 45 days, 507 cases for 45-60 days and 1622 cases for more than 60 days. Further there were delays ranging between one day and 807 days in 1091 (51.83 *per cent*) final refund cases (*Appendix 2.6.7 and 2.6.8*). Out of test checked 1954 cases as detailed in **Table 2.6.4**:

Table- 2.6.4

Period	No. of cases with range of delay			Total	Interest liability (₹ in crore)	Appendix
	Up to 3 months	3-6 months	More than 6 months			
Pre-Automation period (01.07.2017 to 25.09.2017)	97	121	346	564	7.21	2.6.7
Post Automation period (26.09.2017 to 31.07.2020)	412	107	8	527	1.55	2.6.8
Total	509	228	354	1091	8.76	

On this being pointed out (December 2020 to September 2021) in 321 cases of pre-automation period, JCSTs concerned stated (December 2020 to September 2021) that delay was due to various reasons such as tax payers did not submit required documents along with refund application, technical problem in the system, lockdown due to COVID-19 pandemic and difficulties in operating new portal. Replies in respect of remaining 243 cases are still awaited.

In respect of 263 cases of post-automation period, JCSTs concerned stated (January-November 2021) that VPN Connectivity issue, Covid-19 pandemic and delayed submission of documents by taxpayers delayed the issuance of final refund orders, fire incidence in GST Building. Replies in remaining 264 cases are still awaited.

Replies were not acceptable as deficiency memo could have been issued by the Department for obtaining fresh application from refund claimant where delay was due to non-submission of all required documents by the tax payer.

⁸² M/s. Wipro Limited Having GST No. 27AAACW0387R2ZM and ARN No. AA271219004068C under LTU-2 Division, Pune.

⁸³ As specified in the Notification No.13/2017-CT issued by the CBIC.

Audit observed that the Department did not make any payment on account of interest for delayed refund payment till date, but a liability of interest payment amounting to ₹ 8.76 crore as shown above in **Table-2.6.4** was accrued due to delayed issue of final refund orders.

Illustration:

Pre-automation: A tax payer⁸⁴ filed an application for GST refund amounting to ₹ 2.34 lakh for the month of December 2018 on 19.01.2019. However, refund was sanctioned with a delay of 807 days on 04.06.2021. This created liability of payment of interest of ₹ 0.31 lakh on account of delayed issuance of final refund order.

Post-automation: A taxpayer⁸⁵ filed GST Refund application on 27.09.2019 for the period of April 2019 and claimed refund of ₹ 54.96 lakh. However, the JCST concerned sanctioned refund on 03.07.2020 *i.e.* after a delay of 220 days creating a liability of payment of interest of ₹ 0.20 lakh.

2.6.7.4 Excess refund due to consideration of incorrect components in case of zero rated goods/services

As per section 54(3)(i) of the MGST Act read with section 16(3) of IGST Act, a registered person may claim refund of any unutilized ITC at the end of any tax period where zero rated supplies were made without payment of tax. Sub-rule 4 of Rule 89 of MGST Rules provides following formula for grant of refund of ITC in case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the IGST Act:

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

Audit observed excess grant of refund due to incorrect consideration of the components of the formula as detailed below:

(I) Incorrect Adjusted Total Turnover

Adjusted Total Turnover in the above formula means the sum total of the value of-(a) the turnover in a State or a Union Territory excluding the turnover of services; and (b) the turnover of zero rated supply of services and non-zero rated supply of services, excluding- (i) the value of exempt supplies other than zero rated supplies; and (ii) the turnover of supplies in respect of which refund is claimed, if any, during the relevant period.

It was observed in four cases out of 992 cases (0.40 *Per cent*) pertaining to zero rated exports of goods that the adjusted turnover as per refund determined under Rule 89(4) was not considered correctly as it did not match with the figures of GSTR 3B, GSTR 9C. This has resulted in excess refund of ₹ 0.60 crore as detailed in **Appendix 2.6.9**. This excess refund needs to be recovered with applicable interest.

⁸⁴ M/s. K E Infrastructure having GST No. 27AATFK1246M1ZS and ARN No. AA2701190568033 under Thane City Division.

⁸⁵ M/s. Adnet Infosystems (India) Private Limited having GST No. 27AAACA5326Q2ZD and ARN No. AA270919081926C under Nariman Point Division, Mumbai.

On this being pointed out (March and September 2021), the JCST, Nodal-4 Division, Mumbai stated (January 2022) that the case is undertaken for audit and form GST_ADT_01 issued. Another Division JCST Santacruz stated (April 2021) that DRC-01 issued for recovery of the amount. The JCST Goregaon stated (May 2021) that the case is submitted to revisional authority for the revision of the refund order and the JCST LTU-02 Pune stated (September 2021) the point will be verified and excess grant of refund will be recovered.

(II) Incorrect Input Tax Credit

For processing of the refund claims of integrated tax, the CST circular⁸⁶ envisaged to submit the invoices relating to inputs and input services (other than capital goods) where goods or services are exported without payment of integrated tax. It was further stated that the claimant should also submit the details of the invoices on the basis of which ITC has been availed in Annexure-A along with refund application. Further the proper officer shall verify the amount of refund claimed in GSTR-1, GSTR-2A, GSTR-3B, Annexure-A and Annexure-VIII.

In 7 refund cases out of a total 992 cases (1.4 per cent) in four divisions, it was noticed (March-October 2021) that the proper officer considered Net ITC amount, which did not match with the amount shown in the Annexure-A, GSTR-2A & GSTR 9. This resulted in excess refund to the tune of ₹ 19.43 crore (**Appendix 2.6.10**). This excess refund needs to be recovered with applicable interest.

On this being pointed out (March–October 2021), JCST LTU-1 Pune in one case (M/s Tech Mahindra) stated that the refund claimant had excess balance in their IGST Electronic Credit Ledger and therefore there was no excess refund due to incorrect net ITC. Further JCST Nodal-4 Mazgaon in case of M/s Zar Jewels stated that DRC-01A has been issued to the dealer for recovery. In another case (M/s. Klinera Corporation), JCST Ghatkopar stated (September 2021) that the invoices of previous year were included in the Net ITC and hence the difference. However, no supporting documents were provided to verify the facts.

JCST, LTU-01 Mumbai, in one case (M/s. Siemens Health Care Pvt. Ltd.) stated (November 2021) that the Net ITC as per GSTR 3B was incorrect due to clerical mistake and same mistake was corrected in subsequent GSTR-3B. The reply is not acceptable as refund determined based on incorrect parameters.

Remaining two divisions stated that the matter would be verified and the outcome intimated in due course.

Illustration:

The refund claimant⁸⁷, who was an exporter of services filed the refund application for tax period (March 2019). The refund claimant submitted the details of the invoices on the basis of which ITC was availed during the

⁸⁶ Para 3.1 and 3.2 of the Circular No.33T of 2018 dated 14.11.2018.

⁸⁷ M/s. Tech Mahindra Limited having GSTIN-27AAACM3484F1ZI under the LTU-1 Pune Division.

relevant period in Annexure-A (a summary Statement of 255 number of invoices with respect to inputs/inputs service) amounting to ₹ 15.77 crore as eligible ITC along with the refund application (RFD-01A) and also declared the eligibility.

It was observed (August 2021) that the proper officer considered Net ITC of ₹ 30.14 crore (as per GSTR-3B) instead of ₹ 15.77 crore for working of maximum refund amount. This resulted in excess grant of refund to the tune of ₹ 4.63 crore.

On this being pointed out (August 2021), the JCST stated (August 2021) that the refund claimant had excess balance in their IGST Electronic Credit Ledger while filling of GSTR-3B for the tax period and refund was claimed only under the head of IGST.

The reply is not acceptable as the proper officer failed to consider the lesser amount of Net ITC as per Annexure-A.

(III) Excess refund due to incorrect calculation of exclusion of credit of pre-GST period

CBIC circular clarified⁸⁸ that as the transitional credit pertains to duties and taxes paid under the existing laws viz., under Central Excise Act, 1944 and Chapter V of the Finance Act, 1994, the same cannot be said to have been availed during the relevant period and thus, cannot be treated as part of 'Net ITC' and thus no refund of such unutilized transitional credit is admissible.

Audit noticed (July and November 2021) that in one⁸⁹ refund case out of total test checked 992 cases of zero rated exports of services (0.10 per cent), that although while arriving at the 'Net ITC' the department excluded ITC of ₹ 1.66 crore pertaining to pre-GST period⁹⁰ but miscalculated the figures as ₹ 9.94 crore in place of correct net ITC of ₹ 8.29 crore which resulted in excess refund of ₹ 0.66 crore recoverable with applicable interest.

We pointed this out in (November 2021), Reply was awaited.

(IV) Irregular grant of refund on capital goods

As per Rule 89 of the MGST Rules, in case of zero rated supply of goods and services, capital goods are to be excluded while considering the Net ITC for calculating refund. The tax payer shall upload the details of all the invoices on the basis of which ITC was availed in Annexure-B⁹¹ which includes the details of inputs, capital goods or input services.

It was observed (February and March 2021) in three cases, out of total test checked 992 cases of zero rated exports of goods/services that the tax payers have availed the credit on capital goods. This had resulted in an excess refund of ₹ 0.24 crore as detailed in **Appendix 2.6.11**. This excess refund should be recovered with applicable interest.

⁸⁸ Paragraph 50 of CBIC Circular No. 125/44/2019-GST dated 18.11.2019.

⁸⁹ M/s. WNS Global Services Private Limited having GSTIN 27AAACW2598L1ZQ under LTU-01 Division, Mumbai.

⁹⁰ Sr. No.(s) 1 to 423 in the ITC Register indicating availment of ITC on pre GST invoices prior to 01 July 2017.

⁹¹ As per Paragraph 36 of Circular No. 125/44/2019 - GST dated 18.11.2019.

On being pointed out (February and March 2021), in one case (M/s. Adnet Info System Pvt. Ltd), the proper officer accepted (March 2021) the audit observation and issued DRC-1A to the taxpayer for recovery of ₹ 18.05 lakh and interest of ₹ 3.97 lakh. Final compliance is awaited.

In another case⁹² the Proper Officer accepted (June 2021) the audit observation and has asked the taxpayer to pay the excess refund of ₹ 2.15 lakhs with an interest of ₹ 0.66 lakhs totaling 2.81 lakhs in Form DRC 03. Final compliance is awaited.

Reply in remaining one case⁹³ is still awaited. The matter was communicated to the Government in December 2021; However, their response is awaited (August 2022).

2.6.7.5 Excess refund due to consideration of incorrect components in case of Inverted Duty Structure

Rule 89(5) of the MGST Rules states that in the case of refund on account of Inverted Duty Structure, refund of ITC shall be granted as per the following formula:-

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

CBIC⁹⁴ clarified that refund would not be applicable in cases, where the input and output supplies are the same.

Audit observed cases of excess refund in respect of inverted duty structures which are detailed below :

(I) Mismatch of inverted turnover with Statement-1A/Annexure-B/ GSTR-3B:

CBIC in November 2019 clarified⁹⁵ that GST refund application shall be accompanied with statements/declarations and documents as required for processing of the refund claim and be uploaded on the common portal. Neither the refund application nor any of the supporting documents shall be required to be physically submitted to the office of the jurisdictional proper officer.

Further, as per paragraph 36 of the circular, the tax payer shall upload the details of all the invoices on the basis of which ITC was availed in Annexure-B which includes the details of inputs, capital goods or input services.

Audit observed (February/March 2021) that in five refund cases (post automation period) out of the total 661 test checked cases (0.75 per cent), the values of turnover of inverted rated supply of goods and services disclosed by the tax payer in Statement-1A/GSTR-3B *i.e.* statement showing the details of invoices received and issued or Annexure-B as the case may, were not considered by the Department and instead considered higher value mentioned in refund application (RFD-01) by the tax-payer. This resulted in excess

⁹² Floressence Perfumes Private Limited, JCST Nodal 4, Pune.

⁹³ JCST LTU-1 Pune.

⁹⁴ Paragraph 3.2 of the CBIC Circular No. 135/05/2020-GST dated 31.03.2020.

⁹⁵ As per Paragraph 36 of Circular No. 125/44/2019 - GST dated 18.11.2019.

sanction of refund amounting to ₹ 44.02 lakh. (**Appendix 2.6.12**). This excess refund is recoverable with applicable interest.

On this being pointed out (February and March 2021), the Division⁹⁶ stated (January 2022) that tax payer had wrongly uploaded incomplete statement and submitted complete statement in physical form, which was considered for sanction of refund.

The reply is not acceptable, as the submission of statements/declarations and documents in physical form are not allowed during post-automation period. Further, the Department failed to issue deficiency memo in GST RFD 03 as envisaged in such cases.

Another Division⁹⁷ stated (June 2021) that there was no deviation. Reply of the Division is not correct, as Audit observed difference in values mentioned in Statement-1A and RFD-01.

Reply from the Government is still awaited (August 2022).

(II) Incorrect determination of Adjusted Total Turnover:

As per Rule 89(4) of MGST Rules, Adjusted Total Turnover means the sum total of the value of -

- (a) the turnover in a State or a Union Territory and
- (b) the turnover of zero rated supply of services and non-zero rated supply of services excluding (i) the value of exempt supplies other than zero rated supplies; and (ii) turnover of supplies for which refund is claimed.

Audit observed in 11 refund cases out of total test checked 661 cases (1.4 per cent) of five Divisions⁹⁸ that Department failed to include the value of zero rated/non-zero rated supply of goods in the value of Adjusted Total Turnover. This resulted in excess sanction of refund of ₹ 0.79 crore (**Appendix 2.6.13**). This excess refund is recoverable with applicable interest.

On this being pointed out (February to September 2021), one Division⁹⁹ stated (November 2021) that recovery of excess payment of ₹ 27.70 lakh has been effected and notices (DRC-01) were issued for interest amounting ₹ 9.41 lakh in respect of seven cases. Another Division¹⁰⁰ stated (September 2021) that notice (DRC-07) issued and one more Division¹⁰¹ stated (October 2021) that notice (DRC-01A) issued and ₹ 10.67 lakh is recovered along with interest.

Replies from remaining two Divisions and the Government were awaited (August 2022).

(III) Mismatch of Net ITC

As per CBIC instructions (November 2019), the refund application shall be accompanied with the statement/declaration and documents such as Statement

⁹⁶ JCST, Kolhapur.

⁹⁷ JCST, Aurangabad.

⁹⁸ JCST, Solapur; JCST, Nodal-1, Pune, JCST, Fort, Mumbai, JCST Mumbai LTU-03 and JCST Nashik.

⁹⁹ JCST, Solapur.

¹⁰⁰ JCST, Nodal-1, Pune.

¹⁰¹ JCST Mumbai LTU-03.

1A, GSTR-2A etc which gives the details of invoices received and issued during a tax period related to inverted rated supply of goods and services.

In nine refund cases (pre-automation-5 and post-automation-4) out of 661 total test checked cases of five Divisions (1.36 per cent), it was noticed that the higher values of Net ITC amount as shown in the RFD-1 was considered by the proper officer while issuing refund order instead of the Net ITC values shown in the corresponding Statement-1A/GSTR-2A¹⁰²/GSTR-9¹⁰³ and/or purchase register. This resulted in excess allowance of refund amounting to ₹ 1.37 crore (**Appendix 2.6.14**). This excess refund is recoverable with applicable interest.

On this being pointed out (February to September 2021), one Division¹⁰⁴ accepted (November 2021) the fact and excess refund along with interest ₹ 49.16 lakh was recovered. In another Division¹⁰⁵ it was intimated (January 2022) that DRC-01A was issued on 13.12.2021 for excess refund of ₹ 34.47 lakh (with interest) in final settlement of objection taking into account earlier recovery of ₹ 18.71 lakh.

Specific replies from remaining Divisions and the Government are still awaited (August 2022).

Illustration:

A tax payer¹⁰⁶ filed refund application on 10.01.2020 for refund of accumulated ITC of ₹ 25.40 lakh on account of Inverted Duty Structure for the period from April 2018 to March 2019.

It was observed that the proper officer considered (06.03.2020) Net ITC of ₹ 52.58 lakh as per application (RFD-01) submitted by the tax payer and issued sanction order for refund of ₹ 25.40 lakh.

Scrutiny of GSTR-9¹⁰⁷ revealed that an amount of ₹ 41.95 lakh only was available as ITC on account of inputs and ITC amounting to ₹ 10.25 lakh was available for input services.

The ITC on input services do not qualify for refund in the instant case, being Inverted Duty Structure case.

However, proper officer had considered the ITC on account of input services irregularly and granted refund of ₹ 25.40 lakh instead of eligible refund of ₹ 14.78 lakh. This resulted in sanction of excess refund amounting to ₹ 10.63 lakh.

On this being pointed out (March 2021), JCST (November 2021) stated that dealer has paid excess refund amounting to ₹ 10.62 lakh and interest there ₹ 2.99 lakh.

¹⁰² Statement of ITC accrued to the purchaser.

¹⁰³ Annual statement of turnover of sales.

¹⁰⁴ JCST (Fort), Mumbai.

¹⁰⁵ LTU-01 Pune.

¹⁰⁶ M/s. Capital Nonwovens Private Limited having GSTIN – 27AAECC4174G1ZP under Thane City Division.

¹⁰⁷ The GSTR-9 contains the details of all supplies made and received under various tax heads during the entire year along with turnover.

2.6.7.6 Non-compliance to CBIC instructions for re-credit/recovery of wrong/ineligible ITC

Para 4 of CBIC circular¹⁰⁸ (September 2018) envisaged that on rejection of refund claim of unutilized ITC on account of ineligibility of the said credit, the proper officer shall order for re-credit of rejected amount in the Electronic Credit Ledger of the claimant. Simultaneously, a demand notice (DRC-01) was to be issued to the claimant for recovery of said amount. Alternatively, the claimant can voluntarily pay this amount along with required interest and penalty *suo-motu* and intimate the same to the proper officer in FORM GST DRC-03.

In 15 cases in six Divisions, out of test checked 1954 cases (One per cent), Audit observed that the proper officer rejected the claims amounting to ₹ 2.78 crore which included the claim of ₹ 1.34 crore on account of ineligible items such as canteen expenses, *etc.* However, the proper officer had neither initiated any action for re-credit of the same amount into the Electronic Credit Ledger nor issued any demand notice for recovery of the same along with interest and penalty. This resulted in non-recovery of the ineligible availed ITC amounting to ₹ 1.34 crore (**Appendix 2.6.15**). This excess refund is recoverable with applicable interest.

On this being pointed out (March and July 2021), one Division¹⁰⁹ stated (August 2021) that the rejected inadmissible amount was not re-credited as the applicant preferred an appeal. In another Division¹¹⁰, it was stated (June 2021) that the taxpayer made voluntary payment and reversal of ITC would be done. In another two divisions¹¹¹ the proper officer submitted that the same were not re-credited due to non-submission of undertaking by the taxpayers. Remaining two Divisions¹¹² did not submit any specific reply.

The matter was communicated to the Government in December 2021; However, their response is still awaited (August 2022).

Illustration:

A tax payer¹¹³ filed (04.11.2018) an application for refund of ₹ 55.23 crore for the month of June 2018 on account of zero rated supply of goods or services or both without payment of tax. The proper officer sanctioned (06.01.2020) refund (RFD-06) of ₹ 53.80 crore and rejected claim ₹ 1.43 crore. The rejected claim contained an amount of ₹ 33.19 lakh pertaining to canteen expenses which was ineligible ITC.

However, the proper officer neither ordered for re-credit into the Electronic Credit Ledger of the tax payer nor issued demand notice for recovery of the ineligible ITC amounting to ₹ 33.19 lakh along with applicable interest and penalty. On this being pointed out (August 2021), it was stated

¹⁰⁸ Circular No. 59/33/2018-GST.

¹⁰⁹ LTU-1, Pune Division.

¹¹⁰ Aurangabad Division.

¹¹¹ JCST Nodal-1 Pune and Kolhapur.

¹¹² JCST Nashik and Thane Rural.

¹¹³ M/s. Bajaj Auto Limited having GSTN-27AADCB2923M1ZL under the LTU-1 Pune Division.

(August 2021) that the rejected inadmissible amount was not re-credited as the applicant preferred an appeal.

2.6.8 Miscellaneous issues

2.6.8.1 Irregular grant of refund without proof of exports

As per Rule 89(2)(b) of the MGST Rules, the application for refund in case of export of goods shall be accompanied by a statement containing number and date of shipping bills or bills of export of goods. CBIC instructed¹¹⁴ that in case of refund claim on account of export of goods without payment of tax, the shipping bill details shall be checked by the proper officer through ICEGATE site (www.icegate.gov.in) and check the details of EGM¹¹⁵ and shipping bill, Shipping bill number and date.

In one out of 886 cases pertaining to Pre-automation period, Audit observed (December 2020) that the Department sanctioned (February 2020) refund of ₹ 30.38 lakh to a tax payer¹¹⁶ on the basis of Bank Realisation Certificates (eBRC) issued by the DGFT (Director General of Foreign Trade). However, exporter did not submit Statement-3 containing details of shipping bills as proof of export. Thus the proper officer sanctioned refund without verification of shipping bills, which was irregular.

In another case out of 886 cases pertaining to Pre-automation period, a refund of ₹ 0.48 crore was sanctioned (September 2020) to tax payer¹¹⁷ on the basis of list of shipping bills in Statement-3. Audit cross-checked the Statement-3 from website ICEGATE but 107 shipping bills amounting to ₹ 91.10 lakh were not available on the 'ICEGATE' on which refund of ₹ 0.52 lakh was included in the refund order. Non-verification of shipping bills resulted in irregular refund of ₹ 30.90 lakh in two cases without availability of proof of export.

On this being pointed out, the DCST Nagpur in both the cases stated (December 2020 & February 2021) that the exports were done through India Posts in Mumbai and thus, not available on ICEGATE, as these post offices are not linked to ICEGATE. Replies indicate that CBIC instructions were not followed by the proper officer in respect of verification shipping bills through ICEGATE. The details regarding export through foreign post office were not found on records. This resulted in grant of irregular refund of ₹ 30.90 lakh without verification of proof of exports, which was recoverable with applicable interest.

2.6.8.2 Non-submission of invoice details by the taxpayers for refund under inverted duty structure

An Inverted Duty situation arises, when the taxes on output or final product is lower than the taxes on inputs creating an inverse accumulation of ITC, which in most cases has to be refunded.

¹¹⁴ Para 18 of the Circular No.125/44/2019 GST dated 18.11.2019.

¹¹⁵ Export General Manifest.

¹¹⁶ M/s. LEEHPL Ventures Private Ltd, Nagpur.

¹¹⁷ M/s. SSD Pharma, Nagpur.

As per Rule 89(5) of the MGST Rules, the capital goods and input services do not qualify for refund of ITC on account of Inverted Duty Structure.

CBIC issued circular (November 2019) and clarified¹¹⁸ that the refund applicants shall upload on common portal, the details of all the invoices on the basis of which ITC has been availed during the relevant period for which the refund is being claimed in Annexure- B *i.e.* a statement, which provides the details of type of transaction on which ITC is availed *viz.* inputs, capital goods or input services.

In three Divisions¹¹⁹, Audit observed (February 2021) that the Department issued 95 refund orders amounting to ₹ 20.94 crore on account of Inverted Duty Structure pertaining to post-automation period¹²⁰ (**Appendix 2.6.16**), though Annexure-B was not uploaded by the applicant on the common portal.

On this being pointed out (February 2021), two divisions¹²¹ stated (February 2021) that due to technical glitches, the Annexure B could not be uploaded at that point of time, but the refund claimants had submitted the same physically which was duly scrutinized before sanction of the refund. Belapur-Raigad Division did not submit any reply.

Reply was not acceptable as Department should have issued deficiency memo in such cases for non-furnishing of relevant documents.

2.6.8.3 Non-recovery of provisional refund after rejection of refund claim

Section 54(6) of the MGST Act provides for grant of refund on a provisional basis in respect of zero rated supply of goods or services at 90 *per cent* of the total amount so claimed. Rule 91(2) of MGST Rules stipulated that the proper officer, after scrutiny of the claim and the evidences submitted in support thereof and on being *prima facie* satisfied that the amount claimed as refund is due to the applicant, shall make an order for refund on a provisional basis.

Audit observed that in one out of 886 cases pertaining to Pre-automation, a tax payer¹²² filed refund application on 09.01.2019 (ARN-AA271118897558E) for the refund of ₹ 47.00 lakh on account of supplies made to SEZ unit/SEZ developer without payment of tax for the period from August 2018 to November 2018.

It was observed (August 2021) that the proper officer sanctioned (March 2019) 90 *per cent* provisional refund amounting to ₹ 42.30 lakh. The Proper officer issued (September 2020) notice (RFD-08) for rejection of application for refund due to non-submission of required document (*i.e.* statement containing number and date of invoice, proof of receipt of goods or services which is authorized by the specified officer of SEZ, details of payment made, invoice of suppliers, declaration and Agreement). Subsequently, the proper officer issued (November 2020) final refund order

¹¹⁸ Para 36 of Circular No. 125/44/2019-GST dated 18.11.2019.

¹¹⁹ Belapur-Raigad (3), Thane Rural (10) and Thane City (82).

¹²⁰ Period after 26.09.2019.

¹²¹ Thane City and Thane Rural.

¹²² M/s Airlift Global Carriers Pvt. Ltd. having GSTN 27AAMCA4358E1ZL under Nodal-7 Andheri, Mumbai Division.

for 'Nil' amount rejecting the balance refund amount of ₹ 4.70 lakh. However, no action was taken to recover refund amount sanctioned provisionally. After being pointed out by Audit, Department issued notice (August 2021) for recovery of provisional refund of ₹ 42.30 lakh, which was already granted.

On this being pointed out (August 2021) the proper officer stated (September 2021) that primarily, the provisional refund was sanctioned on the basis of documents submitted by the tax payer and while granting final refund, it was found that more documents were required. The balance refund was rejected and further notice (DRC-01A) was issued (August 2021) for the recovery of provisional refund already granted with applicable interest.

2.6.8.4 Non-production of Records/Production of incomplete records

(I) Non-production of data of communication of refund orders to counterpart tax authority

As per CBIC circular¹²³, refund order issued either by State or Union Territory tax authority, it shall be communicated to the concerned counterpart tax authority within seven working days for the purpose of payment of relevant sanctioned amount of tax or cess as the case may be.

Audit requested (August as well as September 2021) to CST and also to Principal Secretary (Financial Reforms) to submit the aforesaid data/information for further scrutiny.

In case of CGST, the CST provided the data of refund orders of CGST forwarded to the Central Tax authority only in January 2022 but it did not contain details like ARN, date of issue of ARN provisional (RFD-04) order/Final order (RFD-06).

As a result audit could not assess delay at various stages in forwarding refund claims to the Central Tax authority.

Similarly in case of SGST, the CST provided the data of refund orders of SGST received from Central Tax authority (January 2022) but it did not contain details like date of issue of ARN, provisional (RFD-04) order/Final order (RFD-06) and date of credit in the bank account.

Despite several requests the required information such as date of issue of ARN, RFD04 and RFD-06 was not furnished to Audit.

As a result audit could not assess delay at various stages in credit of refund claims to the bank account of the claimant.

(II) Non-production of data of conducting of post-audit of refund claims

CBIC¹²⁴ issued circular and elaborately laid down the procedure for manual processing of refund of zero rated supplies¹²⁵. The circular stipulated that pre-audit of the manually processed refund applications is not required irrespective of the amount involved till separate detailed guidelines are issued. However, post-audit of the refund orders may continue on the basis of extant guidelines.

¹²³ No. 24/24/2017 GST dated 21.12.2017.

¹²⁴ Circular No. 17/17/2017-GST dated 15.11.2017 issued by CST.

¹²⁵ Exports without Payment of Tax.

This procedure was extended to all type of refund applications processed manually vide CBIC circular No. 24/24/2017 dated 21 December 2017.

Information in this respect was requested (August as well as September 2021) from the CST and also from Principal Secretary (Financial Reforms) (November 2021).

In reply, list of cases selected for scrutiny were provided to audit (October 2021) but the same were related to evasion prone commodities and not related to post audit of refund claims. CST further stated (January 2022) that list of 3,764 cases have been selected for comprehensive audit but results of audit are awaited.

As a result, Audit could not assess the adequacy, impact and effectiveness of post-audit checks of the refund orders done by the Department (if any).

(III) Non-production of data of payment of GST refund

As per Internal circular¹²⁶ issued in December 2017, the Additional Commissioner of State Tax (VAT-2), Mumbai is state level in-charge and co-ordinator for disbursement of GST refund through NEFT for the pre-automation period. Similarly, in respect of post-automation period¹²⁷, the disbursement of amount of GST refund issued by the Center and State/UT Tax Officers shall be through the Public Financial Management System (PFMS) of the Controller General of Accounts. The common portal shall generate a master file containing the relevant details. The master file shall be shared with PFMS for validation of the bank account details. After validation of bank account details, the proper officer shall issue the payment order. The disbursement status of the refund would also be communicated by the PFMS to the common portal of the GSTN.

Audit requested (August 2021 as well as September 2021) to CST and also to Principal Secretary (Financial Reforms) (November 2021) to submit the following information of disbursement of refund by the Department shown in **Table 2.6.5** :

Table: 2.6.5

Sr. No.	Details of GST refund processed during pre-automation and post automation period	Date of sending letter to CST	Date of sending reminder
1	Disbursement of GST Refund for the pre-automation period through NEFT	04.08.2021	14.09.2021
2	Disbursement of refund of SGST through PFMS	04.08.2021	14.09.2021

In reply (September 2021), Department did not provide data of pre-automation period (2017-18 and 2018-19) but provided data of post automation period (2019-20 & 2020-21) (September 2021) only. However, it did not contain details like Date of issue of Final order/payment advice (RFD 05 and 06), Date of sharing the master file with the PFMS for disbursement and date of credit in the bank account.

Despite several requests the required information such as date of issue of RFD-05, RFD-06, Date of sharing the master file with the PFMS and date of credit in the bank account was not furnished to Audit.

¹²⁶ No.27A of 2017 dated 30.12.2017 issued by CST.

¹²⁷ CBIC circular No.125/44/2019 dated 18.11.2019.

As a result, Audit could not assess timeliness at various stages (for both pre and post automation period) in credit of refund claims to the bank account of the claimant.

Recommendation 2: Department should ensure availability and production of requisitioned records/statements to audit.

Recommendation 3: Compliance to codal provisions and instructions issued by the Government from time to time may be ensured for correct and timely disposal of the refund cases.

2.7 Short Levy of Tax

Application of incorrect rate of tax resulted in short levy of tax and interest thereon to the tune of ₹ 11.72 lakh.

As per provisions of Section 6 of the MVAT Act, 2002, there shall be levied a sales tax on the turnover of sales of goods specified in different schedules at the rates set out in the respective schedule. Further, goods which are not covered by Schedule A, B, C and D of the MVAT Act shall be covered by Entry 1 of Schedule E of the Act and shall be taxable at the rate of 12.5 per cent. Further, as per order¹²⁸ (January 2017) issued by Advance Ruling Authority, Mumbai, 'Tablets' are to be covered under residual entry E-1, and are required to be taxed at the rate of 12.5 per cent.

Scrutiny of records (January 2020) in office of the Deputy Commissioner State Tax, PUN-VAT- E-706, Pune, revealed that a wholesale dealer¹²⁹ of Computers and Computer peripherals was assessed in 2018-19 under MVAT Act, 2005 for the period 2014-15. From the sample invoices available on records, Audit noticed that MVAT on sale of 'Tablets' at ₹ 83.92 lakh was levied at the rate of five per cent instead of 12.5 per cent. This resulted in short levy of tax ₹ 11.72 lakh inclusive of interest thereon (**Appendix 2.7.1**).

On this being brought to notice (January 2020), the assessing authority concerned stated that the point would be verified and complied accordingly. The matter was brought to notice of the Government in May 2021.

In reply, the Deputy Commissioner of State Tax (Audit) stated (March 2022) that the Assessing authority had issued Rectification order (August 2020) after re-assessment and issued demand notice accordingly for recovery of dues of ₹ 6.008 lakh along with interest.

Further progress of recovery is awaited (August 2022).

2.8 Short levy of interest due to incorrect calculation

Incorrect computation of interest under section 30(3) of MVAT Act, 2002 resulted in short levy of interest to the tune of ₹ 47.06 lakh

As per section 30(3) of MVAT Act, 2002, if any tax remains unpaid up to one month after the end of the period of assessment, then the dealer is liable to pay simple interest at the rates as specified from time to time, on such tax for each month or part thereof from the date immediately following the last date of the

¹²⁸ Order No. ARA Mumbai 126/2016-17/Disp. Reg. No. 10 dated 21/01/2017.

¹²⁹ M/s. K Comp Services, TIN :27710344344V, Period : 2014-15, AO dated 18.02.2019.

period for which the dealer has been assessed till the date of the order of assessment. Accordingly, dealer was liable to pay interest at the rate of 1.25 *per cent* per month as prescribed in Rule 88(1) of MVAT Rules, 2005.

Further, by virtue of the Government of Maharashtra, Finance Department's Notification¹³⁰ (November 2015), the rate of interest under Rule 88(1) for the purpose of sub-section (1), (2) and (3) of Section 30 of MVAT Act, 2002 was revised w.e.f. 01 December 2015 as shown in **Table 2.8.1** :

Table 2.8.1

Sl. No.	Period liable for interest	Rate of interest
1	Upto one month	One and quarter <i>per cent</i> of the amount of such tax, for the month or part thereof.
2	Upto three months	One and quarter <i>per cent</i> of the amount of such tax, for the month or part thereof for the first month of delay and One and half <i>per cent</i> of the amount of such tax, for each month or part thereof for delay beyond one month upto three months.
3	More than three months	One and quarter <i>per cent</i> of the amount of such tax, for the month or part thereof for the first month of delay and One and half <i>per cent</i> of the amount of such tax for each month or part thereof for delay beyond one month upto three months and two <i>per cent</i> of the amount of such tax for each month or for part thereof for the period delay beyond three months.

Scrutiny of records (February 2020) in the office of the Deputy Commissioner of State Tax, PUN-VAT-E-607, LTU, Pune revealed that during assessment of a dealers, the Department mentioned the revised rate of interest in the calculation sheet but actually calculated the interest at pre-revised rate. This resulted in short levy of interest under Section 30(3) amounting to ₹ 47.06 lakh (**Appendix 2.8.1**).

(₹ in lakh)

Sl. No.	Name of the Dealer	Assessment Period	Interest leviable under	Interest levied under	Difference
		Date of assessment			
1	2	3	5	6	7(5-6)
1	Dealer A	2014-15 28/03/2019	147.01	99.95	47.06
Total					47.06

On this being brought to notice (February 2020), the Assessing Authority stated that the point would be verified and complied accordingly.

The matter was brought to notice of Government in May 2021; The Department intimated the acceptance of facts (February 2022) and issued order for recovery of interest amounting to ₹ 58.70 lakh. A report on recovery has not been received (August 2022).

2.9 Excess grant of refund under MVAT

Inadmissible allowance of set-off on inputs utilized in construction of factory building resulted in grant of excess refund to the tune of ₹ 21.56 lakh

As per Rule 54(h) of MVAT Rules, 2005, no set-off under any rule shall be admissible in respect of purchases of goods by a dealer, the property in which is not transferred (whether as goods or in other some form) to any other

¹³⁰ Notification No. VAT 1515/CR-81/Taxation-1 dated 05 November 2015.

person, which are used in erection of immovable property other than plant and machinery.

Further, as per Section 51(6)(b) MVAT Act, 2002, if it is found as a result of any order passed under this Act that the refund granted under this section is in excess of the refund, if any, determined as per the said order, then the excess amount shall be recovered as if it is an amount of tax due from the dealer and the dealer shall be liable to pay simple interest at the prescribed rate per month or part thereof from the date of the grant of refund.

During Scrutiny (June 2018) of assessment in the office of the Deputy Commissioner of Sales Tax, E-002, Amravati, Audit noticed that a Manufacturer¹³¹ of bakery products was assessed in 2016-17 for the period 2012-13. As per the Assessment Order, the tax refund was worked out to ₹ 18.80 lakh and the interest thereon granted under Section 52 of MVAT Act, 2002 as ₹ 2.26 lakh. Audit noticed that the purchases on which set-off was allowed included cement, electrical installation items *etc* used in construction of factory building, which was inadmissible in view of the rule *ibid*. This was resulted in excess refund of ₹ 10.56 lakh to the dealer. Thus, ₹ 21.56 lakh was to be recovered under section 51(6)(b) from the dealer which includes interest of ₹ 11.00 lakh (*Appendix-2.9.1*).

On this being pointed out by Audit (June 2018), the Department stated that the matter would be verified and compliance would be furnished in due course.

The matter was brought to notice of the Government in October 2021; their reply thereto was awaited (August 2022).

STAMP DUTY AND REGISTRATION DEPARTMENT

STAMP DUTY AND REGISTRATION FEES

2.10 Short levy of Stamp Duty in cases of lease deed

As per Article 36(A)(b), if leave and license agreement purports to be for a period exceeding sixty months with or without renewal clause, the duty is leviable on lease under clauses (ii) (iii) or (iv) as the case may be of Article 36. As per Article 36(i), (ii), (iii) and (iv) of the Maharashtra Stamp Act (MS Act), in case of lease with a renewal clause contingent or otherwise, where period of lease is up to five years Stamp Duty is leviable on ten *per cent* of market value of the property, if lease is for a period exceeding five years and up to ten years, Stamp Duty is leviable on 25 *per cent* of market value of the property, if lease is for period exceeding ten years and up to 29 years then Stamp Duty is leviable on 50 *per cent* of market value of the property and in case where lease period exceeds 29 years, the Stamp Duty is leviable on 90 *per cent* of market value of the property. Further, as per explanation-II, the renewal period, if specifically mentioned, shall be treated as part of the present lease.

As per Article 60 of the MS Act, transfer of lease by way of assignment and not by way of under lease or by way of decree or final order passed by any Civil Court or any Revenue Officer, the Stamp Duty leviable is the same duty

¹³¹ M/s. Virendra Food Products Pvt. Ltd. TIN: 27600328642V, Period: 2012-13, AO Date: 28.03.2017.

as is leviable on lease under clause (i), (ii), (iii) or (iv) as the case may be of Article 36 for the remaining period of lease.

Audit observed short levy of Stamp Duty amounting to (i) ₹ 01.06 crore due to non- consideration of constructed area in one case, (ii) ₹ 38.19 lakh due to non-consideration of renewal clause in two cases (in two units) and (iii) ₹ 5.28 crore due to undervaluation of market value in 11 cases (in three units) as detailed below :

2.10.1 As per Valuation Guideline (VG) No. 7(d) of Annual Statement of Rates, a school and religious building should be valued at the rate assigned to residential flat in the concerned valuation zone of Annual Statement of Rates.

A Lease deed (Document No. 10503/2018) was executed (August 2018) between Lessee¹³² and Lessor¹³³ at the office of Joint Sub Registrar, Haveli -XVIII, District Pune for leasehold rights of land admeasuring 42.05 R i.e. 4,205 sqm along with constructed area admeasuring 5,576.20 sqm situated at Survey No.12/1 in village Mahalunge (Influence Area), Taluka Mulshi, District Pune for a period of 30 years commencing from 27 June 2018 to 26 June 2048.

The Department worked out the market value of property by taking into account the area of open land (4,205 sqm) only at ₹5.15 crore and consideration mentioned in the document was 'Nil'. The Department recovered SD of ₹ 23.16 lakh.

Scrutiny of document revealed (July 2019) that as per clause 3, the Lessor agrees and undertakes to construct two buildings having construction area of 30,000 square feet each for school in phase-wise manner at their own cost and expenses on land under lease. The possession of Phase-I and Phase-II buildings would be handed over by Lessor to Lessee on 01 March 2019 and 01 June 2022 respectively.

Audit worked out that market value of the property at ₹ 28.62 crore on which SD of ₹ 1.29 crore at the rate of five *per cent* under Article 25 of the MS Act was leviable as against ₹ 23.16 lakh recovered by the department. This resulted in short levy of SD of ₹ 1.06 crore (**Appendix 2.10.1**).

In reply, office of the Inspector General of Registration and Controller of Stamps, Pune (IGR) accepted (March 2021) the audit observation. The Inspector General of Registration stated that process of recovery is in progress at level of office of Collector of Stamps, Pune city, Pune. Further progress of recovery is awaited (August 2022).

The matter was brought to the notice of the Government in May 2021 and October 2021, the reply is awaited (August 2022).

2.10.2 As per VG No. 7(b) of Annual Statement of Rates (ASR), a dispensary/hospital/bank situated on the upper floors should be valued as per clauses (c) and (d) of Valuation Guideline No. 8. The Valuation Guideline No. 8(d) is for valuation of shops in the building comprising larger shopping complex other than Malls as shown in **Table 2.10.2.1** :

¹³² Sant Gyaneshwar Education Trust, Mumbai through its Chairman and Managing Trustee Dr. Nikil Wagh.

¹³³ Mr. Atul Bhima Padale and 20 others, Pune.

Table 2.10.2.1

Sr. No.	Floor comprising a shop	Percentage of the rate of shop as assigned in the ASR to be taken into consideration
1	Basement	70%
2	Lower ground floor	90%
3	Ground floor/Upper ground floor	100%
4	First floor (above ground floor or above still floor)	90%
5	Second floor and floors above	80%

An agreement to construct and lease (Document No. 4481/2016) was executed (July 2016) between Lessor¹³⁴ and Lessee¹³⁵ at the office of the Joint Sub-Registrar, Haveli- XVII, District Pune for a proposed hospital building referred to as the "Bare Shell Building". The period of lease was of 28 years and 11 months. The proposed building comprised of 2 (Two) basements, Ground + 7 (seven) upper floors *plus* terrace. Total built up area was admeasuring at least 2,50,000 sq. ft., of which calculable area shall not exceed 2,40,000 sq.ft. *i.e* 22,304.83 sqm. This building would be constructed by Lessor on the land admeasuring 7,965 sqm at survey No. 111/11/1 (pt), situated at Baner-Mhalunge Road, village Baner, Taluka Haveli, District Pune within the limits of Pune Municipal Corporation.

The Department worked out the market value of the property at ₹ 117.28 crore and consideration mentioned in the document is 'Nil'. The details of calculation based on which the valuation of property arrived at, was not available on records.

Audit worked out the market value of the property at ₹ 163.70 crore as per the rates mentioned in Annual Statement of Rates for the year 2016-17 read with Valuation Guideline 8(d). Accordingly, as per the provisions of Article 36(iii) of the Act, SD amounting to ₹ 4.09 crore on 50 *per cent* of market value was leviable. However, the Department recovered SD of ₹ 2.93 crore only. This resulted in short levy of SD by ₹ 1.16 crore (**Appendix 2.10.2**).

On being pointed out (January 2018), the Joint Sub-Registrar submitted that the compliance would be submitted after getting opinion from the office of the Joint District Registrar, Pune City. The matter was reported (October 2020 and June 2021) to the office of the Inspector General of Registration and Controller of Stamps, Pune (IGR). In reply the IGR stated (February 2022) that the matter is taken under consideration under section 32 C and the decision taken will be intimated to audit.

The matter was brought to the notice of the Government in July 2021 and October 2021, their reply is awaited (August 2022).

2.10.3 Scrutiny of records (Document No. 570/2017) of office of the Joint Sub Registrar (Class-II), Haveli-V, District Pune revealed (April 2018) that a Deed of Assignment of Lease was executed (January 2017) between Assignor¹³⁶ and Assignee¹³⁷ for assigning an industrial plot on lease having area of 2,957 sqm along with industrial shed admeasuring 670 sqm (constructed in year 1989) standing thereon situated at plot No.S-36, T Block

¹³⁴ M/s. AC Realty Spaces LLP, Pune.

¹³⁵ M/s. Columbia Asia Hospitals Pvt. Ltd., Bangalore.

¹³⁶ M/s. Laxmi Agni Components & Forgings Pvt. Ltd.

¹³⁷ M/s. Sachin Projects.

in Pimpri Industrial Area of Maharashtra Industrial Development Corporation, Village Bhosari within the limits of Pimpri-Chinchwad Municipal Corporation. The Department worked out the market value of the property at ₹ 490.46 lakh. However, the consideration mentioned in the instrument was ₹ 506 lakh. The Department recovered the SD of ₹ 25.30 lakh. The details of calculation based on which Department arrived at valuation of property were not available on records.

Originally, the said plot was allotted to an allottee¹³⁸ in May 1988 for period of 95 years who thereafter has assigned their rights in respect of plot together with shed in the name of current Assignor vide registered Deed of Assignment of Lease in December 2001. Further, the present Deed of Assignment of Lease was executed (January 2017) between Assignor and Assignee for unexpired period of lease.

Audit observed (April 2018) that market value of plot along with shed was to the tune of ₹ 8.35 crore, thus, SD at the rate of five *per cent* under Article 25 of the Act, on 90 *per cent* of the market value amounting to ₹ 37.59 lakh was leviable as against ₹ 25.30 lakh recovered by the Department. This resulted in short levy of SD to the tune of ₹ 12.29 lakh. (**Appendix 2.10.3**).

In reply, IGR stated that process of recovery is in progress at level of office of Collector of Stamps, Pune.

The matter was brought to the notice of the Government in May 2021 and October 2021, their reply is awaited (August 2022).

2.10.4 Scrutiny of records (Document No. 3058/2019) of the Office of Joint Sub Registrar, (Class-II), Haveli -III, District Pune revealed (January 2020) that a Leave and License Agreement was executed (February 2019) between Licensor¹³⁹ and Licensee¹⁴⁰ for Units No EB-GF-28 & 29 admeasuring chargeable area 10,104 sqft *i.e* 939.03 sqm on ground floor in Retail Mall/ Shopping Complex known as "Amanora Town Centre" at village Sadesatranali, Hadaspsar, *Taluka* Haveli, District Pune. As per the clause 3 of the document, the period of lease was for nine years. However, in clause No. 3(a), it was mentioned that after expiry of the initial term, the licensee with the consent of licensor, might renew this agreement for a further term of four years. The Department worked out market value of property at ₹ 13.29 crore and recovered SD of ₹ 16.96 lakh considering the period of lease of nine years only.

Audit worked out that SD at the rate of five *per cent* under Article 25 of the MS Act amounting to ₹ 33.22 lakh on 50 *per cent* of the market value as per the provisions of Article 36 (iii) was leviable as against ₹ 16.96 lakh recovered by the Department. This resulted in short levy of SD to the tune of ₹ 16.26 lakh (**Appendix 2.10.4**).

¹³⁸ M/s Ashoka Powerling Ind. Pvt. Ltd.

¹³⁹ City Reality and Development Private Limited, Pune through its authorised signatory Mr. Rameshwar Jatale and Mr. Ramesh Kangude.

¹⁴⁰ The Barbeque Nation Hospitality Ltd, Bangalore.

On being pointed out in October 2020, the IGR accepted (June 2021) the audit observation. The IGR stated that Collector of Stamps, Pune city is directed to effect recovery on priority.

The matter was brought to the notice of the Government in May 2021 and October 2021, their reply thereto was awaited (August 2022).

2.10.5 A Lease deed (Document No. 3961/2015) was executed (May 2015) between Lessor¹⁴¹ and Lessee¹⁴² at the Office of Joint Sub Registrar, Thane-VIII, District Thane for leasehold rights of an unfurnished hospital, Basement +G+7 Floor building (on as is where is basis) for running hospital in newly constructed Primary Health Centre (PHC) building admeasuring area 1,899.64 sqm constructed on land admeasuring 990.27 sqm situated at Sector 3K, Airoli, New Mumbai. The document was earlier adjudicated by the Joint District Registrar (JDR), Thane City vide Adj. Order No. Adj/190/15/5297-98/15 dated 06/05/2015. The Department determined the market value of property at ₹ 17.54 crore and recovered Stamp Duty of ₹ 21.93 lakh on 25 per cent of the market value of property. The details of calculation based on which the valuation of property was arrived at not available on records. The consideration mentioned in the instrument was ₹ 15.00 lakh.

Audit scrutiny of the document revealed (February 2017) that as per Clause 1 of the document, the initial period of lease was for 10 years. However, in Clause No. 24, it was mentioned that “after expiry of this Lease deed, both the parties hereby agree to extend the Lease Deed for another ten years with mutual consent.” Thus, the total lease period works out to 20 years. This was not considered by the Department while levying the SD.

Audit considered the market value of ₹ 17.54 crore as determined by the Department and worked out the SD leviable amounting to ₹ 43.85 lakh on 50 per cent of market value at the rate of five per cent as against ₹ 21.93 lakh recovered by the Department. This resulted in short levy of SD by ₹ 21.93 lakh (*Appendix 2.10.5*).

On being pointed out in October 2020, the IGR stated (January 2021) 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 in July 2021 and October 2021, their reply is awaited (August 2022).

2.10.6 As per Government of Maharashtra, Revenue & Forest Department Resolution (May 2006), for allotment of Government land on occupancy or on lease basis and in all the cases where valuation of government land is to be done, valuation of such land should be determined as per the rates prescribed in ASR as on date on which order for allotment of government land is passed or other orders consisting of valuation is passed.

Scrutiny of records (Document Nos. 2978/2018, 3992/2018, 4753/2018, 3905/2018, 2465/2018, 5070/2018, 2468/2018, 4382/2018 and 3722/2018) of the Office of Joint Sub Registrar-I, Nagpur, District Nagpur revealed

¹⁴¹ Smt. Sonpattidevi Memorial Medical Trust, Navi Mumbai.

¹⁴² Wellcare Health Services, Navi Mumbai.

(July 2019) that nine cases of renewal of lease of intra Municipal/Nazul¹⁴³ for building purpose were executed (between May 2018 and September 2018) between Lessee¹⁴⁴ and Lessor¹⁴⁵ in respect of nazul plots situated in Nagpur district. The Department worked out the market value of property at ₹ 1.52 crore and consideration was shown as Nil. The Department recovered SD of ₹ 7.56 lakh in these nine cases. The details of calculation of market value of the property by the Department were not found on records.

Audit observed that period of lease was 30 years in all the above cases. Thus, SD was leviable on 90 per cent of the market value of the property. Audit worked out market value of the property at ₹ 90.50 crore as per the Annual Statement of Rates. SD of ₹ 4.07 crore at the rate of five per cent was leviable on 90 per cent of the market value of the property, as against the ₹ 7.56 lakh recovered by the Department. This resulted in short levy of SD of ₹ 4.00 crore (Appendix 2.10.6).

The matter was brought to the notice of the Government in July 2021 and October 2021; their reply is awaited (August 2022).

2.11 Short levy of Stamp Duty due to undervaluation of property

2.11.1 Development agreement - Revenue sharing

As per Article 5 (g-a) of Schedule-1 of MS Act, 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, SD leviable shall be as is leviable on a conveyance under clause (a), (b) or (c) as the case may be, of Article 25, on the market value of the property. Further, as per VG No. 33 of ASR, valuation of development agreement relating to revenue sharing (sale proceeds) should be done :- (a) Consideration value of owner's share –Current value of owner's share in terms of the rate of sale having regard to the permissible use thereof x 0.85 + consideration in cash or kind *i.e.* interest on security deposit, *etc.*

(b) Market value of entire land area at land rate of ASR

Value at (a) or (b) whichever is more.

Further, as per Valuation Guideline No. 31, where instruments pertaining to development agreement/sharing of revenue mention that built-up area/revenue inclusive of the Transferable Development Right (TDR) area is to be shared or that Transferable Development Right is to be utilized therein, the rate assigned for such land under the ASR with 25 per cent increase therein should be taken into account for the valuation.

¹⁴³ Prior to independence, erstwhile Government of Central Province (CP) & Berar and prior to formation of Maharashtra State (Maharashtra State was formed in May 1960) the Government of Madhya Pradesh in Vidarbha Region of Maharashtra, allotted Nazul lands on lease subject to certain terms and conditions to public for residential, commercial, educational and charitable purposes. Nazul land means any type of Government land used for non-agricultural purpose such as building, market, playground or any other public purpose or the Nazul land which has potential for such use in future including such lands granted on long or short term lease. (Source: Para 4.4 of Audit Report for the year ended 31 March 2017 on Revenue Sector).

¹⁴⁴ As per calculation sheet of respective Documents number.

¹⁴⁵ Deputy Collector, Nagpur on behalf of Government of Maharashtra.

Audit observed short levy of Stamp Duty amounting to (₹ 39.39 lakh + ₹ 55.13 lakh + ₹ 01.07 crore = ₹ 02.02 crore) in three cases (in three units) 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 :

2.11.1.1 Scrutiny of records (Document 8654/2015) of the Joint Sub Registrar, Class-II, Aurangabad-V, District Aurangabad revealed (December 2016) that a Development Agreement was executed (December 2015) between Owners¹⁴⁶ and Developer¹⁴⁷ for a piece and parcel of open plot No. 2 admeasuring 3,716.71 sqm situated at Gat No. 701 village Chikalhana, Taluka and District Aurangabad along with Transferable Development Right admeasuring 1,486.98 sqm (referred to as demised plot¹⁴⁸) within the limits of Aurangabad Municipal Corporation. The Department worked out the market value of the property at ₹ 3.57 crore. The details of calculation based on which the valuation of property arrived was not available on records. The consideration of ₹ 3.57 crore was mentioned in the document and the Department recovered SD of ₹ 18.37 lakh.

Audit noticed that it was mentioned in page 10 of the document that the said project consists of development of demised plot comprising open land admeasuring 3,716.71 sqm on plot No. 2 and Transferable Development Right admeasuring 1,486.98 sqm. Further, as per clause 4 of the document, the parties agreed to share gross sale proceeds of the project to be constructed on the demised plot in the ratio of 48:52¹⁴⁹. In addition, the developer also gave refundable security deposit of ₹ 1.75 crore to the Owners.

Audit worked out the Owner's share at ₹ 6.66 crore and Developer's share (market value of demised plot admeasuring 5,203.69 sqm including Transferable Development Right) at ₹ 11.55 crore and pointed out (September 2020) short levy of SD of ₹ 39.39 lakh (*Appendix 2.11.1*).

On this being pointed out in September 2020, the IGR accepted (March 2021) the audit observation for ₹ 39.39 lakh. Further progress of recovery is awaited (August 2022).

The matter was brought to the notice of the Government in May 2021 and October 2021; the reply thereto awaited (August 2022).

2.11.1.2 Scrutiny of records of the Office of the Joint Sub-Registrar Class-II, Amravati City-II, District Amravati revealed (September 2019) that a General Power of Attorney (Document No. 2586/2016) and Joint Development Agreement (Document No. 2587/2016) was executed (August 2016) between Owner¹⁵⁰ and Developer¹⁵¹ for development of land admeasuring 14,600 sqm bearing survey No. 159/1, 159/2 and 162 and land admeasuring 4800 sqm of survey No. 160 and 164/2, total land admeasuring 19,400 sqm situated at

¹⁴⁶ Shri Rajesh S/o Laxmandas Paraswant, Aurangabad and three others.

¹⁴⁷ M/s Sara Builders and Developers, Aurangabad.

¹⁴⁸ Demised plot is here referred to plot area 3,716.71 sqm and TDR 1,486.98 sqm collectively.

¹⁴⁹ Owner's share 48 *per cent* and developer's share 52 *per cent*.

¹⁵⁰ Mr. Nilkanth Bapurao Katre & 3 others, Badnera, District Amravati.

¹⁵¹ M/s. Raj Associates, Nagpur.

Mouza Badnera, *Taluka* Amravati within the limits of Amravati Municipal Corporation. In the General Power of Attorney, the Department worked out the market value of the property at ₹ 2.28 crore by levying the rate of open land and consideration was shown as ₹ 2.28 crore and recovered SD of ₹ 11.41 lakh.

As per clause 4(i) of the joint development agreement, the Owner shall be entitled to 35 *per cent* of the net sale price received from the allotments and sales and leases or licenses of saleable premises developed and constructed solely out of basic Floor Space Index (FSI). Further as per clause 4(iii), it is agreed that other than owner's realisation of entire balance purchase price and consideration received from and out of allotments and sales of saleable premises shall belong to Developer. Further, as per clause 5 of the joint development agreement developer shall be responsible for entire cost and risk of development.

Audit worked out the Owner's share (consideration) at ₹ 13.31 crore and Developer's share (market value of whole land) at ₹ 3.42 crore. Thus, the owner's share being more should have been treated as market value and SD at the rate of five *per cent* under Article 25 of the MS Act amounting to ₹ 66.54 lakh was leviable as against ₹ 11.41 lakh recovered by department. This resulted in short levy of SD of ₹ 55.13 lakh (**Appendix 2.11.2**).

On being pointed out in September 2020, the IGR accepted (February 2021) the audit observation¹⁵². The IGR stated (February 2022) to have effected recovery of ₹ 51.50 lakh. (August 2022).

The matter was brought to the notice of the Government in May 2021 and October 2021; their reply is awaited (August 2022).

2.11.1.3 Scrutiny of records (Document No. 5469/2016) of the Office of Joint Sub-Registrar, Class-II, Haveli-VIII, District Pune revealed (January 2018) that a Joint Development Agreement was executed (June 2016) between Owner¹⁵³ and Developer¹⁵⁴ for development of land admeasuring 67,272 sqm¹⁵⁵ for Phase-2 at Survey No. 15 part and 16 part, situated at village Yeolewadi, *Taluka* Haveli, within the limits of Pune Municipal Corporation. The Department worked out the market value at ₹ 12.04 crore and consideration was shown as ₹ 33.51 crore. The Department recovered SD of ₹ 1.68 crore on the amount of consideration.

Audit observed that as per paragraph A and B of the document, land admeasuring 3,79,971 sq.m. is "larger property" and said larger property was converted to "Non-agricultural" in April 2009. Further, as per paragraph E (ii), out of this larger property, land area of 67,272 sqm is subject matter of development for Phase-2 having total Floor Space Index (FSI) availability of

¹⁵² As per IGR office calculation, the short levy of Stamp Duty is amounting to ₹ 64.06 lakh considering the permissible built up area of 21010.71 sqm. The reasons for considering permissible built up area instead of basic FSI is not available on records.

¹⁵³ M/s Pune Kondhwa Realty Pvt. Ltd, Pune.

¹⁵⁴ M/s Lake District Realty Pvt. Ltd, Pune.

¹⁵⁵ 5,372 sqm of S.N.15/1(part), 2,300 sqm of S.N.16/1/4, 6,800 sqm of S.N.16/1/8A/1, 6,800 sqm of S.N.16/1/8A/2, 10,200 sqm of S.N.16/1/8B/1, 3,400 sqm of S.N.16/1/8B/2, 6,100 sqm of S.N.16/1/9, 8,300 sqm of S.N.16/1/10, 3,300 sqm of S.N.16/1/11, 10,400 sqm of S.N.16/1/12/2 and 4,300 sqm of S.N.16/1/12/3 total 67,272 sqm.

74,202.28 sqm. Out of available FSI, 6,749.38 sqm FSI was available on land admeasuring 5,372 sqm situated in survey No.15/1 (part) for villa and bungalow. As per paragraph 3.1, the entire cost to complete project would be borne and paid by the Developer and as per paragraph 6.1, Owner shall be entitled to receive 28.2 *per cent* of the realisation of the unsold units, 12.9 *per cent* of the realisation of allotted premises and 43 *per cent* of the realisation of the row houses and villa.

Accordingly, Audit worked out the consideration at ₹ 49.50 crore and market value of land at ₹ 54.97 crore by applying the Valuation Guideline No. 16(c)¹⁵⁶ of ASR on which SD of ₹ 2.75 crore at the rate of five *per cent* was leviable. However, Department recovered SD of ₹ 1.68 crore only. This resulted in short levy of SD of ₹ 1.07 crore (**Appendix 2.11.3**).

The Office of the IGR accepted (January 2021) the short levy of Stamp Duty and informed that short levy worked out to ₹ 2.53 crore. The IGR stated that recovery action is in progress.

The matter was brought to the notice of the Government in July 2021 and October 2021; the reply is awaited (August 2022).

2.11.2 Development agreement - Sharing of constructed area

Article 5 (g-a) of Schedule-1 of Maharashtra Stamp Act provides, 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 (a), (b), or (c) as the case may be, of Article 25 shall be charged on the market value of the property or consideration, whichever is higher, which is the subject matter of transfer. Further, as per instruction No. 32 of Annual Statement of Rates, in case of development agreement the market value shall be derived by calculating owner's share (cost of constructed area plus interest at the rate of ten *per cent* on security deposit) and developer's share and higher of these should be considered as market value.

Audit observed short levy of Stamp Duty amounting to ₹ 10.27 lakh in one development agreement due to incorrect calculation of owner's share and market value as detailed below :

2.11.2.1 Scrutiny of records (Document No. 2036/2015) of the Office of Joint Sub-Registrar, Haveli-X, District Pune revealed (January 2017) that a Development Agreement was executed (February 2015) between Owners¹⁵⁷ and Developer¹⁵⁸ for development of piece and parcel of land admeasuring 3,600 sqm. bearing *Gut* No.637 of village Kirkatwadi (Influence area), *Taluka* Haveli, District Pune. The Department worked out the market value of the property at ₹ 42 lakh and consideration was shown as ₹ 44 lakh. The Department recovered SD of ₹ 1.76 lakh on the amount of consideration.

¹⁵⁶ Valuation of land/plot assessed as Non-Agricultural user is done by considering 90% of the rates as applicable to the concerned non-agricultural user under ASR.

¹⁵⁷ Shri Digamber B Mate, Pune and 33 others.

¹⁵⁸ M/s. Mantra Buildcraft LLP, Pune through its partner Mr. Vishal N. Gupta.

Audit observed that as mentioned in paragraph 4 (four) of the document, the Owner would retain 40 *per cent* admeasuring 18,480 sq.ft. *i.e.* 1,717.47 sqm of the proposed constructed area and in addition, two Co-owners would get bungalow plots admeasuring 200 sqm each. Further, the Developer would complete the construction at its own cost. In addition to this, the Developer had also given interest free refundable security deposit of ₹ 44 lakh to Owners.

Accordingly, Audit worked out Owner's consideration at ₹ 3.01 crore on which SD of ₹ 12.03 lakh at the rate of four *per cent* was leviable. However, Department recovered SD of ₹ 1.76 lakh only. This resulted in short levy of SD of ₹ 10.27 lakh (**Appendix 2.11.4**).

On being pointed out in March 2021, the IGR stated that Collector of Stamps, Pune City has been directed to effect recovery on priority.

The matter was brought to the notice of the Government in July 2021 and October 2021; their reply is awaited (August 2022).

2.11.3 Development agreement – Re-development of the Society

Article 5 (g-a) of Schedule-1 of MS Act, 1958 (Act) provides, 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, SD is leviable as applicable 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.

As per Appendix III under Regulation 33(7) of the Development Control Regulation for greater Mumbai, 1991 (DCRM), in case of redevelopment of 'A' Category cessed building, the total FSI shall be 3.00 of the gross plot area or the FSI required for rehabilitation of existing occupiers *plus 50 per cent* incentive FSI¹⁵⁹; whichever is more shall be a permissible built up area. In addition, Further, the Regulation 35(4) of DCRM further envisage for fungible FSI not exceeding 35 *per cent* for residential development and 20 *per cent* for industrial/commercial development, over and above admissible FSI, by charging a premium at the rate of 60 *per cent*, 80 *per cent*, and 100 *per cent* of the Ready reckonor rate for Residential, Industrial and Commercial development respectively.

Audit observed short levy of Stamp Duty amounting to (₹ 91.43 lakh + ₹ 17.07 lakh = ₹ 1.08 crore) in two case (in two units) due to incorrect calculation of market value and consideration as detailed below :

2.11.3.1 Scrutiny of records (Document No. 7992/2015) of the Office of Joint Sub Registrar, Mumbai – I revealed (February 2017) that a Development Agreement was executed (July 2015) between Owner¹⁶⁰ and Developer¹⁶¹ for the redevelopment of the building known as "Hardinge House" consisting of

¹⁵⁹ As per note (b) attached to VG No.2.2 of ASR, 2015 (Mumbai and MSD), permissible Incentive FSI as per DCRM should be considered for calculation of permissible built up area.

¹⁶⁰ Hardinge House Co-operative Housing Society.

¹⁶¹ Sambhavparshva Developers Private Limited.

ground plus three upper floors, admeasuring area 648.83 sqm. situated at 56-62, A, August Kranti Marg, bearing CTS No. 540 of Malabar–Cumballa Hill Division. The property and the structure is a ‘A’ category cess building.

Audit worked out the market value of the property as per the provisions stated under Regulation 35(4) and Appendix-III of Regulation 33(7) of the DCRM at ₹ 32.30 crore. Audit worked out the consideration at ₹ 19.36 crore. The SD at the rate of five *per cent* was leviable on the market value of the property at ₹ 1.61 crore as against ₹ 70.00 lakh recovered by the Department. This resulted in short levy of SD of ₹ 91.43 lakh (**Appendix 2.11.5**). The details of valuation done by Department were not available on records.

On being pointed out (February 2017), the Joint Sub-Registrar, Mumbai City-I, in reply stated that as the document is adjudicated, compliance would be submitted after obtaining the comments of the Collector of Stamps, Mumbai. The matter was intimated (August 2021) to the Office of the IGR.

In reply, IGR stated (October 2021) that the matter is under consideration under section 53A of MS Act, and appropriate action would be taken after the decision is taken in the matter. Further progress in the matter was awaited (August 2022).

The matter was brought to the notice of Government in October 2021; their reply thereto was awaited (August 2022).

2.11.3.2 Scrutiny of records (Document No.8840/2014) of the Office of Joint Sub-Registrar, Borivali–VII, Mumbai Suburban District revealed (September 2015) that a development agreement was executed between Owner¹⁶² and Developer¹⁶³ for redevelopment of piece or parcel of khote land admeasuring 3,539.58 sqm bearing CTS No. 1404, 1404/1 to 23 of village-Eksar, *Taluka* Borivali, Mumbai Suburban District. The Department worked out the consideration ₹ 3.46 crore and recovered SD of ₹ 22.85 lakh on amount of consideration.

Audit worked out the market value of the property at ₹ 9.96 crore and consideration amount at ₹ 20.21 crore and amount of SD leviable at ₹ 1.05¹⁶⁴ crore at the rate of five *per cent* as against ₹ 22.85 lakh which was recovered by the department. This resulted in short levy of SD amounting to ₹ 82.20 lakh (**Appendix 2.11.6**).

In July 2019, the Collector of Stamps, Borivali partially accepted the audit observation and stated that recovery of ₹ 58.50 lakh had been effected. The short levy of SD amounting to ₹ 75.57 lakh and outstanding balance recovery of ₹ 17.07 lakh was communicated (August 2021) to IGR.

IGR accepted (December 2021) the audit observation. Further progress of recovery was awaited (August 2022).

The matter was brought to the notice of the Government in October 2021; their reply thereto was awaited (August 2022).

¹⁶² Shri Saraswati Apartment Co-operative Housing Society Ltd.

¹⁶³ Kag-Hitech-Hafizi Builders.

¹⁶⁴ Stamp Duty leviable on consideration amount (₹ 1,01,05,122) + Stamp Duty leviable on Bank Guarantee (₹ 4,00,000).

2.12 Short levy of Stamp Duty in conveyance deed due to incorrect/non-application of provision of MS Act and ASR

Maharashtra Stamp Act envisaged that the consideration for the purpose of levy of Stamp Duty and Registration Fee on an instrument brought for registration shall be the amount mentioned in the instrument or the market value of the property determined in accordance with the Articles of Schedule-I of Maharashtra Stamp Act and the instructions and rates contained in the Annual Statement of Rates prescribed for that year whichever is higher.

Audit observed short levy of Stamp Duty amounting to (₹ 40.96 lakh + ₹ 56.06 lakh = ₹ 0.97 crore) in two cases (in two units) due to incorrect/non-application of provisions of Maharashtra Stamp Act and instructions to Annual Statement of Rates as elaborated below :

2.12.1 As per VG No.17 of the ASR, regarding plot situated in the interior of a road in an urban and influence area, for which separate valuation zone is provided, the valuation of such plot which is situated at a distance of more than 50 meters from the road should be done by taking into consideration 70 *per cent* of the rate applicable to the road.

Scrutiny of records (Document No. 1571/2016) of the Office of Joint Sub Registrar, Haveli-II, District Pune revealed (October 2017) that a Sale Deed was executed (February 2016) between Vendors¹⁶⁵ (Party of the First Part) and Purchaser¹⁶⁶ (Party of the Third Part) for land admeasuring 40 *Ares i.e.* 4,000 sqm of Survey No. 90/B, land admeasuring one hectare 42 *Ares i.e.* 14,200 sqm of Survey No.90/A/2 and land admeasuring 61 *Ares i.e.* 6,100 sqm of Survey No. 90/A/1/2 totaling to land admeasuring 2 hectare 43 *Ares i.e.* 24,300 sqm situated at village Dhanorie, *Taluka* Haveli, District Pune within the limits of Pune Municipal Corporation. The Department calculated the market value of the property at ₹ 22.79 crore by applying Valuation Guideline No. 16B¹⁶⁷ and the consideration mentioned in the Document was ₹ 8.62 crore. Department recovered SD at the rate of six *per cent* (Five *per cent* SD and One *per cent* LBT) on ₹ 15.96 crore (70 *per cent* of market value as per VG No.17 of ASR) at ₹ 95.76 lakh.

Audit observed that as per Annual Statement of Rates for the year 2015, Survey No. 90 is situated on the Dhanorie village to Kalas Road. Further, as per Schedule A of the conveyance, the property is bounded by a DP Road/Shiv of village Kalas on west side and remaining part of Survey No. 90 on east side. Proposed Draft Regional Plan (1990-2011)¹⁶⁸ also confirms that the property is located on road. Thus, valuation of the property at 70 *per cent* rate of Annual Statement of Rates by applying Valuation Guideline No. 17 was not correct.

¹⁶⁵ Shri Baburao Navlu Deokar, Pune and 13 others.

¹⁶⁶ M/s Lunkad Realty, Pune through its partner Smt. Pushpa Kantilal Lunkad and two others.

¹⁶⁷ As per VG 16(b), the valuation of consolidated areas coming under category of bare land shall be done as per the slabs given in table.

¹⁶⁸ Issued by Development Plan Division, Pune Municipal Corporation.

Audit worked out the amount of leviable SD at ₹ 1.37 crore as against ₹ 95.76 lakh recovered by the Department on the true market value of property. This resulted in short levy of SD by ₹ 40.96 lakh (**Appendix 2.12.1**).

On being pointed out in October 2020, in reply the office of the IGR accepted (August 2021) the audit observation. The IGR stated that Collector of Stamps, Pune city is directed to effect recovery on priority. Further progress of recovery was awaited (August 2022).

The matter was brought to the notice of Government in July 2021 and October 2021, their reply thereto was awaited (August 2022).

2.12.2 As per Section 14A of the MS Act, where due to material alterations made in an instrument by a party, with or without the consent of other parties, the character of the instrument is materially or substantially altered, then such instrument shall require a fresh stamp paper according to its altered character.

Scrutiny of records (Document No. 9353/2018) of the Office of Joint Sub Registrar, Andheri-I revealed (January 2020) that a Deed of Rectification was executed (July 2018) between Vendor¹⁶⁹ and Purchaser¹⁷⁰ for rectifying the area of land from 3,922 sqm to 4,934.80 sqm of CTS No. 434, 435, 435/1 situated at village Vile Parle (West), Taluka Andheri, Mumbai Suburban District of a conveyance deed which was executed in June 2005. Based on the valuation report from Town Planning Office, the Department considered the market value of the property at ₹ 4.69 crore and recovered SD of ₹ 23.45 lakh.

Audit observed that at the time of execution of conveyance deed in June 2005, all the property cards of the entire land were not available. Hence, conveyance deed (Document No. 6299/2005) was executed only for land admeasuring 3,922 sqm situated at C.T.S. No. 435, 435/1 to 24 for which property cards were available and proper SD was paid on it. Now, all the property cards of the said entire land were found and as per entries in the property cards, the area of land now is being rectified as 4,934.80 sqm replacing 3,922 sqm. Hence, there is a difference of area of land admeasuring 1,012.80 sqm (4,934.80 sqm–3,922.00 sqm) for which present Rectification deed was executed and SD was levied on the land admeasuring 1,012.80 sqm.

As per the IGR circular dated 31 March 2018, the ASR rates for the year 2017-18 were applicable and remained in force for the year 2018-19. Accordingly, Audit worked out the market value of differential area of land as per rate of 2017-18 at ₹ 15.90 crore on which SD of ₹ 79.50 lakh at the rate of five per cent was leviable. However, Department recovered SD of ₹ 23.44 lakh only. This resulted in short levy of SD of ₹ 56.06 lakh (**Appendix 2.12.2**).

On being pointed out in December 2020, in reply the Office of the IGR, stated (July 2021) that the matter is under consideration under section 53A of MS Act, and appropriate action would be taken after the decision is taken in the matter. Further progress in the matter was awaited (August 2022).

The matter was brought to the notice of the Government in July 2021, their reply thereto was awaited (August 2022).

¹⁶⁹ Mr. Ignatius Francis Gonsalves and seven others, Mumbai.

¹⁷⁰ M/s. Amum Builders through its partner Mr. Mukesh Nishar, Mumbai.

2.13 Short levy of Stamp Duty due to non-consideration of distinct matters in one instrument and clubbing of Mortgage Deeds

As per Section 5 of MS Act 1958 (Act), any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act. Further, as per Clause (b) of Article 40 of Schedule-1 of MS Act, in case of “instruments of mortgage deed, not being an agreement relating to [Deposit of Title Deeds, Pawn or Pledge or Hypothecation (Article 6)], Bottomry Bond (Article 14), Mortgage of a Crop (Article 41), Respondentia Bond (Article 53) or security Bond or Mortgage deed (Article 54)”, when possession is not given or agreed to be given, the duty at five rupees for every one thousand or part thereof for the amount secured by such deed, subject to a minimum of one hundred rupees and maximum of ten lakh rupees is leviable.

Scrutiny of records of Collector of Stamps, Andheri, Mumbai Sub-urban District revealed (May 2019) that an unexecuted Deed of Mortgage between Mortgagor¹⁷¹ and Mortgagee¹⁷² for securing total amount of loan of ₹ 625 crore through four¹⁷³ different agreements was adjudicated vide ADJ case No. ADJ/1100900/1108/2018 dated 11.10.2018 and Stamp Duty of ₹ 1001100/- (under article 40(b) ₹ ten lakh read with Section-6 and 48(d), 5(h)B and 35, ₹ 1,100) was recovered.

Audit observed that there were four independent instruments of loan agreement sanctioned on different dates¹⁷⁴ to two different companies¹⁷⁵. Further, the loans were sanctioned vide four different sanction letters bearing different applicable rates of interest. As four distinct matters were considered in the instant Deed of Mortgage, the application of Article 40(b) (read with Section 6), 48(d), 5h(B) and 35 giving the benefit of maximum limit of ₹ ten lakh for levy of Stamp Duty is incorrect and contrary to the provisions of Section 5 of the MS Act. This resulted in short levy of SD of ₹ 30 lakh (*Appendix 2.13.1*).

On being pointed out in September 2020, in reply the Office of the IGR stated that as per decision under section 53A an recovery of Stamp Duty of ₹ 40 lakh and penalty of ₹ 32 lakh has been ordered. Further progress of recovery was awaited (August 2022).

The matter was brought to the notice of the Government in July 2021 and October 2021; their reply thereto was awaited (August 2022).

2.14 Short levy of Stamp Duty in release deed

As per Article 52 (b) of Schedule-I of MS Act, 1958 (Act) on a release deed same SD as is leviable on a conveyance under clause (a), (b) [or as the case may be (c)] of Article 25, on the market value of the share, interest, part or

¹⁷¹ M/s Neepa Real Estates Pvt. Ltd., Mumbai.

¹⁷² M/s Indiabulls Housing Finance Limited, New Delhi.

¹⁷³ (1) Dated 28 February 2018 amounting to ₹ 145 crore, (2) Dated 22 December 2017 amounting to ₹ 200 crore, (3) Dated 26 June 2018 amounting to ₹ 160 crore, and (4) Dated 12 September 2018 amounting to ₹ 120 crore, total ₹ 625 crore.

¹⁷⁴ 21 February 2018, 15 December 2017, 20 June 2018 and 10 September 2018.

¹⁷⁵ M/s Sheth creators Private Limited and M/s Neepa Real Estates Private Limited.

claim renounced. Further, as per the definition under section 2 (na) of 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. Further as per Example-2 under VG No.1 of ASR given for valuation of old property with tenants at the time of conveyance/sale.

If total area under tenants' occupation is less than total allowable area as per permitted F.S.I.

i.e. If $Z < XY$ then market value should be as under¹⁷⁶:

= $112B + [(XY - Z - H) \times (\text{Land Rate as per ASR})] + (H \times \text{Depreciated Market Value rate as per age and use of property})$.

Scrutiny of records (Document No. 13461/2015) of the Office of Joint Sub Registrar, Mumbai City-I revealed (February 2017) that a release deed was executed (December 2015) between the “first Releasor”¹⁷⁷ and the Confirming parties/Second Releasor¹⁷⁸ and “Releasee”¹⁷⁹. The release deed was for release of 30 *per cent* interest of the first Releasor in favour of “Releasee” in all those pieces or parcels of leasehold land situated at (i) the junction of Colaba Road, Ward No. A 206, (1,1A) Street No. 147 & 5 & 7A Colaba Road, Sassoon Dock and bearing Cadastral Survey No. 64 of Colaba Division admeasuring 2,170.58 sqm (as per Deed of Transfer dated 8th July 2002) and 1,781.79 sqm (as per the survey register for the Town & Island of Bombay) and (ii) the strip of land bearing Cadastral Survey No. 1/64 in the “A” ward street No. 147 admeasuring 388.80 sqm. The total constructed area of the structure constructed prior to the year 1931 on the said entire property is 2,504.22 sqm (built up area), out of which 423.60 sqm (built up area) is used for Commercial purposes and 2,080.62 sqm (built up area) is used for Residential purposes. The Releasors and the Releasee are the perpetual lease holders of the plot. The Department worked out the market value of 30 *per cent* share of “Releasor” at ₹ 39.32 crore and consideration at ₹ 3.70 crore and levied SD of ₹ 1.97 crore at the rate of five *per cent* on market value of the property. The details of valuation of market value done by Department were not available on records.

Audit worked out the 30 *per cent* of market value of the property by applying VG No.1 of ASR at ₹ 43.94 crore and consideration at ₹ 3.70 crore. Thus, SD of ₹ 2.20 crore at the rate of five *per cent* was leviable on market value as against ₹ 1.97 crore as levied by the Department. This resulted in short levy of SD of ₹ 23.12 lakh (**Appendix 2.14.1**).

After being pointed out, the Joint Sub-Registrar, Mumbai City-I in reply stated (February 2017) that as the document was adjudicated by the Collector of

¹⁷⁶ Where 1. Area of total land = X Sq.Mtrs, 2. Permissible F.S.I. = Y, 3. Total allowable Area for that plot = (X) x (Y) = XY Sq.Mtrs., 4. Total area occupied by the tenants = Z Sq.Mtrs., 5. Total area occupied by the owners = H Sq.Mtrs., 6. Total monthly rent from all the tenants, = ₹ B.

¹⁷⁷ Mr. Cyrus Soli Nallaseth.

¹⁷⁸ Mr. Sorab Fali Mehta.

¹⁷⁹ Dr. Keiki R. Mehta.

Stamps, Mumbai, compliance would be submitted after obtaining the comments of that office. The matter was intimated (August and October 2021) to the Office of the IGR. In reply, IGR stated (November 2021) that the matter is under consideration under Section 53A of MS Act, and appropriate action would be taken after the decision is taken in the matter. Further progress in the matter was awaited (August 2022).

The matter was brought to the notice of the Government in October 2021; the reply there to awaited (August 2022).