

## CHAPTER-II GOODS AND SERVICES TAX

### 2.1 Tax Administration

The Department of Taxes is the major source of revenue of the Government of Kerala, accounting for the 3/4th of its revenues. The main goal of the Department is to ensure voluntary tax compliance through transparent and simplified procedures; to eliminate corrupt practices and embracing relevant technology for seamless accessibility to services. The main activities of the Department are collection of tax, registration of dealers, recovery of arrears of tax, prevention and detection of tax offenses under a series of legislations enacted by the State and Central Governments. The critical functions of the Department such as filing of returns, payment of tax, issue of statutory forms, declaration of consignments etc., are now fully automated.

Goods and Services Tax (GST) Act, Kerala General Sales Tax (KGST) Act, Kerala Value Added Tax (KVAT) Act, Kerala Money Lending Act, Luxury Tax Act and Agricultural Income Tax Act are administered by the Department. The Commissioner, SGST Department is the head of the SGST Department who is assisted by Additional Commissioner, Joint Commissioners (JCs), Deputy Commissioners (DCs), Assistant Commissioners (ACs) and State Tax Officers (STOs). The assessment, levy and collection of tax are done by ACs and STOs.

KGST is leviable on sale of ganja, opium, foreign liquor and certain petroleum products. KVAT was leviable on the Intra-State sale of remaining commodities and Central Sales Tax (CST) on Inter-State sales. GST came into effect from 1 July 2017 subsuming VAT, CST etc.

The Government has implemented Kerala Flood Cess under Section 14 of the Finance Act, 2019 for the purpose of providing reconstruction, rehabilitation and compensation needs which had arisen due to the massive flood which occurred in the State of Kerala in the month of August 2018, for a period of two years from 1 August 2019. The State collected ₹1,717.01 crore as flood cess from 1 August 2019 to 31 July 2021.

### 2.2 Internal Audit

The Internal Audit Wing (IAW) of the SGST Department is monitored by the Commissioner. The effective functional unit of IAW for the year 2021-22 was one Joint Commissioner assisted by 10 Deputy Commissioners, two Assistant Commissioners and 15 State Tax Officers. No specific training has been imparted to the officers of the IAW.

A special e audit programme was conducted by exploiting the scrutiny module in KVATIS during which 4,633 paras were raised out of 7,037 files selected.

Out of this, 2,647 were cleared creating an additional demand of ₹748.93 crore.

### 2.3 Results of Audit

There were 216 auditable units in the SGST Department. Out of these, Audit selected 42 units for test check during the year 2021-2022 including 24 units for the SSCA. Test check of the records relating to KVAT/ KGST/ CST assessments and connected documents during 2021-22 showed under-assessment of tax and other irregularities in 68 cases relating to non/ short levy of tax/ interest, irregular allowance of input tax credit, escape of turnover from assessment and other lapses amounting to ₹49.35 crore. These cases are only illustrative as these are based on the test-check of records. As this was test audit in the test-checked cases and the audit observation is of a nature that may reflect in other cases not covered in test audit, the Department may therefore, like to internally examine the position in rest of the units with a view to ensure that the instances of non-compliance are taken care of by taking remedial measures, and may also fix responsibility for the lapses in all such cases. Audit pointed out some of the similar omissions in the earlier years also. Not only do these irregularities persist, but they also remain undetected till the next audit is conducted. Under-assessment of tax and other irregularities involving ₹49.35 crore in 68 cases, including one SSCA, which fall under the following categories are given in **Table - 2.1**.

**Table – 2.1**  
**Details of under-assessment of tax and other irregularities**

Sl. No.	Categories	Number of cases	Amount (₹ in crore)
1	SSCA on 'Department's Oversight on GST Payments and return filing'	1	35.55
2	Short payment of tax due to escape of turnover from assessment	14	2.74
3	Short payment of tax due to excess availing of input tax credit	3	0.12
4	Short payment of tax due to irregular availing of input tax credit	10	1.50
5	Others	40	9.44
<b>Total</b>		<b>68</b>	<b>49.35</b>

During the course of the year 2021-22, the Department accepted under assessment and other deficiencies amounting to ₹5.50 crore in 218 cases, which were pointed out by Audit. An amount of ₹4.28 crore pointed out in 218 cases were realised during the year.

## **2.4 Subject Specific Compliance Audit on ‘Department’s oversight on GST payments and Return filing’**

### **2.4.1 Introduction**

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

As per Section 59 of the CGST/ SGST Act, 2017, GST being a self-assessment-based tax, the responsibility for calculating tax liability, discharging the computed tax liability and filing returns is vested on the taxpayer. The GST returns must be filed online regularly on the common GST portal, failing which will attract late fee and penalty. Even if the business had no tax liability during a particular tax period, it must file a nil return mandatorily. Further, Section 61 of the Act read with Rule 99 of SGST/ CGST Rules, 2017, stipulate that the proper officer may scrutinise the return and related particulars furnished by taxpayers, communicate discrepancies to the taxpayers and seek an explanation.

This Subject Specific Compliance Audit (SSCA) was taken up considering the significance of the control mechanism envisaged for tax compliance and the oversight mechanism of the State Taxes Department (Department), Government of Kerala (GoK) in this new tax regime.

### **2.4.2 Audit objectives**

Audit of ‘Department’s oversight on GST Payments and Return filing’ was taken up with the following audit objectives to seek an assurance on:

- i. whether the rules and procedures were designed to secure an effective check on tax compliance and were being duly observed by taxpayers, and
- ii. whether the scrutiny procedures, internal audit and other compliance functions of the Circles were adequate and effective.

### **2.4.3 Audit scope**

The scope of audit comprises examination of taxpayers’ compliance, scrutiny process and subsequent follow up carried out by the Department on returns filed by the registered taxpayers. In addition, the SSCA includes review of records of a sample of taxpayers for the year 2017-18. The scope of this SSCA also includes evaluation of functions of selected Circles.

The period of review of the scrutiny of returns and verification of taxpayers' records was from July 2017 to March 2018 and that for audit of functions of selected Circles was from 2017-18 to 2020-21.

#### **2.4.4 Audit methodology and Sample selection**

A data driven approach was adopted for planning, as also to determine the nature and extent of substantive audit. The sample for this SSCA is comprised of

- a sample of Circles for evaluating the compliance functions of the circles;
- a set of deviations identified through data analysis for centralised audit that did not involve field visits; and
- a sample of taxpayers for detailed audit that involved field visits and scrutiny of taxpayer's records at departmental premises.

This SSCA has three distinct parts as under:

##### **(i) Part I – Audit of Circles**

For the purpose of evaluation of oversight functions, ten<sup>4</sup> assessment circles with jurisdiction over highest number of selected samples for Detailed Audit were considered as the sample for audit of assessment circles.

##### **(ii) Part II – Centralised audit**

Audit analysed GST returns data pertaining to 2017-18 at GSTN premises and identified a set of deviations and logical inconsistencies between GST returns filed by taxpayers. A set of 14 parameters<sup>5</sup> were identified such as mismatch of ITC availed between Annual Returns and Books of accounts, short payment of interest etc. Audit selected a sample of 419 high risk cases for evaluation of the adequacy and effectiveness of the scrutiny procedure of the Department. The audit review was limited to queries issued to the respective assessment circles between April 2022 and July 2022. There was no further scrutiny of taxpayer records.

##### **(iii) Part III – Detailed audit**

Audit selected 45 cases for detailed audit which involved field visits for verification of records available with the assessment circles. Taxpayers' records like returns and related attachments and information were accessed

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<sup>4</sup> Special Circle Mattanchery at Aluva, Works Contract Ernakulam, Special Circle Thrissur, Deputy Commissioner Thrissur, State Tax Office Second Circle Trippunithura, Special Circle Kottayam, Deputy Commissioner Kottayam, Special Circle Malappuram, Special Circle Palakkad, Special Circle I Ernakulam.

<sup>5</sup> 14 parameters are indicated in Table 2.2 as D1 to D15; D5 (ISD reversal) is absent.

through Circles for evaluation of the extent of tax compliance by taxpayers. Audit utilised the SSOID<sup>6</sup>s provided to the maximum extent feasible to examine data/ documents relating to tax payers (viz. registration, tax payment, returns and other departmental functions). Efforts were made to access the relevant granular records from the taxpayers on a risk based approach such as invoices etc. through respective assessment circles.

Entry conference of this SSCA was held on 30 March 2022 with the Additional Secretary (Taxes) Department, Government of Kerala (GoK), Commissioner, State GST Department and other officers of the State Government and the Department in which the audit objectives, sample selection, audit scope and methodology were discussed. The Exit Conference was held on 25 January 2023 with the Additional Secretary (Taxes) Department, Government of Kerala, Commissioner, State GST Department and other officers of the State Government in which the audit findings were discussed. The views expressed by the State Government during the Exit Conference and the written replies to the draft report have been suitably incorporated in the relevant paragraphs.

#### **2.4.5 Audit Criteria**

The source of audit criteria comprises the provisions contained in the SGST Act, 2017, IGST Act, 2017 and Rules made thereunder. In addition, the notifications and circulars issued by State Tax Department relating to filing of returns, notifying the effective dates of filing of various returns, extending due dates for filing returns, rates of tax on goods and services, payment of tax, availing and utilising ITC, scrutiny of returns and oversight of tax compliance and advisories issued on various subjects also formed part of the audit criteria.

#### **2.4.6 Compliance verification by the department (Part I)- Audit of Circles**

Five systemic areas were identified for examination in audit viz (i) effectiveness of scrutiny of returns, (ii) lack of internal audit, (iii) failure to utilise Analytical Insight Report by Data Mining Cell (iv) lack of action for non-filing of GSTR 10 after cancellation of Registration and (v) lack of action on late filers and non-filers. Accordingly, relevant information was called for from the selected ten assessment circles. The role of Circles is to ensure compliance by taxpayers in respect of accuracy of the taxable value declared, calculation and payment of tax liabilities, filing of returns etc. The Circles have a broad set of functions to be exercised in this regard, which were evaluated as part of this SSCA. The proper officers were not maintaining physical registers as in pre-GST period and MIS reports were also not properly generated in Model 1<sup>7</sup> backend of the department. Hence, Audit relied on

<sup>6</sup> Single SignON IDs – Unique user ID and password issued to responsible officers for accessing GSTN Backend.

<sup>7</sup> Model 1 is the backend interface developed by NIC for various tax administration purposes by proper officers of the State GST department.

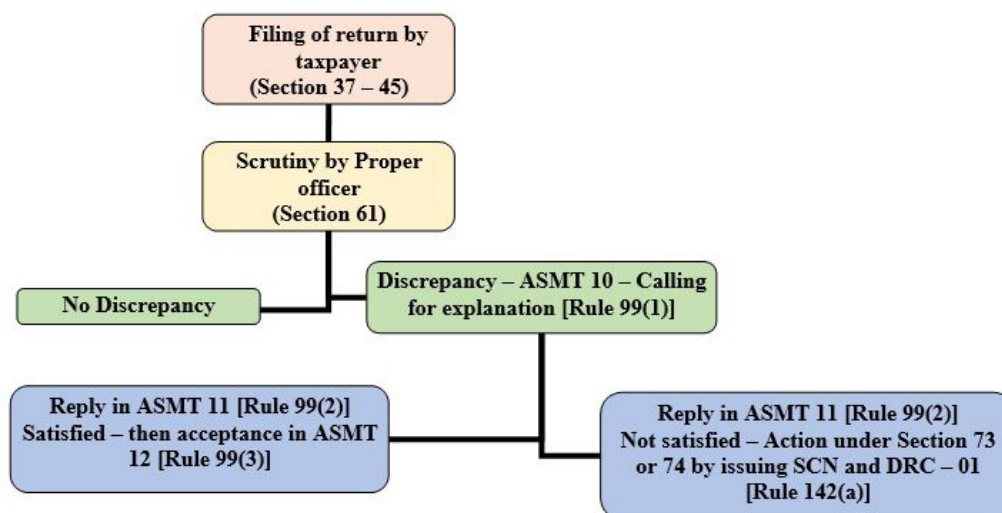
the statistical data provided in respect of the functioning of the selected assessment circles.

Non-production of records, and also limited access in the SSOIDs provided to Audit in Model 1 backend, led to limitation of scope of audit to examine irregularities and evaluate oversight functions of the Department.

#### 2.4.6.1 Effectiveness of scrutiny of returns

As per Section 61 of SGST Act, 2017, various returns filed by taxpayers have to be scrutinised by the Proper Officer to verify the correctness of the returns and suitable action has to be taken on any discrepancies or inconsistencies reflected in the returns. Further, Rule 99 of the SGST Rules, 2017, mandates that the discrepancies, if any, noticed shall be communicated to the taxpayer seeking his explanation. If the explanation offered is found acceptable by the proper officer, the proceedings shall be dropped, the taxpayer shall be informed accordingly, and no further action in the matter shall be taken. If, however, the taxpayer does not furnish a satisfactory explanation within 30 days of being informed (extendable by the proper officer) or does not take any corrective action, the proper officer may initiate appropriate action, including the issue of demand notices under Section 73 or Section 74 of the Act.

The process flow of scrutiny of returns is shown in the following flow chart:



- a) Audit noticed that the State GST Department had not published any manual/ detailed instructions including approach to selection of cases for scrutiny, timelines for scrutiny of returns, reporting and monitoring based on which the assessment/ scrutiny procedures are to be uniformly followed by the proper officers throughout the State.

On this being pointed out (October 2022) the Department stated (November 2022) that Circular No.07/2021 dated 07 November 2021 was issued which contains guidelines/ instructions for scrutiny.

The reply is not fully acceptable as the circular is limited to only eleven specific risk parameters identified through the Analytical Insight Reports for detailed scrutiny only. The instructions are silent on scrutiny schedule, detailed procedure for selection of scrutiny cases, timelines and targets for scrutiny of returns and its monitoring.

- b) Audit evaluated the scrutiny made by the proper officers in the selected ten assessment circles. It was noticed that in nine<sup>8</sup> out of 10 assessment circles, though 3,796 notices were issued vide ASMT 10, SCNs were issued only in 1,131 cases leaving a pendency in 2,665 cases for further follow up of the discrepancies as detailed in **Appendix II**. Action taken in respect of remaining cases is awaited.

This was pointed out to Department/ Government (January 2023), their reply is awaited (March 2023).

#### **Recommendation No.1**

**The Department may prescribe the scrutiny schedule and detailed procedure for selection of scrutiny cases so that targets can be fixed ensuring scrutiny of the returns by the Circles in a time bound manner.**

#### **2.4.6.2 Lack of Internal Audit**

Section 65(1) of the SGST Act, 2017 empowers the Commissioner to authorise, through an order, any officer to undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed. Section 2(13) of the SGST Act, 2017, defines Audit as the examination of records, returns etc. to verify the correctness of the turnover declared, taxes paid, refund claimed and input tax credit availed and to assess his compliance with the provisions of this Act or the rules made thereunder. Internal audit is an integral part of compliance monitoring by the department.

Audit observed that no internal audit was conducted during the audit period in any of the ten selected offices. It was noticed that neither an internal audit party was in existence nor any of the Proper Officers in such assessment circles were assigned with duty of audit of taxpayers records in accordance with the above sections during the period from 2017-18 to 2020-21. Thus, the department is yet to set up an internal audit wing even after a lapse of five years after the implementation of GST.

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<sup>8</sup> Except Deputy Commissioner Office, Kottayam, as GST files got transferred to the assessment circle with effect from August 2020 only.

On this being pointed out (October 2022), the Government stated (January 2023) that internal audit function of the department became full-fledged only after restructuring of the department i.e., January 2023 onwards. Seven<sup>9</sup> audit zones were created covering 15 tax districts along with 140 audit teams consisting of two State Tax Officers and three Assistant Tax Officers. However, Audit found that it is only an instruction for restructuring including formation of an audit wing but no Standard Operating Procedure (SoP) or set of instructions were issued on how to conduct audit.

## **Recommendation No.2**

**The Department may issue detailed instructions/ manual for carrying out internal audit by the newly created internal audit wing.**

### **2.4.6.3 Failure to utilise Analytical Insight Reports by Data Mining Cell**

CBIC was generating state-wise DGARM<sup>10</sup> reports containing high risk taxpayers noticed through data analysis which was shared with State GST Commissioner for action. Audit noticed that these reports were not used by State GST Department. In reply to the audit observation, the department stated that instead of the DGARM reports, State GST Department was generating its own Analytical Insight Reports (AIR) by the Data Mining Cell since December 2021, which were more state specific and result oriented with limited dimensions<sup>11</sup>. Follow up on AIR is performed through Action Taken Reports collected online from the field and reviewed in weekly conferences.

However, Audit could not find any follow up action on these AIRs. Audit further enquired (February 2023) how the results of such action taken are being recorded for further analysis and for monitoring the performance of assessment circles, for which no reply was furnished.

Thus, Audit could not obtain assurance on effectiveness of the system of identification of high risk taxpayers and consequent follow up action by the department.

### **2.4.6.4 Lack of action for non-filing of GSTR 10 after cancellation of Registration**

Section 29 of SGST Act, 2017, stipulates conditions for cancellation of registration, including *suo moto* cancellation of registration of taxpayers who have not filed returns for six consecutive months (three consecutive tax

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<sup>9</sup> Ernakulam (Ernakulam, Aluva), Thiruvananthapuram (Thiruvananthapuram), Thrissur (Thrissur, Palakkad), Kozhikode (Kozhikode, Malappuram, Wayanad), Kollam (Kollam, Pathanamthitta), Kannur (Kannur, Kasaragode), Kottayam (Kottayam, Alappuzha, Idukki).

<sup>10</sup> Directorate General of Analytics and Risk Management.

<sup>11</sup> GSTR 2A – GSTR 3B ITC Comparison, GSTR9 - 8D Difference, ITC availed after due date, capital goods ITC vs exempted turnover, GSTR-1 vs GSTR 3B mismatch and GSTR 3B vs E-way bill.



periods for composition taxpayers). The Proper Officer is responsible for *suo moto* cancellation of registration of non-filers. Section 45 of SGST Act, 2017, read with Rule 81 of SGST Rules, 2017, specifies that any person whose registration is cancelled shall file Final Return in Form GSTR 10 within three months of the date of cancellation or date of order of cancellation, whichever is later.

Section 63 of SGST Act, 2017, provides that where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of Section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under Section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

- a) Audit noticed that in nine out of ten assessment circles, 1,035 taxpayers cancelled their registration either by request or *suo moto* by the proper officer during the period covered by audit, but GSTR 10 was not filed by 775 taxpayers even after completion of three months from the date of cancellation for which no action was taken by the proper officers as detailed in **Appendix III**.
- b) Audit test checked 150 cases out of 1,035 cancelled taxpayers to see whether any activity was conducted by such cancelled taxpayers after the date of cancellation and it was noticed that 29 taxpayers in seven<sup>12</sup> assessment circles effected purchases worth ₹14.18 crore using the cancelled GSTIN which reflected in the GSTR 2A as detailed in **Appendix IV**.

On further scrutiny, Audit revealed that out of these 29 cancelled taxpayers, 25 taxpayers had not filed GSTR 10 and the remaining four<sup>13</sup> taxpayers filed GSTR 10 without any details of transactions effected which were reflected in GSTR 2A. The proper officers did not assess such taxpayers in accordance with Section 63 of the SGST Act, 2017.

On this being pointed out (between September and October 2022), in respect of two<sup>14</sup> cases, the proper officers stated (between October and November 2022) that reply would be furnished after detailed verification of records. The Proper Officer, Special Circle, Malappuram in respect of four cases, stated (January 2023) that in order to conduct assessment of the taxpayers who have

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<sup>12</sup> Special Circle Mattanchery at Aluva, Works Contract Ernakulam, Deputy Commissioner Office Thrissur, State Tax Office II Circle Trippunithura, Special Circle Malappuram, Special Circle Palakkad, Special Circle I Ernakulam.

<sup>13</sup> Jaihind Traders (32AABFJ7099K1Z1), VT Store (32AJHPV2908G1Z8), Ponnore Marketing (32AAJFP5810G1ZH), Autokritz (32EDAPS7868P1ZN).

<sup>14</sup> M/s Eurotech Cements at Special Circle Palakkad, M/s Ponnore Marketing at Deputy Commissioner Office, Thrissur.

cancelled the registration, a temporary GSTIN for the dealer has to be created by the officer concerned with the help of GST backend. But now there is no such function in the GST back-end. Hence a request has been sent to the IT cell to create temporary ID for issuing ASMT 14 through GSTN. Further action will be taken immediately when the function in module is activated. Replies in respect of the remaining 23 cases are awaited.

The matter was pointed out to Department/ Government (January 2023), their reply is awaited (March 2023).

### **Recommendation No.3**

**Allowing a registered person to raise invoice to a cancelled GSTIN is a major system issue which would pave way for unaccounted purchases and corresponding sales etc. Hence, it is recommended to introduce a system check for not allowing cancelled GSTINs to have any transactions in the network, by updating the status of such GSTINs on a real-time basis.**

#### **2.4.6.5 Lack of action on late-filers and non-filers of GST returns**

Section 46 of the SGST Act, 2017, read with Rule 68 of the SGST Rules, 2017, stipulates issue of a notice in FORM GSTR-3A requiring filing of return within fifteen days if the taxpayer had failed to file the return within the due date. In case the taxpayer fails to file the returns even after such notice, the proper officers may proceed to assess the tax liability of the said person to the best of their judgment, taking into account all the relevant material which is available or gathered and issue an assessment order in FORM ASMT-13. This assessment order should be issued within a period of five years from the due date for furnishing the annual return for the financial year, which the tax default relates to. A summary of such order should be uploaded in the system in FORM DRC-07.

The details of action taken on late filers and non-filers in respect of selected ten assessment circles were sought for by audit but not provided by the proper officers. Non-furnishing of information/ relevant documents restricted the scope of audit. Hence, audit verified filing of returns by 45 taxpayers selected for detailed audit and it was noticed that three<sup>15</sup> taxpayers filed returns with a delay ranging from 188 days to 419 days. However, the Proper Officers had not initiated any action regarding assessment and cancellation of registration in these cases.

This was pointed out to Department/ Government (January 2023), their reply is awaited (March 2023).

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<sup>15</sup> M/s Alukka Gold Palace (32AAQFA1469B1ZS), M/s Forest Industries Travancore (32AAACF4562B1Z9), M/s Saffe Systems (32ABOFS7482F1ZT).

### 2.4.7 Centralised Audit (Part II)

Audit analysed GST returns data pertaining to 2017-18 as made available by GSTN. Rule-based deviations and logical inconsistencies between GST returns filed by taxpayers were identified on a set of 14 parameters, which can be broadly categorized into two domains - ITC and Tax payments.

Out of the 14 prescribed GST returns<sup>16</sup> the following basic returns that apply to normal taxpayers were considered for the purpose of identifying deviations, inconsistencies and mismatches between GST returns/ data:

- GSTR-1: monthly return furnished by all normal and casual registered taxpayers making outward supplies of goods and services or both and contains details of outward supplies of goods and services.
- GSTR-3B: monthly summary return of outward supplies and input tax credit claimed, along with payment of tax by the taxpayer to be filed by all taxpayers except those specified under Section 39(1) of the Act. This is the return that populates the credit and debits in the Electronic Credit Ledger and debits in Electronic Cash Ledger.
- GSTR-6: monthly return for Input Service Distributors providing the details of their distributed input tax credit and inward supplies.
- GSTR-8: monthly return to be filed by the e-commerce operators who are required to deduct TCS (Tax collected at source) under GST, introduced in October 2018.
- GSTR-9: annual return to be filed by all registered persons other than an Input Service Distributor (ISD), Tax Deductor at Source/ Tax Collector at Source, Casual Taxable Person and Non-Resident taxpayer. This document contains the details of all supplies made and received under various tax heads (CGST, SGST and IGST) during the entire year along with turnover and audit details for the same.
- GSTR-9C: annual audit form for all taxpayers having a turnover above five crore rupees in a particular financial year. It is basically a reconciliation statement between the annual returns filed in GSTR-9 and the taxpayer's audited annual financial statements.

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<sup>16</sup> GSTR-1, GSTR-3B, GSTR-4 (taxpayers under the Composition scheme), GSTR-5 (non-resident taxable persons), GSTR-5A (Non-resident OIDAR service providers), GSTR-6 (Input service distributor), GSTR-7 (taxpayers deducting TDS), GSTR-8 (E-commerce operator), GSTR-9 (Annual Return), GSTR-9C (Reconciliation Statement), GSTR-10 (Final return), GSTR 11 (person having UIN and claiming a refund), CMP-08, and ITC-04 (Statement to be filed by a principal/ Job worker about details of goods sent to/ received from a job-worker).

- GSTR-2A: a system-generated statement of inward supplies for a recipient. It contains the details of all B2B transactions of suppliers declared in their FORM GSTR-1/5, ISD details from GSTR-6, details from GSTR-7 and GSTR-8 respectively by the counterparty and import of goods from overseas on bill of entry, as received from ICEGATE Portal of Indian Customs.

#### 2.4.7.1 Audit findings based on Data analysis

The details of data analysis pertaining to state jurisdiction on the 14 identified parameters and extent of deviations/ mismatches observed are summarised in **Table - 2.2**.

**Table – 2.2**  
**Summary of data analysis**

Sl. No.	Parameter	Algorithm used	Number of deviations/ mismatches	Amount of deviations/ mismatches (₹ in crore)
Domain: ITC				
1.	ITC mismatch between GSTR 2A and GSTR 3B - [D1]	ITC available as per GSTR2A with all its amendments was compared with the ITC availed in GSTR 3B in Table 4A(5) (accrued on domestic supplies) excluding the reversals in Table 4B(2) but including the ITC availed in the subsequent year 2018-19 from Table 8C of GSTR 9	50	136.11
2.	ITC availed under Reverse Charge Mechanism (RCM) vs payment of tax in GSTR 3B/ GSTR 9 – [D2]	RCM payments in GSTR 3B Table 3.1(d) was compared with ITC availed in GSTR 9 Table 6C, 6D and 6F.  In cases where GSTR 9 was not available, the check was restricted within GSTR 3B - tax discharged in Table 3.1(d) vis-a-vis ITC availed Table 4A(2) and 4A(3)	50	26.82
3.	Short payment of tax under RCM vs ITC availed in GSTR 3B/ GSTR 9 – [D3]	RCM payments in GSTR 9 Table 4G (tax payable) was compared with ITC availed in GSTR 9 Table 6C, 6D and 6F (ITC availed).  In cases where GSTR 9 was not available, RCM payment in GSTR 3B Table 3.1(d) was compared with GSTR 3B 4(A)(2) and 4A(3). Greater of difference in GSTR 9 and GSTR 3B considered where both were available.	16	3.05
4.	Incorrect availing of Input Service Distributor credit – [D4]	ISD transferred in GSTR 9 Table 6G or GSTR 3B Table 4(A)(4) was compared with the sum of Table 5A, Table 8A, and Table 9A of GSTR 6 of recipient GSTINs	25	17.07

Sl. No.	Parameter	Algorithm used	Number of deviations/mismatches	Amount of deviations/mismatches (₹ in crore)
5.	Mismatch of ITC availed between Annual returns and Books of accounts [D6]	Positive figure in GSTR 9C Table 12F and examination of reasons provided in Table 13 for mismatch	25	146.15
6.	Reconciliation between ITC availed in annual returns with expenses in financial statements – [D7]	Positive figure in GSTR 9C Table 14T and examination of reasons provided in Table 15 for mismatch	25	508.32
Domain: Tax payments				
7.	Mismatch in turnover declared in GSTR 9C Table 5R – [D8]	Negative figure in GSTR 9C Table 5R and examination of reasons provided in Table 6 for mismatch	50	6,788.95
8.	Mismatch in taxable turnover declared in GSTR 9C Table 7G – [D9]	Negative figure in GSTR 9C Table 7G and examination of reasons provided in Table 8 for mismatch	42	312.25
9.	Mismatch in tax paid between books of accounts and returns – [D10]	Negative figure in GSTR 9C Table 9R and examination of reasons provided in Table 10 for mismatch	50	31.24
10.	Unsettled liabilities – [D11]	The greater of tax liability between GSTR 1 (Tables 4 to 11) and GSTR 9 (Tables 4N, 10 and 11) was compared with tax paid details in GSTR 3B Tables 3.1(a) and 3.1(b). In cases where GSTR 9 was not available GSTR 3B tax paid was compared with GSTR 1 liability.  The amendments and advance adjustments declared in GSTR 1 and 9 were duly considered.	25	55.56
11.	Composition taxpayer also availing ecommerce facility – [D12]	E-commerce GSTR 8 became effective from 1 October 2018 when TCS provisions became effective. GSTINs declared in GSTR 8 who are also filing GSTR 4 under composition scheme.	9	0
12.	GSTR 3B was not filed but GSTR 1 is available – [D13]	Taxpayers who have not filed GSTR 3B but have filed GSTR 1 or where GSTR 2A available, indicating taxpayers carrying on the business without discharging tax.	25	4.55

Sl. No.	Parameter	Algorithm used	Number of deviations/ mismatches	Amount of deviations/ mismatches (₹ in crore)
13.	Short payment of interest – [D14]	Interest calculated at the rate of 18 <i>per cent</i> on cash portion of tax payment on delayed filing of GSTR-3B <i>vis-a-vis</i> interest declared in GSTR 3B	25	8.15
14.	Stop filers – [D15]	Taxpayers who did not file GSTR1/ GSTR3B for consecutive six months	2	0

#### 2.4.7.2 Response to Audit

Audit selected a sample of 419 from amongst the top deviations/ inconsistencies in each of the 14 parameters for the year 2017-18 as detailed in **Appendix V**. The audit queries were issued to the respective assessment circles between April 2022 and February 2023 without further scrutiny of taxpayer's records. The audit check in these cases was limited to verifying the Department's action on the identified deviations/ mismatches.

Initial responses were yet to be received, as of March 2023, for 211 inconsistencies (50 *per cent*) communicated to the Department (**Appendix VI**) which represent deviations/ mismatches of ₹542.38 crore in 159 cases as detailed in **Appendix VII**.

Details of top ten cases in terms of amount of mismatch where response is yet to be received is detailed in the following **Table - 2.3**.

**Table – 2.3**  
**Top cases where response is awaited**

Sl. No.	GSTIN	Name of taxpayer	Assessment Circle	Dimension	Mismatch amount (₹ in crore)
1	32AAACG1395D1Z3	Godrej & Boyce Mfg Co. Ltd	Special Circle I, Ernakulam	D7	106.40
2	32AAACJ8091R2ZZ	Peninsular Honda	Special Circle III, Ernakulam	D7	52.49
3	32AAACP1272G1ZW	Pepsico India Holdings(P) Ltd	STO II Circle, Trippunithura	D7	46.32
4	32AANCA7444G2ZN	Adani Vizhinjam Port Private Limited	Works Contract, Thiruvananthapuram	D7	43.71
5	32AADFP1492J1ZA	Prabhu Steels	Special Circle II, Ernakulam	D1	25.86
6	32AADCH4100N2ZW	Howe Engineering Projects India Private Limited	Works Contract, Thiruvananthapuram	D7	21.21

Sl. No.	GSTIN	Name of taxpayer	Assessment Circle	Dimension	Mismatch amount (₹ in crore)
7	32AACFK7769C1ZF	Kerala Trade Wings	Special Circle I, Kozhikode	D7	16.62
8	32AAJFS4867J1ZS	Southern Marketing Associates	Special Circle, Thrissur	D7	11.09
9	32AAACN4165C4ZX	The New India Assurance Co Limited	Special Circle I, Ernakulam	D6	9.53
10	32AABCE9683P1Z0	Cedar Retail Private Limited	IAC, Thrissur	D7	9.03

Note: Dimensions have the same meaning as in Table 2.2.

#### Recommendation No.4

**Department may provide replies in respect of 211 mismatches and deviations, pointed out by Audit, for which responses have not been provided.**

#### 2.4.7.3 Summary of deficiencies noticed during Centralised audit

Based on responses received from the Department to the Audit Queries, the extent to which each of the 14 parameters translated into compliance deviations in respect of 201 cases (**Appendix VIII**) is summarised in **Table - 2.4** below:

**Table – 2.4**  
**Summary of deficiencies**

(₹ in crore)

Audit Dimension	Cases where response received		Department reply is acceptable to the Audit <sup>17</sup>		Compliance deviations							
					Recovery made or SCN issued <sup>18</sup>		ASMT-10/ Notice issued		Department's reply not acceptable to Audit		Total	
	Number	Amount	Number	Amount	Number	Amount	Number	Amount	Number	Amount	Number	Amount
ITC Mismatch (D1)	19	44.49	8	26.91	7	12.36	4	5.27	0	0.00	11	17.63
RCM ITC availed (D2)	37	19.71	28	16.00	3	1.63	5	1.12	0	0.00	8	2.75
RCM payment (D3)	10	1.95	7	1.37	1	0.19	1	0.21	1	0.19	3	0.59

<sup>17</sup> This includes acceptable cases such as data-entry errors, action taken before query and other valid explanations.

<sup>18</sup> Recovery made of ₹2.44 crore in 7 cases and SCN issued of ₹20.87 crore in 33 cases.

Audit Dimension	Cases where response received		Department reply is acceptable to the Audit <sup>17</sup>		Compliance deviations							
					Recovery made or SCN issued <sup>18</sup>		ASMT-10/ Notice issued		Department's reply not acceptable to Audit		Total	
	Number	Amount	Number	Amount	Number	Amount	Number	Amount	Number	Amount	Number	Amount
ISD ITC Mismatch (D4)	13	10.59	8	6.33	1	0.45	4	3.80	0	0.00	5	4.25
12F- Excess ITC (D6)	13	121.67	10	113.41	0	0.00	2	\$	1	\$	3	\$
14T Ineligible ITC (D7)	7	142.89	3	115.69	0	0.00	2	#	2	#	4	#
5R Total Turnover (D8)	29	<sup>-19</sup>	18	0.00	2	-	7	-	1	-	10	-
7G Taxable Turnover (D9)	20	<sup>-20</sup>	14	0.00	1	-	2	-	3	-	6	-
9R - Tax paid (D10)	20	13.43	9	6.85	5	2.83	5	3.08	1	0.53	11	6.45
Unsettled Liability (D11)	16	34.45	11	27.39	1	0.04	1	1.50	1	1.40	3	2.94
E-commerce (D12)	2	0.00	0	0.00	0	0.00	0	0.00	2	0.00	2	0.00
No GSTR 3B but GSTR 1 available (D13)	14	3.62	0	0.00	11	3.96	0	0.00	0	0.00	11	3.96

<sup>19</sup> Total unreconciled turnover (TO) in table 5R of GSTR 9C in 29 cases where responses received are ₹1,239.50 crore, out of which ₹239.78 crore in one case is yet to be examined by the department, ₹55.95 crore in three cases were due to data entry error, in two cases with TO ₹34.06 crore action were taken proactively, in 13 cases with TO ₹316.16 crore were having valid explanations for the department, in two cases with TO ₹72.54 crore SCN was issued, ASMT 10 was issued in seven cases with TO ₹483.35 crore, department reply was not acceptable to Audit in one case with TO ₹37.66 crore.

<sup>20</sup> Total unreconciled turnover (TO) in table 7G of GSTR 9C in 20 cases where responses received is ₹131.23 crore, out of which ₹7.59 crore in two cases were due to data entry error, ₹94.57 crore in 12 cases was having valid explanations for the department, SCN was issued in one case with TO ₹0.95 crore, ASMT 10 was issued in two cases with TO ₹12.65 crore, department reply was not acceptable to Audit in three cases with TO ₹15.47 crore.

\$ Compliance deviation of unreconciled ITC in table 12F of GSTR 9C (ASMT 10 issued in two cases with unreconciled ITC of ₹3.86 crore and department reply was not acceptable to Audit in one case with unreconciled ITC of ₹4.40 crore).

# Compliance deviation of unreconciled ITC in table 14T of GSTR 9C (ASMT 10 issued in two cases with unreconciled ITC of ₹15.85 crore and department reply was not acceptable to Audit in two cases with unreconciled ITC of ₹11.35 crore).



Audit Dimension	Cases where response received		Department reply is acceptable to the Audit <sup>17</sup>		Compliance deviations							
					Recovery made or SCN issued <sup>18</sup>		ASMT-10/ Notice issued		Department's reply not acceptable to Audit		Total	
	Number	Amount	Number	Amount	Number	Amount	Number	Amount	Number	Amount	Number	Amount
Interest short paid (D14)	8	1.85	0	0.00	8	1.85	0	0.00	0	0.00	8	1.85
Stop filers (D15)	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
<b>Total</b>	<b>208<sup>21</sup></b>	<b>394.65</b>	<b>116</b>	<b>313.95</b>	<b>40</b>	<b>23.31</b>	<b>33</b>	<b>14.98</b>	<b>12</b>	<b>2.12</b>	<b>85</b>	<b>40.42</b>

Audit noticed deviations from the provisions of the Act in 85 cases, involving a short levy of tax of ₹40.42 crore constituting 41 *per cent* of the 208 inconsistencies/ mismatches in data, for which the Department provided responses. Out of this, Department has accepted the audit observations or initiated action in 73 cases (**Appendix IX**) with tax effect of ₹38.29 crore. Department recovered ₹2.44 crore in seven cases, issued SCN in 33 cases for ₹20.87 crore. Form ASMT-10 was issued in 33 cases for ₹14.98 crore. In 12 cases, the reply of department is not acceptable to Audit. Relatively higher rates of deviations were noticed in risk parameters such as ITC mismatch and undischarged liability.

In 116 cases constituting 56 *per cent*, where the department's reply was acceptable to Audit, data entry errors by taxpayers comprised 69 cases, department had proactively taken action in 14 cases and 33 cases had valid explanations.

In seven cases, constituting three *per cent*, department is yet to examine the observations.

Details of top ten cases in terms of amount of mismatch accepted by the Department is detailed in the following **Table - 2.5** below:

**Table – 2.5**  
**Top cases of mismatch where Department accepted the objections**

Sl. No.	GSTIN	Name of the taxpayer	Assessment Circle	Dimension	Tax (₹ in crore)	Action taken
1	32ACGPA4233M1ZY	A.M Fair Price Medicines	STO IV Circle, Thrissur	D7	8.67	ASMT 10 issued
2	32AAGCM9459A1ZK	Mirones Builders & Developers Pvt. Ltd.	Special Circle, Kottayam	D7	7.18	ASMT 10 issued
3	32AACCA0187B1ZF	AVG Motors Limited	Special Circle, Kottayam	D1	4.24	ASMT 10 issued

<sup>21</sup> This includes seven cases which are yet to be examined by the Department.

Sl. No.	GSTIN	Name of the taxpayer	Assessment Circle	Dimension	Tax (₹ in crore)	Action taken
4	32AAACI4904J1ZV	Indus Motor Company Private Ltd	Special Circle II, Ernakulam	D6	2.93	ASMT 10 issued
5	32BIYPA6876R1Z7	Dreams Traders	STO, Chittur	D13	2.78	SCN issued
6	32AEIPG6407R1Z8	Erumely Traders	STO, Ponkunnam	D1	2.23	SCN issued
7	32AAECK1982G1ZO	KCM Appliances Private Limited	Special Circle, Malappuram	D1	1.97	SCN issued
8	32AAHFV3844N1ZS	Victory Impex Co	Special Circle, Kannur	D1	1.80	ASMT 10 issued
9	32AAKFD1597P1ZX	D J Gold	Deputy Commissioner, Thrissur	D4	1.65	ASMT 10 issued
10	32ACMPJ8252F1ZN	Jemis Enterprise	Special Circle II, Ernakulam	D1	1.54	ASMT 10 issued

Note: Dimensions have the same meaning as in Table 2.2.

A few illustrative cases where the department accepted or initiated action in respect of each dimension are given below:

- i. Excess ITC availed (Dimension 1):* GSTR 2A is a purchase related dynamic form that is automatically generated for each business by GST portal, whereas GSTR 3B is a monthly return in which summary of outward supplies along with ITC and payment of tax are self-declared by the taxpayer.

To analyse the veracity of ITC utilisation, relevant data were extracted from GSTR 3B and GSTR 2A for the year 2017-18, and the tax paid as per suppliers' details were matched with the ITC availed by the taxpayer.

Audit observed that in the case of a taxpayer M/s AVG Motors Limited (GSTIN 32AACCA0187B1ZF), a registered trader in Special Circle Kottayam, ITC available as per GSTR 2A was ₹73.75 crore and the ITC availed as per table 4A(5) of GSTR 3B was ₹77.99 crore resulting in mismatch of ₹4.24 crore which was communicated through an Audit query (April 2022). In response, the Department stated (November 2022) that ASMT 10 was issued to the taxpayer in June 2022.

- ii. Availing of Excess ITC on RCM (Dimension 2):* Under Reverse Charge Mechanism (RCM), the liability to pay tax is fixed on the recipient of supply of goods or services instead of the supplier or provider in respect of certain categories of goods or services or both

under Section 9(3) or Section 9(4) of the SGST Act, 2017 and under sub-section (3) or sub-section (4) of Section 5 of the IGST Act, 2017.

GSTR 9 is an annual return to be filed once for each financial year, by the registered taxpayers who were regular taxpayers, including SEZ units and SEZ developers. The taxpayers are required to furnish details of purchases, sales, input tax credit or refund claimed or demand created etc.

To analyse the veracity of ITC availed on tax paid under RCM for the year 2017-18, the datasets pertaining to GSTR 3B and annual return GSTR 9 were compared to check whether the ITC availed on RCM was restricted to the extent of tax paid. In cases where GSTR 9 was not available, the check was restricted within GSTR 3B where the tax discharged part in GSTR 3B Table 3.1 (d) was compared with the ITC availing part of GSTR 3B 4A (2)<sup>22</sup> and 4A (3)<sup>23</sup>.

Audit observed that in the case of the taxpayer M/s. M K Enterprises (32ADQPK5912J1ZE) in the Office of the Deputy Commissioner, Palakkad, the ITC available as per the tax payable under RCM in table 3.1(d) of GSTR 3B was ₹0.002 crore whereas the ITC availed in table 4A(2) & (3) of GSTR 3B was ₹1.35 crore resulting in mismatch of excess availing of ITC under RCM amounting to ₹1.35 crore. In response to an Audit query (April 2022), the Department stated (May 2022) that SCN was issued to the taxpayer in April 2022.

- iii. *Availing of excess ITC on RCM without payment of Tax (Dimension 3):*** The extent of availing of ITC under RCM for the year 2017-18 without discharging equivalent tax liability or, in other words, short payment of tax under RCM was analysed by comparing the datasets pertaining to GSTR 3B and annual return GSTR 9 to check whether the tax has been discharged fully on the activities/ transactions under RCM. In cases where GSTR 9 was filed, the RCM payments in Table 4G<sup>24</sup> was compared with ITC availed in Table 6C, 6D and 6F. In cases where GSTR 9 was not available, RCM payments in GSTR 3B Table 3.1(d)<sup>25</sup> was compared with GSTR 3B 4(A) (2)<sup>26</sup> and 4A (3)<sup>27</sup>.

Audit observed that in the case of the taxpayer M/s MIFAS Communication (32BASPN8933Q1ZP) in the Office of the STO, Tirur, ITC under RCM amounting to ₹0.21 crore was availed through GSTR 9 with no payment on RCM made through GSTR 3B. In response

<sup>22</sup> Import of services

<sup>23</sup> Inward supply (liable to reverse charge).

<sup>24</sup> Inward supplies on which tax is to be paid on reverse charge basis.

<sup>25</sup> Inward supply (liable to reverse charge).

<sup>26</sup> Import of services.

<sup>27</sup> Inward supply liable to reverse charge other than import of goods and services.

to an Audit query (April 2022) communicating this mismatch, the department stated (August 2022) that ASMT 10 was issued to the taxpayer in August 2022.

- iv. Irregular availing of ITC by recipient on ISD credit (Dimension 4):** To analyse whether the ITC availed by the taxpayer is in excess of that transferred by the Input Service Distributor (ISD), ITC availed as declared in the returns of the taxpayer is compared with the ITC transferred by the ISD in their GSTR 6.

Audit observed in the case of the taxpayer M/s. D J Gold (32AAKFD1597P1ZX) in the Office of the Deputy Commissioner, Thrissur, that the ITC availed in table 6G of GSTR 9 was ₹1.65 crore and ITC transferred by the ISD in table (5A+8A+9A) of GSTR 6 was NIL, resulting in a mismatch of ₹1.65 crore. In response to an Audit query (September 2022) on incorrect availing of ISD credit of ₹1.65 crore, the Department stated (October 2022) that ASMT 10 was issued to the taxpayer in October 2022.

- v. Unreconciled ITC in Table 12F of GSTR-9C (Dimension 6):** Table 12 of GSTR 9C reconciles ITC declared in annual return (GSTR 9) with ITC availed as per audited Annual financial statement or books of accounts. Column 12F of this table deals with unreconciled ITC. The certified reconciliation statement submitted by the taxpayer as required under Rule 80(3) of SGST Rules, 2017, in Form GSTR 9C for the year 2017-18 was analysed at data level to review the extent of identified mismatch in ITC declared in the Annual Return with the Financial Statements.

In the case of M/s. Indus Motors Ltd (32AAACI4904J1ZV) in the Office of the Special Circle II, Ernakulam, Audit noticed (November 2022) unreconciled ITC declared in Table 12F of GSTR 9C amounting to ₹2.93 crore being mismatch of ITC availed in GST returns and ITC on items booked in financial statement. On this being pointed out (November 2022), the Department stated (November 2022) that the issue had been communicated to the taxpayer.

- vi. Unreconciled ITC in Table 14T of GSTR-9C (Dimension 7):** Table 14 of GSTR 9C reconciles ITC declared in annual return (GSTR 9) with ITC availed on expenses as per audited Annual financial statement or books of accounts. Column 14T of this table deals with unreconciled ITC. The certified reconciliation statement submitted by the taxpayer as required under Rule 80(3) of SGST Rules, 2017, in Form GSTR 9C for the year 2017-18 was analysed at data level to review the extent of identified mismatch in ITC declared in the Annual Return with the expenses reported in the Financial Statements.

In the case of M/s. A.M Fair Price Medicines (32ACGPA4233M1ZY), in the office of the STO IV Circle, Thrissur, Audit noticed (May 2022) unreconciled ITC of ₹8.67 crore declared in Table 14T of GSTR 9C, being ITC availed in GST returns in excess of eligible ITC based on expenses reported in financial statements. On this being pointed out (May 2022), the Department stated (June 2022) that ASMT 10 had been issued to the taxpayer in May 2022.

- vii. Unreconciled turnover in Table 5R of GSTR-9C (Dimension 8):** Table 5 of GSTR 9C is the reconciliation of turnover declared in audited annual financial statement with turnover declared in annual return (GSTR 9). Column 5R of this table captures the unreconciled turnover between the annual return GSTR 9, and that declared in the Financial Statement for the year after the requisite adjustments.

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

In respect of the taxpayer, M/s Malanadu Farmers Society (32AABTM2628K1ZO) in the office of the Deputy Commissioner, Pala, Audit noticed (October 2022) a difference in total turnover as declared in Table 5R of GSTR 9C amounting to ₹72.36 crore. On this being pointed out, the Department stated (October 2022) that DRC 01A had been issued to the taxpayer (October 2022).

- viii. Unreconciled taxable turnover in Table 7G of GSTR-9C (Dimension 9):** Table 7 of GSTR 9C is the reconciliation of taxable turnover. Column 7G of this table captures the unreconciled taxable turnover between the annual return GSTR 9 and that declared in the financial statement for the year after the requisite adjustments.

The certified reconciliation statement submitted by the taxpayer as required under Rule 80(3) of SGST Rules, 2017, in Form GSTR 9C for the year 2017-18 was analysed at data level to review the extent of identified mismatch in taxable turnover reported in the Annual Return vis-à-vis the Financial Statements. The unreconciled amount in cases where the turnover in GSTR 9 is less than the financial statement indicates non-reporting, under-reporting, short-reporting, omission,

error in reporting of taxable supplies. It could also be on account of non-reporting of both taxable and exempted supplies.

In respect of the taxpayer M/s Kizhathadiyoor Service Co-operative Bank Ltd. (32AAAK3240R1ZM) in the office of the Deputy Commissioner, Pala, Audit noticed (October 2022) a difference in taxable turnover as declared in Table 7G of GSTR 9C amounting to ₹6.63 crore. On this being pointed out, the Department stated (October 2022) that ASMT 10 had been issued to the taxpayer (October 2022).

**ix. Unreconciled tax liability in Table 9R of GSTR 9C (Dimension 10):**

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

In respect of the taxpayer M/s. Jasmine Agencies (32AACFJ5822D1ZW) in the Office of the Special Circle, Malappuram, Audit noticed (April 2022) unreconciled payment of tax declared in Table 9R of GSTR 9C amounting to ₹1.51 crore. On this being pointed out, the Department stated (January 2023) that ASMT 10 was issued to the taxpayer (January 2023).

**x. Short declaration of tax liability (Dimension 11):** GSTR 1 depicts the monthly details of outward supplies of Goods or Services. The details also assessed by the taxpayer and mentioned in annual return GSTR 9 in the relevant columns. Further, taxable value and tax paid thereof also shown in GSTR 3B.

To analyse the undischarged tax liability, relevant data were extracted from GSTR 1 and GSTR 9 for the year 2017-18 and the tax payable in these returns was compared with the tax paid as declared in GSTR 9. Where GSTR 9 was not available, a comparison of tax payable between GSTR 1 and GSTR 3B was resorted to. The amendments and advance adjustments declared in GSTR 1 and 9 were also considered for this

purpose. In the case of GSTR 3B, tables 3.1(a)<sup>28</sup> and 3.1(b)<sup>29</sup> were taken into account.

Audit observed (May 2022) that in the case of the taxpayer M/s. Najeem Cashew Industries (32ACAPM1256C1ZC), in the Office of the Special Circle Kollam, there was a liability mismatch between GSTR 1 and GSTR 3B amounting to ₹1.54 crore. The liability declared by the taxpayer in GSTR 1 including the amendments carried out in the subsequent years pertaining to invoices issued in 2017-18 works out to ₹2.41 crore. However, the tax discharged in GSTR 3B was only ₹0.87 crore. In response to this Department stated (October 2022) that ASMT 10 was issued to the taxpayer.

- xi. Non filing of GSTR-3B - Non-Payment of tax but passing ITC (Dimension 13):* GSTR 3B return under Rule 61 (5) of SGST Rule, 2017, is the only instrument through which the tax liability is offset and ITC is availed.

Effort was made through data analysis to identify those taxpayers who had not filed GSTR 3B but filed GSTR 1 or whose GSTR 2A was available. The very availability of GSTR 1 and 2A and non-filing of GSTR 3B indicates that the taxpayers had undertaken/ carried on the business during the period but have not discharged their tax liability. It may also include cases of irregular passing on of ITC.

In the Office of the STO, Chittoor, in the case of taxpayer M/s. Dreams Traders (32BIYPA6876R1Z7) the datasets pertaining to relevant fields in GSTR 1, 2A and 3B were analysed. Audit observed (May 2022) that the taxpayer had not filed GSTR 3B in 2017-18 and potential tax liability flowing from GSTR-1 of ₹1.54 crore was noticed. In response to the audit observation on non-filing of GSTR 3B despite output tax liability as per GSTR 1 amounting to ₹1.54 crore, the Department stated (July 2022) that the proper officer had already noticed the non-filing of returns and non-payment of tax and spot enquiry of the business place was conducted in July 2019 itself. It was also stated that the registration of the dealer was cancelled in July 2019. The reply is not acceptable, as the proper officer had only cancelled the registration without taking appropriate action under the Act for realisation of tax.

- xii. Short payment of interest (Dimension 14):* Section 50 of the Act stipulates that every person liable to pay tax in accordance with the provisions of this Act or the rules made thereunder but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay interest at the rate notified.

<sup>28</sup> Outward taxable supplies (other than zero rated, nil rated and exempted).

<sup>29</sup> Outward taxable supplies (Zero rated).

The extent of short payment of interest on account of delayed remittance of tax during 2017-18 was identified using the tax paid details in GSTR 3B and the date of filing of GSTR 3B. Only the net tax liability (cash component) has been considered to work out the interest payable.

In respect of the taxpayer M/s. Sree Krishna Traders (32ACYFS5861K1ZB) in the Office of the STO, Pattambi, Audit noticed (May 2022) short payment of interest amounting to ₹0.30 crore on account of belatedly filing GSTR 3B. On this being pointed out, the Department stated (November 2022) that DRC-07 had been issued to the taxpayer in November 2022.

### **2.4.8 Detailed Audit (Part III)**

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

From an external audit perspective, Audit also focused on a data-driven risk-based approach. Thus, apart from identifying inconsistencies/ deviations in GST returns through analysis of data on GST related to the State, a detailed audit of GST returns was also conducted as a part of this review. A risk-based sample of 45 taxpayers was selected for this part of the review. The methodology adopted was to initially conduct a desk review of GST returns and financial statements filed by the taxpayers as part of the GSTR 9C and other records available in the back-end system to identify potential risk areas, inconsistencies/ deviations and red flags. Desk review was carried out in the office of Principal Accountant General, Kerala. Based on desk review results, detailed audit was conducted in assessment circles by requisitioning corresponding granular records of taxpayers such as financial ledgers, invoices etc, to identify causative factors of the identified risks and to evaluate compliance by taxpayers.



In spite of requisitions and follow up, records such as invoices and agreement copies were not provided by the assessment circle offices in all the 45 selected cases. In 12<sup>30</sup> cases where there were only consolidated accounts (where multi locational units having registration in multiple states), though the state specific certified accounts were called for, but not furnished to audit. Consequently, in these partially produced cases, audit was restricted to the information available in the returns filed by the taxpayers. Thus, audit could not evaluate eligibility of ITC claimed and extent of unsettled tax liability, which constituted a significant scope limitation.

#### **2.4.8.1 Scope limitation**

Section 35(1) of SGST Act, 2017 read with Rule 56(1) of SGST Rules, 2017, envisages that every registered person shall keep and maintain, at his principal place of business, a true and correct account along with relevant documents.

Rule 56(18) of SGST Rules, 2017, envisages that every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law for the time being in force.

It is the statutory obligation, of the officer-in-charge of the auditable entity, as per Section 18 of the DPC Act, to comply with requests by Audit for data, information and documents, whether in advance or during the course of audit, within the specified time.

CAG Audit Regulation, 2020 mandates the officer in charge at the auditable entity to ensure that the basic records, data, information and documents as required in the requisition sent to him by the Audit, are kept ready before the arrival of the audit team.

During the desk review of taxpayers' records available in the back-end system, Audit identified the risks related to excess ITC and tax liability mismatches for detailed examination. On the ITC dimension, the mismatches were identified by comparing GSTR 3B with GSTR 2A and GSTR 9, and the declarations made in Table 12 and 14 of GSTR 9C. On the tax liability dimension, the mismatches were identified by comparing GSTR 3B with GSTR 1 and GSTR 9 and the declarations in Table 5, Table 7 and Table 9 of GSTR 9C. However, in all the cases, the Department did not produce the corresponding granular records such as the supplementary financial ledgers, invoices, agreement copies etc. required for examining the causative factors for

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<sup>30</sup> 32AAACC9308A1ZC (CBRE South Asia Private Limited), 32AAACE1378A1ZC (Esdee Paints Ltd), 32AAACI7351P1ZC (ICICI Prudential Life Insurance Company Limited), 32AAACT4119L1ZH (TATA Projects Limited), 32AAICS7671L2ZU (SUN Direct TV Pvt Ltd), 32AAACR4761J1ZF (RDS Project Ltd), 32AABCA9599A1ZS (Ainwasha Engineering & Projects Limited), 32AAACT7597G1Z4 (Malayala Manorama), 32ACDFS6120L1Z8 (SMARD), 32AAACI4918G1ZW (Indsil Hydro Power), 32AAPFP7515A3ZF (Ponnore Enterprises LLP), 32AAIFR4799M1ZH (Redlands Ashlyn Motors PLC).

mismatches of ITC and tax liability. Audit requisitioned these granular records of the taxpayers through the respective circles. The case-wise listing of partial production is given in **Appendix X**.

The five cases of partial production of records in terms of mismatches in ITC and tax liability are shown in the following **Table - 2.6** below:

**Table – 2.6**  
**Top cases of partial production of records in terms of mismatches**

Sl. No.	GSTIN	Name of taxpayer	Assessment Circle	List of records not produced	Mismatch Amount (₹ in crore)
1.	32ABOFS7482F1ZT	Saffe Systems	Special Circle, Mattancherry at Aluva	Manufacturing accounts, inward invoices along with debit and credit notes for selected months, fixed asset register, payment/receipt vouchers, trial balance.	15.36
2.	32AAACT4119L1ZH	TATA Projects Limited	Special Circle I, Ernakulam	Contract agreement, outward and inward invoices along with debit and credit notes for selected months, fixed asset register, State specific certified accounts.	2.93
3.	32AAACC9308A1ZC	CBRE South Asia Private Limited	Special Circle I, Ernakulam	State specific certified accounts, outward and inward invoices along with debit and credit notes for selected months, fixed asset register, list of major supplies.	2.31
4.	32AAFCT5790G1Z8	Technotrade Retail Services India Private Limited	Special Circle I, Ernakulam	Details of exempted supplies, outward and inward invoices along with debit and credit notes for selected months, fixed asset register.	2.12
5.	32AAACT7597G1Z4	Malayala Manorama	Special Circle, Kottayam	State-specific financial accounts, Contract agreement, Outward and inward invoices along with debit and credit notes for selected months, fixed asset register, payment/receipt vouchers, trial balance, Details of exempted supply.	1.82

The granular records were not fully produced in any of the sampled 45 cases. As a result, the identified risks relating to availing of excess/ irregular ITC and undischarged liability of ₹34.42 crore could not be examined in detail by Audit.

#### 2.4.8.2 Discharge of tax liability

The taxable event in case of GST is supply of goods and/ or services. Section 9 of the SGST Act, 2017, is the charging section authorising levy and collection of tax called Central/ State Goods and Services Tax on all intra-State supplies of goods or services or both, except on supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Act *ibid* and at such rates not exceeding 20 *per cent* under each Act, i.e. CGST Act and SGST Act. Section 5 of the IGST Act, 2017, vests levy and collection of IGST on inter-State supply of goods and services with Central Government with maximum rate of 40 *per cent*.

Section 73(1) of SGST Act, 2017, envisages that where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under Section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

Audit observed 24 cases of compliance deficiencies amounting to ₹20.47 crore out of 45 cases examined as detailed in **Appendix XI**. The deficiencies were mainly due to deficiencies like non-adhering to time of supply provisions, misclassification of supplies, exclusion of taxable supplies, incorrect availing of exemptions, incorrect discharge of tax liability on reverse charge basis and short discharge of tax liability.

Audit also observed seven instances of mismatch in turnover between GST Returns in these 45 cases (**Appendix XII**) for which tax effect could not be established.

- **Non-adhering to time of supply provisions**

As per Section 35(5) and 44 of SGST Act, 2017, the taxpayer shall get his accounts audited and furnish audited annual accounts and audited financial statement.

As per Section 13(2) of SGST Act, 2017, the time of supply of services shall be the earliest of the following dates, namely:

- a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of Section 31 or the date of receipt of payment, whichever is earlier, or
- b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of Section 31 or the date of receipt of payment, whichever is earlier, or
- c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply.

Audit observed compliance deficiencies in three out of 45 cases, amounting to ₹8.59 crore, due to non-adherence of time of supply provisions of the Act, thereby not discharging the tax liability which are illustrated below:

- a) M/s Sun Direct TV Pvt. Ltd. (32AAICS7671L2ZU), a service provider registered in Works Contract Office, Ernakulam furnished consolidated audited accounts for the year 2017-18 only. The accounts relating to Kerala operation under the GSTIN was not furnished to the Department as required under Section 44 of the Act.

The taxpayer accounted ₹174.88 crore as income received in advance and ₹78.27 crore as advance received from distributors (Total ₹253.15 crore). M/s Sun Direct is a distributor of DTH service and the advance received is taxable as per Section 13(2)(c) of the Act. However, as per Part II-4F of GSTR 9, tax on advance received was shown as NIL. The advance in respect of the state was worked out at the rate of 11.78 *per cent* on an amount of ₹1,374.30 crore accounted as revenue for the year on the consolidated accounts and ₹161.89 crore being the turnover pertaining to the state, as disclosed in GSTR 9. Accordingly, the advance receipt in respect of the State is worked out to ₹29.82 crore (11.78 *per cent* of ₹253.15).

Tax of ₹5.37 crore at the rate of 18 *per cent* was to be paid at the time of receipt of advance of ₹29.82 crore which could not be ascertained in Audit in the absence of relevant records. Government, therefore, needs to ensure that tax liability was discharged at the time of completion of work.

The matter was pointed out to Department/ Government (January 2023), their reply is awaited (March 2023).

- b) M/s Smard (32ACDFS6120L1Z8), a works contractor registered in the Deputy Commissioner Office, Palakkad, filed consolidated P&L account with outward supply of ₹50.02 crore for the year 2017-18. Verification of GSTR 9C of the taxpayer reveals that the supply pertaining to the State as declared

comes to ₹45.17 crore i.e. 90.30 *per cent* of the supply accounted in the consolidated accounts.

Audit further checked the accounts of the taxpayer who is a works contractor and noticed that as per Balance Sheet, the taxpayer received ₹18.77 crore as advance from customers which forms part of supply as per Section 13(2) of SGST Act. Tax of ₹3.05 crore at the rate of 18 *per cent* was to be paid at the time of receipt of advance of ₹16.95 crore (90.30 *per cent* of ₹18.77 crore). Government needs to ensure that tax liability was discharged at the time of completion of work.

The matter was pointed out to the Department/ Government (January 2023), their reply is awaited (March 2023).

c) M/s District Nirmithi Kendra (32AAAAD4918P1ZM), a works contractor registered in the Deputy Commissioner Office, Kottayam, received an amount of ₹6.91 crore (₹5.50 crore as advance during GST period and ₹1.41 crore as income for completed works during GST period) during the year 2017-18 for which tax liability comes to ₹0.83 crore. Audit noticed that the taxpayer paid only ₹0.66 crore for the taxable turnover declared resulting in short discharge of tax liability of ₹0.17 crore (0.83 crore – 0.66 crore). The taxpayer is also liable to pay interest in accordance with Section 50 of the Act.

The matter was pointed out to the Department/ Government (January 2023), their reply is awaited (March 2023).

- **Misclassification of supplies**

As per Section 59 of SGST Act, 2017, every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under Section 39.

Rate of tax payable, as notified<sup>31</sup>, along with corresponding notifications under IGST and SGST/ UTGST laws, on goods and services is linked to its classification by way of Harmonized System of Nomenclature (HSN)/ Service Accounting Code (SAC). These rates have been amended periodically vide further notifications.

As per GST notification No. 11/2017-Central Tax (Rate) dated 28 June 2017 as amended from time to time the works contract service for construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer attract GST at the rate of 18 *per cent* and such services when supplied to government/ local authority/ government entity/ governmental authority at the rate of 12 *per cent*.

<sup>31</sup> Vide Notification No.1/2017-Central Tax (Rate) and No.11/2017-Central Tax (Rate), both dated 28 June 2017.

Audit noticed three out of 45 cases where the taxpayer wrongly classified their supplies, resulting in short payment of tax of ₹ 0.74 crore. Two cases are illustrated below:

a) M/s RDS Projects (32AAACR4761J1ZF) registered under Works Contract Office, Ernakulam, who is a supplier of works contract services declared total turnover of ₹153.61 crore in the annual return for the year 2017-18 and tax was paid at the rate of 12 *per cent* for ₹ 137.04 crore and at the rate of 18 *per cent* for ₹ 16.37 crore.

The supplier undertaking both government and non-government works did not upload certified accounts pertaining to the State. Audit ascertained the workwise turnover on the basis of the details furnished in VAT return for the period April to June 2017 and TDS details uploaded by the awarder and it was found that 19.98 *per cent* of the turnover related to Government works and the remaining 80.02 *per cent* was other works. Audit noticed (August 2022) that the taxpayer supplied Government/ Other work contract services in the ratio of 90:10 after implementation of GST. Audit requested for granular records such as contract agreements, work order etc. However, the same were not produced for audit. Hence, the Department may examine to ensure that there is no short discharge of tax liability due to misclassification.

The matter was pointed out to the Department/ Government (January 2023), their reply is awaited (March 2023).

b) M/s Homestead Projects and Developers Private Limited (32AADCH1998L1Z9) registered under Works Contract Office, Malappuram who is engaged in developing residential apartment projects declared in GSTR 9 a taxable turnover of ₹8.52 crore during the year 2017-18 for which the taxpayer is liable to pay ₹1.53 crore as tax at the rate of 18 *per cent*. However, the tax paid by the taxpayer was ₹1.02 crore at the rate of 12 *per cent* resulting in short payment of tax of ₹0.51 crore, as disclosed in GSTR 9C.

On this being pointed out (January 2023), the Government stated (March 2023) that reply received from the taxpayer against DRC 01A issued by the department is under scrutiny.

- **Exclusion of taxable supplies**

Section 7 of SGST Act, 2017, defines ‘supply’ to include all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. It also includes import of services for a consideration whether or not in the course or furtherance of business. This is an inclusive definition, main elements being (1) supply should be of goods or services, (2) supply has to be made for a consideration, (3) supply has to be made in the course or furtherance of business, (4) supply should be made by a taxable person, (5) supply should be a taxable supply, and (6) supply should be made within the taxable territory. Schedule I specifies certain activities which even made without consideration shall be treated as supply. Schedule II specifies treatment of certain activities or transactions as either supply of goods or supply of services. Section 8 of CGST Act, 2017, deals with composite and mixed supplies.

Audit observed compliance deficiencies in ten out of 45 cases, amounting to ₹5.01 crore, due to taxpayers excluding taxable supplies and consequently not discharging tax liability. The top four irregularities noticed in this category amounted to ₹4.13 crore. A case is illustrated below:

M/s Josco Jewellers (32AABCJ8147P1Z6) a trader registered under State Tax Office, I Circle, Changanassery accounted a sales for ₹881.28 crore as per the P& L Accounts and Note No.18 forming part of P& L accounts for the year 2017-18. It was noticed that out of this turnover, an amount of ₹227.31 crore pertained to VAT period and in that case, turnover to be assessed in GST comes to ₹653.97 crore (881.28 – 227.31). However, the taxpayer declared in GSTR 3B, a turnover of ₹606.66 crore and tax was paid accordingly. This resulted in short levy of tax of ₹1.42 crore at the rate of three *per cent* on the turnover escaped assessment of ₹47.31 crore. The taxpayer is also liable to pay interest in accordance with Section 50 of the Act.

It was also noticed that the taxpayer accounted sales returns of ₹33.04 crore. Out of this amount, sales return of ₹9.30 crore pertained to VAT period. Sales returns in the GST regime of ₹23.73 crore were not declared in the GSTR 1 or GSTR 9. This tantamount to exclusion of taxable supply of ₹23.73 crore, with tax implication of ₹0.71 crore at the rate of three *per cent*.

On this being pointed out (January 2023), the Government stated (March 2023) that ASMT 10 was issued.

- **Short payment of tax on turnover disclosed**

As per Section 49(8) of SGST Act, 2017, every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the

following order, namely: (a) self-assessed tax, and other dues related to returns of previous tax periods, (b) self-assessed tax, and other dues related to the return of the current tax period, (c) any other amount payable under this Act or the rules made thereunder including the demand determined under Section 73 or Section 74.

Audit observed compliance deficiencies in two out of 45 cases, amounting to ₹3.22 crore, due to the taxpayers' non-payment of tax on the turnover disclosed, which are illustrated below:

a) M/s Malayala Manorama (32AAACT7597G1Z4) a taxpayer registered in Special Circle, Kottayam for the year 2017-18 declared vide GSTR 9 table 4N, a taxable turnover of ₹632.82 crore for the period April 2017 to March 2018 including inward supply turnover for which tax is to be paid on reverse charge basis. Total tax payable for this turnover is ₹42 crore. ITC eligible for the period as per GSTR 9C table 12D is ₹23.65 crore. Thus remaining tax amounting to ₹18.35 crore was to be paid in cash. But tax paid through cash vide GSTR 3B for July 2017 to March 2018 is only ₹15.44 crore. Cash payment shown in GSTR 9 table 9 Column 3 is also the same amount. Hence it resulted in short payment of tax of ₹2.91 crore.

On this being pointed out (January 2023), Government stated (March 2023) that the taxpayer was eligible for ITC of ₹30.43 crore and hence the liability does not arise as mentioned in the audit observation.

The reply is not acceptable as the ITC eligible for the taxpayer as per reconciliation statement submitted by Chartered Accountant is only ₹23.65 crore. Also, no evidence in support of the reply was furnished to audit.

b) M/s. RDS Projects (32AAACR4761J1ZF) a works contractor registered in Works Contract Office, Ernakulam for the year 2017-18 declared the taxable turnover in GSTR 9 as ₹161.01 crore for which tax liability was disclosed as ₹20.64 crore. Audit noticed that tax discharged after allowing credits like ITC, Transitional credit, Credit on RCM amounting to ₹13.55 crore and considering the tax paid by cash amounting to ₹6.78 crore, arrived at ₹20.33 crore. Hence tax short discharged comes to ₹0.31 crore.

The matter was pointed out to the Department/ Government (January 2023), their reply is awaited (March 2023).

• **Incorrect exemption availed**

Section 2(47) of SGST Act, 2017 defines “exempt supply” as supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply. About 149



items of goods and about 81 items of services were exempted from levy of CGST/ IGST by various notifications.

Audit observed compliance deficiencies in three out of 45 cases, amounting to ₹2.70 crore, due to the taxpayers wrongly availing exemptions, which are featured below:

a) Section 7 of SGST Act, 2017, defines ‘supply’ to include all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. In GST regime, there is only supply of goods or services and no concept of stock transfer, which is erstwhile transfer of goods other than by way of sale. Even if the taxpayer is transferring goods to a branch inter-state, it shall be considered as supply, tax to be paid accordingly and eligible ITC to be availed/ utilised in conformity with the extant provisions of this Act.

M/s Josco Jewellers (32AABCJ8147P1Z6), a trader registered in the State Tax Office, I Circle, Changanassery accounted ₹87.77 crore as stock transfer during the year 2017-18, for which no tax was paid. As per the KVAT return furnished by the taxpayer, inter-state stock transfer outwards at the time of VAT amounts to ₹14.83 crore. Hence, turnover of ₹72.94 crore escaped assessment which resulted in short levy of tax of ₹2.19 crore at the rate of three *per cent*. The taxpayer is also liable to pay interest in accordance with section 50 of the Act.

On this being pointed out (January 2023), the Government stated (March 2023) that ASMT 10 had been issued.

b) Rule 89 of SGST Rules, 2017 provides that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the taxpayer is required to obtain an endorsement from the specified officer of the Zone that the services were provided for authorised operations in the SEZ.

M/s Deens Constructions (32AAFFD7655P1ZZ) a works contractor registered in Works Contract Office, Ernakulam has not furnished the GSTR Forms 9, 9C etc., for the year 2017-18 till date. Audit noticed that the taxpayer provided works contract service for an invoice value of ₹1.74 crore as disclosed in GSTR 3B, for which tax was not paid, stated to be zero rated sales to BPCL SEZ unit. The taxpayer had not furnished the endorsement as required in the statute resulting in short levy of tax of ₹0.31 crore.

The matter was pointed out to the Department/ Government (January 2023), their reply is awaited (March 2023).

c) Section 2(39) of SGST Act, 2017, defines “Deemed Exports” as supplies of goods manufactured in India which are notified as deemed exports under Section 147 of the Act.

As per Section 16 of IGST Act, 2017, “zero rated supply” means any of the following supplies of goods or services or both, namely: (a) export of goods or services or both, or (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

Section 147 of SGST Act, 2017 envisages that deemed exports are such supplies which the Government may, on the recommendations of the Council, notify as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

Rule 89 of SGST Rules provided that in respect of supplies regarded as deemed exports, the application for refund shall be filed by the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund.

Deemed exports are not zero-rated supplies by default and hence all supplies notified as supply for deemed export will be subject to levy of taxes i.e. such supplies can be made on payment of tax and cannot be supplied under a Bond/ LUT.

M/s CBRE South Asia Private Limited (32AAACC9308A1ZC), a works contractor in Special Circle I, Ernakulam, issued eight invoices in the category “Deemed Exports” amounting ₹1.11 crore as per GSTR 1 B2B Invoice List for which tax was not paid, resulting in short payment of tax amounting to ₹0.20 crore at the rate of 18 *per cent*.

The matter was pointed out to the Department/ Government (January 2023), their reply is awaited (March 2023).

- **Incorrect discharge of tax liability on reverse charge basis**

The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

As per Notification No. 13/2017- Central Tax (Rate) dated 28 June 2017, for the services supplied by a director of a company or a body corporate to the said company or the body corporate, tax shall be paid on reverse charge mechanism by the recipient.

Audit noticed in one out of 45 cases, tax liability on reverse charge basis was discharged incorrectly, which is featured below:

M/s. Homestead Projects and Developers Pvt. Ltd. (32AADCH1998L1Z9) a works contractor, registered in Works Contract Office, Malappuram disclosed related party transactions during the year 2017-18 according to which the company has given ₹0.29 crore to one of its directors for Advance to purchase of land and ₹0.86 crore in total, to two of its directors for purchase of residential flats. The said transactions are considered as remuneration to the services supplied by the directors and hence, tax amounting to ₹0.21 crore at the rate of 18 *per cent* on ₹1.15 crore was not paid by the taxpayer on reverse charge mechanism.

On this being pointed out (January 2023), the Government stated (March 2023) that reply received from the taxpayer against DRC 01A issued by the Department is under scrutiny.

### 2.4.8.3 Utilisation of Input Tax Credit

Input Tax Credit (ITC) means the credit of Goods and Services Tax (GST) paid by a taxable person on purchase of goods and/ or services that are used in the course or furtherance of business. To avoid cascading effect of taxes, credit of taxes paid on inward supplies can be used to set-off for payment of taxes on outward supplies.

Section 16 of SGST Act, 2017 allows availing of ITC on any supply of goods or services or both which are used or intended to be used in the course of furtherance of business. Section 17(5) of the Act provides a list of goods and services on which the ITC cannot be availed except when the outward taxable supply is of the same category of services. Rule 36 to 45 of the SGST Rules 2017 prescribes the procedures for availing and reversal of ITC.

Audit observed compliance deficiencies in 21 out of 45 cases as detailed in **Appendix XIII** where taxpayers had availed irregular/ excess ITC of ₹15.10 crore. The deficiencies were mainly on account of irregular availing of ITC, ineligible ITC on capital goods, non-reversal of ITC in respect of exempted/ nil rated supplies, ITC on invoices uploaded after due date.

Audit also observed 32 cases of mismatches between GST Returns as detailed in **Appendix XIV**.

- **Irregular availing of ITC**

As per Section 16 of SGST Act, 2017, every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business.

Section 16(2) of the Act prescribes the conditions for availing ITC. The prerequisites for availing ITC are:

- Taxpayer should be in possession of tax invoice or any other specified tax paying document
- Taxpayer has received the goods or services
- Tax has actually been paid by the supplier
- Taxpayer has furnished the return to avail the ITC
- The value of the goods or services along with the tax should have been paid to the supplier within 180 days from the date of issue of invoice

As provided under Section 16(4), a registered person shall be entitled to take input tax credit in respect of any invoice for supply of goods or services or both made during the financial year, the details of which have been uploaded by the supplier.

Rule 36 of SGST Rules, 2017, prescribe the documentary requirements for claiming ITC. A taxpayer can avail ITC based on (a) Invoice issued by a supplier of goods or services or both, (b) Invoice Issued by recipient along with proof of payment of tax, (c) A debit note issued by supplier, (d) Bill of entry or similar document prescribed under Customs Act, 1962 (e) Revised invoice and (f) Document issued by Input Service Distributor. No ITC shall be availed beyond September of the following financial year to which invoice pertains or date of filing of annual return, whichever is earlier.

Audit observed in 10 out of 45 cases, the taxpayer claimed ITC of ₹62.29 crore out of which the irregular ITC worked out to ₹12.91 crore. The top five irregularities noticed in this category amounted to ₹12.58 crore. Four cases are illustrated below:

a) M/s Malayala Manorama (32AAACT7597G1Z4) a taxpayer under Special Circle, Kottayam, claimed total input tax credit of ₹31.15 crore (₹26.66 crore through monthly returns in GSTR 3B during the period April 2017 to March 2018 and transition credit<sup>32</sup> amounting to ₹4.49 crore). But the ITC eligible to the taxpayer as per GSTR 9 table 7J and GSTR 9C table 12D is ₹23.65 crore. Thus the ITC claimed and credited to the ITC ledger is in excess by ₹7.50 crore.

On this being pointed out (January 2023), Government stated (March 2023) that IGST on import of goods was wrongly updated as ₹6.42 crore instead of ₹9.60 crore, a reversal was shown as ₹11.19 crore instead of ₹7.81 crore. It was also stated that the taxpayer effected certain reversals on account of various reasons.

The reply is not acceptable since the ITC eligibility disclosed after all reconciliation by Chartered Accountant in GSTR 9C is ₹23.65 crore only.

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<sup>32</sup> Unclaimed eligible tax credit pertaining to pre-GST period in respect of the tax payer.

Also, no evidence in support of the reply was furnished to Audit. Further, on verification of GSTR 3B, IGST on import of goods was ₹8.56 crore, which is contradictory to the Government reply.

b) M/s Josco Jewellers (32AABCJ8147P1Z6) a trader in State Tax Office, I Circle, Changanassery, utilised ITC of ₹11.19 crore (IGST ₹5.66 crore, CGST ₹2.18 crore, SGST ₹3.35 crore) as per GSTR 3B for the year 2017-18. Audit noticed that the taxpayer has an eligible credit of ₹9.43 crore only (IGST ₹5.44 crore, CGST ₹2.20 crore, SGST ₹1.78 crore) as per GSTR 9. It resulted in excess utilisation of ITC of ₹1.76 crore which is to be reversed by the taxpayer.

This was pointed out to the Department/ Government (January 2023), their reply is awaited (March 2023).

c) M/s. Redlands Ashlyn Motors (32AAIFR4799M1ZH), a trader registered under Special Circle, Thrissur claimed ITC of ₹1.33 crore in 2017-18 in respect of import of goods and the entire amount has been utilised as per Table 6 of GSTR 3B– payment of tax. However, as per the Trading, P&L Account of the taxpayer, import by the taxpayer's Kerala unit is Nil. Further, the consolidated P&L accounts furnished by the taxpayer revealed that the import was done in its Coimbatore unit for which ITC cannot be availed in Kerala unit. Hence, ITC utilised of ₹1.33 crore was to be reversed.

This was pointed out to the Department/ Government (January 2023), their reply is awaited (March 2023).

- **Availing of ineligible ITC on depreciation availed on capital goods**

As per Section 16(3) of SGST Act, 2017, where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income Tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

Audit observed compliance deficiencies in four out of 45 cases where taxpayers had availed irregular ITC of ₹1.16 crore. A case is illustrated below:

M/s Smard (32ACDFS6120L1Z8), a works contractor registered in Deputy Commissioner Office, Palakkad furnished consolidated accounts for the period 2017-18. As per consolidated accounts total turnover of the taxpayer was ₹50.02 crore whereas that as per reconciliation statement in Form GSTR 9C is ₹45.17 crore, which shows 90.30 *per cent* of the total turnover pertains to Kerala operation. The taxpayer availed depreciation on the capital goods (plant and machinery) purchased during the year i.e., 2017-18 for an amount of ₹4.27 crore as declared in Form 3CD of Income Tax Returns. Audit also noticed through GSTR 9 that the taxpayer claimed ITC of ₹0.27 crore on

capital goods. As the taxpayer claimed depreciation on capital goods, he is not eligible to claim ITC on the same and required to reverse the tax component included in ₹3.86 crore (90.30 *per cent* of ₹4.27 crore). It resulted in non-reversal of excess ITC of ₹0.59 crore claimed on capital goods for which depreciation was also claimed.

This was pointed out to Department/ Government (January 2023), their reply is awaited (March 2023).

- **Non-Reversal of ITC**

Section 2(47) of SGST Act defines “exempt supply” as supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under Section 11, or under Section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply.

Section 16 of the SGST Act, 2017 allows availing of ITC on any supply of goods or services or both which are used or intended to be used in the course or furtherance of his business.

As per Section 17(2) of GST Act, “Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.”

As per Section 17(3), “The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis.”

Rule 42 of SGST Rules, 2017, prescribes the manner of determination of input tax credit in respect of inputs or input services and reversal thereof where the input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of Section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies.

Audit observed compliance deficiency in one out of 45 cases where taxpayer had not reversed ITC in accordance with the provisions stipulated, as featured below:

M/s Magnum Group Roadways (32ABDPN1420F1ZE) a taxpayer registered in Special Circle Kottayam, being GTA service provider declared a total turnover of ₹6.58 crore for the year 2017-18, out of which only ₹0.05 crore is taxable supply and remaining turnover ₹6.53 crore (99.22 *per cent*) is non-

taxable supply<sup>33</sup>. The taxpayer claimed total ITC of ₹0.64 crore through GSTR 3B. Hence ITC attributable to such exempted supply amounting ₹0.64 crore availed by the taxpayer is to be reversed.

This was pointed out to Department/ Government (January 2023), reply is awaited (March 2023).

- **Availing ITC on invoices uploaded after due date**

Section 16(4) of the Act, provides that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019. ITC can be availed in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details for the month of March 2019.

As per notification No. 19/2019 – Central Tax, return in Form GSTR-3B for the month of March, 2019 shall be furnished electronically through the common portal, on or before the 23 April 2019.

Audit observed in six out of 45 cases where the taxpayer availed ITC of ₹0.39 crore on invoices uploaded after the due date. One irregularity is illustrated below:

M/s Technotrade Retail Services (32AAFCT5790G1Z8) a trader registered under Special Circle I, Ernakulam, availed ITC of ₹0.30 crore during 2017-18 in respect of 69 invoices uploaded by the supplier after 23 April 2019. The same is to be reversed by the taxpayer.

These cases were pointed out to Department/ Government (January 2023), reply is awaited (March 2023).

#### **2.4.8.4 Returns filing**

Section 39(1) of SGST Act, 2017, stipulates that every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed.

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<sup>33</sup> Subjected to tax on reverse charge basis and tax is to be paid by the recipient of the services.

All prescribed returns should be filed electronically in the common portal. A return is not valid unless all the tax dues as shown in the returns (including the dues for the previous period, interest and penalty) are paid in full. Even if there are no transactions during a tax period, a NIL return must be filed compulsorily.

- **Non-payment of interest by taxpayers where returns were delayed**

As per Section 50(1) of SGST Act, 2017, every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen *per cent*.

It is also provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of Section 39, except where such return is furnished after commencement of any proceedings under Section 73 or Section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.

Audit observed in ten out of 45 cases, that taxpayers had filed their returns belatedly but the interest payments were not discharged amounting to ₹0.39 crore as detailed in **Appendix XV**. Deficiencies noticed in the filing of returns in two cases are explained below:

a) M/s RDS Project Ltd (32AAACR4761J1ZF), a works contractor under Works Contract Office, Ernakulam filed all the nine returns for the year 2017-18 with a delay ranging from 21 to 140 days and paid the tax dues in these returns by debiting the Cash Ledger. However, interest amounting to ₹0.27 crore was not paid.

This was pointed out to the Department/ Government (January 2023), their reply is awaited (March 2023).

b) M/s Forest Industries Travancore (32AAACF4562B1Z9), a trader under Special Circle, Mattancherry at Aluva filed all the nine returns for the year 2017-18 with a delay ranging from 137 to 419 days and paid the tax dues in these returns by debiting the Cash Ledger. However, interest amounting to ₹0.08 crore was not paid.

This was pointed out to the Department/ Government (January 2023), their reply is awaited (March 2023).

- **Data entry errors**

Audit observed data entry mistakes by taxpayers while filing GST returns in four out of 45 cases. The errors were mainly in the areas like discrepancy



between taxable values and tax liability in GSTR 1/ GSTR 3B, discrepancy in CGST and SGST payments in GSTR 1/ GSTR 3B and discrepancy in ITC availed. An illustrative case is brought out below:

M/s Krishnan Foods (32ABQPN0251R1Z9), a trader in cashew and other goods registered under Special Circle Kollam, exhibited a mismatch of ₹65.38 lakh in ITC availment between GSTR 3B and GSTR 2A during the year 2017-18.

On this being pointed out (July 2022), the Department stated (August 2022) that the taxpayer was having ITC of IGST ₹1.39 crore acquired through import which will not reflect in GSTR 2A. Further the taxpayer inadvertently erred while furnishing GSTR 3B that, an amount of ₹0.71 crore was wrongly entered under ‘All Other ITC’ column instead of entering it in ITC related to import of goods.

#### **2.4.9 Conclusion**

The Subject Specific Compliance Audit (SSCA) on ‘Department’s Oversight on GST Payments and Return Filing’ was undertaken with the objectives of assessing the adequacy of the system in monitoring return filing and tax payments, extent of compliance and other departmental oversight functions.

This SSCA was predominantly based on data analysis, which highlighted risk areas, red flags and in some cases rule-based deviations and logical inconsistencies in GST returns filed for 2017-18. The SSCA entailed assessing the oversight functions of assessment circles at two levels - at the data level through global data queries and at the functional level with a deeper detailed audit both of the assessment circles and of the GST returns, which involved accessing taxpayer records. The audit sample, therefore, comprised 121 assessment circles, 419 inconsistencies across 14 risk parameters selected through data analysis, and 45 taxpayers selected on risk assessment for detailed audit of GST returns for the year 2017-18.

A review of 10 Circles in respect of their compliance verification functions disclosed deficiencies in discharge of functions such as of scrutiny of returns, internal audit and action against non/ stop filers of returns.

As regards centralised audit, deviations were observed in 85 cases, involving a short levy of tax of ₹40.42 crore constituting 41 *per cent* of the 208 inconsistencies/ mismatches in data, for which the Department provided responses. The Department has accepted the audit observations or initiated action in 73 cases with tax effect of ₹38.29 crore. Department recovered ₹2.44 crore in seven cases, issued SCN in 33 cases for ₹20.87 crore. Form ASMT-10 was issued in 33 cases for ₹14.98 crore. In 116 cases constituting 56 *per cent*, where the Department’s reply was acceptable to Audit, data entry

errors by taxpayers comprised 69 cases, the Department had proactively taken action in 14 cases and 33 cases had valid explanations.

Detailed audit of GST returns also suggested significant non-compliance. At the outset, the granular taxpayer records were not forthcoming, which constituted a significant scope limitation. These cases represented a potential risk exposure of ₹34.03 crore towards identified mismatches in ITC availing and tax payments. Despite partial production of records, Audit observed compliance deficiencies with a revenue implication of ₹35.55 crore. The irregularities pertained mostly to availing of ineligible and irregular ITC, misclassification of supplies, exclusion of supplies for taxation, undervaluation of supplies and incorrect discharge of tax under RCM.

Considering the significant rate of compliance deficiencies, the Department must initiate remedial measures before they get time barred. From a systemic perspective, the Department needs to strengthen the institutional mechanism in the assessment circles to establish and maintain effective oversight on return filing, taxpayer compliance through scrutiny of returns and internal audit, cancellation of registrations and recovery of dues from defaulters. Validation controls are required to introduce a system-check for not allowing cancelled GSTINs to have any transactions in the network by updating the status of such GSTINs on a real-time basis.