

CHAPTER-II

TAX RECEIPTS

CHAPTER - II: TAX RECEIPTS

COMMERCIAL TAXES DEPARTMENT

2.1 Tax administration

The levy and collection of Sales Tax/Value Added Tax and Central Sales Tax are governed by the Jharkhand Value Added Tax (JVAT) Act, 2005, the Central Sales Tax (CST) Act, 1956 and Rules made thereunder. Since 1 July 2017, the State Goods and Services Tax is governed by the Jharkhand Goods and Services Tax (JGST) Act, 2017 and Rules made thereunder. The Principal/Chief Commissioner of State Tax, in the Commercial Taxes Department (CTD), is responsible for the administration of these Acts and Rules and is assisted by an Additional Commissioner and Joint Commissioners of State Tax (JCST), Joint Commissioners of State Tax of Bureau of Investigation (IB), Vigilance and Monitoring, along with other Deputy/ Assistant Commissioners of State Tax.

The State is divided into five commercial taxes divisions¹, each under the charge of a Joint Commissioner (Administration) and 28 circles², each under the charge of a Deputy/Assistant Commissioner of State Tax (DCST/ACST). The DCST/ACST of the circle, who is responsible for levy and collection of tax due to the Government, besides survey, is assisted by State Tax Officers. A Deputy Commissioner of IB is posted in each division, to assist the JCST (Administration), and a DCST (Vigilance and Monitoring) is posted, under the control of Headquarters, in each division, and carries out inspection of warehouses or godowns of taxpayers, search and seizure of goods or documents, inspection of goods in movement, arrest of a person for an offence punishable under this Act etc.

2.2 Results of audit

Audit test-checked the records of 10³ out of 44 auditable units (23 *per cent*) of the Commercial Taxes Department, during the year 2020-21. During the period covered in audit, a total of 2,28,771 assesseees were registered in the State, out of which 49,385 assesseees were registered in the test-checked units. Audit examined 1,663 assessment records in the test checked units. In addition, an audit on 'Transitional Credits' was also conducted. The Department collected revenue of ₹ 12,414.05 crore during 2019-20 (Taxes on Sales, Trade etc.: ₹ 3,996.33 crore and State Goods and Services Tax: ₹ 8,417.72 crore), out of which the audited units collected ₹ 6,641.82 crore (53.50 *per cent*). Audit identified irregularities amounting to ₹ 582.63 crore in 193 cases, as detailed in **Table -2.1**.

¹ Dhanbad, Dumka, Hazaribag, Jamshedpur and Ranchi.

² Adityapur, Bokaro, Chaibasa, Chirkunda, Deoghar, Dhanbad, Dhanbad Urban, Dumka, Giridih, Godda, Gumla, Hazaribag, Jamshedpur, Jamshedpur Urban, Jharia, Katras, Koderma, Lohardaga, Pakur, Palamu, Ramgarh, Ranchi East, Ranchi South, Ranchi Special, Ranchi West, Sahibganj, Singhbhum and Tenughat.

³ Office of the DCST, Adityapur, Bokaro, Dhanbad, Dhanbad Urban, Giridih, Jamshedpur, Jamshedpur Urban, Palamu, Ramgarh and Ranchi West.

Table –2.1

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1	Transitional Credit	1	138.13
2	Non/short levy of tax due to concealment of turnover	36	205.93
3	Interest/Penalty not levied	12	76.79
4	Non/short levy of interest	30	68.44
5	Incorrect allowance of Input Tax Credit	55	41.63
6	Irregular allowance of exemption from tax	27	22.15
7	Application of incorrect rates of tax	18	8.30
8	Short levy of tax due to incorrect determination of turnover	4	3.29
9	Other cases	10	17.97
Total		193	582.63

The Department accepted under-assessment and other deficiencies of ₹ 65.37 crore in 65 cases, out of which ₹ 44.75 crore in 28 cases were pointed out in 2020-21 and the rest during the earlier years.

Audit findings relating to Transitional Credit have been discussed in Paragraph 2.3. Further, irregularities involving 48 cases, amounting to ₹ 120.66 crore, related to Value Added Tax (VAT), have been illustrated in paragraphs 2.4 to 2.9. Cases which have been repeatedly reported during the last five years are detailed in **Table –2.2**.

Table – 2.2

(₹ in crore)

Nature of observations	2015-16		2016-17		2017-18		2018-19		2019-20		Total	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Concealment of sale/purchase turnover	18	284.10	108	405.37	1	1.10	3	25.99	39	812.99	169	1,529.55
Non/short levy of penalty	15	53.14	-	-	2	3.93	2	1.60	9	131.51	28	190.18
Non-levy of interest on disallowed exemption/concessions	19	119.92	62	142.00	6	10.95	2	3.97	40	102.24	129	379.08
Irregularities in grant of input tax credit	11	5.76	26	3.36	-	-	-	-	29	23.81	66	32.93
Application of incorrect rate of tax	22	15.44	21	11.07	-	-	1	4.39	10	14.53	54	45.43
Incorrect allowance of exemption	-	-	16	15.43	-	-	-	-	-	-	16	15.43

It was observed that though the CTD ordered (May 2015) Assessing Authorities (AAs) to ensure non-recurrence of similar type of audit observations and provided assurance (August 2016) that appropriate action would be taken on the audit observations, similar nature of irregularities persisted. Thus, it is evident that the State Government and the Commercial Taxes Department have not taken adequate measures to address the persistent irregularities pointed out year after year, by Audit.

2.3 Transitional Credit

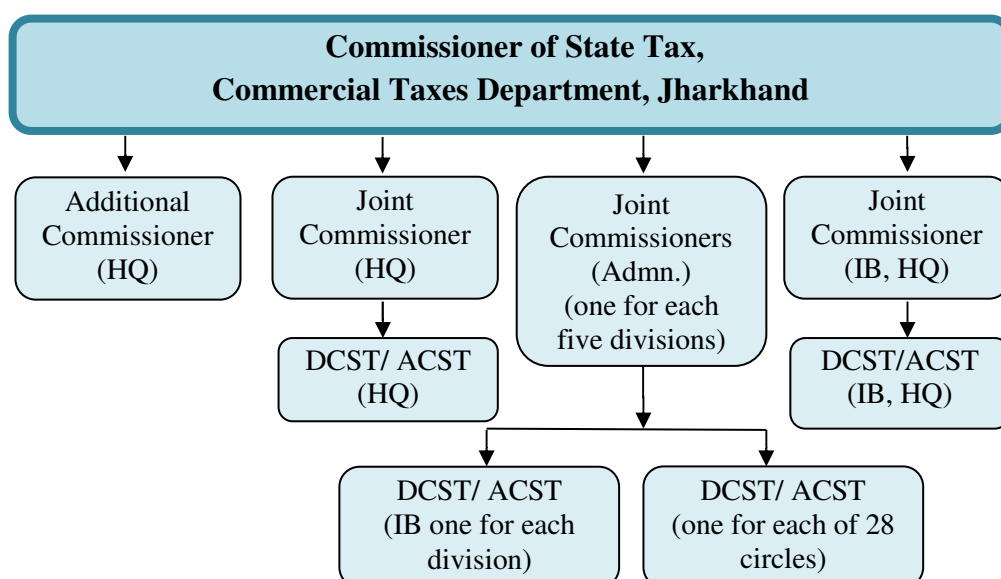
2.3.1 Introduction

Implementation of GST (Goods and Services Tax) is a significant reform in the field of indirect taxes, which replaced multiple taxes levied and collected by the Centre and States. GST is a destination based tax on supply of goods or services or both, which is levied at multi-stages, wherein the taxes move along with supply. The tax accrues to the taxing authority which has the jurisdiction over the place of supply and is levied simultaneously by the Centre and States, on a common tax base. Availability of Input Tax Credit (ITC) of taxes paid on inputs, input services and capital goods, for set off against the output tax liability, is one of the key features of GST. This avoids the cascading effect of taxes and ensures uninterrupted flow of credit from the seller to the buyer. To ensure the seamless flow of input tax, from the existing laws, to the GST regime, a provision for 'transitional arrangements for input tax' was included in the Jharkhand Goods and Services Tax (JGST) Act, to provide for the entitlement and manner of claiming input tax in regard to appropriate taxes paid under the existing laws. Transitional credit provisions are important for both the Government and business. For business, the transitional credit provisions ensure transition of accumulated credits from the legacy returns, input tax in respect of raw materials, work in progress, finished goods held in stock as on the appointed day of 1 July 2017, as well as the credit in respect of capital goods into the GST regime. The provisions enable taxpayers to transfer such input credits only when they are used in the ordinary course of business or furtherance of business.

2.3.2 Tax administration

The Commercial Taxes Department (CTD) Government of Jharkhand administers the JGST in the State, with effect from 1 July 2017. The Commissioner of State Tax is responsible for administration of the JGST Act and Rules in the CTD and is assisted by an Additional Commissioner, Joint Commissioners, Deputy Commissioners and Assistant Commissioners.

The organisational chart of the Department is as under:



2.3.3 Audit objectives

The audit of transitional arrangements for ITC under GST, was conducted with the objective of seeking an assurance on:

- whether the mechanism envisaged by the Department, for selection and verification of transitional credit claims, was adequate and effective; and
- whether the transitional credits, carried over by the assessee, into the GST regime, were valid and admissible.

2.3.4 Audit criteria

The audit criteria were derived from the following sources:

- Section 6, Sections 140 to 142, Section 161, Section 50 and Section 73 of the JGST Act, 2017;
- Rules 117 and 118 of the Jharkhand Goods and Services Tax Rules, 2017; and
- Notifications and circulars, executive and Departmental orders and instructions issued by the Central Board of Indirect Taxes and Customs (CBIC) and CTD, from time to time.

2.3.5 Audit scope and coverage

The Audit of “Transitional Credit” covering the period July 2017 to March 2020, was conducted between January and September 2021. Pan-India transitional credit claims data, for the said period, was obtained from the Goods and Services Tax Network (GSTN). A stratification-based sampling⁴ of the ITC category was done on the obtained data and 10 *per cent* of cases, from each of

⁴ A scorecard approach, based on the risk and materiality for selection of individual cases, from each of the strata, was used.

the ITC source categories⁵ viz. Table 5(c), Table 6(b), Table 7(b), Table 7(c), Table 7(d), Table 10(a) and Table 11(c) of TRAN-1 were selected.

There were 2,845 cases of transitional credit claims of SGST, in Form TRAN-1, involving ₹ 365.13 crore, made by taxpayers in the State. On the basis of the aforesaid sampling methodology, 358 cases of transitional credits amounting to ₹ 258.07 crore, relating to all 28 Commercial Taxes Circles⁶, were selected.

2.3.6 Audit Methodology

The audit methodology included scrutiny of Form TRAN-1, filed by the taxpayers under the transitional arrangements for claiming ITC. It also involved the scrutiny of process and outcomes of departmental verifications, along with detailed independent verification of select claims. The individual transitional credit claims were verified with the last six months' returns under the VAT regime, filed under the existing laws, immediately preceding the appointed date, along with the documentary evidence in support of such claims. The claims were also verified with the assessment case records of the VAT regime, wherever necessary. Further, in respect of ITC claimed, pertaining to materials held in stock, verification involved examination of necessary accounting details, as well as documents or records evidencing purchase of such goods. An initial meeting (entry conference) was held on 22 July 2021, with the Secretary, CTD, Government of Jharkhand, in which the audit objectives, scope of audit, sample selection, audit methodology and mechanism for selection and verification of transitional credit claims by the Department, were discussed in detail.

The audit of Transitional Credits was conducted between January and September 2021. The draft report for comments/replies was issued to the Department on 30 November 2021. An exit conference was held with the Secretary, CTD, Government of Jharkhand, on 16 February 2022, in which the audit findings, conclusions and recommendations, were discussed in detail. The response of the Government/ Department has been suitably incorporated in the Report.

2.3.6.1 Acknowledgment

Audit acknowledges the co-operation of the CTD, Government of Jharkhand, in providing the necessary information and records to Audit.

⁵ Table 5(c) - transitional credit on closing balance of the ITC in last VAT returns.
Table 6(b) - unavailed credit on capital goods.
Table 7(b) - input in transit.
Table 7(c) - credit on tax paid/ duty paid stock.
Table 7(d) - credit relating to exempted goods under existing law which are now taxable.
Table 10(a) & (b) - transfer of credit by centrally registered units.
Table 11 - credit in respect of tax paid on any supply both under JVAT Act and Finance Act.

⁶ Adityapur, Bokaro, Chaibasa, Chirkunda, Deoghar, Dhanbad, Dhanbad Urban, Dumka, Giridih, Godda, Gumla, Hazaribag, Jamshedpur, Jamshedpur Urban, Jharia, Katras, Koderma, Lohardaga, Pakur, Palamu, Ramgarh, Ranchi East, Ranchi South, Ranchi Special, Ranchi West, Sahibganj, Singhbhum and Tenughat.

Audit Findings

Audit evaluated the individual transitional credit claims against the criteria and also evaluated the mechanism of verification of transitional credit claims by the departmental formations and noticed deficiencies in the adequacy and effectiveness of the mechanism envisaged by the Department for verification of taxpayers and compliance to the extant provisions prescribed in the JGST Act/Rules.

Table-2.3 brings out the extent of deficiencies noted during the audit of transitional credit cases, selected for detailed audit.

Table-2.3

(₹ in crore)

Nature of audit findings	Audit sample		Number of deficiencies noticed		Deficiencies in percentage of sample
	Number	Amount	Number	Amount	
Excess carry forward of transitional credit	302	247.60	57	60.08	18.87
Irregular availment of transitional credit on inadmissible items	302	247.60	22	51.31	7.28
Irregular availment of transitional credit on capital goods	13	16.90	05	14.84	38.46
Irregular availment of transitional credit on inputs held in stock	41	3.60	04	1.37	9.75
Irregular availment of transitional credit on inputs in transit	49	3.47	08	1.25	16.33
Irregular availment of transitional credit on goods held by agent on behalf of principal	16	0.10	01	0.03	6.25
Irregular availment of transitional credit on works contract service	08	1.61	02	2.57	25.00
Short/ Non- levy of interest on disallowed transitional credit	358	258.07	24	6.08	6.70
Irregular availment of transitional credit without filing VAT returns	358	258.07	04	0.05	1.11
Others	358	258.07	02	0.55	0.27
Total			129	138.13	

As evident from the table above, Audit noticed excess carry forward of transitional credit in 19 *per cent* cases, irregular availment of transitional credit on inadmissible items in seven *per cent* cases, irregular availment of transitional credit on capital goods in 38 *per cent* cases, irregular availment of transitional credit on inputs in stock in 10 *per cent* cases, irregular availment of transitional credit on inputs in transit in 16 *per cent* cases, irregular availment of transitional credit on works contract service in 25 *per cent* cases and irregular availment of transitional credit without filing JVAT returns in one *per cent* cases. Audit further noticed other deviations from provisions of the JGST Act and Rules, which resulted in short/non-levy of interest and penalty on disallowed transitional credit in seven *per cent* cases and other deviations like irregular revision of demand notice beyond the prescribed timelines and irregular availment of transitional credits by taxpayers under the ‘composition levy’ scheme.

Audit findings, system lapses and remedial measures are discussed in the subsequent paragraphs.

2.3.7 Systemic issues

2.3.7.1 Selection mechanism envisaged by the Department

Section 6(1) of the JGST Act envisages dual control on taxpayers, by both the State Tax officers and Central Tax officers, in all aspects and specifies that the officers appointed under the JGST Act are authorised to be the proper officers for the purpose of the Central Goods and Services Tax (CGST) Act. Accordingly, the Principal Secretary-cum-Commissioner, CTD, Government of Jharkhand, directed (March 2018) verification of the SGST credit claims of all taxpayers, irrespective of their jurisdiction of registration and completion of the verification process by 10 April 2018. Further, Section 73(10) of the JGST Act, prescribes that order for determination of tax and penalty of ITC wrongly availed shall be issued within a period of three years from the due date for furnishing of annual return for the financial year to which ITC wrongly availed relates to.

The Department selected for verification, all the 2,845 cases of transitional credit of JGST in Form TRAN-1, involving ₹ 365.13 crore claimed by the taxpayers. Audit noticed, from scrutiny of verification reports of transitional credits, at all 28 CTCs, that, out of total claims of ₹ 365.13 crore, claims of ₹ 268.98 crore, in respect of 1,139 taxpayers, had been verified by the Department, till September 2021. Thus, 1,706 cases of transitional credits had remained unverified, which led to availment of non-verified claims of transitional credit of ₹ 96.15 crore by taxpayers (**Appendix-I**). The Department did not institute a mechanism to periodically monitor the progress of verification. The verification reports furnished by the proper officers were also not analysed at the Department level, to ascertain the number of unverified claims and initiate action to complete the verification.

Audit further noticed that the CGST Department had adopted the mechanism to draw a sample from the total claimed data and select claims of taxpayers having higher financial implications and taxpayers who had shown growth of ITC of more than 25 per cent from the preceding periods. However, the CTD selected all the 2,845 cases, without allocating any criteria, which resulted in selection of 1,530 cases (54 per cent of total cases), where individual claims were below ₹ one lakh. The Department could have devised a mechanism to draw a sample from the total claim, to ensure that claims having higher financial implications were selected and verified in a timely manner.

The matter was reported to the Government/ Department (November 2021); the Secretary, CTD, during the exit conference, stated (February 2022) that necessary instruction has been issued to concerned Commercial Taxes Circles to verify the remaining transitional credit claims at the earliest. However, results of the verification are awaited (March 2024).

Irregularities in verification mechanism envisaged by the Department

Principal Secretary-cum-Commissioner, CTD, Government of Jharkhand, passed instructions for verification of all claims of SGST and prescribed (March 2018) an illustrative check-list for verification of transitional credit claims. Further, the Additional Commissioner, State Tax, instructed

(March 2018) all the JCSTs (Administration) to verify transitional credit claims of JGST above ₹ 50 lakh.

Audit scrutiny of the sampled 358 transitional credit cases indicated that the proper officers did not adhere to the instructions issued by the Department. Further, no mechanism was put in place to ensure that proper officers/JCST comply the instructions and take remedial measures on disallowed transitional credit cases. As a result, transitional credit claims were verified by officers not authorised to verify the claims and there were irregularities in follow-up action on recovery of disallowed transitional credits, which are discussed in the succeeding paragraphs:

2.3.7.2 Verification of transitional claims by officers not authorised to verify the claims

Joint Commissioners were authorised to verify 105 transitional credit claims above ₹ 50 lakh at 23 CTCs. However, 75 cases were verified by DCSTs/ACSTs/STOs and the balance 30 cases remained un-verified.

Test check (between January and September 2021) of records relating to TRAN-1, filed by taxpayers and the verification report of these TRAN-1 returns furnished by the Department, revealed that 105 taxpayers⁷ at 23 CTCs⁸ had claimed transitional credit above ₹ 50 lakh. As per instructions, all these claims were required to be verified by JCSTs. However, it was noticed that, out of 105 cases, 75 cases were verified by the DCSTs/ACSTs/STOs and 30 cases remained unverified (September 2021). Audit noticed that, though instructions were issued by the Department, no mechanism was developed to monitor compliance of the said instructions. As a result, 75 cases were verified by officers not authorised to verify these claims and 30 cases remained un-verified.

The matter was reported to the Government/ Department (November 2021); the Secretary, CTD, during the exit conference, stated (February 2022) that the authorised officers have been directed to re-verify the claims. Results of verification are awaited (March 2024).

2.3.7.3 Irregularities in follow-up action on recovery of disallowed transitional credits

No follow-up action was initiated by the proper officers to recover disallowed transitional credits of ₹ 14.06 crore, even after the expiry of 24 months.

Section 78 of the JGST Act prescribes that, any amount payable by a taxable person, in pursuance of an order passed under the Act, shall be paid by such person within a period of three months from the date of service of such order, failing which recovery proceedings shall be initiated. Further, Section 79 of

⁷ Out of 2,845 cases of transitional credit filed with the CTD, Government of Jharkhand, 105 cases pertain to claims involving ₹ 50 lakh.

⁸ Adityapur, Bokaro, Chaibasa, Chirkunda, Deoghar, Dhanbad, Dhanbad Urban, Dumka, Giridih, Hazaribag, Jamshedpur, Jamshedpur Urban, Jharia, Katras, Koderma, Ramgarh, Ranchi East, Ranchi South, Ranchi Special, Ranchi West, Sahibganj, Singhbhum and Tenughat.

the JGST Act prescribes that, where any amount payable by a person under the provisions of the Act, is not paid, the proper officer shall proceed to recover the amount by any one or more modes, namely deducting the amount so payable from any money owing to such person, by detaining and selling any goods belonging to such person; detaining any movable or immovable property belonging to such person; or initiating proceedings to recover, from such person, the amount specified thereunder, as if it were an arrear of land revenue etc.

Audit test-checked (between January and September 2021) selected transitional credit cases and noticed, in 19 cases, at nine CTCs⁹, that these taxpayers had claimed transitional credits of ₹ 46.01 crore. The proper officers, on verification of these claims, disallowed an amount of ₹ 39.64 crore, as being incorrectly availed transitional credit and levied interest and penalty of ₹ 8.80 crore on the disallowed credit. Accordingly, demand notices of ₹ 48.44 crore, in Form DRC-07, were issued (between April and December 2018) and an amount of ₹ 34.38 crore was recovered by the proper officers. However, the remaining amount of ₹ 14.06 crore had not been realised till date and was reflected as outstanding liability in the Electronic Liability Register of these taxpayers and no recovery proceedings was initiated by the proper officers for realisation of the same. It was, further, observed that the follow-up action to be taken by the proper officers, on claims disallowed by them, was not prescribed in the check-list issued by the Department. This resulted in non-realisation (September 2021) of incorrectly availed transitional credits of ₹ 14.06 crore (**Appendix-II**).

The matter was reported to the Government/Department (November 2021); the Secretary, CTD, during the exit conference stated (February 2022) that: (i) an amount of ₹ 36 lakh, in six cases, had been recovered (ii) in the remaining cases, notices for hearing had been issued to the concerned taxpayers.

2.3.8 Compliance Issues

Audit evaluated the compliance of extant provisions of the JGST Act and Rules, by the tax authorities as well as the taxpayers and noted that the Department had issued (March 2018) an illustrative check-list for verification of the transitional credit claims. However, due to non-monitoring of adherence to the instructions, the proper officers did not verify the claims in accordance with the provisions contained in the JGST Act/Rules, as well as the checks prescribed by the Department. This resulted in excess carry forward of transitional credits, irregular availment of transitional credits on capital goods, inputs held in stock, inputs in transit, goods held by agent on behalf of principal, works contract service and non/short levy of interest and penalty etc., amounting to ₹ 138.13 crore, in 129 cases, which are discussed in the subsequent paragraphs:

⁹ Bokaro, Chaibasa, Dhanbad, Dhanbad Urban, Dumka, Koderma, Pakur, Ramgarh and Ranchi East.

2.3.8.1 Excess carry forward of transitional credit

57 taxpayers, at 18 CTCs, had carried forward and availed transitional credits of ₹ 70.42 crore. However, these taxpayers were eligible to carry forward credits of ₹ 33.99 crore only. Thus, transitional credits of ₹ 36.43 crore were carried forward in excess, on which interest and penalty of ₹ 23.65 crore was also leviable under the provisions of the Act.

Under the provisions of Section 140(1) of the JGST Act 2017, a registered person shall be entitled to take transitional credit of the amount of Value Added Tax, Entry Tax, carried forward in the return for the period ending June 2017, filed under the existing law. Further, Section 18(4)(ii) of the repealed JVAT Act prescribes that ITC shall be admissible to the extent of CST payable under CST Act 1956, in course of inter-state sale under Section 8(1) of the CST Act and no ITC shall be admissible on inter-state sales made under Section 8(2) of the CST Act. Accordingly, return under the JVAT Act was amended, to record forfeited ITC by the dealers on these items.

Section 50(3) and 73(9) of the JGST Act empowers the proper officer to levy interest at a rate not exceeding 24 *per cent* and penalty equivalent to 10 *per cent* of tax or ₹ 10,000, whichever is higher, in case of undue or excess claim of ITC or where input tax has been wrongly availed or utilised.

Audit test-checked (between January and September 2021) the records of 302 transitional credit cases, where the closing balances of credit, from the last VAT returns, were claimed under Table 5(c) of TRAN-1 and noticed, in 57 cases, at 18 CTCs¹⁰, that an amount of ₹ 75.68 crore had been claimed as transitional credit in Form TRAN-1. After reversal/disallowance by the proper officers, these taxpayers had availed credit of ₹ 70.42 crore. It was further noticed that these taxpayers had furnished an amount of ₹ 65.60 crore, as carried forward ITC in their VAT returns, for the period ending June 2017. Further scrutiny of VAT returns, with the assessment orders under the JVAT Act and other relevant records¹¹, revealed that these taxpayers had showed excess opening balances of ITC in their VAT returns, in comparison to the closing balances of prior periods. The ITC was also not forfeited on account of inter-state sales under Section 8(1) and (2) of CST Act and adjusted by the taxpayers/proper officers while verifying the claims, as illustrated in the check-list. The transitional credits allowable/eligible to be carried forward, on the basis of the above adjustments, were ₹ 33.99 crore. Thus, these taxpayers had availed carry forward of excess transitional credits of ₹ 36.43 crore, on which interest of ₹ 20 crore and penalty of ₹ 3.65 crore was also leviable under the provisions of the JGST Act (**Appendix-III**).

Two illustrative cases, out of 57 cases, based on the highest financial implications, are given in **Table-2.4**.

¹⁰ Adityapur, Bokaro, Chirkunda, Deoghar, Dhanbad, Dhanbad Urban, Dumka, Giridih, Hazaribag, Jamshedpur, Jamshedpur Urban, Jharia, Pakur, Ramgarh, Ranchi East, Ranchi South, Ranchi West and Singhbhum.

¹¹ Declaration in Form JVAT 404 in relation to ITC claimed, details of 8 (1) & (2) sales under CST and declaration in Form 'C' and Form 'F' in relation to interstate sales and stock transfer made by the dealer.

Table-2.4

(₹ in crore)				
Sl. No.	Name of the circle GSTIN	Nature of observation	ITC carried forward ITC eligible to be carried forward	Excess carry forward of ITC Interest & penalty
1	Hazaribag 20XXXXXXXX XXXXZP	Transitional credit of ₹ 23.43 crore was allowed, by the proper officer, to be carried forward in the electronic credit ledger of the taxpayer. However, the eligible transitional credit to be carried forward was ₹ 12.66 crore, as per the assessment orders and VAT returns of the taxpayer, which were not verified by the proper officer.	23.43 12.66	10.77 6.92
2	Ranchi West 20XXXXXXXX XXXXZT	As per the assessment order and VAT returns of the taxpayer, the transitional credit eligible to be carried forward was ₹ 20 lakh. However, transitional credit of ₹ 7.70 crore was allowed, by the proper officer, to be carried forward in the electronic credit ledger of the taxpayer.	7.70 0.20	7.50 4.82

The matter was reported to the Government/ Department (November 2021); the Secretary, CTD, during the exit conference, stated (February 2022) that an amount of ₹ 37.31 lakh, in five cases, had been recovered and additional demand of ₹ 3.72 crore had been raised in 11 cases. In the remaining cases, notices for hearing had been issued to the concerned taxpayers, and letter had been issued to the CGST Department, to take necessary action on taxpayers relating to their jurisdiction. Further, in one case, demand notice could not be issued as the taxpayer was under the insolvency process, as per the judgement of the National Company Law Tribunal.

2.3.8.2 Irregular availment of transitional credits on inadmissible items

22 taxpayers, at 13 CTCs, had availed transitional credits of ₹ 34.55 crore. However, the availed claims included credit of ₹ 31.14 crore on inadmissible items. This resulted in irregular availment of transitional credits on inadmissible items, amounting to ₹ 31.14 crore, on which interest and penalty of ₹ 20.17 crore was also leviable, under the provisions of the Act.

Section 140(1) of the JGST Act, 2017 enables a registered person to take transitional credit for the period ending June 2017 for returns filed under the existing law i.e., the Jharkhand Value Added Tax (JVAT) Act, 2005. Further, Section 18(8)(xviii) of the repealed JVAT Act prescribes that no ITC shall be claimed or be allowed to a registered taxpayer, in respect of goods consumed or burnt up¹² in course of the manufacturing process.

¹² ITC is not admissible on goods such as coal, lubricants etc. which get burnt up/consumed during the manufacture of finished goods like steam, iron and steel etc.

Audit test-checked (between January and September 2021) the records of 302 transitional credit cases, where the closing balances of credit from the last VAT returns were claimed under Table 5(c) of TRAN-1 and noticed, in 22 cases, relating to 13 CTCs¹³, that an amount of ₹ 34.58 crore was claimed as transitional credits. After reversal of credit by the taxpayers itself or disallowance of credit by the proper officer, these taxpayers had availed transitional credits for ₹ 34.55 crore. However, further scrutiny of VAT returns and assessment orders under the JVAT Act, revealed that the availed transitional credits included tax deducted at source (TDS) of ₹ 9.46 crore and ITC of ₹ 21.68 crore, in respect of goods consumed or burnt up in course of the manufacturing process, which were not admissible for transitional credit. Thus, an amount of ₹ 31.14 crore was irregularly availed as transitional credit, on which interest of ₹ 17.05 crore and penalty of ₹ 3.12 crore, were also leviable, under the provisions of the JGST Act (**Appendix-IV**).

Two illustrative cases, out of 22 cases, based on the highest financial implications, are given in **Table-2.5**.

Table-2.5

(₹ in crore)

Sl. No.	Name of the circle GSTIN	Name of the taxpayer (M/s)	Nature of observation	Transitional credit allowed Transitional credit claimed on inadmissible items	Transitional credit allowed on in admissible items Interest & penalty
1	Bokaro 20XXXXXXXXXX XXXZP	Bokaro Power Supply Company Limited	Transitional credit of ₹ 21.68 crore was allowed, by the proper officer, to be carried forward in the electronic credit ledger of the taxpayer. However, the claimed credit related to goods burnt up in course of manufacturing process and was not admissible as transitional credit.	<u>21.68</u> 21.68	<u>21.68</u> 13.93
2	Giridih 20XXXXXXXXXX XXXZO	Ashoka Buildcon Limited	As per VAT returns of the taxpayer, the claimed transitional credit of ₹ 2.16 crore was the value of TDS, which was not admissible as transitional credit; however, the proper officer allowed the claim, in full, to be carried forward.	<u>2.16</u> 2.16	<u>2.16</u> 1.39

The matter was reported to the Government/ Department (November 2021); the Secretary, CTD, during the exit conference, stated (February 2022) that notices for hearing had been issued to the concerned taxpayers and letter had been issued to CGST Department, to take necessary action on taxpayers relating to their jurisdiction.

¹³ Adityapur, Bokaro, Chirkunda, Deoghar, Dhanbad Urban, Dumka, Giridih, Jamshedpur, Jamshedpur Urban, Ranchi South, Sahibganj, Singhbhum and Tenughat.

2.3.8.3 Irregular availment of transitional credit on capital goods

Transitional credit claims of ₹ 9.03 crore on capital goods were availed by five taxpayers. However, these taxpayers did not have unavailed credit on capital goods to be carried forward as transitional credit.

Under the provisions of Section 140(2) of the JGST Act, 2017, a registered person shall be entitled to take, in the electronic credit ledger, credit of the amount of unavailed ITC in respect of capital goods, under the existing law.

Audit test-checked (between January and September 2021) the records of 13 transitional credit cases, where unavailed credit on capital goods was claimed under Table 6(b) of TRAN-1 and noticed, in five cases, relating to four CTCs¹⁴, that an amount of ₹ 9.03 crore had been claimed as transitional credit on capital goods. The claimed credit was availed by these taxpayers in full. However, further scrutiny of VAT returns and assessment orders, under the JVAT Act, of these taxpayers, revealed that there was no credit available on capital goods in respect of these taxpayers, in the repealed JVAT Act. Thus, these taxpayers were not eligible to carry forward transitional credit on capital goods, in the electronic credit ledger, under the JGST Act. This resulted in irregular availment of transitional credit on capital goods of ₹ 9.03 crore, on which interest of ₹ 4.90 crore and penalty of ₹ 90.41 lakh was also leviable under the provisions of the JGST Act (**Appendix-V**).

Two illustrative cases, out of five cases, based on the highest financial implications, are given in **Table-2.6**.

Table-2.6

(₹ in crore)				
Sl. No.	Name of the circle GSTIN	Nature of observation	Transitional credit on capital goods allowed Transitional credit allowable	Irregular allowance of transitional credit Interest & penalty
1	<u>Jamshedpur Urban</u> 20XXXXXXX XXXXZO	Transitional credit of ₹ 8.95 crore on capital goods was claimed and availed by the taxpayer. Audit scrutiny of the VAT records of the taxpayer of different branches, indicated that ITC on capital goods was not available on the appointed day and, thus, the taxpayer was not entitled to take the transitional credit.	<u>8.95</u> 0.00	<u>8.95</u> 5.75
2	<u>Bokaro</u> 20XXXXXXX XXXXZQ	The taxpayer had claimed transitional credit of ₹ 0.05 crore on capital goods. Audit scrutiny of the VAT records of the taxpayer indicated that ITC on capital goods was not available on the appointed day. However, the proper officer irregularly allowed the transitional credit of ₹ 0.05 crore, in the electronic credit ledger of the taxpayer.	<u>0.05</u> 0.00	<u>0.05</u> 0.03

¹⁴ Bokaro, Jamshedpur, Jamshedpur Urban and Ranchi West.

The matter was reported to the Government/ Department (November 2021); the Secretary, CTD, during the exit conference, stated (February 2022) that notices for hearing had been issued to the concerned taxpayers, and letter has been issued to CGST Department, to take necessary action on taxpayers relating to their jurisdiction.

2.3.8.4 Irregular availment of transitional credit on inputs held in stock

Four taxpayers, at four CTCs, had availed transitional credit of ₹ 81.53 lakh on inputs held in stock. However, these claims were not supported by requisite evidence.

Under the provisions of Section 140(3) of the JGST Act 2017, where the person was entitled to take credit of input tax at the time of sale of goods under the Act, he shall also be entitled to take credit of the value added tax and entry tax, levied under JVAT Act, 2005 on inputs or inputs contained in semi-finished or finished goods held in stock, subject to the condition that the said person is in possession of invoice issued not earlier than 12 months preceding 30 June 2017 and evidencing payment of tax, under the existing law, in respect of such inputs.

Audit test-checked (between January and September 2021) the records of 41 transitional credit cases, where credit on inputs held in stock had been claimed under Table 7(c) of TRAN-1 and noticed, in four cases, relating to four CTCs¹⁵, that an amount of ₹ 1.28 crore had been claimed and availed as transitional credit by these taxpayers, on inputs held in stock. However, scrutiny of records indicated that an amount of ₹ 81.53 lakh was not supported by invoices evidencing payment of tax under the existing law, in respect of such inputs. Accordingly, these taxpayers were not eligible for transitional credit of ₹ 81.53 lakh on inputs held in stock, on which interest of ₹ 47.49 lakh and penalty of ₹ 8.18 lakh was also leviable under the provisions of the JGST Act (Appendix-VI).

The matter was reported to the Government/ Department (November 2021); the Secretary, CTD, during the exit conference, stated (February 2022) that: (i) an amount of ₹ 3.88 lakh, in one case, had been recovered (ii) in the remaining cases, notices for hearing have been issued to the concerned taxpayers and (iii) letter had been issued to CGST Department, to take necessary action on taxpayers relating to their jurisdiction.

2.3.8.5 Irregular availment of transitional credit on inputs in transit

Eight taxpayers, at six CTCs, had availed transitional credit of ₹ 75.43 lakh, on inputs in transit. However, these claims were not supported by requisite evidence.

Under the provisions of Section 140(5) of the JGST Act, 2017, a registered person shall be entitled to take credit of the value added tax and entry tax, in

¹⁵ Bokaro, Palamu, Ramgarh and Ranchi West.

respect of inputs received on or after the appointed day but the tax in respect of which has been paid by the taxpayer under the existing law, subject to the condition that invoice of the same was recorded in the books of account of such person, within a period of thirty days from the appointed day.

Audit test-checked (between January and September 2021) the records of 49 transitional credit cases, where credit on inputs in transit had been claimed under Table 7(b) of TRAN-1 and noticed, in eight cases, at six CTCs¹⁶, that an amount of ₹ 75.43 lakh had been claimed and availed as transitional credit on inputs on goods in transit. However, scrutiny of records indicated that these claims were not supported by the documents with TRAN-1, confirming accountal of the invoices, in respect of such inputs, in the books of account, within the prescribed timelines. As such, in absence of requisite invoices, these taxpayers were not eligible for transitional credit on inputs in transit. Thus, an amount of ₹ 75.43 lakh was irregularly availed by the taxpayers, as transitional credit, on inputs in transit. Further, interest of ₹ 41.90 lakh and penalty of ₹ 7.59 lakh was also leviable for irregular availment of transitional credits, under the provisions of JGST Act (**Appendix-VII**).

The matter was reported to the Government/ Department (November 2021); the Secretary, CTD, during the exit conference, stated (February 2022) that: (i) an amount of ₹ 3.30 lakh had been recovered, in one case (ii) in the remaining cases, notices for hearing had been issued to the concerned taxpayers and (iii) letter had been issued to CGST Department, to take necessary action on taxpayers relating to their jurisdiction.

2.3.8.6 Irregular availment of transitional credit on goods held by agent on behalf of principal

Claim of transitional credit of ₹ two lakh was irregularly allowed by the proper officer, though the claim of the taxpayer was not supported by requisite invoices.

Under the provisions of Section 142(14) of the JGST Act 2017, where any goods or capital goods belonging to the principal, are lying at the premises of the agent, on the appointed day, the agent shall be entitled to take credit of the tax paid on such goods or capital goods, subject to the condition that the said person is in possession of invoices issued not earlier than 12 months preceding 30 June 2017 and evidencing payment of tax under the existing law in respect of such inputs.

Audit test-checked (February 2021) the records of 16 transitional credit cases where credit on goods held by an agent, on behalf of principal, were claimed under Table 10(b) of TRAN-1 and noticed, in one case, relating to the Dhanbad Urban CTC, that an amount of ₹ two lakh had been claimed as transitional credit, on goods held in stock by the agent on behalf of principal. The proper officer, on verification, allowed the claim, in full, as transitional credit. However, on scrutiny of records, it was noticed that the claim was not supported by requisite invoices, evidencing payment of tax under the existing law in respect of such inputs. Thus, the taxpayer was not eligible to carry

¹⁶ Adityapur, Bokaro, Jamshedpur, Jamshedpur Urban, Ramgarh and Singhbhum.

forward the transitional credit, in the electronic credit ledger. This resulted in irregular allowance of transitional credit of ₹ two lakh, by the proper officer. Besides, interest of ₹ 1.09 lakh and penalty of ₹ 0.20 lakh was also leviable for irregular availment of transitional credit, under the provisions of the JGST Act (**Appendix-VIII**).

The matter was reported to the Government/ Department (November 2021); the Secretary, CTD, during the exit conference, stated (February 2022) that notice for hearing had been issued to the concerned taxpayer.

2.3.8.7 Irregular availment of transitional credit on works contract service

Though the taxpayers had filed TRAN-1 beyond the prescribed timelines, or were not registered as works contractors under the repealed Act, they had irregularly availed transitional credit of ₹ 1.56 crore on works contract service.

Under the provisions of Section 142(11)(c) of the JGST Act 2017, where tax was paid on any supply, both under the JVAT Act 2005, and under Chapter V of the Finance Act, 1994, tax shall be leviable under the JGST Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law, to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed. Further, under the provisions of Rule 118 of the JGST Rules 2017, every person to whom the provisions of clause (c) of sub-section(11) of Section 142 applies, shall file TRAN-1 within a period of ninety days of the appointed day.

Audit test-checked (between January and September 2021) the records of eight transitional credit cases, where credits, in respect of taxes paid on any supply, both under Value Added Tax Act and under Finance Act, 1994 had been claimed under Table 11 of TRAN-1 and noticed (September 2021), in two cases, relating to Chaibasa and Jamshedpur CTCs, that an amount of ₹ 1.56 crore, was claimed and availed as transitional credit on works contract service. However, on scrutiny of the records, it was noticed, in one case, that TRAN-1 had been filed beyond the prescribed period. In another case, the taxpayer was not registered as works contractor, under the repealed JVAT Act. Thus, these taxpayers were not eligible for transitional credit. This resulted in irregular availment of transitional credit of ₹ 1.56 crore, on which interest of ₹ 85.44 lakh and penalty of ₹ 15.58 lakh was also leviable, under the provisions of the JGST Act (**Appendix-IX**).

The matter was reported to the Government/ Department (November 2021); the Secretary, CTD, during the exit conference, stated (February 2022) that notices for hearing had been issued to the concerned taxpayers.

2.3.8.8 Short/non-levy of interest and penalty on disallowed transitional credit

The proper officers of 14 CTCs, in 24 cases, disallowed transitional credit claims of ₹ 15.91 crore and levied interest and penalty of ₹ 35.88 lakh, instead of the leviable interest and penalty of ₹ 6.44 crore. This resulted in short levy of interest and penalty of ₹ 6.08 crore.

Section 50(3) and 73(9) of the JGST Act empowers the proper officer to levy interest at a rate not exceeding 24 *per cent* and penalty equivalent to ten *per cent* of tax or ₹ 10,000, whichever is higher, on a registered taxpayer who makes wrong claim of ITC, or where input tax has been wrongly availed or utilised.

Audit test-checked (between January and September 2021) the records of 358 transitional credit cases and noticed, in 24 cases, at 14 CTCs¹⁷, that these taxpayers had claimed transitional credits of ₹ 16.79 crore. The proper officers, on verification, disallowed claims of ₹ 15.91 crore and levied interest and penalty of ₹ 35.88 lakh. However, the actual interest and penalty, leviable under the provisions of the Act, was ₹ 6.44 crore. Thus, non-compliance of the provisions of the Act, by the proper officers, resulted in short/non levy of interest and penalty of ₹ 6.08 crore (**Appendix-X**), as illustrated in **Table-2.7**.

Table-2.7

(₹ in crore)					
Sl. No.	Name of the circle	Number of cases	<u>Claimed amount</u> <u>Allowed amount</u>	<u>Interest and Penalty levied</u> <u>Interest and Penalty leviable</u>	Short levy of interest and penalty
1	Bokaro	01	<u>0.02</u> 0.00	<u>0.002</u> 0.004	0.002
2	Chaibasa	01	<u>1.13</u> 0.00	<u>0.00</u> 0.52	0.52
3	Chirkunda	02	<u>0.10</u> 0.03	<u>0.01</u> 0.04	0.03
4	Deoghar	01	<u>0.31</u> 0.00	<u>0.07</u> 0.10	0.03
5	Dhanbad	02	<u>1.43</u> 0.004	<u>0.00</u> 1.30	1.30
6	Dumka	04	<u>1.00</u> 0.64	<u>0.07</u> 0.12	0.05
7	Jamshedpur Urban	01	<u>0.80</u> 0.00	<u>0.15</u> 0.19	0.04
8	Pakur	02	<u>0.08</u> 0.02	<u>0.01</u> 0.02	0.01
9	Ramgarh	01	<u>0.81</u> 0.00	<u>0.00</u> 0.23	0.23
10	Ranchi East	01	<u>0.03</u> 0.00	<u>0.01</u> 0.02	0.01
11	Ranchi South	04	<u>2.06</u> 0.11	<u>0.00</u> 1.01	1.01
12	Ranchi Special	02	<u>8.61</u> 0.02	<u>0.00</u> 2.78	2.78

¹⁷ Bokaro, Chaibasa, Chirkunda, Deoghar, Dhanbad, Dumka, Jamshedpur Urban, Pakur, Ramgarh, Ranchi East, Ranchi South, Ranchi Special, Sahibganj and Singhbhum.

Table-2.7

(₹ in crore)

Sl. No.	Name of the circle	Number of cases	<u>Claimed amount</u> Allowed amount	<u>Interest and Penalty levied</u> Interest and Penalty leviable	Short levy of interest and penalty
13	Sahibganj	01	<u>0.07</u> 0.00	<u>0.00</u> 0.01	0.01
14	Singhbhum	01	<u>0.31</u> 0.05	<u>0.05</u> 0.10	0.05

The matter was reported to the Government/ Department (November 2021); the Secretary, CTD, during the exit conference, stated (February 2022) that recovery had been made in one case and additional demand of ₹ 0.50 lakh had been raised in another case. In the remaining cases, notices for hearing had been issued to the concerned taxpayers, and letter had been issued to CGST Department, to take necessary action on taxpayers relating to their jurisdiction.

2.3.8.9 Irregular availment of transitional credit without filing VAT returns

Four taxpayers had availed transitional credits of ₹ 2.60 lakh, although the prescribed returns, under the repealed JVAT Act, were not filed by them.

Under the provisions of Section 140(1) of the JGST Act 2017, a registered person shall not be allowed to take transitional credit, where he had not furnished all the returns, required under the existing law, for the period of six months immediately preceding the appointed date.

Audit test-checked (between January and September 2021) the records of 358 transitional credit cases and noticed, in four cases, at three CTCs¹⁸, that these taxpayers had claimed and availed transitional credits of ₹ 2.60 lakh. However, scrutiny of the assessment records of the taxpayers, under the JVAT Act, indicated that these taxpayers had not filed returns for the period of six months immediately preceding the appointed date, as prescribed under the provisions of the Act. Thus, these taxpayers were not eligible for the transitional credit claims of ₹ 2.60 lakh. Besides, interest of ₹ 1.48 lakh and penalty of ₹ 0.40 lakh was also leviable, for incorrect availment of transitional credit (**Appendix-XI**).

The matter was reported to the Government/ Department (November 2021); the Secretary, CTD, during the exit conference, stated (February 2022) that: (i) additional demand of ₹ 3.48 lakh had been issued in three cases (ii) in the remaining case, notice for hearing has been issued to the concerned taxpayer.

¹⁸ Deoghar, Palamu and Ranchi West.

2.3.8.10 Irregular revision of demand order beyond the prescribed time-lines

The proper officer, under the provisions of the Act, may rectify the demand within six months of issue. However, demand notice of ₹ 55.19 lakh, in one case, was incorrectly revised as 'nil', after expiry of 16 months, without assigning any reason. This resulted in irregular allowance of transitional credit of ₹ 55.19 lakh.

Section 161 of the JGST Act prescribes that any authority who has passed or issued any decision or order, may rectify any error which is apparent on the face of record, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or by affected person, within a period of three months from the date of issue of such order, provided that no such rectification shall be done after a period of six months from the date of issue of such order.

Audit test-checked (between January and September 2021) 358 transitional credit cases, at all 28 CTCs and noticed, in one case of Bokaro CTC that a taxpayer had claimed transitional credit of ₹ 43.11 lakh. The proper officer, on verification, disallowed the claim being incorrectly availed transitional credit and issued demand notice, in Form DRC-07, for an amount of ₹ 55.19 lakh, on 29 September 2018. However, the proper officer, after 16 months, rectified the aforesaid DRC-07 and made a rectified 'nil' demand in Form DRC-08, on 03 February 2020, beyond the prescribed timelines and without assigning reasons. Non-adherence to the provision of the Act, by the proper officer, and reviewing the demand beyond the prescribed period, resulted in irregular allowance of transitional credit of ₹ 55.19 lakh.

When pointed out (September 2021), the proper officer of Bokaro CTC stated (September 2021) that the case would be reviewed.

The matter was reported to the Government/ Department (November 2021); their reply was awaited (March 2024).

2.3.8.11 Irregular availment of transitional credit availed by taxpayer registered under composition levy scheme

The taxpayer, though registered under composition levy scheme, under the JGST Act, had irregularly availed transitional credit of ₹ 0.56 lakh.

Under the provisions of Section 140(1) of the JGST Act 2017, a registered person, other than a person registered under the composition levy scheme under the Act, shall be entitled to take credit of the amount of Value Added Tax, Entry Tax, unavailed credit of capital goods, carried forward in the return for the period ending June 2017, filed under the existing law.

Audit test-checked (between January and September 2021) the records of 358 transitional credit cases and noticed that a taxpayer of Dhanbad CTC had claimed and availed transitional credit of ₹ 0.56 lakh. However, scrutiny of records revealed that the taxpayer was registered under the composition levy

scheme under the JGST Act. Thus, the taxpayer was not eligible for transitional credit. This resulted in irregular availment of transitional credit of ₹ 0.56 lakh, on which interest of ₹ 0.03 lakh and penalty of ₹ 0.10 lakh was also leviable, under the provisions of the JGST Act.

When pointed out (September 2021), the proper officer of Dhanbad CTC stated (September 2021) that the case would be reviewed.

The matter was reported to the Government/ Department (November 2021); their reply was awaited (March 2024).

2.3.9 Conclusion

The Department did not verify (September 2021) 1,706 cases out of 2,845 transitional credit claims selected for verification, wherein transitional credits of ₹ 96.15 crore had been claimed.

The Department did not monitor the adherence of instructions by the proper officers, resulting in verification of transitional claims of 75 taxpayers out of 105 high value cases, by officers not authorised to verify them. The check-list prescribed by the Department was not adequate for taking effective remedial action on cases verified by the Department. As a result, transitional credit of ₹ 14.06 crore was not recovered, even after the expiry of 24 months.

The taxpayers/proper officers did not comply with the provisions of the JGST Act/Rules. Further, the proper officers did not adhere to the instructions/checks prescribed by the Department, resulting in availment of excess transitional credits of ₹ 60.08 crore, in 57 cases; availment of irregular transitional credits on inadmissible items of ₹ 51.31 crore, in 22 cases; and irregular availment of transitional credits on capital goods, inputs held in stock, inputs in transit, inputs on goods held by agent on behalf of principal and inputs in work contract services, of ₹ 20.06 crore, in 20 cases.

The proper officers had short levied interest of ₹ 6.08 crore in 24 cases disallowed by them. Transitional credit of ₹ 55.19 lakh, in one case, was irregularly allowed by rectifying the demand order beyond the prescribed timelines.

The audit findings are those which came to notice within the selected audit sample and there are possibilities that the same irregularities may persist in other transitional credit cases. The CTD may examine all such cases thoroughly in all Commercial Taxes Circles and take necessary action.

2.3.10 Recommendations

Government may consider:

- instituting a system at the apex level, to monitor the adherence of instructions and compliance of the JGST Act/Rules, by the proper officers;
- issuing instructions to the Department, to verify the remaining 1,706 cases, in a timely manner; and
- issuing directions to the Department, for speedy recovery of outstanding liability, on account of transitional credits wrongly availed.

Other observations/Paragraphs

2.4 Non-levy of interest on disallowed exemptions and concessions

Interest of ₹ 61.65 crore was not levied on disallowed exemptions, concessions and incorrect adjustment of Input Tax Credit (ITC).

The JVAT Act, 2005, provides for levy of interest applicable under the Act, on account of disallowance of ITC, exemptions and deductions and any other concessions or rebates not supported by requisite evidence, as required under the Act, Central Sales Tax Act or Rules framed thereunder. The Act further prescribes payment of simple interest on the additional tax, assessed at the rate of two *per cent* per month from the date of such default, for so long as the assessee continues to make default in payment of the said tax.

Scrutiny of assessment records (between September 2020 to April 2021) of 851 dealers, out of 38,470 dealers registered in seven commercial taxes circles¹⁹, revealed that the assessing authorities (AAs), while finalising the assessments, had disallowed the claims of 10 dealers, on account of exemptions and concessions on turnover of ₹ 1,444.34 crore and adjustment of ITC on turnover of ₹ 7.10 crore, for the period between 2015-16 and 2016-17. Additional tax, including ITC of ₹ 81.41 crore, was levied by the AAs, on the aforesaid disallowed turnovers. However, the AAs failed to levy penal interest, amounting to ₹ 61.65 crore, on the disallowed claims. It was further observed that the interest on disallowed exemptions, concessions and adjustment of ITC in course of assessment, was not being levied uniformly in the above commercial taxes circles.

After the cases were pointed out, DCST, Giridih, accepted the audit observation and intimated (August 2021) that instructions have been given to issue demand notice; DCST, Palamu, intimated (April 2022) that demand notice had been issued and DCST, Bokaro intimated (April 2022) that notice for hearing had been issued. Three DCSTs²⁰ stated (between December 2020 and February 2021) that the cases would be reviewed. However, DCST, Jamshedpur Urban, stated (January 2021) that tax and interest was not leviable on the basis of filed returns. The reply is not in order, as additional tax was assessed by the AAs, on which interest was leviable, as per provision of the Act. Further replies have not been received (March 2024).

The matter was reported to the Government in March 2022; replies have not been received (March 2024).

¹⁹ Bokaro, Giridih, Jamshedpur, Jamshedpur Urban, Palamu, Ramgarh and Ranchi West.

²⁰ Jamshedpur, Ramgarh and Ranchi West.

2.5 Concealment of purchase turnover under JVAT Act

The AAs, while finalising the assessments, did not scrutinise the information furnished by the dealers, which led to non-detection of concealment of turnover of ₹ 126.48 crore by eight dealers and consequential under-assessment of tax and penalty of ₹ 26.29 crore.

Under the provisions of Section 40(1) of the JVAT Act, 2005, if the prescribed authority has reason to believe that the dealer has concealed, omitted or failed to disclose wilfully, the particulars of such turnover or has furnished incorrect particulars of turnover and thereby the returned figures are below the real amount, the prescribed authority shall proceed to assess or reassess the amount of tax due from the dealer in respect of such turnover. The Act, further, empowers the AAs to levy, besides the tax assessed on concealed turnover, by way of penalty, a sum equivalent to thrice the amount of the additional tax so assessed.

Audit test-checked (between November 2020 and March 2021) the assessment records of 775 dealers, out of 24,759 dealers registered in five commercial taxes circles²¹ and noticed that eight dealers had disclosed purchase turnover of ₹ 3,220.15 crore, during the period 2015-16 to 2016-17, through periodical returns and VAT audit report in Form JVAT 409, on which the assessments were finalised (between March 2019 and March 2020). Further scrutiny of records²² indicated that the actual purchase/sales turnover of the eight dealers was ₹ 3,346.63 crore. Thus, failure of the AAs, to cross verify the returns with the relevant information available in the records, resulted in concealment of turnover of ₹ 126.48 crore. This resulted in under-assessment of tax of ₹ 26.29 crore, including penalty of ₹ 19.72 crore.

After the cases were pointed out (between November 2020 and March 2021) the DCST, Bokaro, intimated (April 2022) that notice for hearing had been issued. DCSTs, Giridih and Ranchi West, stated (between November and December 2020) that the cases would be reviewed. DCST, Dhanbad Urban, stated (October 2021) that, as per the reconciliation statement and clarification submitted by the dealer, no discrepancy was noticed in the stock transfer. However, the reconciliation statement and clarification furnished by the dealer, were not furnished to Audit. DCST, Adityapur, stated (April 2022) that the inter-state purchases, shown in the quarterly returns, are inclusive of CST. However, it was observed that the inter-state purchase turnover, accounted in the trading account, were exclusive of CST. The reply is not in order as CST purchases inclusive of tax are required to be accounted for in the trading account as per Section 2 (xlii) of JVAT Act 2005. Further replies have not been received (March 2024).

The matter was reported to the Government in March 2022; replies have not been received (March 2024).

²¹ Adityapur, Bokaro, Dhanbad Urban, Giridih and Ranchi West.

²² Annual return, quarterly return/JVAT-200, Manufacturing and Profit and Loss account, JVAT 409, JVAT 506 and JVAT 404.

2.6 Irregularities in grant of Input Tax Credit (ITC)

The AAs, while finalising the assessments in case of 11 dealers, allowed ITC of ₹ 25.82 crore instead of ₹ 11.36 crore.

Under the provisions of Section 18(8) of the JVAT Act 2005, Input Tax Credit (ITC) shall not be allowed to a registered dealer on the purchase of goods used in manufacture of other goods and sold in course of inter-state trade or commerce under Section 8(2) of Central Sales Tax Act, 1956. Further, ITC was admissible up to the limit of tax payable on sale of such goods under Section 8(1) of CST Act, with effect from 17 February 2017. Also, ITC shall not be allowed in respect of goods consumed for production of exempted and Schedule-E goods and in cases where the value of taxable sale is five *per cent* or less, of the total turnover under the JVAT Rules.

Audit test-checked (between January and April 2021) the assessment records of 246 dealers, out of 8,345 dealers registered in Bokaro and Dhanbad Urban commercial taxes circles and noticed that 11 dealers had claimed ITC of ₹ 25.88 crore, for the period 2015-16 to 2017-18. The AAs, while finalising the assessments (between June 2017 and August 2020) of these dealers, had allowed ITC of ₹ 25.82 crore to them. However, on scrutiny of records, it was noticed that ITC had been incorrectly apportioned on sales made by these dealers under Section 8(1) and 8(2) of CST Act; and was incorrectly allowed where taxable sales were less than five *per cent* of the total sales and goods used in the manufacturing of Schedule E and exempted goods. These dealers were actually eligible for ITC of only ₹ 11.36 crore. This resulted in allowance of excess ITC of ₹ 14.46 crore.

After the cases were pointed out (between January and April 2021), the DCST, Dhanbad Urban, intimated (October 2021) that demand notices had been issued in six cases and DCST, Bokaro, intimated (April 2022) that notice for hearing had been issued. Intimation regarding recovery is awaited (March 2024).

The matter was reported to the Government in March 2022; replies have not been received (March 2024).

2.7 Non-levy of penalty

The AAs, while finalising the assessments, did not levy penalty of ₹ 9.68 crore, under the prescribed provisions of JVAT Act, 2005.

Under Section 40(1) of JVAT Act, 2005, where the prescribed authority has reasons to believe that the dealer has concealed, omitted or failed to disclose willfully, the particulars of turnover and thereby return figures are below the real amount, the prescribed authority shall proceed to assess or reassess the amount of tax due from the dealer in respect of such turnover and for this purpose, the dealer shall pay by way of penalty, a sum equal to thrice the amount of additional tax assessed. Further, as per Section 47(1)(b), if a registered dealer, collects any amount by way of tax, in excess of the tax payable by him, he shall be liable to pay penalty equal to twice the excess tax collected, in addition to the tax collected by him. Also, under Section 63(3), if

any dealer, whose gross turnover exceeds ₹ 60 lakh, fails to get his accounts audited and furnish the Audit Report in Form JVAT-409 within the specified period, the prescribed authority shall impose penalty, equal to 0.1 *per cent* of the turnover, determined in addition to tax payable by him.

Audit test-checked (January 2021) the assessment records of 106 dealers, out of 5,398 dealers registered in the Ramgarh commercial taxes circle and noticed that the AAs had failed to levy penalty of ₹ 9.68 crore, in case of three dealers, as detailed below:

- Two dealers had disclosed gross turnover of ₹ 2,988.68 crore, for the period 2016-17. The AAs, while finalising assessments in August 2020, enhanced the turnover to ₹ 3,069.88 crore, on account of suppression made by the dealers, in order to evade tax. Though the AAs enhanced the turnover by ₹ 81.19 crore and assessed additional tax of ₹ 3.18 crore, penalty of ₹ 9.54 crore, on the additional tax assessed, was not levied.
- A dealer had collected tax of ₹ 9.59 crore, against his tax liability of ₹ 9.52 crore, for the period 2016-17. The AA did not levy penalty of ₹ 14.54 lakh, for the excess tax collected by the dealer.

After being pointed out (January 2021), the AA stated (January 2021) that these cases would be reviewed. Further replies have not been received (March 2024).

The matter was reported to the Government in March 2022; replies have not been received (March 2024).

2.8 Application of incorrect rate of tax

The AAs levied tax of ₹ 8.92 crore, instead of ₹ 16.39 crore, due to application of incorrect rate of tax, resulting in short levy of tax of ₹ 7.47 crore.

According to Rule 22(2) of JVAT Rules, where the amount of charges towards labour and services in any contract is not ascertainable, then such charges shall be calculated at the rate of 30 *per cent* of the total consideration received or receivable and the taxable turnover arrived thereafter shall be taxable at the rate of 14 *per cent*. Further, the existing rate of tax for commodities, under Schedule-B of Part-II, was enhanced, from five *per cent*, to 5.5 *per cent*, through a notification issued in November 2016. Also, under the CST Act, 1956, tax was not leviable where transactions were supported by declarations in Form “C” and “E-I”. In case of failure to submit declaration in Form “E-I”, State rate of tax was applicable, when both the selling and purchasing dealers belonged to the same State.

Audit test-checked (between November 2020 and March 2021) the assessment records of 632 dealers, out of 20,150 dealers, registered in four commercial taxes circles²³ and noticed that the AAs, while finalising the assessments (between January and August 2020) of five dealers, for the period of 2016-17, had levied tax of ₹ 8.92 crore, instead of ₹ 16.39 crore, due to application of

²³ Adityapur, Bokaro, Giridih and Jamshedpur.

incorrect rate of tax. This resulted in short levy of tax of ₹ 7.47 crore, due to non-adherence to the provisions of the Act, as detailed in **Table 2.8**.

Table-2.8

Sl. No.	Number of cases	Nature of observation	(₹ in crore)	
			Tax payable at correct rates Tax paid	Tax short levied
1	03	In the instant cases, the AAs failed to levy tax on revised rates as amended from 5 & 14 per cent to 5.5 & 14.5 per cent respectively.	<u>5.54</u> 5.04	0.50
2	01	In the instant case, the AA after allowing deductions towards labour and other like charges, levied tax at the rate of 5 per cent on the remaining turnover instead of the leviable 14 per cent as per provisions of Rule 22.	<u>9.19</u> 3.28	5.91
3	01	In the instant case, the AA levied tax at concessional rate on interstate transit sale supplies despite the taxpayer failing to produce declaration in Form 'C'.	<u>1.66</u> 0.60	1.06

After the cases were pointed out (between November 2020 and March 2021), DCSTs, Giridih and Jamshedpur stated (November and December 2020) that the cases would be reviewed, while DCST, Bokaro, intimated (April 2022) that notice for hearing had been issued and DCST, Adityapur, intimated (April 2022) that demand notice had been issued. Intimation regarding recovery is awaited (March 2024).

The matter was reported to the Government in March 2022; replies have not been received (March 2024).

2.9 Incorrect allowance of exemption

AAs allowed excess exemption of tax, resulting in under assessment of tax of ₹ 1.12 crore.

Section 9(5) of the JVAT Act, 2005 provides that, where a registered dealer allows any trade discount (other than cash discount) or incentive, whether in terms of quantity in goods or otherwise in relation to any sale effected by him, the quantity so allowed as trade discount or incentive, shall be deemed to be a sale by the dealer. Further, under Rule 22(1)(d) of JVAT Rules 2006, the value of goods involved in a works contract was taxable, after deducting labour and other like charges, including profit earned by the contractor, to the extent it was relatable to supply of labour and services, from their gross receipt value. Also, exemption from tax on SEZ sale was admissible, on production of declaration in Form 'I', under the CST Act.

Audit test-checked (between November and December 2020) the assessment records of 396 dealers, out of 15,886 dealers, registered in three commercial taxes circles²⁴ and noticed that four dealers had claimed exemption from tax, on turnover of ₹ 46.43 crore, on account of trade discount, royalty, profit related to supply of labour and services and sales made to the dealers of SEZ,

²⁴ Giridih, Jamshedpur Urban and Ranchi West.

for the period 2015-16 and 2016-17. The AAs, while finalising the assessments (between February 2019 and August 2020), had allowed the exemption in full. However, scrutiny of records revealed that the allowable exemption to these dealers was only on turnover of ₹ 36.78 crore. This resulted in excess exemption for turnover of ₹ 9.65 crore and consequent short levy of tax of ₹ 1.12 crore.

After the cases were pointed out (between November and December 2020), the DCSTs, Jamshedpur Urban and Ranchi West, stated (between December 2020 and January 2021) that the cases would be reviewed, while DCST, Giridih, intimated (April 2022) that demand notices had been issued. Intimation regarding recovery is awaited (March 2024).

The matter was reported to the Government in March 2022; replies have not been received (March 2024).

EXCISE AND PROHIBITION DEPARTMENT

2.10 Tax administration

The levy and collection of excise duty is governed by the Bihar Excise Act, 1915 and the Rules made/ notifications issued thereunder, as adopted by the Government of Jharkhand. At the Government level, the Secretary of the Excise and Prohibition Department is responsible for administration of the State Excise laws. The Commissioner of Excise (EC) is the head of the Department and is primarily responsible for the administration and execution of State Excise policies and programmes of the Government. He is assisted by a Joint Commissioner of Excise, Deputy Commissioner of Excise and Assistant Commissioner of Excise at the Headquarters' level. Further, the State of Jharkhand is divided into three Excise divisions²⁵, each under the control of a Deputy Commissioner of Excise. The divisions are further divided into 24 Excise districts, each under the charge of an Assistant Commissioner of Excise/ Superintendent of Excise (ACE/SE).

2.11 Results of audit

During 2020-21, Audit test-checked the records of eight²⁶ out of 31 auditable units (26 *per cent*) of the Department. During the year 2019-20, 490 retail excise shops were settled in the test-checked districts. Audit test-checked records related to all the settled retail excise shops. The Department collected revenue of ₹ 2,009.27 crore during 2019-20, of which the audited units collected ₹ 615.55 crore (30.64 *per cent*). Audit noticed irregularities, amounting to ₹ 75.58 crore, in 1,121 cases, as detailed in **Table- 2.9**.

²⁵ North Chotanagpur Division, Hazaribag, South Chotanagpur Division, Ranchi and Santhal Pargana Division, Dumka.

²⁶ Secretary, Excise and Prohibition Department, Ranchi; Assistant Commissioner of Excise, Bokaro, Dhanbad, Hazaribag and Ramgarh; Superintendent of Excise, Giridih and Koderma; and Jharkhand State Beverage Corporation Ltd., Ranchi.

Table-2.9

Sl. No.	Categories	No. of cases	Amount (₹ in crore)
1	Non-levy of late fee for delay deposit of Excise Transport Duty (ETD)	392	47.24
2	Short realisation of demurrage charges	167	7.19
3	Non-levy of late fee for delay/non deposit of Minimum Guaranteed Duty (MGD)	449	7.18
4	Non-deposit of Government revenue	66	3.30
5	Loss of revenue in shape of permit fee for Bars and Restaurants	01	1.79
6	Short remittance of privilege fee	01	5.02
7	Loss of excise revenue due to non-imposition of processing fee during the label registration/renewal for Foreign Made Foreign Liquor (FMFL)	05	0.01
8	Non-levy of ETD	01	2.99
9	Others	39	0.86
Total		1,121	75.58

Irregularities involving 178 cases, amounting to ₹ 6.43 crore, have been discussed in the following paragraph:

2.12 Short lifting of liquor and non-levy of late fee

The Department did not levy excise duty equivalent to the Minimum Guaranteed Duty of ₹ 19.61 lakh, leviable on the short lifted liquor and late fee of ₹ 6.23 crore leviable on delay in payment of Minimum Guaranteed Duty and Excise Transport Duty.

Under the provisions of the Jharkhand Excise (Settlement and Operation of shops for retail sale of liquor) Rules, 2018, read with the Jharkhand Excise (Settlement and Operation of shops for retail sale of liquor) (Amendment) Rules, 2019, each licensed vendor of a retail excise shop is bound to lift liquor, equivalent to the value of Minimum Guaranteed Excise Duty (MGD) of the month, failing which the vendor is required to pay MGD, equivalent to the short lifted liquor, on the last date of the month. The licensed vendor of a retail excise shop is also required to pay 12th part of the annual Excise Transport Duty (ETD), in advance, by the 15th of each month. Further, the Rules provide for late fee, at the rate of five *per cent* per day, for non/short deposit of MGD/ETD.

Examination (between December 2020 and March 2021) of records²⁷ of all 490 retail excise shops, settled in the test-checked districts, revealed that vendors were required to lift liquor, equivalent to MGD of ₹ two crore, in 115 excise shops, in five excise districts²⁸. However, these excise shops had lifted liquor equivalent to MGD of only ₹ 1.40 crore, within the due date. The vendors had short lifted liquor amounting to MGD of ₹ 60.04 lakh, out of which ₹ 40.43 lakh was paid, with delays ranging between two to 335 days. Further, in 63 retail excise shops, vendors had deposited ETD of ₹ 8.36 crore, with delays ranging between one to 89 days. The excise districts had prepared shop-wise reports regarding MGD fixed and ETD leviable, liquor lifted/ETD

²⁷ Settlement register, Revenue files and licensee ledger.

²⁸ Bokaro, Dhanbad, Giridih, Hazaribag and Koderma.

paid during the month and up to the month and forwarded the reports to the Excise Commissioner. However, the Department did not take any action to levy the excise duty equivalent to MGD on the short lifted liquor and late fee for delayed payment of MGD and ETD. This resulted in non-levy of MGD of ₹ 19.61 lakh on short lifting of liquor and late fee of ₹ 2.78 crore and ₹ 3.45 crore on non/delayed payment of MGD and ETD, respectively.

After this was pointed out (between December 2020 and March 2021) the concerned authorities (SE/ACE) stated (between December 2020 and March 2021) that steps would be taken after detailed verification. Further replies have not been received (March 2024).

The matter was reported to the Government in July 2021; replies have not been received (March 2024).