CHAPTER-II
TAXES/VAT ON SALES, TRADE

CHAPTER II: TAXES/VAT ON SALES, TRADE

2.1 Tax administration

The Haryana Value Added Tax Act, 2003 (HVAT Act) and rules framed thereunder are administered by the Additional Chief Secretary (Excise and Taxation). The Excise and Taxation Commissioner (ETC) is the head of the Excise and Taxation Department who is assisted by Additional ETCs, Joint ETCs (JETCs), Deputy Excise and Taxation Commissioner (DETCs) and Excise and Taxation Officers (ETOs). They are assisted by Excise and Taxation Inspectors and other allied staff for administering the relevant tax laws and rules.

2.2 Results of audit

In 2020-21, test check of the records of 11 (Revenue: 08 + Expenditure: 03) units (11,760 assessment cases were audited out of total 57,659 assessment cases) out of 45 units relating to GST/VAT/Sales tax assessments and other records revealed under assessment/evasion of tax and other irregularities involving ₹ 524.18 crore in 436 cases (1.92 *per cent* of the receipt of ₹ 27,270.76 crore for the year 2019-20) under the following categories as depicted in the Table 2.1.

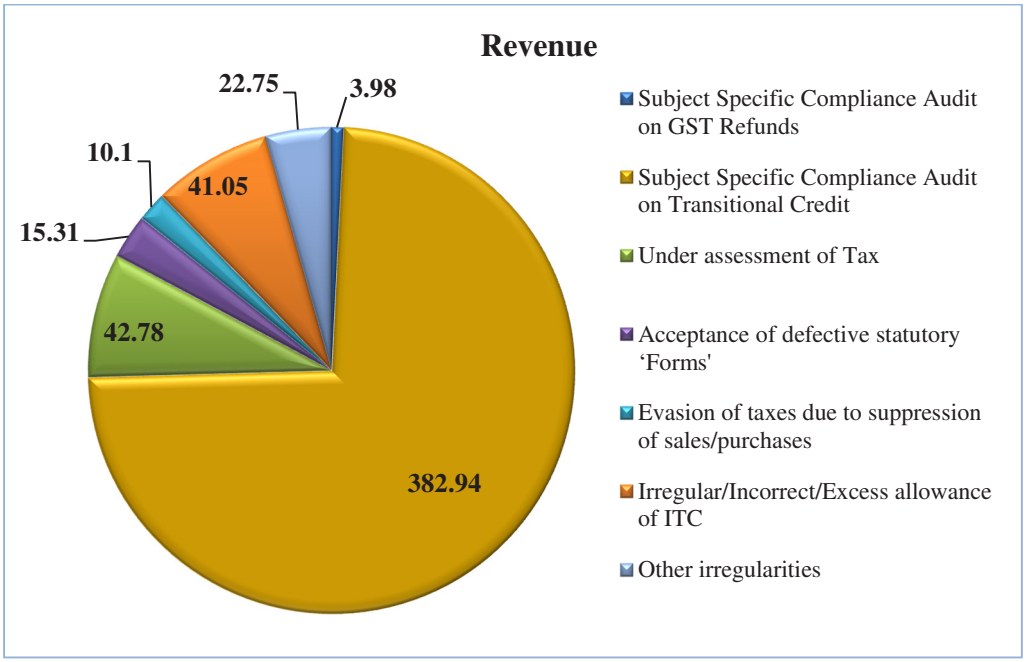
Table 2.1 – Result of Audit

Revenue			
Sr. No.	**Categories**	**Number of cases**	**Amount (₹ in crore)**
1.	Subject Specific Compliance Audit on GST Refunds	01	3.98
2.	Subject Specific Compliance Audit on Transitional Credit	01	382.94
3.	Under assessment of Tax	158	42.78
4.	Acceptance of defective statutory 'Forms'	34	15.31
5.	Evasion of taxes due to suppression of sales/purchases	22	10.10
6.	Irregular/Incorrect/Excess allowance of ITC	137	41.05
7.	Other irregularities	67	22.75
	Total (I)	**420**	**518.91**
Expenditure			
1.	Other irregularities	16	5.27
	Total (II)	**16**	**5.27**
	Grand Total (I+II)	**436**	**524.18**

Source: Data maintained by office

Chart 2.1
Results of Audit

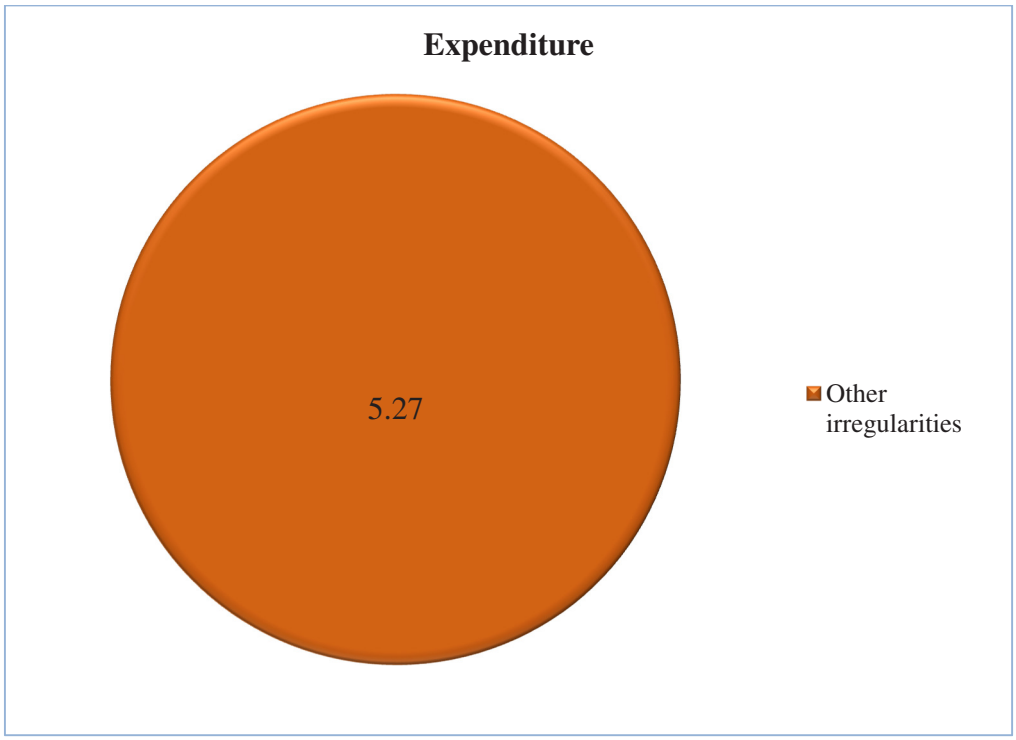
(₹ in crore)



Source: Data maintained by office

Chart 2.2
Results of Audit

(₹ in crore)



Source: Data maintained by office

The Department accepted under assessment and other deficiencies of ₹ 7.41 crore involved in 33 cases which were pointed out during the year. The Department recovered ₹ 33.98 lakh in 23 cases out of which ₹ 0.03 lakh recovered in one case pertained to this year and the rest to earlier years.

Significant cases involving ₹ 476.70 crore are discussed in the following paragraphs. An amount of ₹ 1.34 crore was recovered in two cases of one paragraph.

2.3 Evasion of tax due to suppression of sales

The Assessing Authorities did not verify/cross verify sale/purchase, which resulted in evasion of tax of ₹ 1.52 crore. In addition, penalty of ₹ 4.56 crore was also leviable.

Under Section 38 of Haryana Value Added Tax Act (HVAT Act), 2003 if a dealer has maintained false or incorrect accounts or documents with a view to suppressing his sales, purchases, imports into State, exports out of State, or stocks of goods, or has concealed any particulars in respect thereof or has furnished to or produced before any authority under this Act or the rules made thereunder any account, return, document or information which is false or incorrect in any material particular, such authority may, after affording such dealer a reasonable opportunity of being heard, direct him to pay by way of penalty, in addition to the tax to which he is assessed or is liable to be assessed, a sum thrice the amount of tax which would have been avoided, had such account, return, document or information, as the case may be, been accepted as true and correct.

Scrutiny of the records of 8,908 cases out of 33,157 involving five assessing authorities (between August 2019 and January 2020) revealed that five dealers in five cases[1] in the offices of Deputy Excise and Taxation Commissioner (Sales Tax) {DETC (ST)} Faridabad (West) and Gurugram (North) had not shown correct sales in their quarterly/annual returns for the assessment year 2015-16. While three cases were of incorrect sales figures, two out of these five cases had opening and closing stock mismatch leading to suppression of sales. The Assessing Authorities (AAs) while finalising the assessment (between January 2019 and March 2019) did not verify the details of sales, with reference to records of the purchaser and with referenence to opening and closing stock. The effect of such action resulted in suppression of sales of ₹ 29.96 crore, out of total sales worth ₹ 228.49 crore. This resulted in evasion of tax of ₹ 1.52 crore. In addition, penalty of ₹ 4.56 crore was also leviable.

On this being pointed out, AA Faridabad (W) intimated (February 2022) that two cases had been sent to DETC (I) for *suo moto* action and in another case,

[1] Faridabad (West): 3 cases, Gurugram (North): 2 cases.

notice for reassessment had been issued to the dealer. AA Gurugram (North) intimated (February 2022) that two cases were under examination and notice for reassessment proceedings had been initiated against the dealers.

During exit conference held in March 2022, the Department admitted the audit observations.

Department may ensure putting in place systems and procedures to cross-verify the claim of the dealer before allowing the same.

2.4 Inadmissible/Excess Input Tax Credit

Assessing Authorities allowed benefit of Input Tax Credit without verification of purchases from selling dealers, resulting in incorrect grant of Input Tax Credit of ₹ 9.06 crore. In addition, penalty of ₹ 26.53 crore was also leviable.

As per notification issued in September 2015, input tax means the amount of tax actually paid to the State in respect of goods sold to a VAT dealer, which such dealer is allowed to take credit of, as actual payment of tax by him, calculated in accordance with the provision of Section 8. Under Section 8 of the HVAT Act 2003, input tax in respect of any goods purchased by a VAT dealer shall be the amount of tax paid to the State on sale of such goods to him. ETC Haryana issued instructions in March 2006 and July 2013 that cent *per cent* verification of input tax credit (ITC) up to the stage of actual payment of tax shall be done. Further, Section 38 of the Act provides for penal action (three times of tax avoided as penalty) for claims on the basis of false information and incorrect accounts or documents etc.

Scrutiny of records of 33,901 cases out of 1,22,864 cases involving 16 assessing authorities (between September 2018 and October 2020) revealed that while finalising the assessment of 43 cases of 20 dealers pertaining to eight DETC (ST)[2] for the years 2014-15 to 2016-17 (between May 2017 and December 2019), the AAs allowed benefit of ITC of ₹ 9.06 crore without verification of purchases and actual payment of tax from selling dealers as detailed in the table below:

[2] Ambala, Bahadurgarh, Faridabad (East), Faridabad (North), Faridabad (South), Gurugram (East), Karnal and Panipat.

Table 2.4
Details of irregular ITC claimed

Sr. No.	DETC	No. of dealers/ cases	Bogus Purchase	Rate of Tax (in *per cent*)	Bogus ITC claimed	Penalty u/s 38	Total Amount
1.	Ambala	4/10	4,80,78,287	5 to 13.125	38,95,705	1,16,87,115	1,55,82,820
2.	Gurugram (East)	2/2	45,92,840	5 to 13.125	4,29,167	12,87,501	17,16,668
3.	Faridabad (East)	3/6	3,94,51,702	4.2 to 13.13	44,90,319	1,34,70,957	1,79,61,276
4.	Faridabad (North)	3/7	6,32,41,140	5.25 to 13.13	49,78,233	1,49,34,694	1,99,12,927
5.	Karnal	4/6	1,09,62,39,520	5 to 5.25	5,94,61,927	17,20,52,061	23,15,13,988
6.	Faridabad (South)	2/8	9,28,35,810	5 to 13.125	1,06,99,179	3,20,97,537	4,27,96,716
7.	Bahadurgarh	1/1	10,24,31,584	4.2 to 13.125	48,69,282	1,46,07,846	1,94,77,128
8.	Panipat	1/3	3,31,05,138	5.25	17,38,020	52,14,060	69,52,080
Total		**20/43**	**1,47,99,76,021**		**9,05,61,832**	**26,53,51,771**	**35,59,13,603**

On cross-verification of sale/purchase lists of concerned dealers by audit, it was noted that either the selling dealers had not shown any sales to these purchasing dealers or registration certificates of selling dealers were cancelled. This resulted in incorrect grant of ITC of ₹ 9.06 crore. In addition, penalty of ₹ 26.53 crore was also leviable

On being pointed out, five DETCs[3] intimated (February 2022) that in 25 cases reassessment proceedings were initiated/sent to DETC-cum-Revisional Authority for *suo moto* action. AA Ambala intimated (February 2022) that in four cases, the dealers had filed an appeal before JETC. AA Bahadurgarh intimated (February 2022) that in one case, penalty of ₹ 1.46 crore had been levied under Section 38 of HVAT Act and a Tax Demand Notice (TDN) had been issued for ₹ 1.97 crore to the dealer. AA Faridabad (South) intimated (February 2022) that in seven cases TDN had been issued for ₹ 1.88 crore including interest to the dealer. AA Faridabad (East) intimated (February 2022) that in two cases, additional demand of ₹ 0.47 crore had been created. AA Faridabad (South) intimated (February 2022) that in one case, TDN of ₹ 39.12 lakh had been issued to the dealer. AA Panipat intimated that in three cases, additional demand had been created and recovery proceedings were under process.

During exit conference held in March 2022, the Department admitted the audit observations.

Department may ensure putting in place stringent mechanism of allowing benefit of ITC after due verification.

[3] Ambala, Karnal, Gurugram (East), Faridabad (East), Faridabad (North).

2.5 Non levy of penalty

Assessing Authorities, disallowed inadmissible Input Tax Credit for bogus purchases/inter State sales to five dealers but did not levy prescribed penalty of ₹ 24.66 crore.

Under Section 38 of the HVAT Act, if a dealer has maintained false or incorrect accounts or documents with a view to suppress his sales, purchases, imports into State, export out of State, or stocks of goods, or has furnished to or has concealed any particulars in respect thereof or has furnished to or produced before any authority under this Act or rules made there under any account, return, document or information which is false or incorrect in any material particular, such authority may, after affording such dealer a reasonable opportunity of being heard, direct him to pay by way of penalty, in addition to the tax to which he is assessed or is liable to be assessed, a sum thrice the amount of tax which would have been avoided had such account, return, document or information as the case may be, been accepted as true and correct.

Scrutiny of records of 9,953 cases out of 38,455 cases (between July 2019 and January 2021) revealed that in eight cases[4] of five dealers of the offices of DETCs (ST) Gurugram (North), Karnal and Sonipat assessed for the years 2015-16 and 2016-17 had overstated their purchases/sales amounting to ₹ 78.20 crore and claimed inadmissible ITC on account of bogus purchases/inter State sales. AAs, while finalising the assessments (between January 2019 and February 2020), disallowed ITC/levied tax but failed to levy penalty under Section 38 of HVAT Act. This resulted in non levy of penalty of ₹ 24.66 crore.

On this being pointed out, AAs Gurugram (North) and Sonipat intimated (February 2022) that additional demands of ₹ 3.05 crore had been created in respect of penalty levied/imposed in five cases and notices had been served on the dealers. In remaining three cases of Gurugram (North) and Karnal, proceedings had been initiated, case was under examination and sent to DETCs (I) for taking *suo moto* action.

During exit conference held in March 2022, the Department admitted the audit observations.

The Department may ensure putting in place, systems and procedures to ensure levy of penalty in cases of suppression detected by the Department.

[4] Gurugram (North): 3, Karnal: 1 and Sonipat: 4.

2.6 Underassessment due to allowing exemptions against 'F' forms and 'C' forms

Assessing Authorities, while finalising the assessments allowed incorrect exemption of branch transfers/consignments worth ₹ 70.05 crore to 17 dealers, which resulted into non levy of tax of ₹ 3.94 crore. In addition, penalty of ₹ 11.82 crore was also leviable.

Section 6 (A) (1) of Central Sales Tax Act, 1956 provides that where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be and for this purpose he may furnish to the AA a declaration in Form 'F' duly filled and signed by the principal officer of the other place of business, or his agent or principal. Under section 38 of the HVAT Act, three times penalty is leviable for submitting wrong documents to evade payment of tax. Government of Haryana issued instructions on 14 March 2006 and 16 July 2013 for verification of intra-state and inter-state transactions of more than one lakh rupees before allowing the benefit of tax concession to the dealers. Further, Government of Haryana had in January 2018 issued Standard Operative Procedure to be followed by Assessing Authorities towards verification of the relevant 'Form C' and 'Form F' from the concerned State Tax Authorities and also directed that where verification is not received within six months from the date of assessment order or from the date of dispatch of verification letter whichever is later, Assessing Authorities should levy tax and penalty as provided in HVAT Act or Rules.

Scrutiny of the records of 9,614 cases out of 34,472 cases (between June and December 2018) revealed that 12 dealers in the offices of five DETC (ST)[5] claimed exemption on their branch transfers/consignment sales amounting to ₹ 62.88 crore to five firms situated in Rajasthan and Delhi for the years 2014-15 and 2015-16. In support of the claims, the dealers filed 63 'F' forms[6] obtained from their respective branches/agent located in Rajasthan and Delhi. The concerned AAs finalised the assessment between June 2015 and March 2018 and allowed the exemptions based on the declarations filed but did not carry out the verification provided in the above referred instructions.

Audit referred these 63 'F' forms to concerned authorities of Rajasthan and Delhi for verification. The Department of Trade and Taxes, Government of NCT Delhi intimated that 53 forms of 11 cases was declared cancelled due to non-functioning of the dealers at registered address. Concerned Authorities of Rajasthan intimated that 10 forms pertained to one case where registration of firm stood cancelled, were declared bogus. Thus, allowing the benefit of

[5] Ambala: 5, Faridabad (North): 1, Kaithal: 1, Kurukshetra: 4 and Shahbad: 1.
[6] Ambala: 24, Faridabad (North) : 10, Kaithal: 4, Kurukshetra: 18 and Shahbad: 7.

consignment sale against invalid 'F' forms by AAs, resulted in under assessment of tax of ₹ 3.14 crore. In addition, penalty of ₹ 9.43 crore was also leviable.

On this being pointed out, the AA Ambala intimated (February 2022) that six cases had been sent to DETC for suo moto action and in 12 cases, additional demand of ₹ 36.01 lakh had been created. The AA Faridabad (North) intimated (February 2022) that 10 cases were under revision under Section 34 (1) of HVAT Act. The AA Shahbad intimated (February 2022) that in seven cases, letters had been issued to the concerned authorities for verification. The AAs Ambala, Kaithal and Kurukshetra intimated in February 2022 that in 28 cases, the registration certificates of the dealers had already been cancelled.

(B) Section 8 (4) of the CST Act, provides that concession under sub section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the AA, a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority. Further, Section 38 of the HVAT Act, provides for penal action (three times of tax avoided/benefit claimed) for claims on the basis of false information and incorrect accounts or tax. Further, the Government of Haryana issued instructions in March 2006 and July 2013 requiring verification of the claims involved in case of transactions of more than ₹ one lakh. As per the Standard Operative Procedure (SoP) (January 2018) in cases, where verification report is not received within six months from the date of assessment order or from the dispatch of verification letter whichever is later, the AA should levy tax and penalty as provided in the HVAT Act or Rules.

Scrutiny of records of 6,326 cases out of 27,715 cases (between January and September 2020) revealed that five dealers[7] in 11 cases of in the office of four DETCs (Sales Tax) for the years 2014-15 to 2016-17 claimed concessional rate of tax on their inter-State sales amounting to ₹ 7.17 crore. In support of the claims, the dealers submitted 11 'C' forms[8]. The concerned AAs finalised the assessments between March 2018 and December 2019 and allowed the concessional rate of tax against the declaration forms filed without verification as per the above referred instructions.

Audit referred these forms to the concerned authorities for verification. On Verification of forms by the State Tax Officer of National Capital Territory (NCT) of Delhi and Rajasthan (between December 2018 and February 2020), it was found that the forms had already been cancelled or not issued to the selling dealers, firms were declared bogus or registration had already been cancelled due to suspicious activities, firms were not found functioning, forms were

[7] Charkhi Dadri: 2, Gurguram (East): 3, Jagadhri: 3 and Rohtak: 3.
[8] Charkhi Dadri: 2, Gurguram (East): 3, Jagadhri: 3 and Rohtak: 3.

downloaded by non-existent firms, dealers were not genuine and their certificates were declared cancelled. Thus, allowing concessional rate of tax, without due verification resulted in under assessment of ₹ 0.80 crore. In addition, penalty of ₹ 2.39 crore was also leviable.

On this being pointed out, all the DETCs (ST) intimated (February 2022) that in four cases, re-assessment notice had been issued to the dealer, in five cases letter for verification had been sent to the concerned officer and two cases were sent to DETC-cum-RA for suo moto action.

During exit conference held in March 2022, the Department admitted the audit observations.

The Department may ensure stringent enforcement of its instructions for grant of concession in course of intra-State and inter-State sales/movement after due verification.

2.7 Excess benefit of Input Tax Credit due to non-reversal

Assessing Authorities, while finalising the assessments, did not reverse the Input Tax Credit on account of tax free/inter-State Sales resulting in excess benefit of ₹ 4.68 crore.

As per Schedule 'E', Entry 3 (b) read with Section 8 (1) of HVAT Act, (i) when goods are sold in the course of inter-State trade or commerce or (ii) when the goods are used in the manufacture of goods and the manufactured goods are sold in the course of inter-State trade or commerce or (iii) when the goods are sold at a sale price lower than the purchase price, input tax is admissible to the extent of amount of tax actually paid on the purchase of such goods in the State or tax payable on sale of such goods under the CST Act, whichever is lower.

Scrutiny of the records of 20,450 cases out of 82,868 cases (between September 2018 and August 2020) revealed that 12 dealers of eight[9] DETCs (Sales Tax), had shown purchases of ₹ 211.84 crore in 12 cases and claimed input tax credit (ITC) of ₹ 11.11 crore on purchase value. As per provision of the Act, ITC of ₹ 4.68 crore was to be reversed on account of sales made as tax free or in the course of inter-State trade and commerce. While finalising assessments (between September 2017 and September 2019) for the years 2014-15 to 2016-17, the AAs had not reversed the ITC. This resulted in allowing excess benefit of ITC of ₹ 4.68 crore due to non-reversal of ITC.

On this being pointed out, all the DETCs (ST) intimated in February 2022 that cases had been sent to DETC-cum-RA for suo moto action/reassessment

[9] Ambala, Bhiwani, Charkhi Dadri, Faridabad (North), Gurugram (West), Jagadhri, Jind and Tohana.

proceedings had been initiated and in one case TDN had been issued for ₹ 15.93 lakh against the dealer.

During exit conference held in March 2022, the Department admitted the audit observations.

The Department may ensure that ITC credit is reversed in cases of tax-free sales and sales in the course of inter-State trade and commerce.

2.8 Under assessment of tax due to application of incorrect rate of tax

Assessing Authorities, allowed incorrect rate of tax to five dealers, which resulted in under assessment of tax of ₹ 1.44 crore. In addition, interest of ₹ 1.05 crore was also leviable.

The rates for various commodities under the Haryana Value Added Tax Act (HVAT Act) 2003 have been prescribed as per Schedules A to G. Further, under Section 7 (1) (a) (iv) of the HVAT Act, any commodity other than the commodities classified in any of the schedules is taxable at the rate of 12.5 *per cent* with effect from 1 July 2005. Surcharge at the rate of five *per cent* on the tax is also leviable under Section 7(A) of HVAT Act w.e.f. 02 April 2010. Further, interest was also leviable under Section 14 (6) of the HVAT Act.

Scrutiny of records of 12,071 cases out of 43,589 cases (between September 2018 and February 2019) of five[10] DETCs (ST) revealed that the Assessing Authorities (AAs) while finalising the assessments (between September 2017 and March 2019) of six cases involving five dealers for the years 2014-15 to 2016-17 applied lower tax rates than the applicable rate of tax on sale of goods as mentioned in Table :-

Table 2.8: Details of incorrect application of rate of tax

(Amounts in ₹)

Sr. No. (C1)	DETC Office (C2)	Assessment year/ disposal (C3)	Commodity (C4)	Amount of Sale (C5)	Tax rate (including surcharge) leviable (C6)	Tax Amount leviable (C7)	Tax Amount levied (C8)	Short levy of tax (C9=C7-C8)	Interest
1	Bahadurgarh	2014-15/806 dt. 15 January 2018	Mitti	1,05,80,599	13.125%	13,88,704	0	13,88,704	10,85,040
2	Ambala	2014-15/350 dt. 26 September 2017	Paneer and White Butter	7,06,99,557	13.125%	92,79,317	37,11,727	55,67,590	39,38,142
3	Karnal	2014-15/645 dt. 12 February 2018	Paneer	1,37,82,684	13.125%	18,08,977	7,23,591	10,85,386	8,68,309
			Kaju Pinni and Milk Cake	12,36,688	5.25%	64,926	0	64,926	51,941
4	Palwal	2016-17/653 dt. 27 November 2018	Set Top Box (STB)	2,71,02,611	13.125%	35,57,218	14,22,887	21,34,331	10,77,126
5	Faridabad (West)	2015-16/1063 dt. 27 March 2019	Lubricant	5,31,75,964	13.125%	69,79,345	27,91,738	41,87,607	34,70,130
	Total			**17,65,78,103**		**2,30,78,487**	**86,49,943**	**1,44,28,544**	**1,04,90,688**

[10] Ambala, Bahadurgarh, Faridabad (West), Karnal, Palwal.

The application of lower rate of tax resulted in under assessment of tax of ₹ 1.44 crore. In addition, interest of ₹ 1.05 crore was also leviable.

On this being pointed out, in three cases, AAs Bahadurgarh and Karnal (February 2022) intimated that additional demands of ₹ 90.48 lakh had been created and tax demand notice had been served upon the dealers. In one case, the AA, Palwal (February 2022) intimated that proceedings for re-assessment had been initiated. Replies from the AA, Ambala intimated that the case was remitted back to the Assessing Authority for "de novo assessment" by DETC (ST)-cum-Revisional Authority and the AA Faridabad (West) stated that notice had been issued to the dealer.

During exit conference held in March 2022, the Department admitted the audit observations.

The Department may undertake a detailed scrutiny of other such cases in order to ensure that tax rates as per HVAT/CST Act are being levied.

2.9 Under assessment of tax due to less Gross Turnover

Assessing Authorities, while finalising assessment, assessed the Gross Turnover less by ₹ 8.59 crore resulting in under assessment of tax of ₹ 51.58 lakh.

Under Section 2 (1) (u) of the HVAT Act, Gross turnover (GTO) in relation to any dealer means the aggregate of the sale prices received or receivable in respect of any goods sold, whether as principal, agent or in any other capacity, by such dealer and includes the value of goods exported out of State or disposed of, otherwise than by sale.

Scrutiny of records of 6,426 cases out of 22,973 cases of the offices of DETCs (Sale Tax) Faridabad (West), Fatehabad and Kaithal (between April 2019 and November 2020) of assessment cases for the years 2014-15 to 2017-18 (1st Quarter) revealed that while finalising the assessment (between March 2018 and January 2020) in three cases, Assessing Authorities (AAs) assessed the case on GTO of ₹ 21.55 crore. It was noticed by Audit that GTO were taken less by ₹ 8.59 crore for assessment. The reason was ascribed as sales/purchases not being considered for some quarters in GTO. This resulted in under assessment of tax of ₹ 51.58 lakh.

On this being pointed out, AAs Fatehabad and Kaithal intimated (February 2022) that notice for reassessment under Section 17 of the HVAT Act had been issued and served upon the dealers for Februry 2022. Final outcome of the proceedings would be intimated accordingly. The AA Faridabad (West) intimated (February 2022) that an additional demand of ₹ 46.90 lakh was created and notice had been served upon the dealer. Efforts were being made for recovery of arrears.

During exit conference held in March 2022, the Department admitted the audit observations.

The Department may issue instructions to all the AAs to consider proper GTO at the time of assessment by including all incidental expenditure in gross turnover.

2.10 Subject Specific Compliance Audit on GST Refunds

2.10.1 Introduction

Goods and Services Tax (GST) Act, 2017 was implemented with effect from July 2017. GST was rolled out with the objectives of reducing cascading effect of tax, ushering in a common market for goods and services and bringing in a simplified, self-regulating and non-intrusive tax compliance regime. The roll out of GST has been a landmark achievement of the Government with respect to unifying multiple Central and State Taxes, barring a few goods/sectors and availability of Input Tax Credit (ITC) across the entire value chain. Multiplicity of tax rates have also been eliminated to a large extent.

Refunds of accumulated ITC under GST are covered under provisions contained in Chapter VII of Integrated GST Act and Chapter XI of CGST/SGST Acts. The provisions pertaining to refund contained in the GST laws aim to streamline and standardise the refund procedures under GST regime. It was decided that the claim and sanctioning procedure would be completely online. Due to unavailability of electronic refund module on the common portal, a temporary mechanism was devised, implemented, and followed for refund application uploaded on the portal upto 25 September 2019. An on-line facility was introduced with effect from 26 September 2019 to process the refund applications electronically by facilitating the on-line submission of refund application, supporting documents, statements, replies to notices, etc.

2.10.2 Audit Objectives

Audit of Refund cases under the GST regime was conducted to assess:

(i) the adequacy of Acts, Rules, notifications, circulars etc. issued in relation to grant of refund;

(ii) compliance of extant provisions by the tax authorities and the efficacy of the systems in place to ensure compliance by taxpayers; and

(iii) effective internal control mechanism to check the performance of the departmental officials in disposing of the refund applications.

2.10.3 Scope of audit

Goods and Service Tax Network (GSTN) provided pan-India Refund Data for the period from July 2017 to July 2020. For the period prior to 26 September 2019,

i.e. pre-automation period, the refund applications under each category were sorted in descending order of refund amount claimed by taxpayers. The sorted refund applications were divided into four quartiles for drawing the sample.

For selecting refund applications filed after 26 September 2019, a composite risk score was devised using risk parameters such as refund amount claimed (60 *per cent* weightage), delay in sanctioning refund (15 *per cent*), refund sanctioned to refund amount claimed ratio (10 *per cent*) and issue of deficiency memo (15 *per cent*). Based on the risk score arrived as per this process, refund applications were selected.

Based on the above procedure, 1,133 cases of refunds claimed prior to 26 September 2019 pertaining to 27 units were selected (pre-automation cases) of which 571 cases belonging to 20 units could be examined due to constraints on physical movement as a result of the COVID-19 pandemic and for the post 26 September 2019 period, out of 1,136 cases, 568 refund cases of 20 units were selected (post automation cases) and examined using the login ID based access to State GST portal[11]. Out of 30,168 refund cases processed in the selected circles, a total of 1,139 cases (3.78 *per cent*) (Pre automation: 571 cases and post automation: 568 cases) were examined by Audit for this Subject Specific Compliance Audit (SSCA). Category-wise audit universe and sample selection are given in the ***Appendix V***.

2.10.4 Legal Provisions

The following Sections/Rules/notifications provides the guidelines/procedure for claiming the refunds:

(i) Sections 54 to 58 and Section 77 of Haryana State Goods and Services Tax Act, 2017 (SGST Act).

(ii) Rules 89 to 97 of Haryana State Goods and Services Tax Rules, 2017 (SGST Rules).

(iii) Sections 15, 16 and 19 of Integrated Goods and Services Tax Act, 2017 (IGST Act).

2.10.5 Audit findings

During the audit of refund cases (Pre and post automation), selected for detailed audit, the following deficiencies were noticed as shown in **Table-1** below:

[11] BOWEB portal: Web portal is specially designed website that brings information from various sources such as email, online forums, search engines on one platform, in a uniform way.

Table 1: Details of deficiencies noticed

(₹ in lakh)

Nature of audit findings	Audit sample				Number of deficiencies noticed				Percentage of deficiencies with respect to sample of numbers (5+7/1+3)* 100
	Pre-automation		Post automation		Pre automation		Post automation		
	Number 1	Amount 2	Number 3	Amount 4	Number 5	Amount 6	Number 7	Amount 8	Percentage
Delay in issue of acknowledgment	571	30,666.82	568	27,189.56	271	16,432.05	178	12,244.37	39.42
Delay in issue of refund orders	571	31,384.59	568	30,075.39	57	2,546.76	77	5,087.37	11.76
Delay in communicating refund orders to counterpart tax authority	571	31,384.59	0	0	5	38.61	0	0	0.87
Irregular refund under Inverted Duty structure	232	9,655.23	289	9,038.14	0	0	2	71.27	0.38
Irregular refund in Zero-rated supply cases	266	20,175.28	202	17,867.86	8	27.14	14	164.89	4.70
Irregular grant of provisional refund other than Zero rated supply	305	11,209.31	366	12,207.52	2	14.53	0	0	0.30
Confirmation from Counterpart tax authority regarding payment of refund released to assesse	571	31,384.59	0	0	178	5,813.80	0	0	31.17

As evident from the above table, Audit noticed that there was 39.42 *per cent* delay in issuance of acknowledgment and 11.76 *per cent* delay in issuance of refund orders cases. However, deviations from provisions of the Acts and Rules which resulted in all the above cases ranged between 0.30 to 39.42 *per cent*.

During the audit period (July 2017 to July 2020), 20,761 refund cases were processed in the pre automation period in selected units out of which 571 refund cases were examined and in the post automation period 9,407 cases were processed out of which 568 cases examined. Audit findings noticed and the lapses identified based on these cases are included in the subsequent paragraphs.

2.10.5.1 Non-compliance of prescribed timelines

(A) Acknowledgement

Under Rule 90 (2) of SGST Rules stipulates that where the application relates to a claim for refund from the electronic credit ledger, an acknowledgement in Form GST RFD-02 shall be made available to the applicant within a period of 15 days from the receipt of application in pre-automaton phase and from date of filing in post-automation phase. The acknowledgement shall clearly indicate the date of filing of claim for refund.

Pre automation: Scrutiny of records revealed that there was delay in 71 cases[12]

[12] DETC Faridabad (East): 8; Faridabad (South): 6; Gurugram (North): 3; Gurugram (South): 9; Jagadhri: 7; Karnal: 19; Kurukshetra: 2; Panipat: 15; Rewari: 1 and Rohtak: 1.

(19.13 *per cent* out of 371 cases) in issue of acknowledgement from one to 256 days with average and median value for delay was 41.65 days and 30 days respectively. Of these, 65 cases, four cases and two cases were delayed upto three months, three to six months and more than six months respectively. Further, no acknowledgement were issued in 200 cases[13].

Post automation: Scrutiny of records revealed that there was delay in 178 cases[14] (31.33 *per cent*)[15] in issue of acknowledgement from one to 116 days with average and median value for delay was 15.75 days and 10 days respectively. Of these, 176 cases and two cases were delayed upto three months and more than three months respectively.

Thus, the department failed to adhere to the timelines for issuing acknowledgements as prescribed in the rules *ibid*.

The Department stated in the Exit Conference held in March 2022 and in response in March 2022 that lapses in issuance of acknowledgment was a procedural lapse and irregularity was technical in nature but refunds were issued within the prescribed timelines.

(B) Deficiency memo

Rule 90 (2) and 90(3) of SGST Rules stipulates that if any deficiencies are noticed in the refund application, the Proper Officer[16] shall communicate the deficiencies to the applicant in Form GST RFD-03 within a period of 15 days from the receipt of application in pre-automation phase.

Pre automation: Scrutiny of records revealed that in five refund cases of DETC Gurugram (East), deficiency memo (Form RFD-03) was issued with a delay ranged between seven and 25 days. This resulted in non-compliance of the provisions of Rule *Ibid*.

The average delay in issuance of deficiency memo was 13.2 days and the median was 11 days.

The Department stated in the Exit Conference held in March 2022 and in response in March 2022 that delay in issuance of deficiency memo was due to

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13 DETC Ambala: 23; Faridabad (North): 1; Faridabad (West): 12; Gurugram (North): 5; Gurugram (East): 26; Gurugram (West): 27; Gurugram (South): 1; Hisar: 1; Jagadhri: 24; Jhajjar: 27; Karnal: 1; Kurukshetra: 1; Panchkula: 8; Panipat: 1 and Sonipat: 42.

14 DETC Ambala: 6; Faridabad (North): 1; Faridabad (East): 8; Faridabad (West): 4; Faridabad (South): 2; Gurugram (North): 10; Gurugram (East): 28; Gurugram (West): 17; Gurugram (South): 9; Hisar: 2; Jagadhri: 5; Jhajjar: 11; Karnal: 24; Panipat: 22; Rewari: 4; Rohtak: 6 and Sonipat: 19.

15 Percentage is calculated in respect of pre automation on 571 cases and in post automation on 568 cases.

16 "Proper Officer" means the Commissioner or the officer of the Central/State Tax who is assigned that function by the Commissioner.

lack of procedural and policy related clarity in the initial stage of implementation of GST Act.

(C) Refund Sanction orders

Under Section 54 (7) of the SGST Act, the proper officer shall issue the refund order within a period of 60 days from the date of receipt of application complete in all respects. Further, Section 56 of the Act provides that if any refund tax order was not issued to the applicant within 60 days from the date of receipt of application, interest at the rate of six *per cent* shall be payable. Rule 94 of the SGST Rules, 2017 provides that an order for interest shall be made alongwith payment advice in Form GST RFD-05, specifying therein the amount of refund and interest for the delayed period. In case of refund arising from an order passed by an adjudicating authority or appellate authority or appellate tribunal or Court, interest at the rate of nine *per cent* shall be payable.

Pre automation: Scrutiny of records, revealed that there was delay in sanction of refund orders in 57 cases[17] (9.98 *per cent*) from four to 436 days with the average delay being 65.77 days in these cases and the median value for delay was 32 days. Of these, 45 cases were delayed by upto three months, six cases were delayed by three to six months and six cases were delayed by more than six months. An interest of ₹ 32.48 lakh ***(Appendix VI)*** was also payable to the eligible persons for delayed issue of refund sanction orders which was not paid by the department.

Post automation: Scrutiny of records revealed that there was delay in sanction of refund orders in 77 cases[18] (13.55 *per cent*) from one to 122 days with the average delay being 34.32 days in these cases and median value for delay was 25 days. Of these, 74 cases were delayed by upto three months and in three cases were delayed by three to six months. An interest of ₹ 30.01 lakh ***(Appendix VI)*** was payable to the eligible persons for delayed issue of refund sanction orders which was not paid by the department.

Thus, the department failed to adhere to the timelines for sanctioning the refund orders as prescribed in the rules *ibid*.

The Department stated in the Exit Conference held in March 2022 and in response in March 2022 that delay in sanctioning refunds taken place due to tethering problems in the initial stages of implementation of the Act. Further the department also stated that in none of the cases pointed out by audit

[17] DETC Faridabad (North): 3; Faridabad (West): 1; Gurugram (North): 6; Gurugram (East): 2; Gurugram (South): 4; Jhajjar: 2; Jagadhri: 4; Karnal: 11; Panchkula: 5; Panipat: 11 and Sonipat: 8.

[18] DETC Ambala: 3; Faridabad (North): 2; Faridabad (East): 5; Faridabad (West): 3; Faridabad (South): 3; Gurugram (North): 7; Gurugram (East): 21; Gurugram (West): 2; Gurugram (South): 4; Hisar: 1; Jhajjar: 3; Jagadhri: 2; Karnal: 6; Panipat: 3; Rewari: 2; Rohtak: 1 and Sonipat: 9.

taxpayers had claimed interest of the refund amount issued late to it. However, interest was payable for delayed issue of refund sanction orders by the Department.

(D) Communication of refund orders to counterpart tax authority

Central Board of Indirect Taxes and Customs vide its circular No. 4/24/2017-GST dated 21 December 2017 instructed that refund order issued either by Central tax authority or State tax/UT tax authority shall be communicated to the concerned counterpart tax authority within seven working days for making payment of relevant sanctioned refund amount of tax or cess as the case may be. It was also instructed therein to ensure adherence to timelines specified under Section 54 (7) and Rule 91 (2) of SGST Act/Rules, 2017 for sanction of refund orders.

Pre automation: Scrutiny of records revealed that five cases of DETCs Panchkula and Jagadhri involving refund of IGST/CGST amounting to ₹ 38.61 lakh were forwarded to the Central tax authority with delays ranging between three and 97 days. Of these, three cases were delayed by upto three months and two cases were delayed by more than three months. The average delay in forwarding the refund orders to counterpart tax authorities was 47.20 days and the median was 35 days.

During exit conference, the Department in its reply agreed to the audit observation and stated that delay was due to procedural/technical matters and there was no monetary loss to the exchequer.

(E) Non-issuance of notice for rejected amount of refund

Rule 92 (3) of SGST Rules, stipulates that where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund, is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of 15 days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant. Provision also provides that no application for refund shall be rejected without giving the applicant an opportunity of being heard.

Pre automation: Scrutiny of records revealed that in 21 refund orders (3.68 *per cent*) were sanctioned after rejecting an amount of ₹ 61.08 lakh.

Post automation: Scrutiny of records, revealed that 26 cases[19] refund orders (4.58 *per cent*) were sanctioned after rejecting an amount of ₹ 24.12 lakh.

[19] DETC Ambala: 3, Gurugram (North): 4, Gurugram (East): 4, Gurugram (West): 11, Panipat: 1 and Sonipat: 3.

The Department had not issued notices to the concerned applicants in Form RFD-08 in contravention of the prescribed rules. Thus, the department had failed to adhere to the provisions for issuing the notices prior to rejection of refund amount claimed as prescribed in the rules *ibid*.

The Department stated in the Exit Conference held in March 2022 and in response in March 2022 that all the DETCs are directed to produce relevant documentary evidence for giving undertaking for no objection to the rejection of refund amount.

2.10.5.2 Grant of refunds

(A) Provisional refund

Section 54 (6) of the SGST Act, provides that the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, refund on a provisional basis, 90 *per cent* of the total amount so claimed excluding the amount of ITC provisionally accepted.

Pre automation: Scrutiny of records revealed that in one refund case of DETC Gurugram (South) amounting to ₹ 37.73 lakh (90.70 *per cent*) was sanctioned on provisional basis against the refund claim of ₹ 41.60 lakh resulting in excess grant of refund of ₹ 0.29 lakh. Further, in two cases of DETC Faridabad (East), the concerned officer (s) sanctioned refund of ₹ 14.53 lakh on provisional basis for refund claimed on account of Inverted Duty Structure which was not covered under the provisions.

Department while accepting the audit observation replied that there was no revenue loss as only eligible amount of refund was granted to the taxpayer. The reply is not tenable as the Department has not followed the prescribed procedure of the provisions.

(B) Irregular refund on account of exports

Haryana Government vide its No. 356/GST-II dated 16 December 2019 and No. 798 dated 29 May 2020 instructed that while undertaking detailed scrutiny of application made for claim of refund on account of export of goods without payment of tax, the Shipping bill details shall be checked by the proper officer through ICEGATE[20] portal (www.icegate.gov.in) to establish that refund is due to the applicant. Further, Rule 89 (2) (c) SGST Rules provides that in case of refund on account of export of services, the application for refund shall be accompanied by a statement containing the number and date of invoices and the relevant Bank Realisation Certificates (BRCs) or Foreign Inward Remittance Certificates (FIRCs), as the case may be. Guidelines also prescribed that

[20] Indian Customs Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway.

supporting documents shall not be required to be physically submitted to the office of the jurisdictional proper officer.

Post automation: Scrutiny of records revealed that in three cases (DETCs Ambala: 1 case and Karnal: 2 cases), applicants claimed refund on account of export of goods without payment of tax. In these cases, the concerned officer(s) had sanctioned refund of ₹ 22.24 lakh against export value of ₹ 2.07 crore. While verifying the shipping bills, exports valuing ₹ 80.95 lakh could only be verified on ICEGATE portal and export of ₹ 1.26 crore could not be verified. Export documents for these transactions were also not found on the GST portal. Thus, taxpayers were entitled to refund of ₹ 9.99 lakh for verified value of export and sanction of refund of ₹ 12.25 lakh was irregular as it was done without verification of prescribed export documents.

Similarly, in another three cases, (DETC Gurugram (East): one case and Gurugram (South): two cases), applicants claimed refund on account of export of services without payment of tax. In these cases, the concerned officer(s) had sanctioned refund of ₹ 71.96 lakh against export value of ₹ 19.52 crore. Analysis of information/documents available on the ICEGATE portal revealed that taxpayers had not submitted copies of BRC/FIRC in token of realisation of consideration in convertible foreign exchange.Thus, the concerned officer(s) sanctioned irregular refund of ₹ 71.96 lakh without obtaining BRCs/FIRCs in contravention of the instructions.

The Department stated in the Exit Conference held in March 2022 and in response in March 2022 directed the concerned DETCs to verify the veracity of shipping bills from Customs formations under intimation to audit and also to furnish the relevant copies of BRCs/FIRCs.

(C) Restriction of Input Tax Credit

Haryana Government vide its No. 356/GST-II dated 16 December 2019 issued guidelines for fully electronic refund process. As per guidelines, applicant shall have to upload (i) details of all the invoices on the basis of which input tax credit (ITC) has been availed during the relevant period for which refund was claimed in the prescribed format (Annexure-B) and (ii) self-certified copies of invoices in relation to which the refund of ITC was claimed and which are declared as eligible for ITC in that Annexure-B but which are not populated in GSTR-2A return. It was further prescribed in the guidelines that supporting documents shall not be required to be physically submitted to the office of the jurisdictional proper officer. Government further vide its No. 798 dated 29 May 2020 clarified that refund of accumulated ITC shall be restricted to the amount of ITC as per those invoices, the details of which are uploaded by the supplier in form GSTR-1 and reflected in GSTR-2A of the applicant.

(i) Post automation: Scrutiny of records revealed that in eight refund cases[21] where applications for refunds were made upto March 2020 for refund of ITC accumulated on account of Inverted Duty Structure or Export without payment of tax, the officer had sanctioned refund amounting to ₹ 2.72 crore on the basis of ITC of ₹ 7.97 crore (***Appendix VII***) claimed in refund application. However, as per instructions, the officer had to sanction refund of ₹ 2.53 crore by restricting the ITC to ₹ 7.40 crore for reasons such as non-restriction of ITC to the tax invoices reflected in GSTR-2A where Annexure-B was not uploaded by the applicant, for non-uploading of tax invoices not reflected in GSTR-2A, amount of ITC claimed in Annexure B was less than ITC reflected in GSTR-2A etc. Thus, the officer had irregularly sanctioned the excess refund of ₹ 19.13 lakh by not restricting the ITC to the extent of invoices reflected in GSTR-2A and in absence of certified copies of tax invoices uploaded by the applicants.

(ii) Further in four refund cases[22] the applicants had claimed (after March 2020) for refund of unutilised ITC on account of Inverted Duty Structure or Export without payment of tax. In these cases, the officer(s) had sanctioned refund amounting to ₹ 1.00 crore on the basis of ITC of ₹ 1.63 crore (***Appendix VIII***) claimed in refund application. However, as per instructions, the officer(s) had to sanction refund of ₹ 73.74 lakh by restricting the ITC to ₹ 1.34 crore as per GSTR-2A. ITC claimed for refund in these cases was more than tax invoices reflected in GSTR-2A. Thus, the officer had irregularly sanctioned the excess refund of ₹ 26.66 lakh.

Thus, the department had failed to adhere to restrict ITC to be considered for computation of due refund in light of instructions prescribed by the Government. This resulted into grant of excess refund of ₹ 45.79 lakh.

The Department stated in the Exit Conference held in March 2022 and in response in March 2022 directed the DETCs to produce the relevant record to audit.

(D) Irregular refund on account of supplies made to merchant exporter

Government of Haryana vide its Notification No. 117/ST-2 dated 24 October 2017 and Government of India, Ministry of Finance, Department of Revenue vide its Notification No. 40/2017 dated 23 October 2017 exempted State and Central tax each in excess of 0.05 *per cent* for intra-State supply of taxable goods by a registered supplier to a registered recipient for export.The registered recipient shall provide copy of shipping bill or bill of export containing details of Goods and Service Tax Identification Number (GSTIN) and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed to the registered supplier as well as jurisdictional tax

[21] DETC Ambala:1, Faridabad (West):1, Gurugram (North):1, Karnal: 1 and Sonipat:4.
[22] DETC Gurugram (South):1, Karnal:1, Panipat:1 and Sonipat:1.

officer of such supplier. It is also provided that the registered supplier would not be eligible for the above-mentioned exemption if the registered recipient failed to export the said goods within a period of 90 days from the date of issue of tax invoice.

Post automation: Scrutiny of records revealed that in two cases of Gurugram (South) and Gurugram (East), the applicants had applied for refund of accumulated ITC of ₹ 78.42 lakh on account of Inverted Duty Structure on supplies made amounting to ₹ 4.02 crore, to merchant exporters at tax rate of 0.1 *per cent*. Concerned officer(s) had sanctioned refund of ₹ 73.90 lakh in these cases. However, the recipients had not submitted any such documents even though no any documents furnished by the applicant for claiming refund so that applicants were eligible for refund of ₹ 2.63 lakh resulting in irregular refund of ₹ 71.27 lakh without obtaining the documents in support of exports.

The Department stated in the Exit Conference held in March 2022 and in response in March 2022 directed the DETCs to produce the relevant records to audit.

(E) Irregular grant of refund in time barred cases

Section 54 (1) of SGST Act provides that application for refund may be filed before the expiry of two years from the relevant date. Section 54 (14) (2) further prescribes the relevant date for reckoning the permissible period of two years as detailed below:

(a) in case of goods exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India;

(b) in case of deemed export of goods, the date on which the return relating to such deemed exports is furnished; and

(c) in case of refund on account of Inverted Duty Structure, due date for furnishing of return under Section 39 of SGST Act for the period in which such claim of refund arises.

Post automation: Scrutiny of records revealed that in seven cases[23] taxpayers had claimed refund of accumulated ITC of ₹ 1.30 crore (***Appendix IX***) on account of Inverted Duty Structure and Export of Goods & Services. The concerned officer(s) had sanctioned refund of ₹ 1.24 crore in these cases. Audit observed refund amounting to ₹ 88.91 lakh related to the time barred period in view of the above referred provisions. Thus, considering the time barred period for granting refund resulted into irregular grant of refund of ₹ 88.91 lakh.

The Department stated in the Exit Conference held in March 2022 and in

[23] DETC Faridabad (East):1, Faridabad (South):1, Gurugram (West):2, Rohtak:1 and Sonipat:2.

response in March 2022 directed the DETCs to re-examine these cases and produce the relevant record to audit.

2.10.5.3 Excess refund due to consideration of invoice value in place of Free on Board (FOB) value

Section 54 (3) (i) SGST Act, 2017 provides for refund of unutilized input tax credit (ITC) at the end of any tax period for zero-rated supplies made without payment of tax. Similarly. Section 16 of the IGST Act in respect of integrated tax also stipulates that 'zero rated supply' includes 'export of goods or services or both'. Further, explanation (1) below Section 54 (14) of the Act inter alia states that 'refund' includes refund of tax paid on inputs or input services used in making such zero-rated supplies.

Sub-rule 4 of Rule 89 of SGST Rules provides the following formula for grant of refund in case of such zero-rated supply of goods without payment of tax:

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) * Net ITC / Adjusted Total Turnover).

CBIC vide its circular No. 37/11/2018-GST dated 15.03.2018 and Haryana Government vide its No. 356/GST-II dated 16 December 2019 instructed that the value of goods declared in the GST invoice and the value in the corresponding Shipping bill/bill of export should be examined by the proper officer from ICEGATE portal and lower of the two values should be taken into account while calculating the eligible amount of refund. Guidelines also prescribed that supporting documents shall not be required to be physically submitted to the office of the jurisdictional officer during the post-automation period.

Pre automation: Scrutiny of records revealed that in eight[24] cases (1.40 *per cent*) Free on Board (FOB) value was ₹ 24.81 crore. However, the applicants claimed refund on the basis of invoice value of ₹ 26.79 crore. The concerned officers allowed the refund of ₹ 3.98 crore against the admissible refund of ₹ 3.71 crore by considering the invoice value instead of FOB value in contravention of the instructions which resulted in excess grant of refund of ₹ 0.27 crore.

Post automation: Scrutiny of records revealed that in eight cases[25] (1.40 *per cent*) Free on Board (FOB) value was ₹ 130.40 crore. However, the applicants claimed refund on the basis of invoice value of ₹ 140.86 crore. The concerned officer (s) allowed the refund of ₹ 9.60 crore against the admissible refund of ₹ 8.79 crore by considering the invoice value instead of FOB value in contravention of the instructions which resulted in excess grant of refund of ₹ 0.81 crore.

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[24] DETC Ambala:5; Karnal:2; and Kurukshetra:1.

[25] Gurugram(North):1; Gurugram(South):3; Jagadhri:1; Karnal:1 and Panipat:2.

Thus, the Department failed to adhere the instructions for considering the lowest of the Invoice and FOB value resulted into excess grant of refund of ₹ 1.08 crore (***Appendix X***).

The Department stated in the Exit Conference held in March 2022 and in response in March 2022 that necessary directions have been issued to field offices to process the refunds by considering the lowest of the FOB and invoice value.

2.10.5.4 Confirmation from Counterpart tax authority regarding payment of refund released to assesse

CBIC vide its circular No. 24/24/2017-GST dated 21 December 2017 instructed that refund sanction order passed either by Central tax authority or State tax/UT tax authority shall be communicated to the concerned Counterpart tax authority for making payment of sanctioned refund amount of tax or cess as the case may be. After release of payment by the respective Pay & Accounts Officer to the applicant's bank account, the nodal officer of Central tax and State tax authority shall inform each other.

Pre automation: Scrutiny of records revealed that in 178 cases[26] (31.17 *per cent*), refund orders for making payment of IGST and CGST amounting to ₹ 37.92 crore and ₹ 20.22 crore (***Appendix XI***) respectively were forwarded to Counterpart central tax authorities. However, no intimation was received from the Central tax authority regarding refund payments made to the taxpayers. Thus, the concerned Authorities had not followed-up the above instructions.

The Department stated in the Exit Conference held in March 2022 and in response in March 2022 that there was no revenue loss in the cases pointed by audit.

2.10.5.5 Non-conducting of post audit of refund claims

The CBIC elaborately laid down the procedure for manual processing of refunds of zero-rated supplies. The circular inter alia, stipulated that, the pre-audit of manually processed refund applications is not required to be carried out, irrespective of the amount involved, till separate detailed guidelines are issued. However, as per extant guidelines post audit of refund orders above ₹ 0.50 lakh but less than ₹ five lakh may be continued.

Scrutiny of records (November 2020 to June 2021) revealed that neither the mechanism to conduct the post audit of refund cases for zero rated supplies existed nor did the Department make efforts to establish the same.

[26] DETC Faridabad (South):11; Faridabad (East):13; Gurugram (West):25; Gurugram (East):13; Hisar:1; Jagadhri:27; Kaithal:3; Panchkula:10; Panipat:35; Rewari:1; Rohtak:2 and Sonipat:37.

The Department stated in the Exit Conference held in March 2022 and in response in March 2022 that the department had issued instructions (February 2022) for enabling internal control mechanism for refunds in GST.

2.10.5.6 Conclusion

The Department failed to adhere the timelines for issuing acknowledgements, sanctioning the refund orders, non compliance of provisions of rules regarding Deficiency memo and issuing notices prior to rejection of refund amount.

The Department had sanctioned the irregular refund without obtaining Bank Realisation Certificates/ Foreign Invoice Remittance Certificates, sanctioned excess refund by not restricting the Input Tax Credit. The Department had also failed to adhere to restrict the value of zero rated supplies to the extent of Free On Board (FOB) value given in export documents. Hence, the need for strict compliance of the provisions of relevant Acts and Rules and more effective monitoring is evidenced by ₹ 3.98 crore highlighted in the SSCA.

The instances of non-adherence to the provision relating to refund pointed towards the need for expediting automation of refund processing with proper checks and validation besides improving the system for monitoring manual processing of refunds till automation is completed.

2.10.5.7 Recommendations

It is recommended that the Government:

- may ensure strict application of the provision of the Acts and Rules by all the concerned tax authorities;
- may ensure that the provisional refund are not granted to ineligible categories and in case of exports, provisional refund was not granted exceeding the eligible amount.

2.11 Subject Specific Compliance Audit on Transitional Credit

2.11.1 Introduction

Introduction of Goods and Service Tax (GST) is a significant reform in the field of indirect taxes in our country, which replaced multiple taxes levied and collected by the Centre and States. GST is a destination-based tax on supply of goods or services or both, which is levied at multi-stages wherein the taxes will move alongwith supply. Tax is levied simultaneously by the Centre and States on a common tax base. Central GST (CGST) and State GST (SGST)/Union Territory GST (UTGST) is levied on intra state supplies and Integrated GST (IGST) is levied on inter-state supplies. 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. To ensure the seamless

flow of input tax from the existing laws to GST regime, a 'Transitional arrangements for input tax' was included in the GST Acts to provide for the entitlement and manner of claiming input tax in respect of appropriate taxes or duties paid under existing laws. The provisions enable taxpayers to transfer such input credits only when they are used in the ordinary course of business or furtherance of business.

This was needed especially to provide for carry forward of ITCs, relating to pre-GST taxes (VAT) that were available with the taxpayers on the day of roll out of GST, into GST regime (herein after referred to as transitional credits). Transitional credit provisions are important for both the Government and business. For business, these credits should be carried forward properly to give them benefit of taxes they had already paid on inputs or input services in the pre-GST regime. From the view point of the Government, the amount of admissible transitional credits will determine the extent of cash flow of GST revenue and hence, in the interest of revenue, only admissible and eligible transitional credits should be carried forward into GST. In this process, Government of Haryana also framed Haryana Goods and Service Tax (HGST) Act, 2017 for levy and collection of tax (Act No. 19 of 2017, dated 08 June 2017). Chapter XX (Sections 139 to 142) of the HGST Act elaborates provisions relating to transitional arrangements for ITC.

2.11.2 Transitional arrangements for input tax-legal provisions

Chapter XX (Sections 139 to 142) of the HGST Act 2017 (CGST Acts/UTGST Acts) enables the taxpayers to carry forward the ITC earned under the existing laws to the GST regime. The section read with Rule 117 of CGST Rules, 2017 prescribes elaborate procedures in this regard. All registered taxpayers, except those who are opting for payment of tax under composition scheme (under Section 10 of the Act), are eligible to claim transitional credit by filing TRAN-1 returns within 90 days from the appointed day. The time limit for filing TRAN-1 returns was extended initially till 27 December 2017. However, many taxpayers could not file the return within the due date due to technical difficulties. Thus, sub-rule 1A was inserted under Rule 117 of CGST Rules, 2017 vide Notification 48/2018 CT dated 10 September 2018, to accommodate such taxpayers. The due date for filing TRAN-1 was further extended to 31 March 2020, vide Central Board of Indirect Taxes and Custom (CBIC) order No.01.2020-GST dated 07 February 2020, for those taxpayers who could not file TRAN-1 due to technical difficulties. Under transitional arrangements for ITC, the ITC of various taxes paid under the existing laws such as Central Value Added Tax (CENVAT) credit, State Value Added Tax (VAT) etc. was carried forward to GST regime as under:

(a) Closing balance of the credit in the last returns: The closing balance of the CENVAT/VAT credit available in the returns filed under existing law for

the month immediately preceding the appointed day can be taken as credit in Electronic Credit Ledger (ECL).

(b) Credit on duty paid stock: A registered taxable person, other than the manufacturer or service provider, may take the credit of the duty/tax paid on goods held in stock based on the invoices.

(c) Input/input services in transit: The input or input services received on or after the appointed day but the duty or tax on the same was paid by the supplier under the existing law.

(d) Tax paid under the existing law under composition scheme: The taxpayers who had paid tax at fixed rate or fixed amount in lieu of the tax payable under existing law, now working under normal scheme under GST can claim credit on their input stock, semi-finished and finished stock on the appointed date.

(e) Credit in respect of tax paid on any supply both under Value Added Tax Act and under Finance Act, 1994: Transitional credit in respect of supplies which attracted both VAT and Service tax under existing laws, for which tax was paid before appointed date and supply of which is made after the appointed date.

2.11.3 Context and materiality

The transitional credit is a one-time flow of input credit from the legacy regime into the GST regime, which can be availed by both the taxpayers migrating from the previous regime as well as new registrants under GST regime. The State Tax Department (STD) had considered this as a focus area and envisaged verification of these claims in a phased manner. In this regard, 3,837 cases who claimed transitional credit, across the Haryana were selected for detailed verification.

2.11.4 Scope of audit

The scope of audit comprises a review of transitional credit claim returns, both TRAN-1 and TRAN-2, filed by the taxpayers under the transitional arrangements of various sections of HGST Act. Audit verification involves the scrutiny of process and outcomes of departmental verifications along with detailed independent verification of selected claims. Verification of individual transitional credit claims would entail the examination of VAT credit claimed by the taxpayers in the last quarterly/annually returns filed under existing laws, immediately preceding the appointed date i.e 01 July 2017, along with the documentary evidence in support of such claims. Further, in respect of input tax claimed pertaining to purchase of materials, verification would involve examination of necessary invoices, documents or records evidencing purchase of such goods.

2.11.5 Audit objectives

Transitional credit claimed under TRAN-1 and TRAN-2 returns, credited to the ECL of the taxpayers as ITC, would be adjusted against GST output liability of the taxpayers. Thus, the claims have a direct impact on GST revenue collection. Thus, the audit of transitional arrangements for ITC under GST was taken up with the following audit objectives with a view to seek an assurance on:

(i) Whether the mechanism envisaged by the Department for selection and verification of transitional credit claims was adequate and effective (System issues).

(ii) Whether the transitional credits carried over by the assessees into GST regime were valid and admissible (Compliance issues).

2.11.6 Audit methodology and audit criteria

The methodology for verification of transitional credit claims of selected taxpayers involves data analysis, verification of records related to assessment of taxpayers, available with the STD at District Excise and Taxation Commissioner (DETC) level.

Audit Criteria: The criteria against which the audit objectives and sub-objectives was to be verified, comprises of the provisions of Chapter XX (Sections 139 to 142) of the HGST Act, 2017 read with Rules 117 of the CGST Rules, 2017, notifications/circulars and relevant instructions issued by the CBIC/STD.

Therefore, the envisaged systemic checks address the issues of (i) whether the procedure developed by the Department for verification of transitional credit claims was robust (ii) whether, after verification, the Department could secure effective remedial measures against taxpayers falling under State jurisdictions.

2.11.7 Audit sample

Selected sample cases i.e. 3,837 were identified on the basis of risk parameters as under:

- Taxpayers who have claimed transitional credit under Table 5 (c) in excess of the closing VAT credit balance available as per the legacy returns filed for the period immediately preceding the appointed day.
- Transitional claims of manufacturers or service providers who have claimed transitional credit under column 7 B of Table 7a.

2.11.7.1 Sample size and selection

Out of the overall sample size of 3,837 cases in 27 DETCs, 2,152 cases (cent *per cent*) in eight districts were covered for detailed verification and

845 cases (50 *per cent*) in remaining 13 districts were determined on the basis of high value transitional credits for detailed verification. Thus, the overall sample covered during the audit is as below:

Table 2: Sampling selection

Description	Sample provided by HQ office	Strata I	Strata II
Population	3,837	2,152	1,685
Sample size	2,997	2,152	845
Percentage of coverage	**78**	**100**	**50**

Out of the total 3,837 cases, 2,997 cases (78 *per cent*), involved 98.33 *per cent* monetary value of transitional credits were covered for detailed verification during the period April to August 2021. Based on the above parameters, these 2,997 cases were categorized into two strata:

Strata I: Cent *per cent* cases of taxpayers which constitute potentially risk prone cases for verification in two districts Gurugram and Faridabad and six nearby districts Ambala, Jagadhri, Kaithal, Karnal, Kurukshetra and Panchkula. In this way, outstation cases belong to large industrial hubs/economic centres were covered during audit.

Strata II: 50 *per cent* cases of taxpayers which constitute comparatively lesser risk in 13[27] districts.

2.11.8 Audit areas

The audit areas are based on the provisions of law and the mechanism envisaged by the Department for verification of the transitional credit claims of taxpayers. Audit areas were categorized corresponding to the two audit objectives as systemic and compliance issues which are discussed below**:**

2.11.8.1 Systemic issues

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

2.11.8.1.1 Verification mechanism envisaged by the Department

Securing compliance to the transitional credit provisions and regulating the transitional credit claims of taxpayers constitutes a control risk. Apart from the statutory requirements prescribed under both legacy as well as GST laws, the STD had specified transitional credit verification as one of the key focus areas for the year 2017-18. The STD had identified cases where transitional credit

[27] Bhiwani, Fatehabad, Hisar, Jhajjar, Jind, Mewat, Narnaul, Palwal, Panipat, Rewari, Rohtak, Sirsa and Sonipat.

claims were in excess of ₹ 25 lakh or more and ₹ 10 lakh or more for verification. The STD had taken up verification of these cases in two phases.

2.11.8.2 Compliance issues

The compliance issues pertain to the validity and admissibility of the transitional credits carried over by the taxpayers into GST regime (second audit objective of this SSCA). Taxpayers were required to claim transitional credits in the various specified tables of TRAN-1[28] and TRAN-2[29]. Since some of the transitional credit claims were verified by the Department, the compliance issues encompass the efficacy of the verification procedure, adherence to timelines and compliance deviations from cases not verified by the Department, which are briefly discussed below:

2.11.8.2.1 Compliance deviations

The components of transitional credit claimed by taxpayers in the appropriate tables mentioned below, in the two forms TRAN-1 and TRAN-2, flow from the underlying conditions specified under relevant Sections of the HGST Act.

Table 3: Details of Returns

Returns	Table No	Transitional credit component
TRAN-1	5(c)	Closing balance of credit from the last returns
TRAN-1	6(b)	Un-availed credit on capital goods
TRAN-1	7(b)	Credit on Input/input service in transit
TRAN-1	7(c)	Credit on input held in stock supported by invoices
TRAN-1	7(d)	Credit on input held in stock without invoices
TRAN-1	10 A	Credit on input related to goods held as agent on behalf of principal
TRAN-1	10 B	Credit on inputs for goods held by agent
TRAN-1	11	Credit on inputs availed in terms of Section 142 (11(c))

The general issues, which are common to all tables and the table specific issues that are likely to emerge are brought out below:-

2.11.8.3 Major findings:

Major findings are elaborated in succeeding paragraphs:

2.11.8.3.1 Carry forward of Ineligible amount of Transitional Credit

As per provision of Section 140 (1) of CGST/HGST Act, 2017, a registered person, other than a person opting to pay tax under section 10, shall be entitled

[28] TRAN-1 is the return to be filed by taxpayers to claim the credit of tax paid under legacy rules.

[29] TRAN-2 is the return to be filed by taxpayers to claim the credit of tax paid under legacy rules, if tax paid documents are not available.

to take, in his ECL, the amount of CENVAT/VAT credit of eligible duties, carried forward in the return relating to the period ending (30 June 2017) with the day immediately preceding the appointed day (01 July 2017), furnished by him under the existing law within such time and in such manner as may be prescribed:-

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely;

(i) Where the said amount of credit is not admissible as ITC under this Act; or

(ii) Where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or

(iii) Where the said amount of credit relates to goods sold under such exemption notification claiming refunds as are notified by the State Government.

A taxable person who makes an undue or excess claim of ITC under Section 50 (3) of CGST Act, 2017 read with sub-section (10) of Section 42 or undue or excess reduction in output tax liability under sub-section (10) of Section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty four *per cent*, as may be notified by the Government on the recommendations of the Council.

(a) Carry forward of excess Transitional Credit of non-eligible amount (where Tran-1 amount was not considered in Assessment Orders)

Scrutiny of records of the office of 27 DETCs, it was revealed that out of the total 2,997 cases, in 700 cases, the Assessing Authorities (AAs) while finalising the assessments (between November 2017 and March 2021) for the year 2017-18 (1st quarter), taxpayers carried forward excess amount of ₹ 243.38 crore of VAT credit in TRAN-1 (GST regime), in excess of his eligible credit balance. This resulted in excess carry forward of VAT credit/transitional credit of ₹ 243.38 crore in ECL. In addition, interest was also leviable as per Act.

The Department stated in the Exit Conference held in March 2022 and in response in April 2022 that in nine DETCs out of 13 DETCs, an amount of ₹ 4.05 crore had been recovered in 42 cases[30] and in remaining cases action had been initiated to recover the balance amount.

The average excess grant of transitional credit was ₹ 35.37 lakh, however, the median value was ₹ 5.25 lakh.

[30] DETCs Faridabad (North) (three cases: ₹ 0.02 crore); Faridabad (South) (five cases: ₹ 1.59 crore); Faridabad (West) (seven cases: ₹ 0.13 crore), Karnal (six cases: ₹ 1.57 crore); Narnaul (six cases: ₹ 0.10 crore), Palwal (eight cases: ₹ 0.32 crore); Sirsa (five cases : ₹ 0.17 crore), Sonipat (one case: ₹ 0.10 crore), Rewari (one case: ₹ 0.05 crore).

(b) Allowance of excess transitional credit due to refund without verification

Scrutiny of records of the office of 27 DETCs, in DETC (ST) Ambala revealed that out of 140 cases, in one case transitional credit of ₹ 33.94 lakh was claimed by the dealer in December 2017. The AA while finalising the assessment in March 2020, allowed refund of ₹ 18.64 lakh from the available ECF of ₹ 33.87 lakh and refund order was issued in August 2020. After payment of this refund, the available ECF of the dealer was ₹ 15.23 lakh. However, the dealer claimed transitional credit of ₹ 33.94 lakh against available ECF of ₹ 15.23 lakh. While finalising assessment, the AA had not considered the correct amount of Transitional credit and allowed excess transitional credit of ₹ 18.71 lakh in TRAN-1. This resulted in excess carried forward of VAT/transitional credit of ₹ 18.71 lakh in ECL. In addition, interest was also leviable as per Act.

(c) Excess transitional credits through different tables of Form TRAN-1

Scrutiny of records of the office of 27 DETCs, in three DETCs (ST) Faridabad (West), Faridabad (North) and Gurugram (West), it was revealed that out of 615 cases, the taxpayers applied for transitional credits in three cases amounting to ₹ 2.44 crore in TRAN-1 which was depicted in ECL. Further, it was seen that the taxpayers claimed similar transitional credit amount through different tables of TRAN-1. In this way, the taxpayers were allowed duplicate claim of transitional credit of ₹ 2.33 crore. This resulted in excess carried forward of VAT/transitional credit of ₹ 2.33 crore in ECL. Interest was also leviable as per Act.

The Department stated in the Exit Conference held in March 2022 and in response in April 2022 that an amount of ₹ 0.11 crore had been recovered in one case of Faridabad (West) and in remaining cases action had been initiated to recover the balance amount.

The average availment of duplicate transitional credit was ₹ 77.66 lakh whereas the median value was ₹ 23.76 lakh.

(d) Excess of transitional credit: System Error

Scrutiny of the records of office of 27 DETCs, in DETC (ST) Gurugram (North), it was revealed that out of 193 cases, the taxpayer claimed transitional credits in one case amounting to ₹ 1.10 crore in TRAN-1, however, in ECL a sum of ₹ 1.12 crore was found credited.

As per procedure amount mentioned in column 10 of table 5C should be credited in ECL. However, the system credited the amount mentioned in column 2 of Table 5C instead of amount mentioned in column 10 of table 5C. Further, the amount mentioned in Column 2 of Table 5C includes the ITC of turnover of pending form (C/H/F/I) at the time of claim of transitional credit. Hence, system was crediting wrong value of transitional credit in the ECL, instead of correct

value mentioned in column 10 of table 5C, after deduction of pending statutory forms liability. This resulted in excess credit of ₹ 2.17 lakh due to system error.

(e) Allowance of ITC as transitional credit where said amount of ITC is not admissible as ITC under this act (for Exempted Goods)

Scrutiny of the records of office of 27 DETCs, in eight[31] DETCs (ST) revealed that out of 729 cases, in 73 cases, dealers were engaged in trading/ manufacturing of food grains such as rice and its by-products *etc*. (falls in exempted category as per HGST act) on which ITC was not admissible in GST regime. These taxpayers claimed transitional credit of ₹ 71.78 crore in their TRAN-1, out of which a sum of ₹ 71.32 crore was not admissible as ITC because food grains items (rice, wheat) were tax exempted in GST regime. This resulted in excess carried forward of VAT/transitional credit of ₹ 71.32 crore in ECL. Interest was also leviable as per Act.

The Department stated in the Exit Conference held in March 2022 and in response in April 2022 that an amount of ₹ 0.16 crore had been recovered in two cases of DETC Karnal out of three DETCs *viz*. Karnal, Kurukshetra and Sirsa and in remaining cases action had been initiated to recover the balance amount.

The average of allowance of transitional credit on exempted goods was ₹ 1.04 crore whereas the median value was ₹ 23.91 lakh.

(f) Allowance of transitional credit where taxpayers have not furnished all the returns required under the existing law

Scrutiny of the records of office of 27 DETCs, in seven[32] DETCs (ST) revealed that out of 835 cases, in 18 cases taxpayers claimed transitional credits of ₹ 57.43 crore in TRAN-1. These taxpayers have availed transitional credits without furnishing all the returns required under the existing law (VAT) for the period of six months immediately preceding the appointed date. This resulted in excess carried forward of VAT/transitional credit of ₹ 57.43 crore in ECL. Interest was also leviable as per Act.

The Department stated in the Exit Conference held in March 2022 and in response in April 2022 that action had been initiated to recover the amount.

The average of irregular transitional credits without filing of requisite returns was ₹ 3.19 crore whereas the median value was ₹ 18.44 lakh.

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31 Fatehabad, Gurugram (South), Hisar, Jind, Kaithal, Karnal, Kurukshetra and Sirsa.

32 Bhiwani, Faridabad (North), Gurugram (East), Gurugram (North), Gurugram (South), Kaithal and Rohtak.

2.11.8.3.2 Carry forward of transitional credit of VAT in respect of inputs received on or after the appointed day

As per provision of Section 140 (5) of HGST Act 2017, a registered person shall be entitled to take, in his Electronic Credit Ledger, credit of value added tax, if any, in respect of inputs received on or after the appointed day but the tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

Provided further that the said registered person shall furnish a statement, in such manner, as may be prescribed, in respect of credit that has been taken under this sub-section.

A taxable person who makes an undue or excess claim of input tax credit under Section 50 (3) of HGST Act read with sub-section (10) of Section 42 or undue or excess reduction in output tax liability under sub-section (10) of Section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be at such rate not exceeding twenty four *per cent*, as may be notified by the Government on the recommendations of the Council.

(a) Carry forward of transitional credit of VAT: Accountal of goods after prescribed period

Scrutiny of records of the office of 27 DETCs, in DETC (ST) Rohtak revealed that out of 58 cases, the taxpayer procured steel tubes in one case amounting to ₹ 1.68 lakh before appointed day, however, material was taken in the books of account of firm on 10 August 2017. The taxpayer claimed transitional credit of ₹ 0.08 lakh as SGST for which the taxpayers was not eligible for transitional credit as the items was taken in the books of account after prescribed 30 days from appointed day. This resulted in excess carried forward of VAT credit/transitional credit of ₹ 0.08 lakh in ECL. Interest was also leviable as per the Act.

(b) Excess transitional credit: Duplicate claim of Transitional credit

Scrutiny of the records of office of 27 DETCs, in DETC (ST) Jind revealed that out of 44 cases, in one case the dealer had claimed transitional credit of ₹ 1.10 crore in CGST and ₹ 1.10 crore in SGST for similar items in Table 7B of Tran-1 and the same was credited in ECL. Hence, the dealer made a duplicate claim of transitional credit of ₹ 1.10 crore in Tran-1. This resulted in excess carried forward of VAT/transitional credit of ₹ 1.10 crore in ECL. Interest was also leviable as per Act.

2.11.8.3.3 Transitional Credit by the taxpayers under composition scheme

As per provision of section 140 (6) of HGST Act 2017, a registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his Electronic Credit Ledger, credit of value added tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:

(i) Such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) The said registered person is not paying tax under section 10;

(iii) The said registered person is eligible for input tax credit on such inputs under this Act;

(iv) The said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of inputs; and

(v) Such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

A taxable person who makes an undue or excess claim of input tax credit under 50 (3) of CGST Act 2017 read with sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of Section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be at such rate not exceeding twenty four *per cent*, as may be notified by the Government on the recommendations of the Council.

Scrutiny of the records of office of 27 DETCs, in three[33] DETCs (ST) revealed that out of 483 cases, in six cases taxpayers who opted for composition scheme in pre-GST regime, claimed ITC of ₹ 2.06 crore in TRAN-1. Such dealers were not entitled for input tax credit under pre-GST regime, hence, were not entitled to claim transitional credits of ₹ 2.06 crore under Table 5C of TRAN-1 proforma in GST regime. These dealers were only entitled to carry forward their balance stock under Table 7C of Tran-1 proforma as per conditions prescribed in the act. This resulted in excess carried forward of VAT /transitional credit of ₹ 2.06 crore in ECL. Interest was also leviable as per Act.

The Department stated in the Exit Conference held in March 2022 and in response in April 2022 that notice had been issued to the dealer in one case of Faridabad (North) and in remaining cases efforts would be made to recover the outstanding amount.

[33] Gurugram (East), Gurugram (West) and Faridabad (North).

The average of ineligible transitional credit by the taxpayers was ₹ 34.41 lakh whereas the median value was ₹ 28.77 lakh.

2.11.8.3.4 Allowance of excess transitional credit: Non adjustment of pending/awaited statutory forms

Under the Central Sales Tax Act, 1956 (CST Act) and the rules framed thereunder, the dealers are eligible for certain exemptions/concessions of tax on inter-State sale/transaction to the registered dealers, transfer of goods to branches/agents and on export/import of goods out of/into the territory of India on the strength of prescribed declaration in forms C[34], F[35] and H[36] along-with supporting certificates and documents as provided under Sections 5 (3), 6 (2), 6 (4), 6 A, 8 (3) and 8 (8) of CST Act.

As per provisions of TRAN-1 return if the taxpayers have any pending statutory forms (C/F/H/I), then, they were required to pay the differential tax and were not eligible for concessional rate of tax. Such differential tax payable was to be deducted from the input tax credit balance available in the last return filed by them and the remaining credit will be carried forward under GST Regime. Section 140 (1) of HGST Act, also provides that so much of the credit as is attributable to any claim related to section 3, sub-section (3) of section 5, section 6, section 6A or sub-section (8) of section 8 of the Central Sales Tax Act, 1956 which is not substantiated in the manner, shall not be eligible to be credited to the electronic credit ledger.

A taxable person who makes an undue or excess claim of ITC under 50(3) of HGST Act, 2017 read with sub-section (10) of Section 42 or undue or excess reduction in output tax liability under sub-section (10) of Section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be at such rate not exceeding 24 *per cent* p.a., as may be notified by the Government on the recommendations of the Council.

Scrutiny of records of the office of 27 DETCs, in six[37] DETCs (ST) revealed that out of 750 cases, taxpayers neither submitted statutory forms for concessional rate nor shown pending forms in 21 cases in Col 5 (b) and (c) of TRAN-1 return. As such, ITC forwarded through TRAN-1 for awaited/ pending forms resulted in excess carry forward of ITC in ₹ 4.96 crore in TRAN-1. This resulted in excess carried forward of VAT credit/transitional credit of ₹ 4.96 crore in ECL. Interest was also leviable as per Act.

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34 Form C for making inter-State purchases/sales at concessional rate of tax.

35 Form F for making transfer of goods (without payment of tax) to branches/agents in other States.

36 Form H for making purchases (without payment of tax) to comply with an order of export of goods outside the territory of India.

37 Ambala, Faridabad (E), Panchkula , Sonipat, Rewari and Yamunanagar.

The Department stated in the Exit Conference held in March 2022 and in response in April 2022 that an amount of ₹ 14,983 had been recovered in one case of DETC Panchkula and in remaining cases action had been initiated to recover the outstanding amount.

The average allowance of transitional credit without supporting statutory forms was ₹ 23.64 lakh whereas the median value was ₹ 1.25 lakh.

2.11.8.3.5 Adjustment of transitional credits: ITC set off

As per provision of Section 49 of HGST Act 2017 (5) (c) the amount of ITC available in the ECL of the registered person on account of the State tax shall first be utilised towards payment of State Tax and the amount remaining, if any, may be utilised towards payment of Integrated Tax.

Scrutiny of the records of office of 27 DETCs, in DETC (ST) Kaithal revealed that out of 75 cases, the taxpayers claimed ₹ 16.35 lakh as transitional credits, in one case and credited in ECL on 22 December 2017 under SGST head. At later stage it was revealed that the said transitional credit was not eligible as ITC, the firm deposited said amount through Form DRC-03 on 01 July 2020 and ₹ 14.68 lakh was adjusted against IGST first and remaining amount of ₹ 1.67 lakh was adjusted against SGST later in contravention of Section 49. Thus, ITC of ₹ 14.68 lakh was wrongly set off against IGST instead of SGST.

The above points were referred to the Department in October 2021; its reply was awaited (December 2021).

2.11.9 Non production of records

Three cases (two cases from DETC Faridabad (West) and one case from DETC Gurugram (N)), out of total 2,997 selected cases were not produced to audit, for scrutiny.

However, during exit conference in March 2022, the Department admitted the audit observations.

2.11.10 Conclusion

Irregularities pointed out by Audit, indicate deficient internal control of the Department due to which there have been deviations and non compliance to provisions of the GST Acts/Rules. The department had not established robust mechanism to verify genuineness of the transitional credits resulting in ₹ 382.94 crore of ineligible credits being allowed. Hence, the need for strict compliance of the provisions of relevant Acts and Rules and more effective monitoring was required.

2.11.11 Recommendations

The Government may consider effecting the recoveries pointed out in the Report, including levy and recovery of interest, as applicable, on priority.