सत्यमेव जयते

Report of the Comptroller and Auditor General of India

for the years ended March 2019 and March 2020

भारतीय लेखापरीक्षा और लेखा विभाग ✦ INDIAN AUDIT AND ACCOUNTS DEPARTMENT

सत्यमेव जयते

लोकहितार्थ सत्यनिष्ठा
Dedicated to Truth in Public Interest

Union Government
Department of Revenue
(Indirect Taxes – Goods and Services Tax, Central Excise and Service Tax)
Report No. 1 of 2021

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Laid on the table of Lok Sabha/Rajya Sabha on _____

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Preface

This combined Report for the years ended March 2019 and March 2020 has been prepared for submission to the President of India under Article 151 of the Constitution of India.

The Report contains significant results of the compliance audit of Central Board of Indirect Taxes and Customs (CBIC) under the Department of Revenue, and Information Technology audit of Goods and Services Tax Network (GSTN). The report contains audit findings relating to Goods and Services Tax and legacy Indirect Taxes viz. Central Excise and Service Tax.

The instances mentioned in this Report are those, which came to notice in the course of test audit during the period 2018-19 and 2019-20, as well as those which came to notice in earlier years but could not be reported in the previous Audit Reports.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

Executive Summary

Chapter I: Indirect Taxes Administration

In the CAG's first Audit Report[1] on Goods and Services Tax (GST), we noted the landmark achievement of the Government and other stakeholders in roll out of GST. We had further noted that an area where full potential of GST had not been achieved was the simplified tax compliance regime. The originally envisaged system-validated Input Tax Credit (ITC) through "invoice matching" had not been implemented. The complexity of return mechanism and technical glitches had resulted in roll-back of key GST returns, rendering the system prone to ITC frauds. Accordingly, we had recommended simplified tax compliance regime by introducing simplified return forms duly using technological solutions.

During the current audit, we noticed that owing to the continuing extensions in the roll out of simplified return forms, and delay in decision making, the originally envisaged system-verified flow of ITC through "invoice matching" is yet to be implemented and a non-intrusive e-tax system still remains unimplemented. The GST return system is still a work in progress despite more than three years of GST roll out. In the absence of a stable and simplified return mechanism, one of the main objectives of roll out of GST i.e. simplified tax compliance system is yet to be achieved.

It is recommended that a definite time frame for roll out of simplified return forms may be fixed and implemented as frequent deferments are resulting in delay in stabilisation of return filing system and continued uncertainty in the GST eco-system.

(Paragraph 1.4.1)

Indirect Taxes collections increased by ₹ 16,627 crore during FY20 over FY19. However, there is a declining trend in annual growth of Indirect Taxes during the last five years. The annual growth of Indirect Taxes (Y-o-Y) declined from 21.33 *per cent* in FY17 to only 1.76 *per cent* in FY20. Further, share of Indirect taxes in total revenue receipts declined from 38.95 *per cent* in FY17 to 36.92 *per cent* in FY20. Central GST taxes[2] revenue as percentage of GDP declined from 3.08 *per cent* in FY 19 to 2.95 *per cent* in FY20.

(Paragraph 1.3.1 & Paragraph 1.3.2.1)

CBIC has yet to put in place an effective system of scrutiny of returns based on detailed instructions/manual for the tax officers. As a result, an important

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1 Audit Report No. 11 of 2019 (Indirect Taxes- Goods and Services Tax)

2 GST revenue included Central Goods and Services Tax, Integrated Goods and Services Tax, UT Goods and Services Tax and GST Compensation Cess.

compliance function of the department, as mandated by law, is yet to be effectively rolled out even after three years of GST implementation.

(Paragraph 1.4.2)

Chapter II: Audit Mandate, Audit Universe and Response to Audit

A very large number of audit observations were pending for compliance in the Local Audit Reports[3] as on 31 March 2019. Department's response to these audit observations was intermittent and not substantive leading to persistent accumulation of outstanding paras. Department had not furnished reply to 52 *per cent* (13,475) of total LAR audit paras, pending as on 31 March, 2019, reflecting lackadaisical approach of the Department in replying to audit observations. Reply of the department in 6,474 (48 *per cent*) paras was pending for more than three years, as on 31 March 2019.

(Paragraph 2.5.3 & 2.5.4)

Chapter III: IT audit of GSTN

IT audit of GSTN (Phase – II) was undertaken to assess whether the Refund and Returns modules implemented by GSTN were in line with the provisions of the Acts and Rules governing the GST regime and the System Requirements Specifications (SRS). In addition, E-Way Bills module, which has been developed by National Informatics Centre, under the supervision of GSTN was also reviewed.

In 14 cases, the key validations / functionalities as existing in the rolled out modules were not found aligned to the applicable provisions even though SRS was correctly framed.

(Paragraph 3.5.1)

Refund module

Absence of adequate controls, risk of claiming refund on unverified ITC and deficiencies in integration of GST Portal with the Indian Customs EDI Systems (ICES) application for IGST refund on export of goods resulted in following deficiencies in Refund module:

- Due to GSTR 2 and 3 being held in abeyance, the envisaged buyer seller reconciliation mechanism could not be implemented resulting in unmitigated risk in the GST refund system.

(Paragraph 3.7.3.2)

[3] Local audit report is issued by the field audit office to each audited departmental unit. Based on their reply significant observations are included in Audit Reports, which are placed in the Parliament.

- Non re-crediting of ITC ledger of taxpayers where Deficiency Memo was issued on second and subsequent occasion.

(Paragraph 3.7.3.3)

- The refund of ITC sanctioned was disproportionately more than the actual value of export in case of export without payment of tax (Letter of Undertaking).

(Paragraph 3.7.3.4)

- Verification of endorsement detail of invoices of supplies to SEZ with SEZ online was not made mandatory while processing the refund application.

(Paragraph 3.7.3.5)

- Due to non-implementation of "With-hold" request functionality at back office there is a possibility of further refunds to the non-compliant exporters.

(Paragraph 3.7.3.6)

- Absence of auto–exclusion functionality to deduct the ITC of Capital goods could lead to excess refund being claimed.

(Paragraph 3.7.3.9)

- Lack of validation in the system to verify the turnover of inverted rate of supply in Statement-1 with the corresponding entries as provided in Statement-1A could lead to excess claim of refund.

(Paragraph 3.7.3.10)

Returns module

We noticed lack of adequate validations in the return module, lack of auto calculation of interest liability of taxpayers in GSTR-3B, and incorrect mapping of rules to SRS, as follows:

- Incorrect creation of GSTR-2A, which is an important source of information on inward supply for the tax officers, could lead to irregular availability of ITC.

(Paragraph 3.8.3.3)

- Absence of validation on turnover, leading to no restriction being imposed on composition taxpayers, in regard to filing of GSTR-4, even after crossing the threshold limit.

(Paragraph 3.8.3.4)

- Absence of provisions in the system for Non-Resident Taxable Persons (NRTPs) to pay GST for services received on Reverse Charge Mechanism (RCM) basis.

(Paragraph 3.8.3.5)

E-Way Bill module

- Rejection of EWBs was allowed despite expiration of mandated 72 hours due to browser manipulation.

(Paragraph3.9.5.1)

- Supply to or by SEZ was recorded as intra-state supplies with tax recorded under CGST and SGST, in place of IGST.

(Paragraph 3.9.5.2)

- Inherent weakness in periodic updation of Postal Index Number (PIN) Master resulted in incorrect automatic calculation of distance based on PIN Code.

(Paragraph 3.9.5.4)

- The quantity once entered while generating the EWB was amendable, which led to inconsistency of values in multivehicle mode of transport.

(Paragraph 3.9.5.5)

We have made 26 recommendations for consideration of the Ministry / GSTN. The recommendations pertain to implementation of adequate validations in the modules audited by us; appropriate changes in the rules/forms; and incorporation of functionalities in the system for effective implementation of GST laws and rules.

(Paragraph 3.11)

Chapter IV: Compliance Audit of GST

During the years 2018-19 and 2019-20, we focused mainly on audit of transitional credits (i.e. carry forward of Cenvat credit of legacy taxes regime to GST regime), GST registrations and refunds. Audit of GST returns is yet to be started as the original due date for filing annual return for 2017-18 by December 2018 has been subsequently extended to 5th/ 7th February 2020 in a staggered manner. Similarly, the original due date for filing annual return for 2018-19, by December 2019, has been subsequently extended to 31 December 2020.

(Paragraph 4.1)

Part A: Transitional credits

To conduct data analysis and identify areas of focus and to select units / cases for audit, we requested Department of Revenue to provide data relating to transitional credits. Despite repeated requests, we were not provided the requisitioned data[4] during FY 19 and FY 20.

In the absence of data, we could carry out only a limited audit of transitional credit claims in the units which we selected for audit based on other revenue related risk parameters. We had to restrict audit to mostly those Tran-I cases that had already been verified by the department, as access to other Tran-I declarations was not provided through the GST IT system.

(Paragraph 4.5)

We verified 5,822 out of 77,363 transitional credit cases in 81 Central GST Commissionerates and five Audit Commissionerates, and noticed 1,182 instances (20 *per cent*) of non-compliance. We noticed instances of irregular claim of transitional credit on input services in transit, irregular availing of Cess of earlier regime as credit, excess carry forward of Cenvat credit, irregular availment of transitional credit on exempted goods etc. with money value of ₹ 543.70 crore.

(Paragraph 4.6.1)

Part B: Refunds

During the period October 2018 to March 2020[5], we examined the records relating to 4,736 refunds out of 23,106 in 33 CGST Commissionerates. We noticed non-adherence to extant provisions in processing of refunds in 280 claims (6 *per cent*) involving an amount of ₹ 16.16 crore. We observed instances of irregular grant of refund due to non-consideration of minimum balance in electronic credit ledger, irregular sanction of refund of input tax credit availed on capital goods etc.

(Paragraph 4.7)

Part C: Other irregularities noticed during GST audit

During examination (August/September 2019) of the data of non-filers of GSTR-3B returns in Range-I and II of the Aligarh Division under Agra CGST Commissionerate, we noticed that 1,965 taxpayers, out of 12,694, had not submitted their GST-3B returns for a continuous period of six or more than six months. However, the registration of these defaulters were not cancelled by

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4 The transitional credit data has now been provided in July 2020.

5 Audit observations upto September 2018 had been included in the CAG's Audit Report No. 11 of 2019.

the department after following the process laid down in Rule 22 of CGST Rules, 2017 as provided in Section 29(2)(b) and (c) of CGST Act, 2017.

(Paragraph 4.8.4)

For the audit observations relating to audit of transitional credits, refunds and non/short payment of GST/interest, the corresponding impact on the State Goods and Services Tax is given in **Appendix-VII**.

(Paragraph 4.9)

Chapter V: Show Cause Notices (SCNs) & Adjudication Process in CBIC

We had examined the SCN and adjudication process of the department in FY15 covering the period FY12 to FY14, and audit findings were included in CAG's Report No. 1 of 2016 (Service Tax) and Report No. 2 of 2016 (Central Excise). We followed up on the Ministry's Action Taken Notes on the aforesaid report, and during the course of current audit, noticed persistent compliance deviations with respect to issue of SCNs and Adjudication process despite Ministry's assurance in the action taken notes.

(Paragraph 5.4)

Out of 107 Executive Commissionerates, 48 Audit Commissionerates and 25 Zonal Units of DGGSTI, we selected 116 departmental units for examination of SCN and adjudication process of the department.

(Paragraph 5.6.1.1)

Disposal of SCNs reduced from 86.69 *per cent* in FY17 to 72.81 *per cent* in FY19 in respect of Central Excise. Similarly, disposal of SCNs in Service Tax reduced from 77.51 *per cent* in FY17 to 51.93 *per cent* in FY19.

(Paragraph 5.7.1)

We noticed significant deviations from law/rules such as incorrect computation of demand in SCNs, late issuance of SCNs, delay in adjudications etc. during audit of SCNs that were pending for adjudication as on 31 March 2019.

As for SCNs adjudicated between FY17 to FY19, the irregularities pertained to incorrect invocation of extended period, non-inclusion of demand for part period due to late issuance of SCN, incorrect computation of demand, delay in adjudication, delay in issuance of adjudication orders, non-availability of documents in the case file resulting in the dropping of demand etc.

As for SCNs kept in Call Book as on 31 March 2019, the irregularities observed pertained to non-issuance of periodical SCNs, short computation of demand in SCNs kept in Call Book, incorrect transfer of SCNs in Call Book, non/delayed retrieval of cases from Call Book, non-conducting the periodical review of Call

Book, and non-approval of competent authority before transfer of SCNs to Call Book.

We identified lack of effective monitoring mechanism, inadequate coordination among CBIC field formations, delay in issuing clarifications by the Board, delay in investigation/ verification by CBIC field formations, delay in appointment of common adjudicating authority, non-availability of records in the case files etc. as the reasons for many irregularities noticed by Audit. Further, the department cited transition to GST, shortage of staff, heavy pendency of cases, frequent change in adjudicating authority, delay in transfer of records etc. as the reasons for delays in adjudication and other irregularities observed in Audit.

(Paragraph 5.17)

We recommend end-to-end computerisation of the SCN and adjudication process, with the following components:

(i) The process of issuance of SCN may be computerized with inbuilt controls to ensure correct computation of demand, timely issuance of SCN, valid invocation of extended period of time and correctness of the SCN issued.

(ii) Computerization of adjudication process with inbuilt controls to ensure effective monitoring, conducting of personal hearings and timely issuance of adjudication orders.

(iii) Maintenance of Call Book may be computerized with inbuilt mechanism to ensure issuance of periodical SCNs, timely retrieval of SCNs from Call Book, intimation to the assessee regarding transfer of cases to Call Book, prior approval of competent authority before transfer of SCNs to Call Book and controls regarding transfer of valid cases to Call Book.

(Paragraph 5.18)

Chapter VI: Effectiveness of Tax administration and Internal Controls (Central Excise and Service Tax)

During 2018-19, we selected records of 2,939 assessees[6] in 827 selected Ranges for detailed examination with respect to assessment and payment of Central Excise duty and Service Tax. During 2019-20, we selected records of 1,471 assessees in 451 selected Ranges for detailed examination.

(Paragraph 6.2)

Out of total 4,410 assessees, records of which were audited during 2018-19 and 2019-20, we noticed non-compliance of tax laws and rules in respect of 1,562

[6] Assessees were selected on the basis of high revenue, high percentage of CENVAT credit, nature of commodities/service, nature of transaction, number of SCNs issued, confirmed demand cases, year of last CAG audit etc.

assessees (35.42 *per cent*). We raised 2,712 audit observations having monetary impact of ₹ 1,036.35 crore. We observed instances of non/short payment of duty/tax, incorrect availing/utilization of CENVAT credit, non/short reversal of CENVAT credit, non-payment of cess, non-payment of interest etc.

Out of 4,410 assessees, records of which were examined by us, 1,244 assessees had already been audited by Internal Audit wing of the Department. We observed that Internal Audit had failed to detect lapses in 1,104 instances pertaining to 594 assessees (48 *per cent*), having monetary impact of ₹ 420.39 crore.

(Paragraph 6.3)

Chapter I: Indirect Taxes Administration

This chapter gives an overview of the indirect taxes administration, revenue trends in indirect tax collection and compliance verification mechanism under Goods and Services Tax.

1.1 Nature of Indirect Taxes

This Audit Report covers transactions involving levy and collection of Goods and Services Tax, Central Excise and legacy Service Tax. Audit findings on levy and collection of Customs duty are presented in a separate report. The indirect taxes covered in this report are discussed below:

a) **Goods and Services Tax:** Goods and Services Tax (GST) is a tax on supply of goods or services or both except taxes on the supply of alcoholic liquor for human consumption. GST came into effect from 1 July 2017[7]. Central Excise duty (except five Petroleum products), Service Tax, Countervailing duty (CVD), Special Additional duty (SAD) components of customs and most of the indirect taxes of states have been subsumed into GST. Central Excise duty is continued on five Petroleum products as these products are out of GST at present, and will be brought under GST later. Tobacco products are subject to Central Excise and GST both. GST is a consumption based tax i.e. tax is payable in the state where goods or services or both are finally consumed. In addition to GST, a cess named GST Compensation Cess is levied on some goods i.e. Tobacco products, Coal, Aerated water, Motor cars etc.

   There are three components of GST as follows:

   - **Central Goods and Services Tax (CGST):** payable to the Central Government on supply of goods and service within state/union territory.
   - **State/Union territory Goods and Services Tax (SGST/UTGST):** payable to the State/Union territory Government on supply of goods and service within state/Union territory.
   - **Integrated Goods and Services Tax (IGST):** In case of inter-state supply of goods and services, IGST is levied by Government of India. Equivalent IGST is also levied on imports into India. IGST shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

[7] With effect from 8 July 2017 in Jammu and Kashmir

b) Central Excise duty: Central Excise duty is levied on manufacture or production of goods in India. Parliament has powers to levy excise duties on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics including medicinal and toilet preparations containing alcohol, opium etc. (Entry 84 of List 1 of the Seventh Schedule of the Constitution).

c) Service Tax: Service Tax was levied on services provided within the taxable territory (Entry 97 of List 1 of the Seventh Schedule of the Constitution). Service Tax was a tax on services rendered by one person to another. Section 66B of the Finance Act, 1994 envisaged that there shall be a tax levied at the rate of 14 *per cent* on the value of all services, other than those specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.[8] 'Service' had been defined in section 65B (44) of the Finance Act, 1994 to mean any activity for consideration (other than the items excluded therein) carried out by a person for another and to include a declared service.[9]

1.2 Organizational Structure

The Department of Revenue (DoR) of Ministry of Finance (MoF) functions under the overall direction and control of the Secretary (Revenue) and co-ordinates matters relating to all the Direct and Indirect Union Taxes through two statutory Boards namely, the Central Board of Indirect Taxes and Customs (CBIC[10]), and the Central Board of Direct Taxes (CBDT) constituted under the Central Board of Revenue Act, 1963. Matters relating to the levy and collection of GST are looked after by the CBIC.

Indirect Tax laws are administered by the CBIC through its field offices. In view of implementation of GST, CBIC restructured its field offices into 21 Zones of GST headed by the Principal Chief Commissioner/Chief Commissioner vide circular dated 16 June 2017. Under these 21 Zones of GST, there are 107 GST Taxpayer Services Commissionerates that deal with GST and Central Excise, headed by the Principal Commissioner/Commissioner. Divisions and Ranges are the subsequent formations, headed by Deputy/Assistant Commissioner and Superintendents, respectively. Apart from these Commissionerates, there are 49 GST Appeal Commissionerates, 48 GST Audit Commissionerates and 22 Directorates dealing with specific functions such as DG (Systems) for

[8] Section 66B was inserted by the Finance Act, 2012 with effect from 1 July 2012; section 66D lists the items the negative list comprises of.

[9] Section 66E of the Finance Act, 1994 lists the declared services.

[10] Formerly Central Board of Excise and Customs (CBEC).

management of Information Technology projects and DG, National Academy of Customs, Indirect Taxes & Narcotics (NACIN)[11] for training needs.

1.3 Revenue Trend

1.3.1 Indirect Taxes revenue trend

Tax revenue of the Union Government consists of revenue receipts from Direct and Indirect Taxes. In the pre GST regime, Indirect Taxes comprised of Central Excise, Service Tax and Customs duties. After the implementation of GST, Service Tax and duties of Central Excise other than Petroleum products have been subsumed in GST. Central Excise continues to be levied on petroleum products, and tobacco has been subjected to both GST as well as Central Excise. The overall resources of Government of India and details of tax revenue of the Union Government from 2015-16 to 2019-20 have been given in table No.1.1 below: -

Table No. 1.1 : Resources of the Government of India

(₹ in crore)

Tax component	2019-20*	2018-19	2017-18	2016-17	2015-16
A. Total Revenue Receipts	25,98,705	25,67,917	23,64,148	22,23,988	19,42,353
i. Direct Tax Receipts	10,50,685	11,37,718	10,02,738	8,49,801	7,42,012
ii. Indirect Tax Receipts including other taxes	9,59,374	9,42,747	9,16,445	8,66,167	7,13,879
iii. Non-Tax Receipts	5,88,273	4,86,388	4,41,383	5,06,721	4,84,581
iv. Grants-in-aid & contributions	373	1,063	3,582	1,299	1,881
B. Miscellaneous Capital Receipts	50,349	94,979	1,00,049	47,743	42,132
C. Recovery of Loans and Advances	18,647	30,257	70,639	40,971	41,878
D. Public Debt Receipts	73,01,386	67,58,482	65,54,002	61,34,137	43,16,950
Receipts of Government of India (A+B+C+D)	**99,69,087**	**94,51,635**	**90,88,838**	**84,46,839**	**63,43,313**

Source: Union Finance Accounts of respective years.

* Figures for the year 2019-20 are provisional.

Although the Indirect Taxes collections increased by ₹ 16,627 crore during FY20 over FY19, the annual rate of growth of Indirect Taxes (Y-o-Y) declined from 21.33 *per cent* in FY17 to 1.76 *per cent* in FY20.

[11] Formerly National Academy of Customs Excise and Narcotics (NACEN)

Further, share of Indirect taxes in total revenue receipts declined from 38.95 *per cent* in FY17 to 36.92 *per cent* in FY20.

When pointed out (September 2020), the Ministry stated (November 2020) that relatively higher growth in indirect taxes in FY16 and FY17 was, *inter alia,* contributed by changes in tax policy/structure such as increase in service tax rate and introduction of new cesses like Swachh Bharat Cess, Clean Environment Cess and Krishi Kalyan Cess in the Union Budget, which were abolished with roll out of GST. As for FY20, Ministry attributed the decline in growth in indirect taxes to, *inter alia,* negative growth (Y-O-Y) in Index of Industrial Production (IIP) and imports. As for FY18 and FY19, Ministry did not mention any specific reasons for the decline in growth of indirect taxes. Ministry, however, mentioned that indirect tax collections and tax buoyancy in a particular year depends on various external factors such as GDP growth, level of domestic consumption of goods and services, change in tax policy, crude oil prices, change in tax rates etc.

1.3.2 Growth of Indirect Taxes - Trends and Composition

Table 1.2 depicts the relative growth of Indirect Taxes, during FY14 to FY20, with respect to GDP and Gross Tax Revenue.

Table No.1.2: Growth of Indirect Taxes

(₹ in crore)

Year	Indirect Taxes*	GDP	Indirect Taxes as *per cent* of GDP	Gross Tax revenue	Indirect Taxes as *per cent* of Gross Tax revenue
FY14	4,97,349	1,13,45,056	4.38	11,38,996	43.67
FY15	5,46,214	1,25,41,208	4.36	12,45,135	43.87
FY16	7,10,101	1,35,76,086	5.23	14,55,891	48.77
FY17	8,62,151	1,51,83,709	5.68	17,15,968	50.24
FY18	9,13,486	1,67,73,145	5.45	19,19,184	47.59
FY19	9,41,037	1,89,71,237	4.96	20,80,465	45.23
FY20**	9,57,710	2,03,39,849	4.71	20,10,058	47.65

Source: Tax revenue - Union Finance Accounts, GDP – Press note of CSO[12].
*Indirect Taxes includes, Revenue from CX, ST, GST, Customs and other taxes on commodity and services.
** The figures for the year are provisional.

Indirect Taxes as a percentage of GDP continued to decline every year since FY 17. Indirect taxes to GDP ratio declined from 5.68 *per cent* in FY17 to 4.71 *per cent* in FY 20.

Indirect Taxes as a percentage of gross tax revenue showed declining trend from FY17 to FY19. However, in FY 20, the percentage of Indirect Taxes to Gross Tax revenue increased to 47.65 *per cent* from 45.23 *per cent* in FY 19

[12] Press note on GDP released on 29 May 2020 by Central Statistical Office (CSO), Ministry of Statistics and Programme Implementation.

owing to less collections under direct taxes, which showed a negative growth of 7.65 *per cent* over the last year (FY 19).

When pointed out (September 2020), the Ministry attributed (November 2020) declining growth in Indirect Tax Revenue to macro-economic factors and other policy related decisions such as rate rationalisations by GST Council, reduction in duty rates on free trade agreements (FTA) imports, impact of export promotional schemes, impact on account of reduction in Basic Excise Duty on Petrol and Diesel (during 2017-18 and 2018-19) and impact of carry forward of input tax credits of legacy taxes to the GST regime (Transitional Credits).

1.3.2.1 Comparative growth of various components of Indirect Taxes

Table 1.3 depicts the relative growth of various components of Indirect Taxes during FY 19 and FY 20:

Table No.1.3: Comparative growth of various components of Indirect Taxes

(₹ in crore)

Tax component	2018-19	2019-20*
Central GST Taxes[13]	5,84,387[14]	6,01,784[15]
Customs	1,17,813	1,09,283
Central Excise	2,30,993	2,39,452
Service Tax	6,904	6,029
Other taxes and duties	990	1,162
Indirect Taxes	**9,41,037**	**9,57,710**

Source: Union Finance Account for the Year 2018-19.
*Figures for the year 2019-20 are provisional

As evident from the table above, Central GST tax revenue grew by 2.97 *per cent* during FY20 over FY19. Central GST tax revenue as percentage of GDP, however, declined from 3.08 *per cent* in FY 19 to 2.95 per in FY20. The share of GST remained constant at 62 *per cent* of the total indirect tax collections during the last two years (FY19 and FY 20)**.** There was a marginal increase of ₹ 8,459 crore in the collection of Central Excise duty during FY 20 compared to FY 19.

When pointed out (September 2020), the Ministry attributed (November 2020) GST rate rationalisations as one of the main reasons for decline in Central GST taxes to GDP ratio. Ministry stated that the GST rates were initially fixed on the basis of pre-GST tax incidence and revenue neutrality of the rates. As a result

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13 GST revenue included Central Goods and Services Tax, Integrated Goods and Services Tax, UT Goods and Services Tax and GST Compensation Cess.

14 *₹ 13,944 crore was retained by the Centre from IGST account in contravention of IGST Act, which requires apportionment of IGST between Centre and States.

15 ₹ 9,125 crore was retained by the Centre from IGST account in contravention of IGST Act, which requires apportionment of IGST between Centre and States.

of rate rationalisations by GST Council, GST rates have been reduced significantly resulting in relief of about ₹ 92,000 crore per year till July 2019.

It is pertinent to mention that the Report on the Revenue Neutral Rate and Structure of Rates for the Goods and Services Tax (GST)[16]recommended the range of 15 *per cent*- 15.5 *per cent* as the revenue neutral rate, in December 2015. However, the effective weighted average GST Rate as on July 2019 was 11.6 *per cent*[17]. In addition, GST Council revised the threshold turnover limits upwards for registration of taxpayers and composition levy scheme to ₹ 40 lakh and ₹ 1.5 crore, respectively, which affected GST collections.

1.3.3 GST revenue of Government of India: Budget Estimates vs actual receipts

Table 1.4 depicts a comparison of the Budget Estimates and the corresponding actuals for GST receipts.

Table No. 1.4 : Budget, Revised estimates and Actual receipts (GST)

(₹ in crore)

Year	Budget Estimates (BE)				Revised Estimates (RE)				Actual*			
	CGST	IGST	Cess	Total	CGST	IGST	Cess	Total	CGST	IGST	Cess	Total
2017-18	No BE only RE				2,21,400	1,61,900	61,331	**4,44,631**	2,03,261	1,76,688[18]	62,612	**4,42,561**
2018-19	6,03,900	50,000	90,000	**7,43,900**	5,03,900	50,000	90,000	**6,43,900**	4,57,534	28,945[19]	95,081	**5,81,560**
2019-20	5,26,000	28,000	1,09,343	**6,63,343**	5,14,000	--	98,327	**6,12,327**	4,94,070	9,125	95,553	**5,98,748**

Source: Union Finance Accounts and receipt budget documents of respective years.
*Figures for the Year 2019-20 are provisional

As could be seen from table 1.4 above, the CGST revenue was short of the budget estimates and the revised budget estimates during the financial years 2018-19 and 2019-20. The shortfall vis- à-vis budget estimates was 22 *per cent* and 10 *per cent* for the years 2018-19 and 2019-20, respectively.

Ministry replied (November 2020) that on the recommendations of the GST Council, rate rationalizations have been implemented from time to time by the Government and therefore, the actual indirect tax collections may vary with regard to the target set for a financial year.

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16 Report by the Committee appointed by the Government under the Chairmanship of Dr. Arvind Subramanian, Chief Economic Adviser, Ministry of Finance (Chairman).

17 Source: Para No.3.17 of report on State Finances: A study of budgets of 2019-20 by Reserve Bank of India, September 2019.

18 ₹ 67,998 crore was assigned to the States and balance ₹ 1,08,690 crore retained by the Centre

19 ₹ 15,001 crore was assigned to the States and balance ₹ 13,944 crore retained by the Centre

1.4 Compliance Verification Mechanism under GST

As per Section 59 of the Goods and Services Tax Act, 2017, every registered person shall self-assess the tax payable on supplies made during the tax period and file the return of each tax period. GST, therefore, continues to promote self-assessment just like the Central Excise, VAT and Service Tax.

The introduction of self-assessment underscored the need for an effective tax compliance verification mechanism. Such a mechanism typically has three important components—returns' scrutiny, internal audit and anti-evasion functions. The subsequent paras bring out the status of implementation of simplified GST return mechanism and department's performance with respect to the aforesaid compliance verification functions.

1.4.1 Status of implementation of simplified return mechanism

In the last Audit Report[20], we noted the landmark achievement of the Government and other stakeholders in roll out of Goods and Services Tax. We had further noted that an area where full potential of GST had not been achieved was the simplified tax compliance regime. The originally envisaged system validated Input Tax Credit (ITC) through "invoice matching" had not been implemented. The complexity of return mechanism and technical glitches had resulted in roll-back of invoice matching, rendering the system prone to ITC frauds. Accordingly, we had recommended to simplify tax compliance by introducing simplified invoice matching mechanism and simplified return forms duly using technological solutions.

We reviewed the progress made in this regard and noted that originally envisaged system-verified flow of ITC has yet not been implemented and simplified return mechanism is yet to be rolled out even after three years of GST roll out. The return mechanism in GST as envisaged originally and the implementation status of the same is discussed in the following paragraphs.

The basic feature of the return mechanism in GST envisaged electronic filing of returns, uploading of invoice level information, auto-population of information relating to ITC from returns of supplier to that of recipient, invoice level information matching and auto-reversal of input tax credit in case of mismatch.

The system-verified seamless flow of ITC was envisaged to be achieved through the returns GSTR 1, 2 & 3. It was originally envisaged that suppliers would file invoice-wise details of outward supplies made by them during the month through GSTR-1. The details of outward supplies so furnished by the supplier in GSTR-1 were to be made available electronically to the registered

[20] Audit Report No. 11 of 2019 (Indirect Taxes- Goods and Service Tax)

recipients through form GSTR-2A. Similarly, details of supplies relating to composition taxpayers, Input Service Distributors and Non-Resident taxpayers as well as Tax Deducted at Source (TDS) by Government departments / agencies and E-commerce operators also were to be made available electronically to the recipients. Thereafter, based on details available in form GSTR-2A, the taxpayer was supposed to furnish form GSTR-2 after including details of other inward supplies.

The details of inward supplies added, corrected or deleted by the recipient in his form GSTR-2 were to be made available to the supplier electronically in form GSTR-1A through the common portal. The supplier may either accept or reject the modifications made by the recipient and Form GSTR-1 furnished earlier by the supplier should stand amended to the extent of modifications accepted by him.

GSTR-3 is a monthly return with the details of sales and purchases during the month along with the amount of GST liability. Most of GSTR-3 was supposed to be auto-generated from GSTR-1 and GSTR-2 while the taxpayer had to include the details of discharge of liability of tax, interest, penalty, refund claimed from electronic cash ledger and debit entries in electronic cash/credit ledger while filing GSTR-3.

However, owing to unprepared GST ecosystem and complexity of return forms, the originally envisaged key returns were postponed and a new simpler temporary return, GSTR-3B, was introduced, initially for two months. GSTR-3B was designed as a self-assessed summary return which captured summary of outward supplies and inward supplies liable to reverse charge. As a result, ITC would now be settled based on these self-assessed summary returns filed by taxpayers. The originally envisaged system-verified flow of ITC was kept in abeyance rendering the system prone to ITC frauds.

New Return mechanism

The GST council in its 27th meeting (May 2018) approved the broad principles for the design of new simplified return filing system. In May 2019, a prototype of the offline tool was shared on the GST portal to give the look and feel of the new return forms to the taxpayers and from July, 2019 the taxpayers were able to upload invoices on trial basis for familiarisation.

Key Features of New Return Mechanism

(i) All taxpayers, excluding small taxpayers, Composition dealers, Input Service Distributors etc. shall file one monthly return. Small taxpayers, having turnover up to ₹ 1.5 crore, shall file quarterly return with monthly payment of taxes.

(ii) The main return will have two main tables, one for reporting supplies on which tax liability arises and one for availing input tax credit.

(iii) Taxpayers who have no output tax liability and no input tax credit to file return through SMS.

(iv) Continuous uploading and viewing facility for upload of invoices by the supplier and viewing by the recipient along with tax payment status of an invoice shall be available.

(v) Facility for locking of invoice by the recipient before filing of the return shall be available. Locked invoices cannot be amended.

(vi) No input tax credit can be availed by the recipient where goods or services have not been received before filing of a return by the supplier

(vii) There shall not be any automatic reversal of input tax credit at the recipient's end where tax has not been paid by the supplier. Revenue administration will first try to recover the tax from the seller and only in some exceptional cases like missing dealer, shell companies, closure of the business by the supplier, input tax credit will be recovered from the recipient by following the due process of serving of notice and personal hearing.

Further, it was proposed that simpler quarterly return would be available for small traders who make only Business to Consumer (B2C) supplies or Business to Business (B2B) and Business to Consumer (B2C) supplies. These returns were proposed to be called SAHAJ for B2C suppliers and SUGAM for B2B plus B2C suppliers.

Implementation Status of New Return mechanism

The GST Council in its 28th meeting (July 2018) decided that the new return mechanism would be implemented with effect from 1 January, 2019. Later, in its 31st meeting, GST Council (December 2018) extended the rollout date and decided to implement the new return forms in a phased manner so that from January 2020 onwards, all taxpayers would be filing returns as per the new return mechanism, and Form GSTR-3B would be completely phased out. The GST Council again extended the date of roll out of new return system in its 37th meeting (September 2019) and decided that the new return system shall be introduced from 1 April, 2020 onwards. In 39th GST council meeting (March 2020) the implementation of new return system was further deferred up to September 2020.

GST Council now, in its 42nd meeting (October 2020), has decided not to roll out the proposed new return system in one go. It has decided to incrementally incorporate the features of the new return system in the present familiar GSTR-1/GSTR-3B scheme. The new approach would allow the taxpayer to view

ITC available in his electronic credit ledger from all sources i.e. domestic supplies, imports and payments on reverse charge etc. prior to the due date for payment of tax, and enable the system to auto-populate return (GSTR-3B) through the data filed by the taxpayer and all his suppliers. The new provisions will be provided w.e.f 1 January 2021 for monthly filers and 1 April 2021 for quarterly filers. The present GSTR-1/3B filing system has been extended till 31 March 2021 and the GST laws would be amended to make the GSTR-1/3B return system as the default return filing system.

Owing to the above mentioned continuing extensions in the roll out of simplified return forms, and delay in decision making, the originally envisaged system-verified flow of ITC through "invoice matching" is yet to be implemented and a non-intrusive e-tax system still remains unimplemented. The GST return system is still a work in progress despite more than three years of GST roll out. In the absence of a stable and simplified return mechanism, one of the main objectives of roll out of GST i.e. simplified tax compliance system is yet to be achieved.

It is recommended that a definite time frame for roll out of simplified return forms may be fixed and implemented as frequent deferments are resulting in delay in stabilisation of return filing system and continued uncertainty in the GST eco-system.

We pointed this out in November 2020. Reply of the Ministry is awaited (December 2020).

1.4.2 Scrutiny of returns under GST

Section 61 of the Central Goods and Services Tax Act, 2017 stipulates that the proper officer may scrutinize the return and related particulars furnished by the taxpayers to verify the correctness of the returns and information. Under Rule 99 of the Central Goods and Services Tax Rules, 2017, discrepancies noticed if any, be communicated to the taxpayer for seeking his explanation. If the explanation offered is found acceptable by the proper officer, the proceeding shall be dropped, the taxpayer shall be informed and no further action in the matter shall be taken. If, however, the taxpayer

- does not furnish a satisfactory explanation within 30 days of being informed (extendable by the proper officer), or
- does not take any corrective action in his return in which discrepancy is accepted,

the proper officer may initiate appropriate actions including adjudication proceedings for determining the tax liability under section 73 or section 74.

We had requested the Board (March 2020) to provide the instructions or guidelines issued by it to its field formations for conducting returns' scrutiny including the criteria for selection of GST returns for scrutiny, under the aforesaid provisions of the Act.

However, as per the available information, CBIC has yet to put in place an effective system of scrutiny of returns based on detailed instructions/standard operating procedure/manual for the tax officers. As a result, an important compliance function of the department, as mandated by law, is yet to be effectively rolled out even after three years of GST implementation.

Further, the due date for filing Annual returns for FY 18 has already passed i.e. 5/7 February 2020[21] . As per section 73 of CGST Act, 2017, the proper officer shall issue the *adjudication* order within three years[22] from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund in normal cases, and shall issue the notice at least three months prior to the time limit specified for issuance of order.

In view of above, the issue needs to be addressed at the earliest as the time available for issuance of adjudication order and recovery of revenue, in cases of non/short payment of tax has already shrunk by more than nine months.

When pointed out (September 2020), the Ministry informed (October 2020) that a Committee of officers has been constituted to suggest guidelines for scrutiny of GST returns. Ministry also informed that based on the recommendations of the Committee, a mechanism for scrutiny/ verification of returns shall be standardized.

1.4.3 Internal audit under GST

1.4.3.1 Internal audit of GST units

Internal Audit helps to measure the level of compliance by taxpayers in light of the provisions of the Goods and Services Tax Act and rules made thereunder. The Board had issued detailed procedure of Internal Audit in the form of Goods and Services Tax Audit Manual (GSTAM) in July 2019. The internal audit provisions of the department envisaged selection of taxpayers based on risk assessment, using GST data, done by Director General of Analytics and Risk

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21 Due date for filing the Annual returns for 2017-18 was 5th and 7th February, 2020.

22 As per section 74 of CGST Act, 2017, the proper officer shall issue the adjudication order within five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund in extended period cases, and shall issue the notice at least six months prior to the time limit specified for issuance of order

Management (DGARM). The internal audit was to be commenced from 1 July 2019. The details of internal audit undertaken by the department during 2019-20 for the GST are as under: -

Table No.1.5: Total detection made vis-à-vis units audited by Internal Audit (GST)

Year	Category	Total units planned	Total units audited	Short levy detected (₹ in crore)	Total recovery (₹ in crore)	Recovery as % of Total detection
FY20	Large Units	17,172	244	66	9.42	14
	Medium Units	18,050	296	15	8.06	53
	Small Units	19,920	318	15	1.80	13
	Total	**55,142**	**858**	**96**	**19.28**	**20**

Source: Figures furnished by the Ministry.

As is evident from the above table, only 1.6 *per cent* of the planned units were audited up to FY20. The total recovery effected was 20 *per cent* of the amount detected in Internal Audit during FY20.

Ministry replied (October 2020) that the last date of filing GST annual returns kept on getting extended and therefore, not many taxpayers filed their annual returns. Thus, less number of taxpayers were available for audit. Ministry further stated that in the meanwhile the field formations continued to conduct legacy audits of Central Excise and Service tax assessees.

1.4.3.2 Internal audit of Central Excise and Service Tax units

The details of internal audit undertaken by the department during 2018-19 and 2019-20 for the Central Excise and Service Tax units are as under: -

Table No.1.6: Total detection made vis-à-vis units audited by Internal Audit (CX & ST)

(₹ in crore)

Year	Category	Total units planned	Total units audited	Short levy detected	Total recovery	Recovery as % of Total detection
FY19	Large Units	9,204	6,159	5,149	1,419	28
	Medium Units	16,991	12,191	2,120	721	34
	Small Units	40,756	26,441	1,517	638	42
	Total	**66,951**	**44,791**	**8,786**	**2,778**	**32**
FY20	Large Units	6,361	3,432	8,429	519	6
	Medium Units	12,075	6,678	1,698	364	21
	Small Units	35,383	21,649	1,210	433	36
	Total	**53,819**	**31,759**	**11,337**	**1,316**	**12**

Source: Figures furnished by the Ministry.

It is observed that the recovery in large units was only 28 *per cent* and 6 *per cent* of the amount detected in Internal Audit during FY 19 and FY 20, respectively. The total number of units audited, out of the planned units for large, medium and small unit was 67, 72, and 65 *per cent* during the year FY 19. The corresponding coverage during the FY20 reduced to 54, 55, and 61 *per cent*, respectively.

As regards low recovery rate in large units, Ministry stated (October 2020) that large taxpayers have their own dedicated department dealing with audit and they generally decide not to agree with the audit findings and contest the same. Further, Ministry cited shortage of officers in Audit Commissionerates (generally the working strength of officers is in the range of 40 to 50 *per cent* of the sanctioned strength), non-cooperation by the taxpayers in providing documents and conduct of legacy audit of only those cases that were left over from previous years as the reasons for shortfall in coverage of units.

Reply of the Ministry is not acceptable as internal audit is one of the main compliance verification function of the department in the self-assessment regime. Ministry needs to strengthen this function by providing sufficient manpower and taking measures to improve cooperation by the taxpayers.

1.4.4 Anti-evasion functioning

Directorate General of Goods and Service Tax Intelligence-DGGI (formerly Director General of Central Excise Intelligence (DGCEI)) as well as the Goods and Service Tax Commissionerates have well-defined roles in the task of detection of cases of evasion of Goods and Services Tax, Central Excise duty and Service Tax. While the Commissionerates, with their extensive database of units in their jurisdiction and presence in the field, are the first line of defence against duty evasion, DGGI specialises in collecting specific intelligence about evasion of substantial revenue. The intelligence so collected is shared with the Commissionerates. Investigations are also undertaken by DGGI in cases having all India ramifications. Table No.1.7 and Chart No. 1.1 below depict the performance of DGGI and GST Commissionerates during last five years.

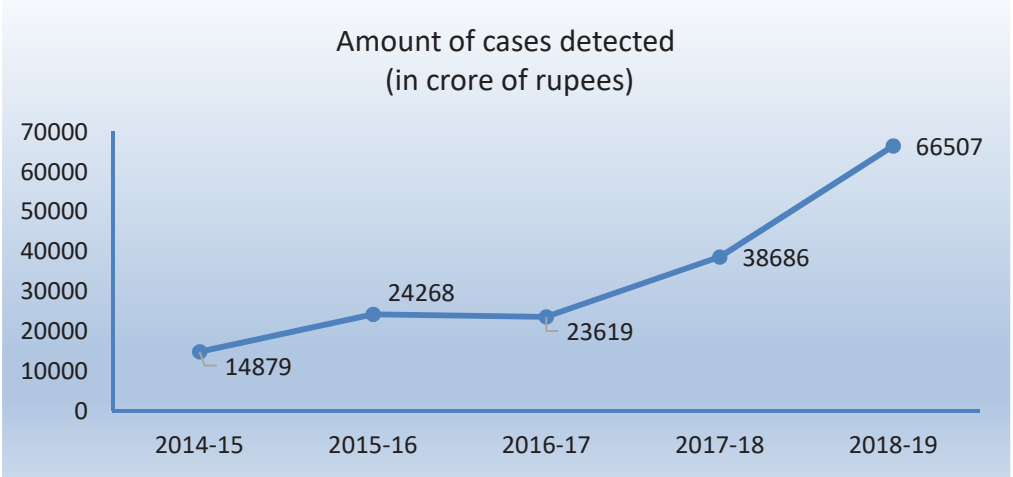
Table No.1.7 - Anti-evasion performance of DGGI and GST Commissionerates during last five years

(Rupees in crore)

Year	Central Excise			Service Tax			Goods and Services Tax			Total		
	No.	Amt.	VP*	No.	Amt.	VP*	No.	Amt.	VP*	No.	Amt.	VP*
2014-15	2123	4335	546	6719	10544	4448	--	--	--	8842	14879	4994
2015-16	2366	5297	804	7534	18971	4658	--	--	--	9900	24268	5462
2016-17	2122	5773	795	8085	17846	5313	--	--	--	10207	23619	6108
2017-18	894	6415	365	5299	24202	3571	233	8071	7592	6426	38686	11527
2018-19	1001	4282	458	5507	32902	4442	3046	29323	16488	9554	66507	21388
2019-20 (Upto Sep 2019)	210	7018	43	1577	9271	562	1580	8768	4733	3367	25056	5338

* Voluntary payment

Chart No. 1.1 Amount of cases detected through anti-evasion activities



Source: Figures furnished by the Ministry.

As is evident from Table No.1.7, for all indirect taxes other than Customs duty, there is an increase in detection of both the evasion cases and the amount to the extent of 49 *per cent* and 72 *per cent*, respectively, during 2018-19, in comparison to the year 2017-18.

Further, there was significant increase in detection of evasion cases during the last two years. Compared to the evasion amount of ₹ 23,619 crore detected in 2016-17, the amount detected in 2017-18 and 2018-19 increased to ₹ 38,686 crore and ₹ 66,505 crore i.e. annual growth of 64 and 72 *per cent*, respectively.

Similarly, compared to the voluntary payment of ₹ 6,108 crore in 2016-17, the voluntary payment in 2017-18 and 2018-19 increased to 11,526 and 21,388 crore i.e. annual growth of 89 and 86 *per cent*, respectively.

As regards Goods and Services Tax, the number of cases detected increased from 233 to 3,046 and tax involved increased from ₹ 8,071 crore to ₹ 29,323 crore during 2018-19 in comparison to 2017-18.

1.4.4.1 Nature of anti-evasion cases during April 2017 to September 2019

The nature of anti-evasion cases detected by DGGI involving Central Excise, Service Tax and GST during 2017-19 (Upto September) is highlighted in table 1.8: -

Table No.1.8

Sl. No.	Central Excise		Service Tax		GST	
	Nature	**%**	**Nature**	**%**	**Nature**	**%**
1	Clandestine Removal	29	Non Payment of Service Tax for providing taxable services	63	Non-payment of Tax on supply of taxable goods and services	40
2	Undervaluation	26	Service tax collected but not paid to government exchequer	8	Wrong availment / non-reversal of Input Tax Credit	24
3	Misuse Of Cenvat Scheme	20	Short Payment of service tax by undervaluing taxable service	6	Tax collected but not paid to government exchequer	12
4	Wrong Availment of Exemption Notification	9	Non Payment Of Service Tax under reverse charge mechanism	6	Short Payment of Tax by Undervaluing Taxable goods and services	3
5	Mis-Classification	3	Wrong Availment of exemption notification	1	Non-payment of Tax under Reverse charge mechanism	3
6	Others	13	Others	16	Others	18

As could be seen from Table 1.8, clandestine removal, undervaluation and misuse of Cenvat Scheme formed the major portion of evasion activities detected in Central Excise. As for service tax, non-payment of service tax for providing taxable services, service tax collected but not paid to government exchequer, and short payment of service tax by undervaluation of taxable services formed the major portion of evasion.

Non-payment of tax on supply of taxable goods and services, wrong availment/non-reversal of Input Tax Credit, and tax collected but not paid to Government exchequer were the major forms of evasion activity under GST.

When we pointed this out (June 2020), Ministry attributed (September 2020) the significant increase in the number and amount of cases detected through anti-evasion activities to increase in the tax base owing to GST implementation; issuance of fake invoices for passing on substantial amount of Input Tax credit by unscrupulous taxpayers; and setting up of Directorate General of Analytics and Risk Management (DGARM), which is entrusted with the functions of analysing big data, the outcomes of which were intermittently shared with the DGGI.

While the Departmental efforts in leveraging information technology for better generation of leads for anti-evasion activities are noteworthy, there is

an urgent need to address the problem of fake invoices through the implementation of simplified return system based on a system-verified flow of input tax credits and by strengthening the GST registration process to keep a check on fake registrations.

1.5 Non-furnishing of Compensation Fund Account for the years 2017-18 and 2018-19

Goods and Services Tax (GST) compensation cess is to be levied on goods and services under Section 8 of the Goods and Services Tax (Compensation to States) Act, 2017 (the Act) to compensate the revenue losses occurred to the states because of the implementation of GST in the country. The compensation cess is to be levied for a period of five years in pursuance of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016.

Section 10 (1) of the Act states that the proceeds of the cess leviable under section 8 and such other amounts as may be recommended by the Council, shall be credited to a non-lapsable Fund known as the Goods and Services Tax Compensation Fund (Compensation Fund) which shall form part of the Public Account of India and shall be utilised for purposes specified in the said section.

As per section 10 (4) of the Act, the accounts relating to the Compensation Fund shall be audited by the Comptroller and Auditor General of India (CAG) or any person appointed by him at such intervals as may be specified by him. Further, as per section 10 (5) of the Act ibid, the accounts of the Compensation Fund as certified by the CAG or any other person appointed by him in this behalf together with the audit report thereon shall be laid before each House of Parliament.

For performing auditing responsibilities under the Act, the Department of Revenue (DoR), Ministry of Finance, Government of India needs to furnish the Compensation Fund Accounts to the CAG indicating inflow and outflow of cess funds and other details, as necessary for certification. Despite repeated requests, Department of Revenue has not submitted Compensation Fund Accounts for the years ended 31 March 2018 and 31 March 2019 for certification.

As a result, Audit could not perform its statutory auditing responsibilities in respect of the years ended 31 March 2018 and 31 March 2019, as mandated under Section 10 (4) of the Act.

When pointed out in July 2020, the Ministry stated (November 2020) that Compensation Fund Accounts can be prepared only after receipt of Accountants General certified annual revenue collection figures from the States.

It is pertinent to mention that Accountants General have been experiencing delays in receipt of requisite information/records from many State Governments leading to delay in certification of the annual revenue figures under section 7(3)(b) of the Goods and Services Tax (Compensation to States) ACT, 2017. The details of certification, for the year 2017-18, are given in **Appendix I**.

While the matter is being taken up by the Accountants General, Ministry may also take up this issue with the State Governments to expedite production of requisite records/information to Accountants General for certification of annual revenue figures so that the Compensation Fund Account could be prepared and submitted to CAG for certification.

Chapter II: Audit Mandate, Audit Universe and Response to Audit

2.1 Audit Mandate

Article 149 of the Constitution of India provides that the Comptroller and Auditor General of India (CAG) shall exercise such powers and perform such duties in relation to the accounts of the Union and of the states and of any other authority or body as may be prescribed by or under any law made by the Parliament. The Parliament passed the Comptroller and Auditor General's DPC Act (CAG's DPC Act) in 1971. Section 16 of the CAG's DPC Act authorizes CAG to audit all receipts of the Government of India and of Government of each state and of each Union territory having a legislative assembly and to satisfy himself that the rules and procedures are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed. Regulations on Audit & Accounts (Amendments) 2020 lay down the principles for Receipt Audit.

2.1.1 Examination of systems and procedures and their efficacy

Audit of receipts includes an examination of the systems and procedures and their efficacy mainly in respect of:

a. identification of potential tax assessees, ensuring compliance with laws as well as detection and prevention of tax evasion;
b. exercise of discretionary powers in an appropriate manner including levy of penalties and initiation of prosecution;
c. appropriate action to safeguard the interest of the Government on the orders passed by appellate authorities;
d. any measures introduced to strengthen or improve revenue administration;
e. amounts that may have fallen into arrears, maintenance of records of arrears and action taken for recovery of the amounts in arrears;
f. pursuit of claims with due diligence and to ensure that these are not abandoned or reduced except with adequate justification and proper authority.

2.1.2 Audit of Indirect Taxes

Indirect Tax System is a self-assessment system in which the tax payers prepare their own tax returns and submit it to the Department. This system is guided by the fiscal laws including the Goods and Service Tax Act, 2017, Integrated Goods and Service Tax Act, 2017, Goods and Service Tax (Compensation to States) Act, 2017 and legacy tax acts viz. Central Excise Act, 1944 and Finance

Act, 1994. Indirect Tax administration assesses and scrutinizes the returns by way of preliminary scrutiny, detailed scrutiny, internal audit etc. and ensures the correctness of the tax so deposited by the tax payer.

To examine the efficacy of the systems and procedures of the Indirect Tax administration, CAG examines the records related to the returns submitted by the assessees along with the records of the various field formations and functional wings of the Board.

2.2 Audit Universe

The audit universe includes the Department of Revenue, CBIC, its subordinate organisations and field formations. The organisational structure of CBIC and the number of departmental units are discussed in Para 1.2 of this Report. Roles and duties of the CBIC and its field formation are discussed in the subsequent paragraphs.

2.2.1 CBIC

The Central Board of Indirect Taxes and Customs, in the Ministry of Finance, is the apex body for administering the levy and collection of indirect taxes of the Union of India. It deals with the tasks of formulation of policy concerning levy and collection of indirect taxes, prevention of smuggling and administration of matters relating to indirect taxes and narcotics to the extent under CBIC's purview. CBIC is headed by a Chairman and consists of four members.

2.2.2 Zones

Zones are the highest auditable field entities headed by Principal Chief Commissioner/Chief Commissioner. Principal Chief Commissioner/Chief Commissioner of Zone exercises supervision and control over the technical and administrative work of all the Commissionerates in the Zone. They monitor the revenue collection by each Commissionerate in the Zone and the proper implementation of Acts/Rules and Board's instructions/guidelines issued from time to time.

2.2.3 Commissionerates

Commissionerates are divided in three categories viz. Executive Commissionerates, Commissionerates (Audit) and Commissionerates (Appeal).

The primary function of a Central Goods and Service Tax Commissionerate (Executive Commissionerate) is to implement the provisions of Central Goods and Service Tax Act, 2017, Central Excise Act, 1944, rules framed under these Acts and other allied Acts of the Parliament under which duty of GST/ Central Excise is levied and collected. Administratively, each Commissionerate is a 3-tier set-up with its Headquarters at the helm, four to six Divisions at the

second level and on an average four to seven Ranges under each Division at the third and final level.

In each zone, there may be one or more Audit Commissionerates headed by a Commissioner (Audit). The main function of the Audit Commissionerate is to conduct internal audit of the taxpayers falling under its jurisdiction, convening of monitoring committee meetings, helping executive Commissionerates in pursuing the cases against the assessees etc.

Commissioner (Appeal) acts as an appellate authority and passes orders on appeals in relation to all adjudication orders passed by an authority subordinate to the rank of a Commissioner.

2.2.4 Divisions

Each executive Commissionerate has four to six Divisions headed by a Deputy/Assistant Commissioner. The Divisional heads are responsible for proper compliance of laws and procedures within their jurisdiction. They are also responsible for provisional assessments, sanctioning of rebate/refund claims and perform quasi-judicial functions viz. adjudication of cases falling within their competence.

2.2.5 Ranges

Each Division consists on an average four to seven Ranges. The Range, headed by a Superintendent, is the first office of contact between the trade and industry and the Department. Scrutiny of the assessment is done by the Range on the basis of prescribed returns filed by the assessees. Apart from the assessment work, the Range officials also check the correctness of statutory declarations filed by the taxpayers.

2.3 Audit Sample

The details of departmental units audited by us during 2018-19 and 2019-20 are depicted in chart 2.1, as follows:

Chart No. 2.1: Audit Universe and Sample

FY19			FY20		
Auditee Unit	Universe	Sample	Auditee Unit	Universe	Sample
Zones	21	19 (90%)	Zones	21	18 (86%)
Commissionerates	111	71 (64%)	Commissionerates	111	68 (61%)
Divisions	753	263 (35%)	Divisions	753	261 (35%)
Ranges	3912	1007 (26%)	Ranges	3912	1016 (26%)
Other Units*	280	149 (53%)	Other Units	287	134 (47%)
Total	5077	1509 (30%)	Total	5084	1497 (29%)

* Other units includes Audit Commissionerates, Appeal Commissionerates, Pay and Account Offices, Customs Excise and Service tax appellate Tribunal, Directorate General of GST Intelligence, ADG (Audit) etc.

As can be seen from the above, we audited 1509 units (30 *per cent*) out of 5077 units, and 1497 units (29 *per cent*) out of 5084 units, during 2018-19 and 2019-20, respectively.

2.4 Audit Efforts and Audit Products

Compliance Audit of GST and legacy indirect taxes was conducted by our nine field offices headed by Directors General (DsG)/Principal Directors (PDs) of Audit.

In GST audit, during the period October 2018 to March 2020, we verified 5,822 transitional credit cases, out of 77,363 transitional credit cases in 81 Central GST Commissionerates and five Audit Commissionerates. We noticed 1,182 instances (20 *per cent*) of non-compliance/omissions with money value of ₹ 543.70 crore. Out of these 1,182 instances, we have included 62 draft paragraphs consisting of 105 significant observations having monetary impact of ₹ 86.11 crore in this report. Similarly, during the same period we examined the records relating to 4,736 refunds cases, out of 23,106 refund cases in 33 CGST Commissionerates. We noticed non-adherence to extant provisions in processing of refunds in 280 claims (6 *per cent*) involving an amount of ₹ 16.16 crore. Out of this, we have included 07 draft paragraphs consisting of 25 significant observations having monetary impact of ₹ 8.26 crore in this report. In addition to this, we have also included 08 draft paragraphs, pertaining to other irregularities noticed during GST audit, having monetary impact of ₹ 6.77 crore in this report. Audit observations pertaining to compliance audit of GST are included in Chapter IV of this report.

During 2018-19, we selected records of 2,939 assessees, in 827 Ranges, for detailed examination with respect to assessment and payment of Central Excise duty and Service Tax. Similarly, during 2019-20, we selected records of

1,471 assessees for detailed examination, in 451 Ranges. We raised 2,712 audit observations having monetary impact of ₹ 1,036.35 crore. We have included 146 draft paragraphs having monetary impact of ₹ 472.30 crore, in this report. In addition to this, we have also included 66 draft paragraphs having monetary impact of ₹ 667.71 crore pertaining to period prior to the period 2017-18 in this report. Audit observation pertaining to legacy taxes (Central Excise & Service Tax) are included in Chapter VI of this report.

In addition, we conducted IT Audit of GSTN[23] and a Subject Specific Compliance Audit on SCN and Adjudication Processes. IT audit observations are included in Chapter III, and observations on 'SCN and adjudication process' are included in Chapter V of this report.

2.5 Response to CAG's Audit

A large number of audit observations, incorporated in the local audit reports (LAR)[24] are pending for compliance by the Department. As on 31 March 2020, 29,496 paras pertaining to 10,489 LARs were pending for compliance. One of the main reasons for pendency of paras has been lack of replies or delayed replies from the Department. We carried out a detailed study in this regard, for the paras outstanding as on 31 March 2019, the results of which are presented in the subsequent paras.

2.5.1 Provisions regarding Local Audit Reports (LARs)

We elicit response to our observations from the audited entities at different stages of audit. As per provisions of the regulation 136 of CAG's Regulations on Audit and Accounts (Amendments) 2020, on completion of field audit, we issue the LAR to the Department for comments.

Board's circular No. 1023/11/2016-CX dated 8 April 2016 prescribed the procedure for dealing with audit observations raised by CAG Audit and instructed its field formations to reply to the Local Audit paragraphs within thirty days. The circular also provided for the Zones to hold quarterly coordination meetings with Audit to discuss and settle the pending LAR paragraphs.

As per provisions of regulations 137 to 152, we took measures like sending of important audit observations to head of the Commissionerates for follow-up, communicating the significant audit observations to Zonal Heads, convening

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[23] Phase-II

[24] Local audit report is issued by the field audit office to each audited departmental unit. Based on their reply significant observations are included in Audit Reports, placed in the Parliament.

of Audit Committee Meetings (ACMs) etc. for the purpose of monitoring and ensuring compliance and settlement of pending audit observations.

2.5.2 Audit Scope and sample

We examined the status of replies of the Department on LAR paras, pending as on 31 March 2019. Out of 109 Commissionerates, 49 Commissionerates[25] were selected for audit. A sample of outstanding paras was selected in the Commissionerates for detailed examination under two categories:

(i) where response to audit observations was not received.

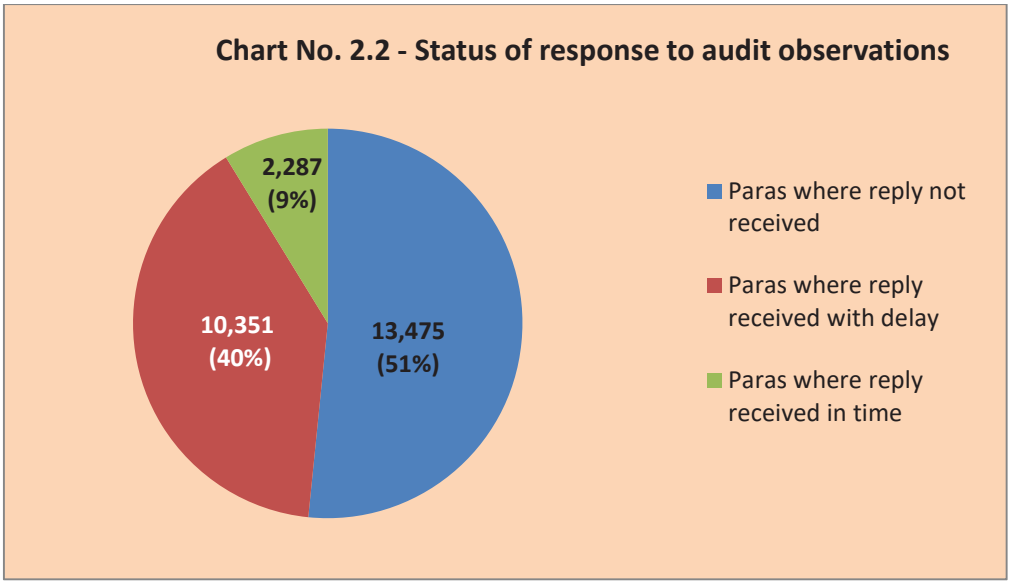
(ii) where response to audit observations was received with delay.

2.5.3 Audit findings

Analysis of outstanding LAR paras revealed that a total of 26,113 audit paras, with a reported tax effect of ₹ 19,970.81 crore were outstanding in 109 Commissionerates, spread across India, as on 31 March 2019. **Out of these, the Department had failed to offer first response to 13,475 audit paras i.e. 51.60 *per cent* (reported tax effect ₹ 12,017.18 crore), and responded to 10,351 audit paras (39.64 *per cent*) with delay. Thus, only in 2287 cases (8.76 *per cent*), the Department gave first response within the prescribed time limit of 30 days.**

Chart 2.2 summarises the status of first response to audit paragraphs included in Local Audit Reports.

[25] Agartala, Ahmedabad South, Allahabad, Bengaluru East, Bengaluru North-West, Bengaluru South, Bengaluru West, Belapur, Chennai North, Chennai Outer, Chennai South, Delhi-East, Delhi-West, Dibrugarh, Gandhinagar, Ghaziabad, Goa, Gurugram, Guwahati, Haldia, Howrah, Indore, Jaipur, Jalandhar, Jamshedpur, Kochi, Kolkata South, Kuch/Gandhidham, Lucknow, Ludhiana, Madurai, Meerut, Mumbai East, Mumbai South, Nagpur-I, Nashik, Navi Mumbai, Palghar, Patna I, Pune II, Raigad, Raipur, Ranchi I, Rohtak, Shillong, Surat, Thiruvananthpuram, Udaipur and Vadodara.

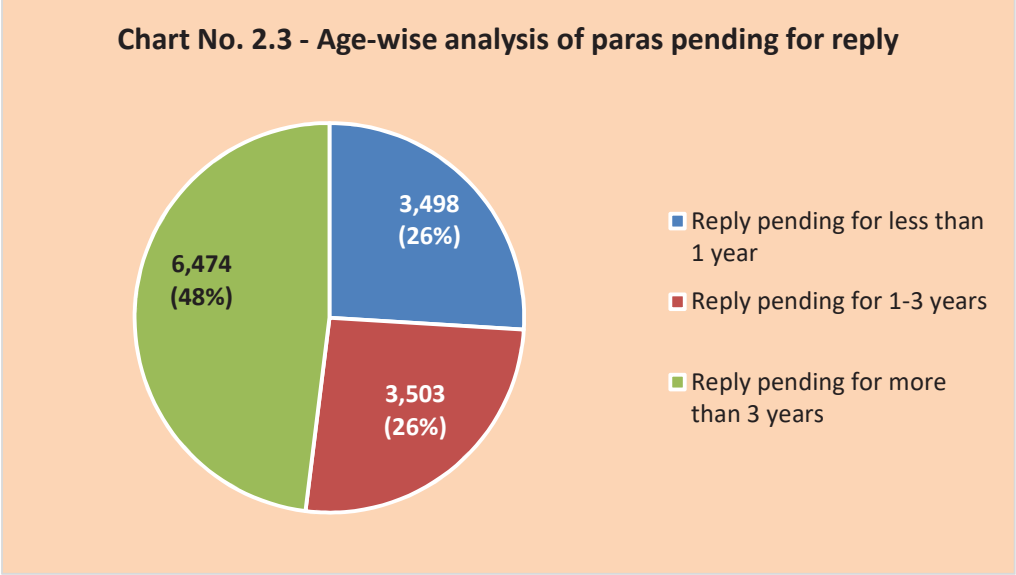


In order to assess the reasons for lack of adequate responsiveness to audit observations, and to ascertain the action taken by Department on audit findings, we examined in detail a sample of LAR paras as stated in para 2.3.3.

2.5.4 LAR paras where Department did not furnish reply

Out of total 26,113 outstanding audit paras, pertaining to 109 Commissionerates as on 31 March 2019, in 13,475 paras (51.60 *per cent*), first replies were not received from the Department.

An age-wise analysis of paras, where reply has not been received from the Department, is given in the chart 2.3 below:



As is evident from Chart 2.3 above, replies on 6,474 (48.04 *per cent*) paras with tax effect of ₹ 8,660.17 crore were pending for more than three years, reflecting lackadaisical approach of the Department in replying to audit observations.

Further, we analysed the reasons for Department's failure to respond to audit paras despite lapse of considerable time and sampled 1,012 audit paras for detailed examination and observed that:

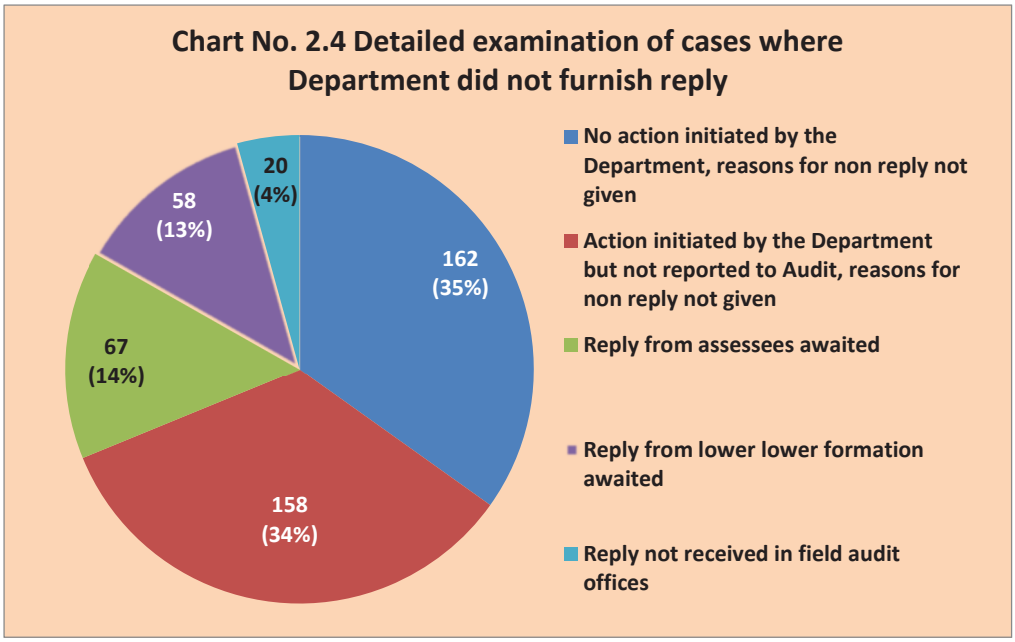
(a) Out of these 1,012 paras where first reply was not received, in 547 cases (54 *per cent*), the Department failed to produce case files for verification during the field visit.

Reasons for non-production of records to Audit were non-traceability of records in 172 cases (31 *per cent*), records awaited from sub-ordinate field formations in 127 cases (23 *per cent*) and transfer of records to other Commissionerates owing to restructuring in 117 cases (21 *per cent*). In 131 cases, no reasons were provided for non-production of records for audit scrutiny.

(b) Out of the remaining case files relating to 465 paras, which were produced to Audit:

- **(i)** We noticed that in respect of 162 audit paras (34.84 *per cent*), no action was taken by the Department. Out of these 162 cases, 47 cases (29 *per cent*) involving ₹ 13.62 crore are more than five years old, and are thus time barred for taking any action. Reasons for inaction were not available in the records produced to Audit.
- **(ii)** We noticed that in 158 cases (34 *per cent*), though the action was initiated by the Department, the same was not intimated to Audit. Reasons for not reporting the action were not intimated to Audit.
- **(iii)** In 67 cases (14 *per cent*), we observed that the Department did not reply to audit observations as it required clarifications/responses from the assessees, which were awaited for long period.
- **(iv)** In 58 cases (13 *per cent*), we observed that the Department did not respond to LAR paras because the replies sought from lower field formations, for responding to LAR paragraphs, were awaited.
- **(v)** In the remaining 20 cases (4 *per cent*), replies were furnished by the Department, however, the same were not received in field audit offices.

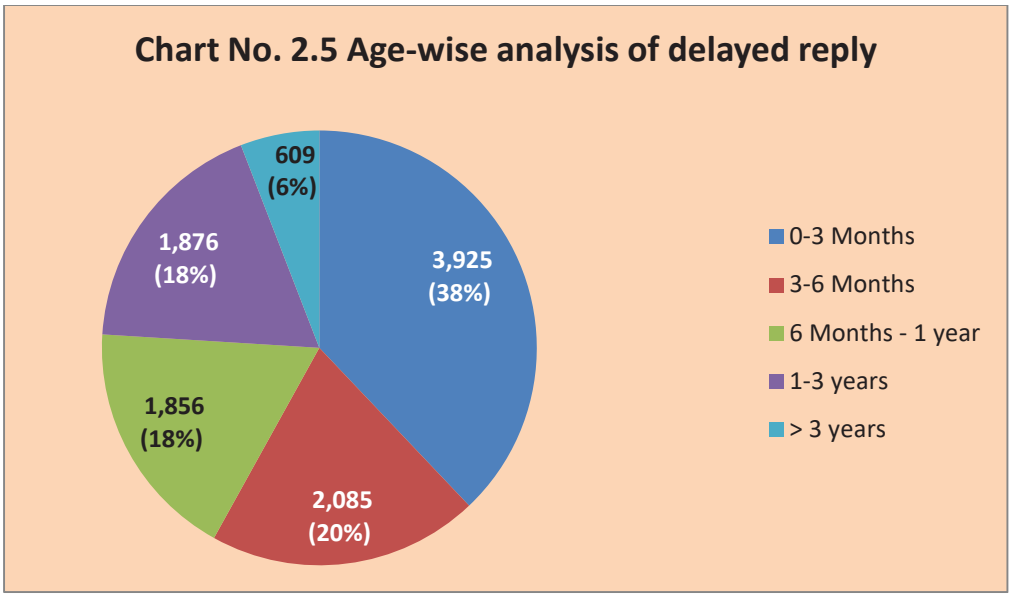
Chart 2.4 depicts the results of examination of cases where Department did not furnish reply.



We pointed this out in August 2020. Reply of the Ministry is awaited (December 2020).

2.5.5 LAR paras where Department replied with delay

Out of total 26,113 outstanding audit paras pertaining to 109 Commissionerates, as on 31st March 2019, in 10,351 paras (39.64 *per cent*) first replies were received with delay from the Department. The delays in reply ranged from 1 month to more than 3 years as depicted in the chart 2.5 below:



In order to analyse the reasons for delay in responding to audit observations, we examined 1,137 LAR audit paras in 49 Commissionerates. The results of the examination are given below:

(a) Out of these 1,137 paras where first reply was received with delay, in 430 cases (38 *per cent*), the Department failed to produce case files for verification during the field visit.

Reasons for non-production of records to Audit were non-traceability of records in 80 cases (19 *per cent*), records awaited from sub-ordinate field formations in 236 cases (55 *per cent*), and Transfer of records to other Commissionerates owing to restructuring in 31 cases (7 *per cent*). In 83 cases (19 *per cent*), no reasons were provided for non-production of records for audit scrutiny.

(b) Out of the remaining case files relating to 707 paras, which were produced to Audit, we examined the reasons for delay in response and observed the following:

(i) In 164 (23.20 *per cent*) cases, it was observed that the Department required clarification/response from the assessees, which were delayed.

(ii) In 33 cases (4.67 *per cent*), the reply from the subordinate field formation such as Division/Ranges was delayed.

(iii) In 510 (72.14 *per cent*) cases, no reason for delay was found on record.

We pointed this out in August 2020. Reply of the Ministry is awaited (December 2020).

2.5.6 Inadequate response by the Department to paras discussed in Audit Committee meetings

Regulation 145 of Regulations on Audit and Accounts (Amendments) 2020 stipulates that Government may establish audit committees for the purpose of monitoring and ensuring compliance and settlement of pending audit observations. Each committee so established shall comprise of a representative each from the administrative Department, Audit and a nominee from the Finance Department besides the head of the Department of the auditable entity. Minutes of the meetings of the audit committee shall be recorded.

Audit Committee Meetings (ACM) with the Department were planned and conducted periodically for settlement of outstanding audit observations. The details of Audit Committee Meetings held with the Commissionerates under different Zones during the last four years are enumerated below:-

Table No. 2.1: Audit Committee Meetings (ACMs)

Year	Number of ACMs conducted	Total number of paras discussed in ACM , where departmental action was awaited	Number of paras where action/reply not received despite discussion/assurance in the ACM	No of paras where reply received	% response of the Department
2015-16	74	5846	2472	3374	57.71
2016-17	75	9102	3479	5623	61.78
2017-18	69	6796	3274	3522	51.82
2018-19	68	7331	3550	3781	51.58
Total	**286**	**29075**	**12775**	**16300**	**56.06**

The Department was given additional opportunity to provide replies to outstanding objections by conducting ACMs held with the Commissionerates under different zones. Though, during the last four years, Audit Committee Meetings were planned and conducted with the auditee units but result/response from the auditee organisation was limited. The Department replied to only 56.06 *per cent* of paras discussed during the meetings.

We pointed this out in August 2020. Reply of the Ministry is awaited (December 2020).

2.5.7 Audit Conclusion

A very large number of audit observations were pending for compliance in the LARs as on 31 March 2019. Department's response to these audit observations was intermittent and not substantive leading to persistent accumulation of outstanding paras. Department had not furnished reply to 52 *per cent* (13,477) of the LAR audit paras, pending as on 31 March, 2019, reflecting lackadaisical approach of the Department in replying to audit observations.

2.5.8 Recommendations

- The Department may develop a comprehensive database to monitor compliance on audit observations in CBIC field formations.
- The Department may create an online interface with Audit wherein all audit paras are responded through the system and pendency could be tracked through Management Information System (MIS). A system of periodical reports may be put in place at the Board level to monitor remedial action taken on audit observations.

- Files which are not traceable may be located and suitable rectificatory action may be ensured in all cases.
- LAR paras that are outstanding may be reviewed and followed up by the Department and responses may be sent to Audit without further delay.

2.6 Follow-up of CAG's Audit Reports

In the last five Audit Reports (including current year's report), we had included 1,322 audit paragraphs pertaining to Central Excise, Service Tax and Goods and Services Tax involving ₹ 3,631.13 crore. The details of follow-up on audit observations are included in Table 2.2.

Table No. 2.2: Follow-up of Audit Reports

(Amount in ₹ crore)

Year			FY15	FY16	FY17	FY18	FY19 & FY20	Total
Paragraphs Included		No.	231	255	300	**239**	297	**1322**
		Amt.	534.37	435.56	1018.79	401.26	1241.15	**3631.13**
Paragraphs accepted	As on 31.12.2020	No.	213	237	269	216	183	**1118**
		Amt.	510.17	384.78	548.56	200.39	504.01	**2147.91**
Recoveries effected	As on 31.12.2020	No.	139	178	160	116	107	**700**
		Amt.	83.27	110.97	372.15	58.37	43.24	**668.00**

The Ministry had accepted audit observations in 1,118 audit paragraphs involving ₹ 2,147.91 crore, and had recoverewd ₹ 668.00 crore in 700 audit paragraphs.

2.6.1 Response by Ministry to audit observations included in this report.

As stated before, we issued only significant observations to the Ministry for comments before inclusion in this Audit Report. We gave six weeks to the Ministry to offer their comments on cases issued to them before inclusion in the Audit Report. We have included 289 draft paragraphs with monetary impact of ₹ 1,241.15 crore in the current Audit Report. The Ministry admitted 183 draft paragraphs having monetary impact of ₹ 504.01 crore. Ministry's reply is awaited with respect to 84 draft paragraphs.

We also issued two draft Paragraphs on IT Audit of GSTN and Subject Specific Compliance Audit on "SCN and Adjudication process".

In addition to the above, we issued five draft paragraphs related to Indirect Taxes Administration, Compliance verification mechanism under GST, Revenue Trends under GST, and non-furnishing of GST Compensation Fund Account. Ministry has replied on four draft paragraphs. Reply with respect to one draft paragraphs is awaited.

Chapter III: Information Technology Audit of GSTN (Phase-II)

3.1 Introduction

Goods and Services Tax Network (GSTN) is a private limited company incorporated under Section 25 of the Companies Act, 1956 (now Section 8 of the Companies Act 2013), as a 'Not for Profit Organisation'. GSTN has been set up primarily to provide Information Technology (IT) infrastructure and services to the stakeholders[26] for implementation of GST. The main objectives of GSTN include:

- To assist and engage with various stakeholders in preparing IT and communications related infrastructure for smooth roll out of any IT driven initiatives and other e-governance initiatives of the Government or any department or agency of the Government, specifically for the roll out of GST;
- To provide for smooth transitioning of the legacy indirect tax regime to the GST regime;
- To provide IT and communications related services to various stakeholders for implementation and management of various initiatives, including e-governance initiatives like implementation of GST, taken by the Government or any department or agency of the Government; and
- To provide IT and communications related services to various stakeholders in order to prepare them for aligning their IT and communications infrastructure and processes with those e-governance initiatives undertaken by the Government or any department or agency of the Government.

3.2 Organisational setup of GSTN

According to the Articles of Association, the Board of Directors of GSTN (the Board) should have at least two and maximum 14 directors. The Chairman of GSTN shall be nominated through a joint approval mechanism of Central Government and State Governments, and the Board shall appoint a Chief Executive Officer (CEO) for the management of the business of the Company subject to the control and supervision of the Board. Under the present organisational setup, the CEO is being assisted by Executive Vice Presidents

[26] Finance departments of Government of India and State Governments, Taxpayers, Central Board of Indirect Taxes and Customs (CBIC), State Tax Authorities, Principal Chief Controller of Accounts (PCCA), State Treasuries, Reserve Bank of India and Authorised Banks.

(EVP) and Senior Vice Presidents (SVP) looking after different functions of the company.

3.3 GST IT Portal

GST IT Portal has been at the core of the entire GST ecosystem, providing a single interface for over a crore taxpayers for their GST compliance functions. It has facilitated integration of tax administration across the Union and the States. The common GST Portal developed by GSTN has been functioning as the front-end interface of the overall GST IT eco-system and provides for filing of registration application, filing of return, creation of challans for tax payment, payment of GST, settlement of IGST payment, and generation of Business Intelligence (BI) and analytics. M/s Infosys has been engaged as the system developer and Managed Service Provider (MSP). The back-end IT systems of CBIC and State Tax Departments are used to handle tax administration functions such as registration approval, assessment, audit, appeal enforcement and adjudication. While six[27] States and CBIC have been developing their own IT systems for tax administration, GSTN has been entrusted with the development of the same for 25 other States / UTs.

3.4 IT audit of GSTN (Phase-II)

3.4.1 Background – IT audit (Phase-I)

IT audit of GSTN has been conducted in two phases. Phase-I of the audit was conducted during May-August 2018. The main objectives of audit were to assess whether the IT modules for Registration, GST Payment and settlement of Integrated GST (IGST) among Union and States were in line with the provisions of the Acts and Rules governing the GST regime. Aspects of Business Continuity Plan (BCP) and Change Management Process (CMP) were also covered. Audit findings were reported in CAG's Audit Report No. 11 of 2019. Major findings are mentioned below:

3.4.1.1 Major findings – IT audit (Phase-I)

3.4.1.1.1 ***Registration module***: System validations were not aligned to the provisions of the GST Acts and Rules in many cases, leaving crucial gaps in GST Registration module such as the system failing to validate and debar ineligible taxpayers from availing Composition Levy Scheme, lack of validation of key fields in Registration (Legal Name, Type of Business and Corporate Identity Number) with Central Board of Direct Taxes (CBDT) and Ministry of Corporate Affairs (MCA) databases, etc.

[27] Goa, Haryana, Karnataka, Kerala, Sikkim and Tamil Nadu

3.4.1.1.2 ***Payment module***: The Payment module, despite being in operation since 1 July 2017, was fraught with operational deficiencies such as delay in updating the Electronic Cash Ledger (ECL) even after successful payment of tax by the taxpayer, issues in reconciliation of GST receipts etc.

3.4.1.1.3 ***IGST Settlement reports***: All the IGST Settlement Ledgers were not being generated due to non-implementation of corresponding GST modules, like imports and appeals. This, coupled with the inaccuracies in the settlement algorithm and limitation of the GSTR-3B return in capturing all the information required for settlement, had a bearing on the settlement of funds to the Centre and various States.

3.4.1.1.4 ***Other findings*****:** In addition, there were system design deficiencies. BCP was not finalised and CMP was deficient.

3.4.2 Scope of IT audit of GSTN (Phase-II)

- **Audit Objectives**
  - To assess whether the Refund and Returns modules implemented by GSTN were in line with the provisions of the Acts and Rules governing the GST regime and the System Requirements Specification (SRS)[28].
  - To review E-Way Bills (EWB) module in GST ecosystem which has been developed by National Informatics Centre (NIC) under the supervision of GSTN.
  - Follow-up audit on the action taken on audit findings noted in Phase-I of IT audit.
- **Audit Methodology**

We conducted (October 2019) an entry conference with the GSTN senior management to discuss audit plan and programme followed by discussions, presentations and walkthrough to understand business processes and flow of information through GSTN IT application.

Our testing of important forms and functionalities, as envisaged in relevant Acts and Rules governing GST and SRS, was first conducted on training environment of the GST system. Data from production environment was requested for validation of various audit checks. For majority of the audit

[28] A System Requirements Specification (SRS) (also known as a Software Requirements Specification) is a document or set of documentation that describes the features and behavior of a system or software application. It includes a variety of elements that attempts to define the intended functionality required by the customer to satisfy their different users.

checks, we analysed data of a selected state for a few months as provided by GSTN. Integration with Indian Customs Electronic Data Interchange (EDI) System (ICES) was covered as part of audit of IGST refund on exports.

We also reviewed the roll out plan and instructions issued by Department of Revenue (DoR), and leading causes that resulted in delayed / non-implementation of various modules. Audit was conducted during October, 2019 to June, 2020. We conducted (10 July 2020) an exit conference with GSTN senior management to discuss main IT audit findings. GSTN responses on audit findings (11-20 July 2020) have been suitably incorporated in this report. Module-wise audit findings have been reported in succeeding paragraphs.

- **Audit Criteria**

Sources from where audit criteria for this IT audit was derived include

  - Relevant provisions of CGST Act, IGST Act, UTGST Act, SGST Acts and their associated rules and regulations
  - Notifications of the tax authorities like CBIC
  - Business process of Refund, Returns and e-way Bills modules
  - SRS

- **Acknowledgement**

  Audit acknowledges the co-operation of the GSTN, NIC and Directorate General of Systems & Data Management, CBIC (DGS) in providing necessary information and records to audit and for furnishing replies to the audit observations. Draft Audit Paragraph on observations discussed in this chapter was issued to the Ministry on 27 August 2020. However, Ministry's reply is awaited (December 2020).

3.5 Overview of findings – IT audit (Phase-II)

3.5.1 Overview of IT audit findings

Our examination of Refund module, Returns module, EWB System and BCP revealed lack of controls and validations pointing towards risk areas in implementation of these modules. In this regard, we issued audit observations pertaining to 56 issues related to all the modules audited. Out of these, 29 were accepted by GSTN. GSTN didn't accept 17 issues raised by Audit. In 5 cases, GSTN explained that the issues pertain to policy and will be taken up with DoR / Law Committee for further directions. Replies to five audit observations are still awaited.

In 14 cases (Appendix-II), the key validations / functionalities as existing in the rolled out modules were not found aligned to the applicable provisions even though SRS was correctly framed.

Audit findings on Refund module, Returns module, EWB and BCP have been given in the following four parts.

3.6 Follow-up on Phase-I audit observations

We conducted follow-up audit to assess whether GSTN has taken effective action on audit findings and recommendations reported in Phase-I audit. GSTN intimated that it had already implemented corrective action in 25 out of 42 observations. Audit reviewed the corrective action and noticed that GSTN had fixed the deficiency successfully in 19 cases. The status of remaining 23 audit observations is given below **(*Appendix-III*)**:

Status of corrective action	Number of observations	Module-wise breakup
Corrective action successfully implemented.	19	Registration:15 Payments: 2 IGST Settlement: 2
Issues still persist despite GSTN assuring corrective action	6	Registration: 2 IGST Settlement: 4
Corrective action is being taken up by GSTN and will be implemented in due course	12	Registration:7 Payments: 1 IGST Settlement: 4
Rectificatory action is pending at the end of other agencies	5	Payments: 3 IGST Settlement: 2

The important observations where corrective action has not been implemented so far are listed in **Appendix-III**.

3.7 Refund Module

3.7.1 About Refund module

Under GST, refund refers to any amount that is due to the taxpayer from the tax administration. The provisions pertaining to refund contained in the GST law aim to streamline and standardise the refund procedures under GST

regime. The relevant provisions embodied in Section 54 and Section 77 of the CGST Act, 2017 and in Rules 89(1) and 89(2) of CGST Rules, 2017 give an overview of the various situations that may necessitate a refund claim. Following table shows the major categories under which refund can be claimed, and the details of refund applications filed through RFD-01A[29] up to 29 September 2019.

Table No. 3.1: Status of refund applications filed up to 29 September 2019

Refund category	Number	Amount (in crore)[30]
Export of goods / services- Without payment of Tax, i.e., ITC[31] accumulated	2,13,309	78,751
ITC accumulated due to inverted tax structure (clause (ii) of proviso to section 54(3)	1,06,245	23,683
Excess balance in ECL[32]	2,05,866	5,349
Export of services- With payment of Tax	19,252	3,901
On account of supplies made to Special Economic Zone (SEZ) unit/ SEZ developer (without payment of tax)	8,253	3,136
On account of supplies made to SEZ unit/ SEZ developer (with payment of tax)	21,727	1,850
Excess payment of tax, if any	5,916	561
Supplier of deemed exports	1,521	542
Recipient of deemed export	2,024	492
Tax paid on an intra-State supply which is subsequently held to be inter-State supply and vice versa (change of Place of Supply)	130	156
On account of assessment/provisional assessment/ appeal/ any other order	919	60
Others	22,507	3,772
Total	**6,07,669**	**1,22,253**

[29] Application for Refund (Manual) for casual taxable person or Non Resident Taxable Person (NRTP), tax deductor, tax collector and other registered taxable person

[30] Data in table taken from GSTN Summary Report dated 29 September 2019

[31] Input Tax Credit (ITC) means reducing the taxes paid on inputs from taxes to be paid on output.

[32] Any GST payment made in cash or through bank reflects in ECL. The balance in ECL can be claimed as a refund by submitting a refund application form RFD-01

3.7.2 Audit Objectives

IT audit of GST Refund module was conducted to

a) assess whether Refund module, rolled out by GSTN, was properly planned and effectively implemented as per the timelines
b) assess whether the Refund module, rolled out by GSTN, is in line with relevant provisions of the GST Act / Rules / notifications as amended
c) assess whether integration between the two IT systems (GST and Customs) as regards to refund of IGST on export of goods has been effectively operationalized
d) assess whether the rollout of Refund module has positively impacted the taxpayers in ease of doing business

3.7.3 Rollout of Refund module

Refund module of GST Portal envisaged online filing of refund application by taxpayer and subsequent electronic processing of the claims by the tax department. Refund is a core taxation functionality and therefore, this functionality was supposed to be rolled out from the early days of rollout of GST itself. However, there was no Refund module when the GST was rolled out in July 2017. Refund module was rolled out as per the following timelines:

(a) In case of refund of IGST paid on exports, the automated route of refund sanction was deployed in GST Portal in October, 2017. This involved integration with ICES that uses automated verification of refund claims.

(b) For other categories of refunds, functionality was not provided on GST Portal till November 2017. From November 2017 onwards, provision was made in the GST Portal to file refund application online by taxpayer. Thereafter, the taxpayer would take a printout of the application form and submit to the tax officer along with supporting documents. The tax officer would subsequently process the refund claim in files instead of the portal and sanction refunds. This was essentially manual processing of the refund approval process necessitating avoidable interface with tax officer instead of a faceless IT interface. This system continued till December 2018.

(c) Subsequently in December 2018, a feature was enabled in the GST Portal wherein refund application form GST RFD - 01A, along with all supporting documents, were to be submitted electronically. Thereafter, the documents were to be pushed to the tax officer's dashboard electronically. However, various post submission stages for processing of the refund application continued to be manual as shown in Chart 3.1.

(d) This manual processing of refund continued till 26 September 2019 when GSTN provided a complete electronic refund processing environment starting from the refund processing by the tax department to single authority disbursement through Public Financial Management System (PFMS). The process flow is shown in Chart 3.2.

Chart No.3.1: Manual processing of Refund

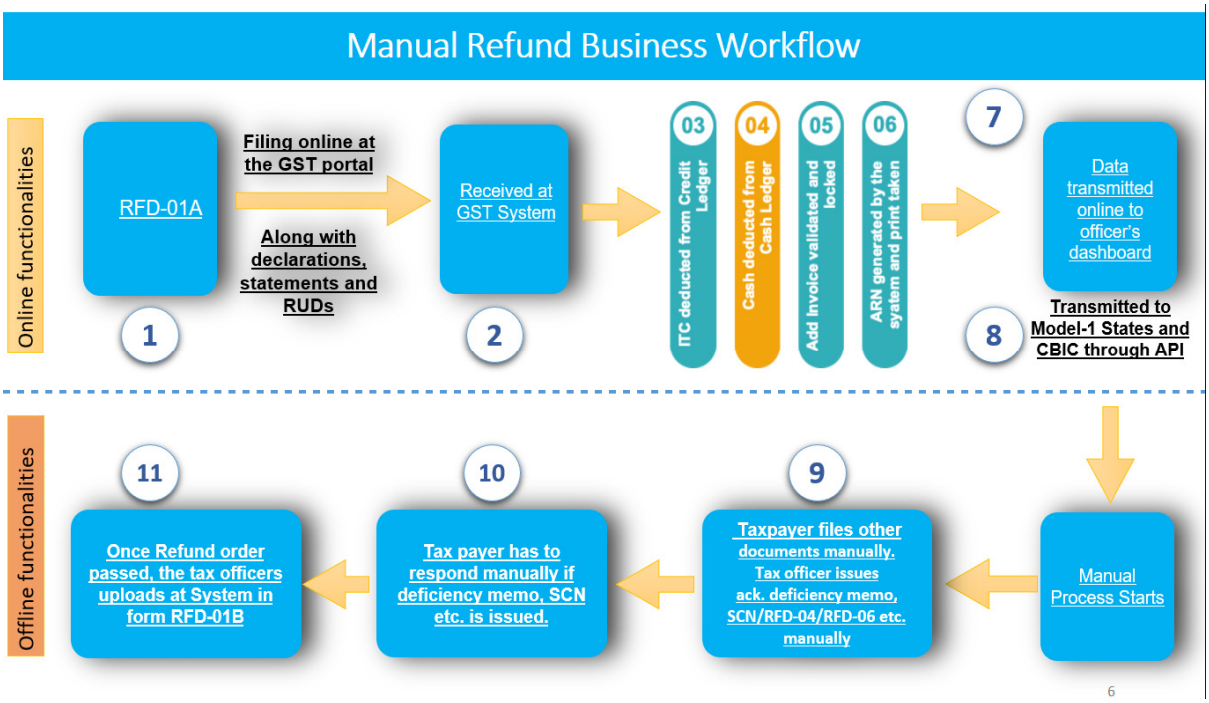
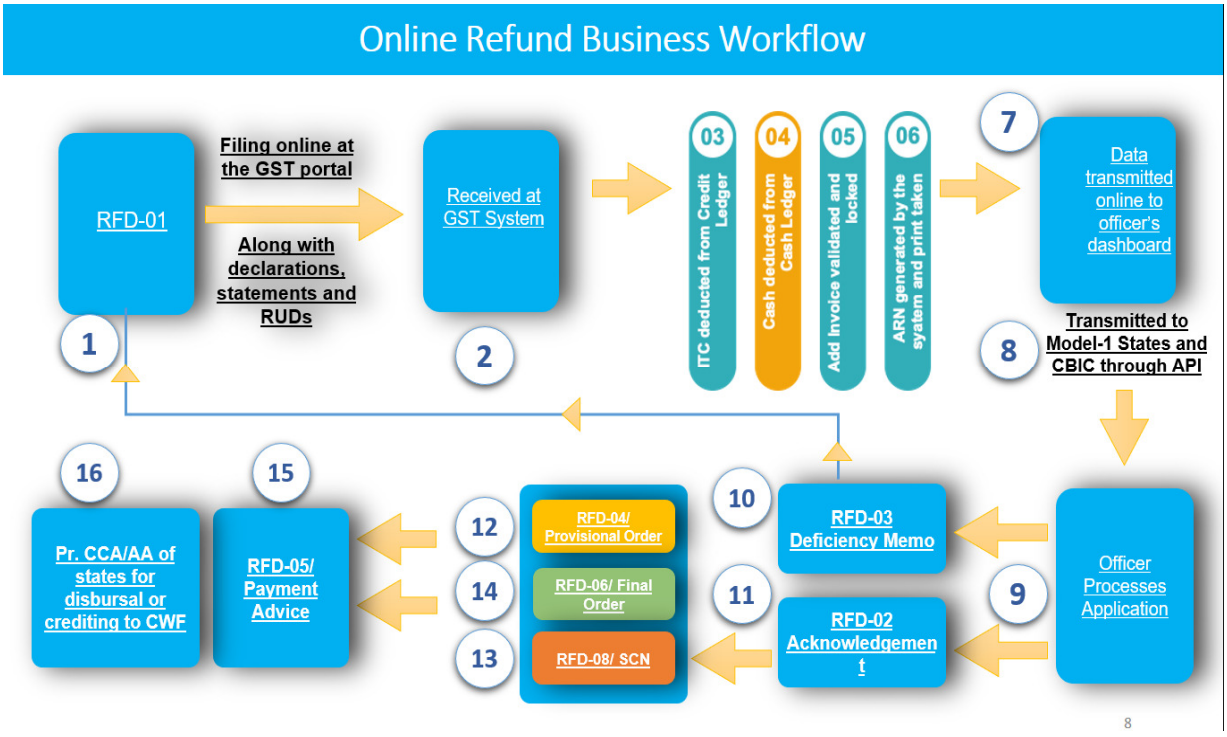


Chart No. 3.2: Online processing of Refund



Thus, GST refund module was fully rolled out only in September 2019, more than two years after the rollout of GST. The constraints which led to the delayed rollout as stated by GSTN were as follows:

(a) Frequent changes and delay in finalization of the GST rules during the months prior to the rollout of GST Portal in July 2017.

(b) The dispensation of initial GST return mechanism and keeping in abeyance of GSTR-2 and 3 due to which the entire GST refund module had to be reworked.

(c) Dependency of the rollout on readiness of Model-1 states - In March 2019, GSTN was ready with the business flow of processing of refund application electronically. However, Model-1 states and CBIC have their own backend systems and Refund module couldn't have been deployed without the readiness of all the Model-1 States and CBIC together.

(d) Single Disbursement process - The initial RFD-01A flow had an offline disbursement process, wherein the refund amount was to be disbursed by both Central and State authorities (CGST and SGST components respectively). Eventually it was decided to implement single authority disbursement through PFMS. Due to this, the integration process with Model-1 states had to be modified taking into account the readiness of not only CBIC and Model-1 States but also PFMS.

Refund module is a crucial module with high relevance for taxpayers and should have been prioritized and expedited by GSTN. The rollout of refund module could have been expedited by proper planning and coordination among stakeholders.

The IT audit revealed deficiencies in the Refund module of GST IT system, including areas where the GST IT system was not aligned with the provisions of the GST Acts and the Rules. Detailed audit findings are as follows:

3.7.3.1 Overview of findings on IT audit of Refund module

During audit of Refund module, we noticed absence of adequate controls, risk of claiming refund on unverified ITC and deficiencies in integration of GST Portal with ICES application for IGST Refund on Export of Goods. Eighteen audit observations related to Refund module were noticed as part of this audit, out of which 15 were issued to GSTN and three were issued to DGS. Out of the 15 audit observations issued to GSTN, eight were accepted and four were not accepted by GSTN. For the remaining 3, GSTN replied that the issue being a policy matter would be referred to DoR /Law committee for further action. Reply to two audit observations that were issued to DGS, is awaited as of November 2020.

3.7.3.2 Unmitigated risk in the GST Refund mechanism

There are refunds of the unused ITC which get accumulated during production of goods and services. In these refund categories, a taxpayer is paid in cash equivalent to the ITC accumulated. Such a system's effectiveness depends on inbuilt mechanism to verify / cross check the ITC claimed by the taxpayer and ensure its authenticity. However, in the current GST system, such mechanism is not there posing the risk of claiming refund on unverified ITC as explained in succeeding paragraphs.

In the original GST system, the GST Portal would have verified the ITC, and seamless flow of ITC was envisaged to be achieved through the returns GSTR-1, 2 and 3. It was envisaged that suppliers would file invoice-wise details of outward supplies made by them during the month through GSTR-1. These details were to be made available electronically to the registered recipients through form GSTR-2A who was in turn supposed to furnish form GSTR-2 after including details of other inward supplies. Form GSTR-1 furnished earlier by the supplier would have stood amended to the extent of modifications accepted by him.

The GSTR-2 so filed by a registered dealer could be used to check with the sellers' GSTR-1 for buyer-seller reconciliation. This reconciliation is vital because ITC on purchases will only be available if the details of purchases filed in GSTR-2 return of buyer matches with the details of sales filed in GSTR-1 of the seller. GSTR-3, monthly return with the details of sales and purchases during the month along with the amount of GST liability, was supposed to be auto-generated from GSTR-1 and GSTR-2.

However, GSTR-2 and 3 were kept in abeyance. In lieu of GSTR-3, a new form GSTR-3B was inserted by the Government as a summary return. GSTR-3B was introduced as a temporary arrangement to collect tax from taxpayer till a new return format replacing initial GSTR-1, 2 and 3 is deployed. However, the new returns have not been rolled out as of November 2020, and GSTR-3B continues to be used. There is no auto-population either from or to GSTR-3B from other returns. All the details in GSTR-3B are purely based on taxpayer input.

Thus, the invoice matching mechanism of returns via GSTR-1, 2 and 3, as originally envisaged, is not functional. Being a self-assessed summary return and having no validation of ITC claimed for paying tax liability in GSTR-3B, there is a risk that tax paying entities pass on ITC down below in the ITC chain without actually paying tax.

In reply, GSTN stated (July 2020) that they have developed the refund business process as per existing legal provisions and all the changes introduced by Government have been implemented.

GSTN's reply should be seen in the light of facts that these passed down ITCs can be used to claim refund after multiple levels of ITC transmission. The only control preventing such fraudulent refund claims is verification by the Refund Processing Officer (RPO) while processing Refund claims. However, it is practically not feasible for a RPO to get the source of every ITC claim especially where the ITC chain may have huge number of layers involving genuine taxpayers in between. Thus, the risk of fraudulent refund claims on fake ITC is an inherent risk in the GST eco-system due to incomplete rollout of the envisaged returns and lack of reconciliation / auto-population in the alternate mechanism adopted (GSTR-3B).

3.7.3.3 Deficient re-crediting facility of ITC where Deficiency Memo (DM) was issued on second and subsequent occasion

CGST Rule 90(3) provides "Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03" requiring him to file a fresh refund application. As per Rule 93(1) "Where any deficiencies have been communicated under aforesaid, the amount debited under sub-rule (3) of rule 89 is re-credited to the electronic credit ledger".

We observed that when a taxpayer files an application under various categories of refund at GST Portal, the ITC ledger of the taxpayer is debited with an equivalent amount of refund claimed. If RPO issues a DM on the application, the ITC ledger of taxpayer gets re-credited with the amount of refund claimed on this first occasion of issuance of DM by the RPO. If the taxpayer again applies refund for the same period, the ITC ledger of taxpayer gets debited but ITC ledger does not get re-credited if RPO issues further DM on the second occasion and in subsequent DMs. This could result in blockage of ITC of taxpayers.

GSTN accepted (June 2020) the audit observation and stated that due to a code error, in few cases, the system was not re-crediting the ITC if the tax officer issued further DMs. GSTN stated (13 July 2020) that the defect had been fixed on 21 January 2020 and all the impacted cases had been resolved through data fix by re-crediting the ITC.

3.7.3.4 Excess refund allowed by system in case of export without payment of tax (LUT)

Section 16 (3) (a) of IGST Act, 2017 provides that the person may supply goods or services or both under bond or Letter of Undertaking (LUT), without payment of integrated tax and claim refund of unutilised ITC. For calculating eligible refund amount of ITC, Rule 89 (4) of CGST Rules, 2017 provides the following formula –

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero rated supply of services) x Net ITC ÷Adjusted Total Turnover {Statement-3A}

The intention of this refund category is to provide refund to an exporter on the ITC he/she has accumulated while purchasing domestic inputs required for making export goods / services. We noticed that the system is implemented in such a way that it is possible for the taxpayer to claim refund on ITC much more than the ITC accumulated from the purchase of domestic inputs as detailed in the following case study.

Case Study

A taxpayer filed an application for refund of ₹ 59,24,756 for the month of October 2019 under the category 'Refund of ITC on export of goods without payment of tax'. We noticed that the total taxable value of export of goods for the period was only ₹ 70,689. However, in this case, ₹ 59.25 lakh was sanctioned as refund against the exports of ₹ 70,689 made in the month with refund sanctioned to export ratio of 8381.4 per cent. Thus, this is a case of sanctioning excess refunds. There is also a possibility that the ITC for which refunds have been sanctioned may not be related to exports at all.

The above case clearly shows that refund of ITC sanctioned was disproportionately more than the actual value of export. GSTN provided sample data[33] of 9136 cases of refunds under LUT category. We noticed that in 143 of these cases, the refund sanctioned was disproportionate to the export value. In 27 of these 143 cases, the refund sanctioned was more than the export value with refund sanctioned to turnover ratio ranging from 103.24 *per cent* to 8381.4 *per cent*[34].

It appears that the system is designed in a way that it does not restrict the claim of refund on the basis of export value, and thus enables taxpayers to get higher ITC encashment through this functionality. The sample data query results substantiate that such cases are actually happening and refunds are also sanctioned far in excess of the maximum ITC possible in comparison to export value.

In response to audit observation, GSTN stated (June 2020) that the functionality has been developed strictly as per the legal requirements / provisions, and since the observation relates to policy and not to IT, GSTN cannot comment on the policy issue being pointed out by Audit. Further, GSTN

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[33] All Refund cases on account of export of goods / services without payment of tax for the period 01 July 2019 to till 31 December, 2019 containing details like Refund claim, Sanctioned amount and Taxable value.

[34] These are cases where refund sanctioned was more than 28 *per cent* (maximum GST rate) of export value.

stated (June 2020) that the audit observation is based on the notion that refund on account of export of goods and services without payment is automated i.e. once the refund application is filed, the amount is sanctioned automatically. However, that is not the case. The jurisdictional officer processing the refund application verifies the antecedents of the taxpayer and scrutinises the case before sanctioning refund application, and thus audit assertion of fraudulent refund claims by fly-by-night operators lacks merit.

We understand that the system has been designed as per the rule provisions. However, the intention of refund of ITC on exports ***is to provide for tax paid domestically for goods exported and the tax should be in proportion to the goods exported***. As the above examples show, the system allows refund far more in excess of the tax paid in goods exported and is not in sync with the intention of the law. There is currently no mechanism to separate ITC remaining unutilised on account of goods sold in India (for which refund is not admissible) with goods exported out of India (for which refunds are possible). We are also not in agreement with the GSTN contention that RPO alone is an effective check against fraudulent claims of this manner. The IT system should as far as possible strive to aid the jurisdictional officer in highlighting the risk and make effective controls. In this case, the possibility of IT system to identify and prevent such cases is under-utilised leaving the entire risk mitigation responsibility on the RPO.

In a complex system like GST, it is possible that the rule provisions may not cover all possible scenarios. GSTN may consult the matter with DoR / Law Committee to flag this issue and make adequate validations in the system. GSTN replied (July 2020) that the matter has been considered by Law Committee, and GSTN was yet to receive any instruction in this regard.

Recommendation 1: GSTN may implement validations to restrict the refund claimed under LUT in proportion to turnover of goods exported.

3.7.3.5 Mandatory validation not put into the system (Endorsement detail of invoices of supplies to SEZ was not made mandatory)

Rule 89 sub-rule (2) of CGST Rules, 2017 provides that the application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in form GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:- (d) a statement containing the number and date of invoices as provided in Rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a SEZ unit or a SEZ developer, (e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of

payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the SEZ Act, 2005, in a case where the refund is on account of supply of services made to a SEZ unit or a SEZ developer. As per Paras 5.4.6 & 5.4.7 of Refund SRS, the applicant is required to enter Shipping Bill / Bill of Export / Endorsed Invoice by SEZ' details mandatorily, in case of refund on account of supplies made to SEZ unit/ SEZ developer. In case of refunds on supplies to SEZ category, Endorsed Invoices by SEZ is a proof that the supplies are actually made to SEZ.

We observed that the system allowed the taxpayer to submit the refund application without providing the details of Endorsed Invoices by SEZ (in Statement-4 of refund application) while filing refund application against the supplies made to SEZ unit / developer with payment of tax. Similarly, the refund application against the supplies made to SEZ unit / Developer without payment of tax can also be filed without providing details of Endorsed Invoices by SEZ in Statement-5 of refund application. The validation of Endorsed Invoices by SEZ was mandatory as per provisions of SRS and has not been implemented in the system. Without validation of the Endorsed Invoice details, it is not possible to ensure that exports (against which refund is sanctioned) have actually happened from the SEZ.

In response, GSTN mentioned (June 2020) that in the development of IT functionality requiring seamless integration with other IT systems, the relative maturity and preparedness of constituent IT systems plays a pivotal role. Now, after rigorous testing and checks, the integration with Indian Customs Electronic Gateway (ICEGATE) has become stable and therefore, the process of SEZ Endorsed Invoice data validation through ICEGATE has been taken up for implementation. GSTN informed (July 2020) that they were currently having interactions with ICEGATE / SEZ Online to finalise the integration process. GSTN also intimated that the tax officers have access to SEZ Online Portal wherein Endorsed Invoices can be verified while processing the refund application.

Tax officers having access to SEZ Online and manually verifying them is not an effective substitute for automatic validation by IT system. Integration with SEZ should have been a priority for GSTN due to the risk involved. The fact remains that even after three years from the rollout of GST and despite having provisions in the SRS for such validation, integration with SEZ system has not been achieved to minimize this risk in the system.

Recommendation 2: GSTN may take necessary steps for integration of GST Portal with SEZ Online system.

3.7.3.6 Non implementation of "With-hold" request functionality

As per CGST Rule 96(4)(a) and (5), the claim for refund of integrated tax paid on goods (or services) exported out of India shall be withheld where request has been received from the jurisdictional Commissioner of GST to withhold the payment of refund for violation of provisions of GST / Customs Act. Where refund is withheld in accordance with these provisions, the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of GST, and a copy of such intimation shall be transmitted to the common portal.

We observed that the functionality for issue of "With-hold" request of shipping bills by the GST Commissioner, in case of refund of export with payment of tax, was not developed / implemented in the system. On enquiring with DGS it was also confirmed that there is no electronic transmission of GST withheld cases.

GSTN accepted (April 2020) that "With-hold" functionality has not been implemented in full. GSTN intimated that the business flow with respect to withhold and release functionality is under discussion in the Law Committee and the forms have to be notified. Further, GSTN stated (June 2020) that since the observation relates to policy and not to IT, GSTN cannot comment on the policy issue being pointed out by audit.

In the absence of the "With-hold" functionality, the possibility of further refund to the non-compliant exporters cannot be ruled out. We are also unaware of any alternate mechanism to mitigate the risk other than GST Commissionerate writing directly to Customs Ports to suspend the IGST refund which is inefficient and not in line with the vision of fully electronic processing of refunds. The provision of "With-hold" was there in the law from the beginning, and the need for rolling out should have been anticipated much earlier. The responsibility of not rolling out of this functionality rests with all the stakeholders including GSTN.

GSTN replied (July 2020) that they have flagged the issue with the Law Committee, and are yet to get an instruction in this regard.

Recommendation 3: GSTN may pursue the matter with the DoR to finalise the business flow and forms required to implement the "With-hold" functionality at the earliest.

3.7.3.7 Functionality for interest on delayed payment of Refund was not implemented in the system

Section 56 of CGST Act 2017 provides that if any tax ordered to be refunded under sub-section (*5*) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application, interest at such rate not exceeding

six *per cent*, as may be specified in the notification issued by the Government on the recommendations of the Council, shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund of such tax. Claims of refund that arise from an order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or court which has attained finality are also governed by these provisions.

We observed that

- the provisions to calculate (automatic / manual) interest payable on delayed sanctioning of refund were not considered for incorporation in the SRS and consequently not implemented in the system.
- the interest field in RFD-05 form (Payment Advice) is not mandatory to fill even in cases where 60 days have passed since refund application.
- there are no fields available where the RPO has to mention the reason for not sanctioning the interest in cases where refunds are sanctioned beyond 60 days.

We also noticed that there is no provision in the GST Portal to apply for interest in case the taxpayer is not provided interest along with the refund payment. A specific example of the same is given below:

We noticed that one tax-payer was not paid interest along with the refunds. He approached Hon'ble High Court for redressal of his grievance. The petitioner also stated that there was no option available on the common portal to enable the registered person to make application for claiming compensation / interest on delayed refund. High Court agreed with the contention and directed to pay the interest at the rate of 9 per cent per annum for delayed payment of refund to taxpayer where interest was not paid at the time of payment of refund claim.

In response, GSTN replied (April 2020) that the tax officer can manually calculate the interest amount and include the same. GSTN stated (June 2020) that the calculation of interest on delayed sanction of refund involves many scenarios which were difficult to be captured efficiently by the system due to myriad number of factors. GSTN stated (June 2020) that the system cannot calculate interest on refund in various scenarios like non-compliance by the taxpayer in quasi-judicial proceedings, multiple payment orders against a single Application Reference Number (ARN), withholding of refund by the proper officer and its subsequent release, delays on account of non updation of bank account by the taxpayer, process of assessee master validation by PFMS etc. Similarly, there are certain externalities that are beyond control viz. pandemics, natural disasters, network breakdown, differences in the holiday

calendars of different states etc. that might delay the sanction of refund amount. Hence, to envisage all these scenarios and deliver the functionality of auto-calculation of interest will not be feasible.

GSTN's reply is not acceptable as calculation of interest is relatively straightforward in most cases. Citing exception scenarios to not implement the interest calculation feature is, in our view, under-utilisation of the potential of IT in achieving effectiveness and automation of process.

During exit conference, GSTN intimated (July 2020) that delays may also occur between the sanction of refund and payment being made. Interest for such delay will be not be possible to calculate automatically since it happens outside GST Portal. We are not in agreement with GSTN's contention since delay at payment stage is likely to be of less duration since it's primarily an automated process involving integration with PFMS / banks. More importantly, since this delay will be after the calculation of interest, it would not impact the amount of interest whether interest calculation is done manually or automatically. Hence non-implementation of automatic calculation of interest citing this reason doesn't hold merit.

The purpose of an IT application is not to exactly replicate the manual processes. Instead, the IT system should strive to achieve efficiencies and automation of processes wherever feasible. This has not been achieved in the instant case.

GSTN did not reply to audit observation regarding lack of provision in the GST Portal to apply for interest in case the taxpayer is not provided interest along with delayed refund payment.

Recommendation 4: GSTN may implement the functionality of auto calculation of interest on delayed payment of refund, and provide for a functionality in the GST Portal for the taxpayer to apply for interest if the same is not paid with delayed sanction of refunds by the department.

3.7.3.8 Non allocation of RFD 10 of Other Notified Persons (ONP) to State Jurisdictional Authority

Para 6.3 of SRS for GST Refund module provides the Main Flow (MF) of refund application for UN bodies / Embassies / ONPs. SRS provides that "RFD-10 " filed by ONPs shall be sent to State / Centre based on the Authority selected by the applicant in the registration form and RFD-10 filed by UN Bodies / Embassies shall be sent to CBIC via APIs[35]".

[35] Application Programming Interface

During audit, we filed a dummy refund application under the category "Other Notified Person having State administration" as its jurisdictional authority. We noticed that the application was not assigned to any officer of assigned state jurisdiction for further processing of refund. This indicates lacunae in the assignment process of refund application under "Other Notified Person of Unique Identification Number (UIN)" category with possibility of refund applications not being assigned at all.

GSTN accepted (June 2020) the audit observation and stated that there are very few entities registered under the "Other Notified Person of UIN" category and the proposed logic of assigning the ARNs would entail the development of complete backend systems of all the States and CBIC which would also require multiple APIs for integration. Keeping in view the pressing priorities with regard to development of other critical use cases and subsequent changes, the proposed functionality was given lower priority in view of disproportionate effort vis-a-vis the outcome. GSTN stated (July 2020) that the audit observation has been noted and a Change Request (CR) has been raised to this effect.

3.7.3.9 Absence of auto–exclusion functionality to deduct the ITC of Capital goods

In GST regime, taxpayers are eligible for tax credit on tax paid on inputs used in the finished good. As per Section 2(59) of CGST Act, 2017 "input" means any goods ***other than capital goods*** used or intended to be used by a supplier in the course or furtherance of business.

In the original return format (GSTR-3), there was provision to capture ITC availed in respect of input goods, input services and capital goods separately. This would have enabled the system to identify ITC excluding the capital goods while processing of refund applications. However, this GSTR-3 was held in abeyance and instead Government introduced a new summary return i.e. GSTR-3B. The format of GSTR-3B does not contain separate fields for ITC of input goods, input services and capital goods distinctly and hence in the present return format there is no mechanism to segregate ITC from input goods/services with ITC from capital goods.

While testing refund applications under the category 'Inverted Tax Structure'' in training environment, we noticed that the value of Net ITC is auto-populated from ITC availed by the tax-payer in his return (GSTR-3B). This value of Net ITC may also include the ITC of capital goods (which is non-refundable) availed during the return period. There is no functionality available in the system to identify and exclude ITC of capital goods from the total ITC available with the taxpayer nor is the taxpayer being instructed to exclude the ITC due to capital

goods while filing of refund application. This may lead to sanction of excess refunds.

On being pointed out, GSTN replied (May 2020) that a CR has been raised for incorporating the instruction for excluding the ITC of capital goods, in the system, in case of refund on account of Inverted Duty Structure (IDS). GSTN further stated (May 2020) that the taxpayer can downward edit to exclude the ITC availed on capital good and the RPOs have access to the inward invoices auto-populated in the GSTR-2A of the refund applicant to address the issue.

Instead of instruction to exclude the ITC on capital goods, additional fields may be created in the refund application form (or in the proposed new return form) wherein the taxpayer explicitly declares the ITC on capital goods while applying refunds so that it can be excluded from the total ITC. In response, GSTN stated that even if the flag of capital / non-capital ITC is inserted, as suggested by audit, the system won't be able to validate the veracity of the flag being chosen by the taxpayers and again it will be a self-declaration which is currently being followed.

Legal position is that Refund of ITC on capital goods is not available and therefore, ITC related to capital goods should be distinctly identifiable to guard against sanction of excess refund. Such a field will be a deterrent for the taxpayer to wilfully or by mistake include the ITC on capital goods in refunds. Moreover, it will assist the RPOs in readily identifying risks if unusual values are there in that field (say, too low ITC on capital goods value relative to the profile of the business). We also noted that similar risks exist in the refund category of export of goods or services without payment of tax under bond or LUT.

GSTN intimated (July 2020) that suggestions made by audit will be submitted to Government for appropriate action / direction.

Recommendation 5: GSTN may review the feasibility of creating additional fields in refund application of IDS and export of goods or service or both without payment of tax for taxpayer to declare ITC related to capital goods for excluding the same from ITC used for calculation of refund claim amount.

3.7.3.10 Excess claim of refund in the absence of adequate controls / validations

Rule 89(2)(h) of CGST Rules 2017 provides that the Refund application shall be accompanied by Statement 1A in cases where the claims pertain to refund of any unutilised input tax credit under sub-section (3) of section 54, where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt

supplies (i.e., Inverted tax structure). In Statement 1A along with Refund Application form GST RFD-01A/01, the taxpayer has to furnish the *invoice wise details* of inward and outward supplies electronically. Similarly, taxpayer has to provide the total turnover of inverted rated supply of goods and services in Statement-1. The total turnover in Statement-1 should be less than or equal to the total turnover of invoices in Statement-1A to ensure that invoice details for all supplies are available for which refund is claimed.

We noticed that 69 GSTINs had declared higher value of turnover of inverted rate of supply of goods and services in Statement-1 in comparison to the total value of invoices of outward supplies as provided in Statement-1A on all India basis for the period from 1 April 2019 to 30 November 2019. The difference of turnover between these two tables was ₹ 652.21 crore**.**

In reply, GSTN stated (July 2020) that a CR has been initiated on 15 June 2020 for adding validation for turnover in Statement-1 of refund application in the case of Inverted Duty Structure (IDS) Refund. It will be taken up for development once other lined up priority CRs have been developed.

Recommendation 6: GSTN may implement the validation in the system to verify the turnover of inverted rate of supply in Statement-1 with the corresponding entries as provided in Statement-1A.

3.7.3.11 Functionality for unregistered person / consumer to apply for refund not implemented

Section 76 (10) (CGST Act, 2017) provides that where any surplus is left after the adjustment under sub-section (*9*), the amount of such surplus shall either be credited to the Consumer Welfare Fund (referred to in section 57) or refunded to the person who has borne the incidence of such amount. As per SRS for GST Refund module, in case of unregistered person / consumer, the refund application would be taken after creating a temporary login (Front Office module). Assumption (AS_11) provides "Refund application can be filed by unregistered person on creating a temporary login".

We observed that an unregistered person / consumer can get a "temporary login ID and password" through the functionality provided in Services module of the GST Portal. However, functionality for applying a refund with this temporary login ID and password (i.e. for unregistered person / consumer) has not been provided in Refund module. In the absence of such functionality, an unregistered person / consumer would not be able to file application for his refund claim. Further on verification of data, it was observed that in one case only, temporary GSTIN was issued to unregistered person by the tax officer till 25 March 2020.

In response to audit observation, GSTN stated (June 2020) that the functionality of refund application to unregistered person / consumer was not accorded high priority. However, the refund business process has stabilized now and development of the functionality allowing unregistered person / consumer to claim refund has been initiated.

Recommendation 7: GSTN may implement the functionality of refund application to unregistered person / consumer in a time bound manner.

3.7.3.12 IGST Refund on Export of Goods – integration with ICES application

Exports are zero-rated in GST regime. It implies that exporters can claim refund of tax (IGST) paid on exports or ITC available with them. There are two means with which this is achieved both of which involve data exchange between the GST Portal and Customs ICES application.

Export of Goods with payment of IGST

IGST Refund process for exports is operational in ICES since 10 October 2017. As per Rule 96 of the CGST Rules 2017, the shipping bill filed by an exporter is deemed to be an application for refund of integrated tax paid on the goods exported out of India, once both the Export General Manifest (EGM) and valid return in form GSTR-3 or form GSTR-3B, as the case may be, have been filed. Further, the information on GSTR-1 (Table-6A) is then transmitted electronically to the ICES application.

The necessary matching between the two data sources (GSTN and ICES) is done at invoice level and any mis-match of the laid down parameters returns with error / response codes. If matching is successful, ICES processes the claim for refund and the relevant amount of IGST paid with respect to each Shipping Bill or Bill of Export is electronically credited to the exporter's bank account by the Customs Commissionerate.

Export of Goods under LUT

Here the exporter doesn't pay IGST while exporting. Instead he gives LUT and claim refund for the ITC. The necessary matching between the two data sources (GSTN and ICES) is done at invoice level including other values from various data fields and any mis-match of the laid down parameters returns with error / response codes. In case of refund of unutilized ITC on inputs or input services for export under LUT, the taxpayer has to file online refund application (RFD-01/01A) which is sanctioned by the GST Commissionerates.

Existing System for Transmitting IGST Paid Export Invoices to ICEGATE

GST System uses a ledger based mechanism to ensure that cumulative liabilities from export (table 6A), supplies to SEZ (table 6B), any change of liability due to amendment of export invoice (table 9A) and credit / debit notes (tables 9B & 9C) is sufficiently paid under table 3.1(b) – Zero rated outward taxable supplies. The invoices, pertaining to export of goods, from table 6A are transmitted to ICEGATE if the IGST cumulatively paid under table 3.1(b) of all GSTR-3B returns filed till date, is equal to, or greater than, the cumulative liability arising out of tables 6A/6B/9A/9B/9C of all GSTR-1 filed till date. Under this process of validation, it is possible that either of GSTR-1, or GSTR-3B, of same months is not filed, but the invoices are transmitted for previous periods because the difference between IGST paid and liability is greater than, or equal to zero.

We analysed the integration between the GST Portal and ICES and noticed the following deficiencies:

3.7.3.12.1 Reconciliation between GST Portal and ICES

The processing of refund of IGST on exports involve to and fro transmission of data between the GST Portal and ICES through API mechanism. A robust reconciliation mechanism is expected between the two portals to ensure that there is no data loss during transmission and to ensure completeness and accuracy of data received at each end. In an API based data exchange, it is preferable that the reconciliation mechanism is also API based for seamless integration of the reconciliation process between the two systems.

We could not find any formal Standard Operating Procedures (SOPs) document between the two agencies which clearly specifies the roles and responsibilities of each party and the validations to be ensured by each side. Similarly, there is no formal documentation on the reconciliation process being employed between the two portals to ensure that there is no data gap/loss or transmission errors in the data exchange between the two portals.

GSTN was also requested to provide copies of reconciliation reports so that we could verify the current reconciliation mechanism. In reply, GSTN stated (July 2020) that the reconciliation is based on the count of transactions sent by the GST System to ICEGATE and it also includes the transactions that ICEGATE validates and transmits back to the GST System. Presently, a daily report is generated by the GST System and sent to all relevant stakeholders, including the ICEGATE team. Similarly, an excel based data comparison is done between the two teams on meta data. None of these reports or details of data comparison methodology were shared with us despite being asked for. Hence,

we are not in a position to comment whether the reconciliation mechanism is effective or it is free from errors.

To independently verify the reconciliation mechanism by comparing data sets of same month from GSTN and DGS, we requested same month data from both the agencies. Though GSTN provided (July 2020) the data, we have not received desired data set for doing such analysis from DGS and in its absence, we could not verify the reconciliation mechanism.

GSTN further stated (July 2020) that a CR is being worked upon for an API based reconciliation between GST System and ICEGATE. Once the CR is live, daily transaction level reconciliation will be done over API, and relevant stakeholders will be alerted of gaps, if any noticed.

We note that the API based data exchange between GST and ICES portals has been functioning since October 2017. However, an API based reconciliation mechanism for the data exchange is yet to be operationalised.

Recommendation 8: ***GSTN and DGS may implement*** API based reconciliation between GST Portal and ICES system at the earliest.

3.7.3.12.2 Non-deployment of validation to restrict the shipping bills having higher rate of duty drawback

Section 54 (3) (ii) of CGST Act, 2017 provides that no refund of ITC shall be allowed, if the supplier of goods or services avails drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

Analysis of the data shared by DGS revealed that IGST refund amounting to ₹ 1.50 crore against 115 shipping bills at four Customs ports was disbursed where the higher rate of drawback was already allowed during the period July 2017 to February 2020. This implies that the system had not deployed the validation to restrict the shipping bills having granted higher rate of duty drawback from claiming refund.

The issue was raised with DGS, vide audit observation dated 18 June 2020 followed by an Inspection Report dated 7 July 2020. Reply is still awaited.

Recommendation 9: DGS may deploy the validation in ICES Portal to restrict the shipping bills having granted higher rate of duty drawback from claiming refund.

3.7.3.12.3 Absence of system validation led to excess IGST Refund amount

As per para 9.1 of circular No 37/11/2018-GST dated 15 March 2018, during the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be examined and the lower of the two values should be sanctioned as refund.

Further, Business Rule 6(1) of Para 9.2.6 of SRS of Refund module also provides that the refund amount to be reimbursed shall be lower of the two values, out of:

(i) IGST value reported in shipping bill filed at Customs and

(ii) IGST value reported in GSTR-1 filed at GST Portal.

Analysis of all India data for the period July 2017 to February 2020 provided by DGS revealed that the system allowed disbursement of higher value of IGST from the IGST reported in shipping bill at Customs and IGST reported from GSTR-1 in 67 shipping bills. Thus, the absence of validation in the system allowed disbursement of ₹ 2.28 crore instead of ₹ 1.55 crore resulting in excess refund of IGST of ₹ 72.49 lakh which was in contravention to the aforesaid criteria. Hence, it may be concluded that the functionality to restrict the disbursement of higher value between IGST reported in shipping bill at Customs and GSTR-1 has been not developed/deployed.

The issue was raised with DGS vide audit observation dated 18 June 2020 followed by an Inspection Report dated 7 July 2020. Reply is still awaited.

Recommendation 10: DGS may deploy in ICES Portal the functionality to restrict the disbursement to lower value between IGST reported in shipping bill at Customs and in GSTR-1.

3.8 Return Module

3.8.1 About Returns module

In GST, taxpayers have to file common return for all taxes viz., CGST, SGST, IGST and GST Compensation Cess. The basic features of the return mechanism envisaged electronic filing of returns, uploading of invoice level information, auto-population of information relating to ITC from returns of supplier to that of recipient, invoice level information matching and auto-reversal of ITC in case of mismatch. As per GST Rules, ITC cannot be claimed by a taxpayer unless it has been paid by the supplier. This is to be ensured through the provisions for matching of invoices of 'suppliers and recipients' through filing of returns GSTR-1 (details of outward supplies) and GSTR-2 (details of inward supplies) as also generation of monthly return GSTR-3 (payment of tax, interest and late fee, if any, on the basis of computation of net tax liability) based on GSTR-1 and 2 filed by taxpayers, with the taxpayer adding details of tax paid in GSTR-3.

However, from the initial stages of introduction of GST, filing of GSTR-2 and GSTR-3 returns have been kept in abeyance and taxpayers are allowed to claim ITC in GSTR-3B return without any such cross-verification. Under GSTR-3B, ITC is claimed by the taxpayer on self-assessment basis. Hence, in the absence of

validation that ITC is being claimed by a taxpayer after payment of tax by the supplier, it is not possible to verify the veracity of ITC claims. This has serious implications, as the taxpayer could claim excessive ITC. However, of late, attempts were made to address this issue by limiting the claim to ITC available according to GSTR-2A, which is created from the suppliers' outward supply details filed in GSTR-1.

Moreover, in the 31st GST Council meeting (December 2018), it was decided that a new return system, for taxpayers under GST would be introduced for the taxpayers in place of GSTR-1 and GSTR-3B. After several changes in the proposed date of implementation, new return forms were proposed to be brought from October 2020. New return forms were to address the need for a single, simple and concise return form which would take the place of multiple return forms of complex nature that are currently being filed by taxpayers. GST Council have in its 42nd meeting (October 2020), decided not to roll out the proposed new return system in one go. It has decided to incrementally incorporate the features of the new return system in the present familiar GSTR-1 / 3B scheme. The new approach would allow the taxpayer to view ITC available in his electronic credit ledger from all sources i.e. domestic supplies, imports and payments on reverse charge etc. Prior to the due date for payment of tax, and enable the system to auto-populate return (GSTR-3B) through the data filed by the taxpayer and all his suppliers. The new provisions will be provided with effect from 1 January 2021 for monthly filers and 1 April 2021 for quarterly filers. The present GSTR-1 / 3B filing system has been extended till 31 March 2021 and the GST laws would be amended to make the GSTR-1 / 3B return system as the default return filing system.

3.8.2 Audit Objective

IT audit of Return module was conducted to assess whether it was rolled out in line with relevant provisions of the GST Act / Rules / notifications as amended, and to identify the risks in the GST eco-system due to incomplete rollout of Return module.

3.8.3 Audit Observations

3.8.3.1 Overview of findings on Returns Module

We noticed lack of validations resulting in gaps / non-filing of GSTR-1, 3B and 4, lack of auto calculation of interest liability of taxpayers in GSTR-3B, and incorrect mapping of rules to SRS. Ten audit observations pertaining to Return Module were issued to GSTN apart from one para on non-furnishing of documents. Out of these, 6 were accepted by GSTN and two were not accepted. In the remaining two observations, GSTN intimated that the issue

pertains to policy and hence, would be taken up with government for further clarification.

3.8.3.2 Non-Production of information to Audit

For assurance on the first audit objective, i.e., whether Returns module was implemented as per extant laws, rules and procedures, we had provided a total of 93 information seeking data queries (in December 2019) for execution to GSTN. As of now (December 2020), output of only 68 data queries have been provided, and output in respect of 25 queries is still pending despite GSTN having adequate time of seven months for running the queries.

With regard to the second audit objective of identifying risks in the GST eco-system, we had issued 73 data queries to GSTN. GSTN replied that these queries were not related to check of controls / validations in the IT System and hence did not fall within the scope of IT audit. GSTN further stated that it was holding the data of individual taxpayers in fiduciary capacity, on behalf of the respective Central / State Tax Administrations, and hence was not in a position to provide the data. Since GSTN did not provide the requisite information, we are not in a position to provide assurance on risks and vulnerabilities prevailing in the system owing to incomplete roll out of Returns module.

GSTN replied (July 2020) that it would provide replies to the pending data queries related to first objective shortly. GSTN's reasons for non-furnishing of data for assessing risks in Returns module are not tenable, as CAG is empowered to satisfy himself that an effective check on the assessment, collection and proper allocation of revenue has been incorporated into the design of the system (Section 16 of the CAG's Duties Powers and Conditions of Service (DPC) Act). To this end, it was necessary, in audit, to carry out checks, not merely to check validation failures, but also to place such vulnerabilities in perspective. Analysis of summary data was, therefore, of utmost importance, to assess the possible impact of designing a GST ecosystem without originally envisaged provisions such as invoice-matching.

3.8.3.3 Incorrect creation of GSTR-2A led to irregular availability of ITC

As per the provisions[36] of the CGST Act 2017 (as amended), and Notifications[37] issued from time to time, ITC could be utilised only by the recipient taxpayer and only for the amount of tax paid, which was shown to the said taxpayer in GSTR-2A (details of inward supplies) plus 10 *per cent* thereof, at most. Further,

[36] Section 16 (2) read with Section 39 and Section 43A of CGST Act.

[37] Notification No. 49/2019-CT dated 09-10-2019 as amended by Notification No. 75/2019 dated 26 December 2019.

there was provision[38] of amendment of invoice, subsequent to uploading of information in GSTR-1.

During test-check of forms, we noticed that, when the invoice was amended by changing the GSTIN of the recipient, the amount of invoice was seen in GSTR-2A of both the recipients-i.e. the originally mentioned recipient, as well as the amended one. Further, no flag was raised to the original recipient for the amendment of invoice. Therefore, ITC was shown as available to both the recipients, for utilisation for payment of tax. Similarly, when only the amount of invoice was amended but the recipient was same, it was noticed that GSTR-2A of the recipient contained both the original and revised invoices, along with the corresponding amounts. Thus, when a taxpayer amended his invoice details in his GSTR-1 in the subsequent tax period, after filling in the original return, the corresponding details in GSTR-2A of respective recipients was not reflected correctly.

On this being pointed out (January 2020), GSTN emphasised (June, July 2020) that the absence of GSTRs-1/2/3 had led to the problems in creation of GSTR-2A. It further averred that GSTR-2A had been designed as a bucket of information, relating to inward supplies to the taxpayers, for viewing purposes only, since GSTRs-2 and 3 had been kept in abeyance, and GSTR-2A not only depicted details from the filed GSTR-1, but also from the one submitted but not filed. It further stated that ITC had to be claimed on self-assessment basis only and that the amount of ITC available is already shown to the taxpayers (in GSTR-2A), along with the amount they are claiming (in GSTR-3B), for ensuring compliance.

GSTN's reply is not acceptable as, in the absence of GSTR-2, GSTR-2A is an important source of information on inward supply. Taxpayers, as well as tax officers, rely primarily on GSTR-2A as the reference record for their claims and issuance of refunds. Thus, the correctness of GSTR-2A is of immense importance for safeguarding of government revenue. Further, the Act restricts ITC from being taken by two persons on the same invoice, and also twice on the same invoice. In absence of validations in this regard, possibility of fraudulent practices cannot be ruled out. GSTN was in fact aware of the consequences of faulty GSTR-2A and had created (October 2018) a CR to plug the loophole. However, the CR has not been implemented so far.

Thus, from the reply furnished by GSTN and that the CR was not implemented, it was clear that it had not enacted requisite changes in the system, to prevent the system from showing incorrect ITC availability on the amended invoice. In

[38] In terms of Rule 36 of CGST Rules, 2017 read with Notification 49/2019 and CBIC Circular No.123/42/2019-GST Dated: 11 November 2019

the exit meeting (July 2020) with Audit, GSTN stated that additional facilities including filing status, amendment status etc. will be made available in GSTR-2A, with the approval of Government.

Recommendation 11: Since tax officers and taxpayers rely on GSTR-2A, GSTN may make necessary changes in the implementation of GSTR-2A to keep the system updated with underlying invoice data so that it reflects the correct picture.

3.8.3.4 Absence of validation on turnover, leading to no restriction being imposed on composition taxpayers, with regard to filing of GSTR-4, even after crossing the threshold limit

Rule 6 of the CGST Rules, 2017, provides for the validity of composition levy. It stipulates that, when the person liable to pay tax under section 10 of the CGST Act 2017, ceases to satisfy any of the conditions mentioned in section 10, he should issue tax invoices for every taxable supply made thereafter, and should also file an intimation for withdrawal from the scheme in form GST CMP-04 within seven days of the occurrence of such event. Further, as per the SRS[39] of GSTR-4, after filing of return, the system should check aggregate turnover on PAN level basis. If the turnover exceeds the prescribed limit[40], an alert may be sent to the taxpayer in the notification section of the dashboard.

During the course of test-checks relating to filing of GSTR-4 for the year 2017-18, we noticed (in the test environment) that no alert was sent to the taxpayer even when the total value of supply exceeded the threshold limit of ₹ 1.5 crore in any single return. The system allowed the same taxpayers to file returns for the next quarters of 2017-18, despite their turnover exceeding the prescribed cut-off limit in the previous quarter itself. This was in contravention of the GST provisions and the SRS mentioned above.

On this being highlighted (January 2020), GSTN stated (June 2020) that the functionality could not be implemented due to frequent changes in the threshold limit of Composition Scheme, as also due to the frequency of filing returns being changed to 'Annual', adding that it was difficult for the software development cycle to keep pace with such changes. It further stated that the development of an IT functionality required bucketing of functionalities into *'must have'* and '*good to have'* features and *'must have'* functionalities had been given priority.

GSTN's reply is not acceptable, since the annual turnover constitutes an important criterion for deciding upon the category of the taxpayer. As such,

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[39] SRS- BR_SRS_RET_004_16

[40] Initial limit was 40 lakh later the threshold turnover has changed to ₹ 1.5 crore vide notification No. 14/2019 dated. 03 July 2019.

the turnover for the taxpayer under the Composition Scheme should have fallen under *'must have'* criteria, instead of the *'good to have'.* Moreover, GSTN did not furnish records relating to the decision taken in regard to not categorising annual turnover in the *"must have"* bucket. Subsequently, GSTN stated (July 2020) that the functionality to check turnover threshold and sending alert to such taxpayers on crossing the threshold limit would be implemented with CMP-08 [quarterly return] (erstwhile GSTR-4) by the end of August, 2020.

Recommendation 12: GSTN may make appropriate changes in the system, to check the PAN level turnover, at the time of filing GSTR-4, to ensure that eligible taxpayers are permitted to file GSTR-4.

3.8.3.5 Absence of provisions in the system, leading to non-payment of tax on Reverse Charge Mechanism (RCM) basis by Non Resident Taxable Person (NRTPs)

As per Section 2(98), "reverse charge" means the liability to pay tax, by the recipient of goods or services or both, instead of the supplier of such goods or services or both, under Section 9 and section 5 of the IGST Act. Further, Notification No. 13/2017 Central Tax (Rate) dated 28 June 2017 specifies various categories of services, with the whole tax being leviable under Section 9 of the CGST Act and needing to be paid on reverse charge basis by the recipient of such service/(s), according to which the Goods Transport Agency (GTA) or legal services providers fall under such category.

During the course of test-checks, it was noticed that, in GSTR-5, as provided vide Rule 63, there is no provision for tax payment, on reverse charge basis, in case an NRTP has availed services which have attracted tax payable on reverse charge basis only. Clarification was sought for from GSTN as to whether the payment of tax on reverse charge mechanism, as applicable to NRTP for receiving such services, is available in the system or not; and whether GTA or legal services providers etc., while filing GSTR-1, are allowed to declare outward supplies (Table-4B), payable on reverse charge basis, to the NRTP or not. In reply, GSTN stated that there are no such provisions in the notified form GSTR-5, adding that, in Table-4B (supplies attracting tax on reverse charge basis) of GSTR-1, the system does not accept the GSTIN of NRTP. This implies that there is no provision in the system, for an NRTP to pay GST for services received on reverse charge basis, nor is there any provision for the service providers to pay the GST, on behalf of the NRTP, as a forward charge. This lacuna in the form GSTR-5 carries the risk of loss of revenue, as, under the present system, the liability of GST rests neither with the NRTP, nor with the service provider.

On this being highlighted, GSTN stated (June 2020) that there is no table in GSTR-5 to capture supplies attracting reverse charge. It added that the system having been designed according to the notified form, there is no gap between the IT process and the law and suggested that comments may also be obtained from the concerned department of government.

The reply of GSTN that there is no gap between the IT process and the law is not acceptable, since an important provision of the Act has not been mapped in the form GSTR-5 and in the system, which carries the risk of non-payment of tax, along with revenue loss to Government for this category of transactions. Subsequently, GSTN stated (July 2020) that it would forward the audit observation to the Government for appropriate action.

Recommendation 13: DoR may make necessary changes in the GSTR-5 and consequently in the IT system to enable NRTPs to discharge their tax liability on RCM basis, in respect of supplies which necessitate payment of tax on RCM basis only.

3.8.3.6 Incorrect mapping of Rule to SRS diluted the criteria of declaring HSN[41] details in GSTR-1 by relevant taxpayers

Details of outward supply are required to be furnished by relevant taxpayers in form GSTR-1 as per Rule 59 (1) of CGST Rules, 2017, read with Section 37 of CGST Act. Further, as per the instructions (Sl. No.17 of GSTR-1) for filing the said return, it is mandatory to report the HSN code: (i) at 2-digit level, for taxpayers having an annual turnover, above ₹ 1.50 Cr but up to ₹ 5.00 Cr, in the preceding year and (ii) at 4-digit level, for taxpayers having an annual turnover above ₹ 5.00 crore, in the preceding year. A similar provision for providing HSN details in the tax-invoice was also notified vide Notification No. 12/2017 – Central Tax dated 28 June, 2017.

During the course of test-checks, we noticed that the system did not make it mandatory for taxpayers having a specified turnover to fill in the relevant HSN details. In response to audit query as to whether the system checks the annual turnover in the preceding financial year, for complying with the abovementioned rule, GSTN stated that the checking of turnover is not required at this time. The reply is not admissible, as the compulsion of filling in HSN details in Table-12 of GSTR-1 is dependent on the turnover of the previous year. Thus, adequate validations have not been built into the system resulting in the risk of non-filling up of appropriate HSN details, which are

[41] HSN code stands for "Harmonized System of Nomenclature". This system has been introduced for the systematic classification of goods all over the world. HSN code is a 8-digit uniform code that classifies 5000+ products and is accepted worldwide.

mandatory for taxpayers whose annual turnover in the preceding year was above ₹ 1.50 crore.

On this being highlighted (June 2020), GSTN stated that the implementation of turnover-based HSN check is difficult and may not be feasible because the turnover is dynamic and may change even after the end of preceding year till September return of the next financial year through various amendments. Further, restrictions over HSN declaration have not been imposed strictly, because a majority of the taxpayers have migrated from State VAT, and are not familiar with HSN. GSTN later stated (July 2020) that HSN code validation will be developed and implemented with the approval of Government.

The earlier reply of GSTN is not tenable, in light of the provisions of the Act / Rule / Notification, mandating that HSN details are compulsory. Further, even though the system has the provision to capture HSN, it has not been made mandatory for relevant taxpayers. Again, as the taxpayer is expected to determine his turnover when filing the return, it is assumed that the system would also be able to do it. Further, neither the dynamic nature of the turnover, nor ignorance of the provision by taxpayers, constitutes a valid basis for not implementing a provision of law.

Recommendation 14: GSTN may make necessary changes in the system and incorporate validations in line with the provisions of the Act, which mandate that HSN information is compulsory, for specified taxpayers, based upon their previous year's turnover.

3.8.3.7 Non-computation of actual interest liability and non-enforcement of payment thereof through the system

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

During the course of IT audit of Returns module, a clarification was sought from GSTN as to whether 'Interest' is auto-calculated in GSTR-3B; and whether GSTR-3B can be submitted by paying tax only, without payment of 'Interest', even if there is interest liability. In reply, GSTN stated that interest liability is not auto-calculated in GSTR-3B and payment of interest is on the basis of self-declaration. Thus, the system does not enforce the taxpayer to pay the interest liability, leaving open the risk of erroneous calculation of interest liability, as well as short / non-payment of interest.

On this being highlighted (June 2020), GSTN stated that, owing to the differences in the frequency of filing of GSTR-1 and GSTR-3B returns etc., as well as the various conditions and implications involved, it is difficult to implement the auto-computation of interest in GSTR-3B. Contention of GSTN is not acceptable as auto-computation of interest was originally envisaged as per SRS of GSTR-1, but it could not be implemented because GSTR-1 filing was not made sequential and remained unlinked with GSTR-3B. GSTN also stated that the Law Committee, in its meeting dated 20 April 2018, had held that the current design of GSTR-3B did not permit auto-computation of interest. Subsequently, GSTN intimated (July 2020) that, once GSTR-1 and GSTR-3B are linked, an attempt would be made to auto-compute interest.

Recommendation 15: GSTN may make necessary changes in the system for auto-calculation of interest and, to enforce payment of the actual interest liability by taxpayers.

Shortcomings noticed in the system on the basis of TRAN-1 and TRAN-2 data

In the course of audit, exception data queries were issued to check validations relating to various provisions of carry forward of legacy ITC to GST regime. On the request of GSTN, however, we sought complete transitional credit data for a sample of 10 GSTINs, out of a list of 100 GSTINs shared by GSTN. Apart from this, data pertaining to another 10 GSTINs was sought, for detailed verification. The following are the results of the analysis:

3.8.3.8 Ineligible taxpayer allowed to avail benefit under TRAN-2

In terms of CGST Rule 117(4)(a)(i), sub-section(3) of section 140 of the CGST Act, form TRAN-2 can be filed by a dealer/trader (but not a manufacturer or a service provider) who is registered in the GST regime, but was unregistered under the pre-GST regime. Such a dealer, who does not have a VAT or excise invoice for stocks held by him on 30 June, 2017, can use form TRAN-2 to claim tax credit of the stock held by him. TRAN-2 has to be filed by a dealer or trader at the end of every month, when stock is sold, reporting the details to claim ITC.

Analysis of data shared with Audit showed that all the twenty taxpayers were migrated taxpayers, who had been registered in the pre-GST regime, either in Central Excise, Service Tax or State VAT and thus were ineligible to avail benefit under TRAN-2. Further, 10 out of these 20 taxpayers had multiple registrations. It was observed that 17 taxpayers had declared items in part 7B of Table 7(a)[42]

[42] Table 7(a) deals with amount of duties and taxes on inputs claimed as credit excluding the credit claimed under Table 5(a) (under sections 140(3), 140(4)(b), 140(6) and 140(7)) and **Part 7B** deals with cases where duty paid invoices are not available (Applicable only for person other than manufacturer or service provider).

and Table 7(d)[43] of form TRAN-1, with total tax value of ₹ 51.77 crore and subsequently availed the benefit in form TRAN– 2, to carry forward ITC on stock held, where proof of payment of duty was not available. These taxpayers had availed ITC on such items to the tune of ₹ 1.51 crore under 1,571 transactions and the same was credited in their electronic credit ledger, ITC_LDG.

This contravenes the provision of the CGST Act and Rules, 2017, mentioned above. Reply of GSTN is awaited (December 2020).

3.8.3.9 ITC availed in respect of ineligible items in TRAN-2

As per CGST Rule 117 (4), a taxpayer can avail ITC on goods held in stock on the appointed day and declared in form TRAN-1. He cannot avail any ITC on such goods which had not been declared therein. In other words, only such HSN line items can be added in TRAN-2 for availing ITC, which have been declared in Part 7B of Table 7(a) and Table 7(d) of TRAN-1, furnished earlier.

Analysis of data, shared with Audit, revealed that, out of total 468 distinct HSNs, for which ITC had been availed by 17 GSTINs in form TRAN-2, in two cases, the HSNs had not been declared in form TRAN-1. The system, however, allowed the taxpayer to take credit on items undeclared in TRAN-1. Further, in one case, the declaration of details in form TRAN-1, was seen to be inconsistent with the opening stock declared in form TRAN-2 for the same item. Thus, the system did not restrict the taxpayer from availing ITC on items in form TRAN-2, according to eligibility, based on the declarations in form TRAN-1. Apart from this, in 1,108 cases, units of measurements in form TRAN-1 and form TRAN-2 were inconsistent. Reply of GSTN is awaited (December 2020).

3.8.3.10 Credits allowed in TRAN-2 without validating the tax rate as per law

As per CGST Rule 117(4)(a)(ii), the ITC on items carried forward in form TRAN-2 "shall be allowed at the rate of sixty percent on such goods which attract central tax at the rate of nine percent or more and forty *per cent* for other goods of the central tax applicable on supply of such goods after the appointed date and shall be credited after the central tax payable on such supply has been paid". In case of tax paid as IGST, the rate of credit would be 30 and 20 *per cent*, respectively.

Analysis of the data provided by GSTN, revealed that the credit carried forward from form TRAN– 2, to the electronic credit ledger, was not as per the

[43] Table 7(d) deals with stock of goods not supported by invoices/documents evidencing payment of tax

provisions of the Rule stated above. The discrepancy was found in case of 5 GSTINs, out of a total of 17 GSTINs, regarding which data had been provided. Out of 1,571 transactional records, it was noticed that in 110 cases, more than 40 *per cent* of the tax paid was applied for ITC, despite the tax paid amount being less than 9 *per cent*, as per the central tax rate. Reply of GSTN is awaited (December 2020).

3.9 E-Way Bill System

3.9.1 About EWB

Electronic Way Bill (or EWB) is a unique document or bill generated electronically for each consignment or movement of goods from one place to another under GST regime. When EWB is generated, a unique EWB number is made available to the supplier, recipient and the transporter. The EWB replaces the way bill, which was a physical document and existed during VAT regime for the movement of goods separately in each states. The EWB system was introduced nation-wide for inter-state movement of goods with effect from 1 April 2018 while the states were given the option to choose any date till 3 June 2018 to implement EWB system for intra-state supplies. Consequently, all the states have notified the EWB system for intra-state supplies, the last being the NCT of Delhi where the EWB system was introduced with effect from 16 June 2018. Though part of GST eco-system and under the control of GSTN, the IT Portal for EWB has been developed by NIC.

3.9.2 Statutory Provisions of EWB

Section 68 of the CGST Act, 2017 empowers the Government to prescribe the documents or devices to be carried by a person in charge of a conveyance and the method of validating such documents. The section also empowers the specified tax officers to inspect such conveyances or movement of goods. Based on this section, detailed provisions are prescribed under Rule 138 of the CGST Rules, 2017.

This Rule initially prescribed that till such time an EWB system was developed and approved by the GST Council, the Government might, by notification, specify the documents that the person in charge of a conveyance carrying any goods in transit should carry. Detailed provisions for EWB were issued (August 2017) by amending the Rule 138 and incorporating new rules from 138A to 138D in the CGST Rules, 2017. Thereafter, EWB was introduced for inter-state movement of goods with effect from 1 April 2018 vide notification dated 7 March 2018. Rule 138E was incorporated in the CGST Rules, 2017 in December 2018, after implementation of the EWB system. The EWB consists of two parts – Part A and Part B. Part A contains details of the supplier,

recipient, product and invoice. Part B contains details of the transporter and vehicle numbers.

3.9.3 Objectives of the EWB

The following are the envisaged objectives of the EWB:

i. Single and unified EWB for inter-state and intra-state movement of goods for the whole country in self-service mode

ii. Enabling paperless and fully online system to facilitate seamless movement of goods across all states

iii. Improve service delivery with quick turnaround time for the entire supply chain and provide anytime anywhere access to data/services

iv. To facilitate hassle free movement of goods by abolishing inter-state check posts across the country.

3.9.4 Audit Objectives

IT audit of EWB system was conducted to verify

(a) whether the functionalities of EWB system are designed and implemented as envisaged,
(b) whether the technology solution is robust in terms of infrastructure, documentation and security, and
(c) whether the EWB Portal is user friendly.

3.9.5 Audit Findings

The EWB system developed by NIC, Bengaluru has leveraged important features of the e-Sugam application[44] in vogue in the State of Karnataka. Currently, the EWB system is effectively supporting the growing volume of EWBs generated on a daily basis. NIC has developed an application, deployed various upgradations and feature enhancements to the EWB system.

In order to realise the full potential and achieving defined objectives of EWB system, implementation of the envisaged RFID system to track the physical movement of goods on real time is essential. Implementation of the RFID system, however, has not taken place. The continued delay in implementation of the RFID system for tracking the movement of goods is impairing the utility of the EWB system.

[44] e-Sugam was a procedure set by the Commercial Taxes Department of Karnataka State for movement of goods, having value above a prescribed limit, within Karnataka and in & out of Karnataka in the pre-GST VAT regime. The system functioned on the basis of a transit document, carrying a unique number generated online by a seller or dealer who was transporting the goods. The unique number thus obtained was to be produced to the check post officer on reaching a check post

We issued audit observations on 18 issues pertaining to EWB system as a part of IT audit of GSTN. Out of these, 10 observations were accepted and eight observations were not accepted. The observations noticed during the IT audit of EWB are provided in succeeding paragraphs:

3.9.5.1 Rejection of EWBs

Rule 138(12) of GST Rules envisages that if the recipient of the EWB does not communicate acceptance or rejection within 72 hours of the details being made available on the common portal or at the time of delivery of goods, whichever is earlier, it shall be deemed that the person has accepted the said details.

On verification of EWBs for the quarter July 2019 to September 2019 for the states of Bihar and Karnataka, however, it was observed that:

a) Rejection of EWBs was allowed after the expiration of 72 hours in 281 cases in violation of the rules, out of total 1988 rejected cases (for both the states).

b) Rejection of EWBs with a short validity period of less than 72 hours was not restricted to the validity of the EWB. There were 155 such cases in the data set (only for Karnataka) where rejection of EWBs was allowed after the EWB validity date. Providing a uniform validation rule of 72 hours for all EWBs (having validity less than 72 hours and those having validity beyond 72 hours) exposes the system to the potential risk of clandestine movement of goods.

NIC, in response (July 2020), stated that the rejection of EWBs beyond the stipulated 72 hours was due to some users manipulating screens in some versions of browser and that this issue has since been resolved on 5 June 2020. NIC further stated that the change in rule "rejection within 72 hours or at the time of delivery of goods, whichever is earlier" was effected at a later stage and hence the validation was not incorporated. The fact, however, remained that Rule 138(12) was amended prior to the implementation of the EWB system in April 2018. GSTN subsequently stated (July 2020) that the issue at (b) above has been resolved.

3.9.5.2 Supply to or by SEZ

Section 7 of IGST Act defines the nature of inter-state supply. Clause (b) of Sub-section (5) of Section 7 states that any supply "to or by a SEZ developer or SEZ unit" shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce. In continuation, proviso (i) of sub-section (1) of Section 8 states that supply of goods to or by a SEZ developer or SEZ unit shall not be treated as intra-state supply. SRS of EWB module also specifies

the business rule (Para 4.8.5) stating that "In case one of the party is SEZ unit, then IGST tax and values have to be passed".

Verification of the front-end of the EWB system disclosed that the SEZ users (both SEZ units and SEZ developers) have to use the option of export / import for recording transactions, to or from SEZ developers and units, to indicate the transactions as Inter State supplies. The system, however, does not bar users from selecting supplies of goods by or to SEZ developers and units as intra-state supplies. Analysis of EWB data for the quarter July to September 2019 for the State of Karnataka revealed that, in 318 cases, users have recorded supplies of goods by or to SEZ developers as intra-state supplies with tax recorded under CGST and SGST in place of IGST.

GSTN, in its response (July 2020), stated that the validation for SEZ units existed in the system for supply, export and import transactions. The validation for SEZ developers could not be included due to non-availability of their status, which has now been implemented from 5 April 2020.

The reply only confirms the audit contention. SEZ users are identified for IGST values when they use either the export / import option or supply option only with the export code (999999). There is no validation in the system to restrict the SEZ users from recording intra-state supplies with CGST/SGST values by using the pin code of SEZ units and SEZ developers. A sample check of 10 SEZ units for the quarter of July to September 2019 (for the state of Karnataka) revealed that 22 records exist for three SEZ units where supply has been treated as intra-state supply by recording CGST/SGST instead of IGST, which is not in consonance with rules.

Recommendation 16: GSTN may implement a functionality to restrict SEZ users from recording intra-state supplies with CGST/SGST values.

3.9.5.3 Extension of EWBs

The second proviso to Rule 138(10) of GST Rules states that 'where, under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the EWB, the transporter may extend the validity period after updating the details in Part B of form GST EWB-01, if required'. Third proviso of the same rule states that 'provided also that the validity of the EWB may be extended within eight hours from the time of its expiry'. Explanation (1) under Rule 138(10) further states that the period of validity shall be counted from the time at which the EWB has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of EWB.

Verification of EWBs data for the quarter of July 2019 to September 2019 for the states of Bihar and Karnataka involving extension of EWBs (9,21,880 records) revealed that in:

a) 14064 cases (only in Bihar), EWBs have been extended 24 hours after expiry of their validity.

b) 11647 cases (both for Bihar and Karnataka), EWBs have been extended earlier than eight hours prior to the expiry of EWBs, indicating that the validation was not incorporated in the EWB system.

GSTN, in response (July 2020), stated that a) the validity time of EWB has to be read as 23:59:59 hours of the validity date, and that all cases are within the prescribed eight-hour limit from that time; and b) extension earlier than eight hours prior to the expiry of EWBs occurred due to users manipulating the request through the browser. GSTN also stated that this issue would be resolved before 31 July 2020 and test report provided to audit.

Recommendation 17: GSTN may ensure that the system recorded validity time depicts the actual validity time.

3.9.5.4 Automatic calculation of distance based on PIN Code

In the enhancements to the EWB system implemented in April 2019, GSTN introduced auto calculation of distance based on PIN codes for generation of EWB. As per the implementation details, "The EWB system will calculate and display the estimated motorable distance between the supplier and recipient addresses. User is allowed to enter the actual distance as per the movement of goods. However, it will be limited to 10 *per cent* more than the auto calculated distance displayed".

On verification of EWB data for Bihar and Karnataka for the quarter July-September 2019, however, it was observed that:

a) the system did not impose any restriction on entry of distance. For example, in 32 cases, it is observed that the distance recorded was unrealistically more than 3500 km even when both the place of supply and place of receipt were in the State of Karnataka.

b) in 524 cases (407 cases pertaining to Karnataka and 117 cases pertaining to Bihar), even though the place of supply and place of receipt are in different states and not sharing a common border, the distance recorded was less than 10 km. Further, a check of front-end of the EWB system also confirmed that the system does not restrict entry of unrealistic distances on the lower side.

GSTN, in its response (July 2020), stated that the i) PIN master obtained regularly from Postal Department is consolidated once in a few months by the department, due to which the PIN to PIN distance for the new PIN codes will not be available. In such cases, users are allowed, without hampering their business, to enter the distance less than 4000 km. GSTN further stated that a MIS report is being designed for officers of the department to examine such EWBs; and ii) distance of less than 10 km entered for two different states does not have any risk impact as lesser distance implies shorter validity date of EWB and the goods have to be moved in shorter time.

The reply indicates the inherent weakness in periodic updation of PIN Master, which is hampering the functionality of auto calculation of distances based on PIN codes. Users entering exceptionally high distances (as noticed during audit) is fraught with the risk of generating EWBs with longer validity and using the same EWB for multiple trips. Further, GSTN's reply stating that EWBs for a distance of less than 10 kilometres do not have a risk exposure, is not tenable as EWBs with such unrealistic distances could imply that users are potentially creating a record /document to attest movement of goods without actually transporting them.

Recommendation 18: GSTN may strengthen the process of PIN Master updation with a defined periodicity for updation. GSTN may consider implementing a functionality to restrict users from recording exceptionally large distances for intra-state transport. GSTN may consider implementing a functionality to limit recording distances on the lower side as compared to the system calculated distance similar to the validation for recording distances on the higher side.

3.9.5.5 Multivehicle Mode of Transport

Rule 138(5) read with Rule 55(5) of CGST Rules allows transportation of goods in batches or lots and the particulars in Part B of FORM GST EWB-01 should accordingly be updated while the goods are transferred from one conveyance to another. Para 4.12 of SRS, further envisages that the EWB system provides the users viz. the suppliers and transporters an option of multivehicle mode of transport. As per the procedure, if user wishes to ship the goods in more than one mode of transport to reach the destination they can use the multivehicle mode of transport. Using this option, user can select the multi-mode of transport, split the quantity based on requirement and update the vehicle details. When using this option, the quantity of goods to be moved cannot exceed the original quantity as per the EWB.

Verification of the front end of the system and EWB data for Bihar and Karnataka, for the quarter July-September 2019, indicated the following issues in multi-mode transport option:

a) The quantity once entered while generating the EWB is amenable to changes when vehicle details are updated in the EWB with multimode option. In 2212 cases, the total quantity as per the multi vehicle mode exceeded the total quantity mentioned in the EWB when it was originally generated.

b) The unit of measurement specified in the original EWB viz. bags, boxes etc. can also be freely altered during the vehicle updation process. In 39750 cases, the unit of measurement mentioned while updating the EWB into the multi vehicle mode is not the same as mentioned in the EWB when it was originally generated.

Thus, the system was not ensuring internal consistency of values entered for total quantity and unit of measurement, which exposed the system to the risk of potential fraudulent behaviour. GSTN replied (July 2020) that this issue would be addressed based on a discussion with the policy wing.

Recommendation 19: Adequate controls need to be put in place expeditiously to ensure consistency of values entered for total quantity and unit of measurement while updating the EWB with multi-mode option.

3.9.5.6 Transportation by Rail

Rule 138(2A) of CGST Rules, 2017 stipulates that EWB shall be generated after furnishing information in Part B of FORM GST EWB-01 by the registered person in case of transportation of goods by rail. Para 4.8 of SRS (Generate EWB) further envisages that when mode of transport is Railways, it is mandatory for the user to enter the Railway Receipt (RR) number and date to generate the EWB, and on clicking the "submit" button, system should check for RR number. A valid RR number is a nine digit numerical provided by Railways when a transporter books a rail cargo.

On verification of EWB data of State of Karnataka for the month of September 2019, it was observed that in 18 cases the RR number was not recorded in the generated EWB. It was further observed that RR number was not entered in the 9-digit format in 19,104 (83 *per cent*) out of 23,024 records. Further, a test of the front-end indicated that the EWB system allows any value as RR number. GSTN agreed (July 2020) to incorporate a suitable validation after examining the format of the RR number with the Railways.

Recommendation 20: GSTN may incorporate a functionality to restrict users from entering irregular Railway Receipt numbers where transportation involves movement by rail.

3.9.5.7 MIS Reports for departmental officers

The Officer module of the EWB system encompasses functionalities to facilitate verification of the EWB, search on taxpayers, transporters, products and services. It comprises various reports that assist departmental officers with data driven analysis on aspects such as strategic places for inspection based on the commodities, GSTIN, vehicle number etc. There are multifarious reports on critical data points and outlier situations, which can potentially enhance the functional capacity of officers with a targeted approach to detection of irregular movement of goods and tax evasion.

As of December 2019, 19,809 users have registered in the officer's module. However, analysis of the information revealed that the application was not being used extensively. During December 2019, only 5 *per cent* of the total users were using the application daily (that is, officers using MIS Reports for more than 20 days of the month). The percentages ranged from zero *per cent* in some states (eg: NCT of Delhi, where 140 users were registered) to a maximum usage of 25 *per cent* in Karnataka.

GSTN replied (July 2020) that the EWB system has MIS reports designed as per requirements of all officers of the state and central departments and that these authorities will be informed to make extensive use of these reports.

Recommendation 21: GSTN may regularly bring to the notice of tax departments the status / extent of usage of the Officer module. Tax departments / GSTN may also train tax officials in the use of Officer module.

3.9.5.8 Analytic Reports on EWBs

Audit analysis of EWB data pertaining to the state of Karnataka for the quarter July to September 2019 revealed certain high risk patterns and variances in generation of EWBs, especially with respect to rejection, cancellation and extension of EWBs which need to be examined by the department.

Rejection of EWB:

i. For 13 Users (as recipient), more than 50 *per cent* of the EWB supplied to them are shown as rejected.

ii. Two users have more than 90 *per cent* of the EWB supplied to them as rejected.

iii. In case of 8 users (as supplier), more than 50 *per cent* of the EWB generated have been rejected.

Cancellation of EWB:

i. For 128 users (as supplier), more than 50 *per cent* of the EWB generated are shown as cancelled.

ii. Nine users have more than 90 *per cent* of their EWB as cancelled.

iii. In case of 226 users (as recipient), more than 50 *per cent* of the EWB generated against them, as recipient, are shown as cancelled.

iv. For 20 users, more than 90 *per cent* of the EWB generated against them, as recipient, are shown as cancelled.

Extension of EWB:

For 192 users (as EWB generator), more than 50 *per cent* of EWB generated were shown as extended in transit, out of which in respect of 14 users, more than 90 *per cent* of their EWB generated were extended.

Such high risk patterns need to be further analysed by the Department for further action as appropriate. GSTN, in its response (July 2020), stated that new analytical reports will be designed on these patterns and will be made available to officers for further action as required.

Recommendation 22: GSTN may implement analytical reports in the nature of discerning patterns to facilitate effective monitoring and oversight of EWB system.

3.9.5.9 Disaster Recovery (DR) Management

A review of the DR Management Plan disclosed that NIC has not operationalized a functional DR environment. In the event of a disaster affecting the primary site, the system would face an outage and with a non-functional DR setup, the time required to bring the EWB system back online cannot be estimated.

Further, a scrutiny of the document revealed that it does not describe steps to be undertaken during the DR procedure. The document neither listed out the actions nor their inter-se order to activate the DR site of the EWB system if the need arises. The issue-wise escalation matrix and contact details indicated multiple organizations spread across different cities that may need to work together in the event of a disaster. Without detailing out action items and mode of coordination, it is not clear as to how the DR Plan in its present form would serve the intended use.

GSTN, in its response (July 2020), stated that the DR site of the EWB system was established at NIC-Hyderabad in August 2019, and it is ready for operationalization with complete infrastructure, application and data. GSTN

further communicated (July 2020) a revised BCP and DR Plan of the EWB system.

The fact, however, remains that even though EWB System has been in operation for two years; the system is yet to have a functional DR set up. Apart from the inherent risk exposure from a functionality dimension, the technology infrastructure earmarked since August 2019 for the DR set up has a continuing opportunity cost for the period the dedicated infrastructure is not put to use in a functional DR set up. Based on the hardware specifications shared by NIC for the DR set up, the estimated cost using the cost calculator at the NICSI Cloud Service website (https://cloud.nicsi.nic.in), works out to ₹14.30 lakh per month.

Recommendation 23: GSTN may ensure that the requisite procedural formalities are completed expeditiously so that the DR set up can be made functional.

3.10 Other Issues

3.10.1 Monitoring of Incident Management Process (IMP)

An incident is any event which is not part of the standard operation of a service and which causes, or may cause, an interruption to, or a degradation in the quality of services. One of the ways in which GSTN classifies incidents is on the basis of incident severity which is the extent to which the defect can affect the software. Accordingly, there are three levels viz., Severity 1 (critical business impact), Severity 2 (significant business impact) and Severity 3 (minimal business impact).

3.10.1.1 Delay in providing resolution

On the basis of classification of severity, the incident is supposed to be initiated within stipulated response time and service should be resumed within prescribed resolution time as mentioned in process document. We noticed that in 14 out of 17 high priority (P1) incidents, the resolution time (60 minutes) was more than the prescribed, as given below:

Table No.3.2: Incident resolution time

Severity	Nature	Resolution Time	Total Number of incidents	Number of incidents which took more than the resolution time prescribed
I	Critical Business Impact	60 Minutes	17	14

GSTN stated (August 2020) that in GST system, though end result / impact of an incident may be same or similar yet the root cause of the incidents is typically different. Hence, considering the complexity of the system, it takes more time than stipulated within the Service Level Agreement (SLA) to restore a service. To prove the SLA adherence, GSTN and MSP have identified areas of improvement in ensuring sustainability and resilience of the system to reduce repetition of the incident with same root cause and improve lead time for restoration of the service. GSTN enumerated following actions taken in this regard:

- Digitization and updation of knowledge repository of incident/root cause/resolution to make it easy for reference and reduce restoration time. First set has been made operational effective May 2020 and it is being done on an ongoing basis.
- Improvement at design / code level to eliminate recurring issues and enhance performance optimization to improve system resilience. This has been made operational effective June 2020 and it is being done on an ongoing basis.
- Complete capacity augmentation at infrastructure layer and network layer to eliminate issues related to concurrency and load. This has been completed on 18 June 2020 and 7 July 2020.

GSTN also stated that incidents, where dependency on Original Equipment Manufacturer (OEM) or third party service provider is involved or which require device / appliance replacement / upgrade, may take longer than stipulated time within SLA since it is beyond reasonable control of GSTN and MSP.

Recommendation 24: GSTN should ensure that the resolution of incidents is achieved in accordance with the timelines prescribed in Incident Management Process.

3.10.2 License Management

As per License Management Process (LMP) document of GSTN, license management is the management and traceability of every aspect of a procured license from beginning to end, and it includes the key process areas i.e. name of the license, name of the OEM, quantity of license procured / deployed / spare and its validity, metric of license, periodic review etc. Further, it stipulates that license deployment shall be taken up as per the business requirement. The Asset Manager, Software Quality Assurance (SQA) and Application & Infrastructure Support (AIS) teams shall be the users and responsible for the LMP. They periodically track and capture all the software license details (quantity delivered, validity, utilization, spare) as per the

prescribed template. LMP team shall review the software license every month and observations / comments of the review be closed within a week.

Scrutiny of root cause analysis (RCA) document revealed that an incident was created after the helpdesk and Infosys internal teams reported on 26/09/2019 (at 08:30 a.m.) that the GST Portal was not working or users were not able to login to portal. The services were affected till 10:00 am as the incident management team resolved the issue temporarily. However, in the meanwhile, the team analysed the issue and found that all four (DC1 & DC2)[45] bundled McAfee AV licenses had expired for CAS[46] devices. All four licenses were renewed and synced up by GSTN. The issue got fixed at 08:07 p.m. and took almost 12 hours for resolution. From the above, it may be concluded that the proper monitoring was not being done for renewal of licenses, which resulted in avoidable major incident affecting the entire GST Portal.

In response to audit observation, GSTN stated (June 2020) that at the time of commissioning the infrastructure, all software licenses were recorded in the asset register as per agreed Bill of Material (BoM). However, since the McAfee antivirus licenses were bundled in the appliances, these were not recorded as separate license in the BoM and the asset register. As a result, validity of these bundled licenses was not known to the license management team. There was a gap in capturing license details in the asset register because the OEM partner had failed to explicitly mention the bundled license details as part of the BoM.

GSTN further stated (August 2020) that the license management process has been streamlined and is being monthly reviewed with MSP. Status of license expiry is being tracked during operations review meetings. Corrective action was taken in October 2019 and there has been no further recurrence.

3.10.3 GST Portal Performance on peak filing days

As per GSTN's Standard Operating Process – Peak Readiness, activities like scaling up of resources, health check- up of various components, pro-active availability of teams and Circuit Breaker (Portal User Concurrency) are required to be conducted before peak period. Below 2 dates are primary peaks from system perspective:

- GSTR3B - From 18th to 20th of the Month.
- GSTR1 – From 9th till 11th of the Month

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[45] Data Centre: DC1 (NCT of Delhi) and DC2 (Bengaluru)

[46] Content-addressed storage (CAS) is a method of providing fast access to fixed content (data that is not expected to be updated) by assigning it a permanent place on disk. CAS makes data retrieval straightforward by storing it in such a way that an object cannot be duplicated or modified once it has been stored; thus, its location is unambiguous.

During verification of RCA documents pertaining to various incidents, we noticed that there has been frequent disruption/non-functioning of the GST portal on peak filing days and the taxpayers were facing difficulty in filing various types of returns. We noticed that five incidents have been raised on the same issue from October, 2018 to February, 2020. The duration of services affected due to these incidents ranged 2 hours to 55 hours (approx.) from October, 2018 to February, 2020. The causes for the incidents as per the RCA documents include issues such as high load on peak filing days, high utilization of CPU, load on Return APIs, configurations not increased in accordance with expected load etc.

The recurring disruption of the GST portal on peak filing dates indicates that the GST portal is not designed to handle the expected load/concurrent users even two and half years after the rollout of GST.

In response to audit observation, GSTN stated that the Maximum Peak Capacity observed on Portal since launch is approximately 1.56 lakh concurrent users. In addition to this, the GST system handles around 1500 back office user sessions, around 50,000 API sessions from Government entities and 1.5 lakh GST Suvidha Provider (GSP) API sessions.

GSTN informed that the peak concurrency of the GST portal at the time, when GST came into effect was estimated at 25,000 based upon the original estimated number of registrations which was about 64 lakh as per the RFP. In anticipation of expected growth over the next five years, the RFP mandated that security & network devices be sized at double the anticipated load i.e-50,000 concurrent users. Based on the pattern of increase in the numbers of registrants, the concurrency design load of the GSTN System has since been revised and raised up to 1.5 lakh i.e. six times of the original design estimate. However, in certain scenarios like two last dates coinciding due to the amnesty scheme/ last date extensions / last date of filing of GSTR-1 return coinciding with the last date of filing of GSTR-3B etc., the number of concurrent users exceeded GST portal capacity, and hence the system performance was affected. GSTN intimated that GST Portal is now in the process of being upgraded to handle up to 3 lakh concurrent user sessions.

We also sought details of periodic load/stress testing on the application to get assurance on the ability of the system to handle peak load. GSTN replied that as per the terms of the contract between GSTN and MSP, the MSP is obliged to demonstrate performance of GST system at 50,000 concurrent user load before Go-Live in production environment. MSP successfully completed the performance/stress test as per the agreed criteria prior to launch of each functionality such as registration, Return form GSTR-1 and GSTR-3B. The main GST return form (GSTR-3B) had also passed such performance test in

August 2017 before being made available to public. As concurrency on the portal increased beyond 50,000 concurrent user sessions, the application started to show signs of stress. In response, the MSP redesigned the application architecture and repeated the performance testing at an increased load of 90,000 concurrent users in the month of November 2018.

We have not been provided with load testing reports since the November 2018 test despite asking for it. In November 2018 load test, the maximum concurrent load tested was only 90,000 concurrent users against around 1.6 lakh peak concurrency now. Even at 90,000 load, the portal had encountered issues and showed strain. In such a scenario, periodic load/stress/endurance testing should have been the ideal course of action so that GSTN could have been ready for peak loads.

We agree with GSTN argument regarding earlier estimates in RFP on peak concurrency being widely off the mark. Such a scenario is possible when designing a system with few parallels like GST portal. However, we have concerns on the agility of GSTN in ramping up capacity thereafter. It is not acceptable that the system is still not able to handle peak load after three years of rollout. Moreover, on issues like load testing, more proactive approach is expected rather than just doing load testing during rollout time and little action thereafter.

During exit conference, GSTN intimated that it has recently upgraded the system to handle peak capacity of 3 lakh concurrent users. It was informed that GSTN was in the process of upgrading the system capacity to handle upto 5 lakh concurrent users. GSTN also replied that they have set up a dedicated test environment to test any new change for its impact on portal performance at peak concurrent users before releasing the change into production environment.

Recommendation 25: GSTN may conduct a comprehensive analysis of the issue of poor portal performance on peak filing days, and upgrade the portal infrastructure accordingly if required.

3.10.4 Business Continuity Management Plan

Any kind of disruption in functioning of GST IT System, even of temporary nature, will severely impact the indirect tax administration of the country. Hence, a comprehensive policy of Business Continuity Management Process (BCMS) and its proper implementation are crucial for all stakeholders of the project.

GSTN has released BCMS (Version 1.4) on 28 March 2019. The purpose of this plan is to identify critical business services, foreseeable category of disaster

events, emergency response plan, recovery plan and restoration plan to the pre-defined levels of business operation following a disaster.

3.10.4.1 Disaster Recovery Drill Plan

GSTN has released its DR Plan for the GST IT System to ensure continuity of service in the event of a disaster.

As per the SLA document of GSTN with MSP, it is mentioned that two DR drills should be conducted every year. As per Section 3.5.4 of DR Plan, DR drill will be conducted to test the failing over of services within the planned downtime / Recovery Time Objective[47] (RTO) of 30 minutes for critical functions, and 4 hours for non-critical functions. The objective of testing the DR Plan is to ensure a reliable failover of services to alternate DC[48].

We noticed that GSTN did not conduct two successful DR drills in 2019-20 as required.

Further scrutiny of documents related to a disaster event on 5 March, 2020 disclosed that the database of DC1 was not coming up during implementation of a change (DC1 DB Failover) within the planned duration of 5 hours. Hence, an incident was raised and it was decided at 7.21 am to switch over to DC2 environment. Switch over of critical services to DC2 started at 8.40 am.

However, we noticed that critical services could be restored in DC2 only by 10 am. Thus, in an unplanned switchover to DC2 from DC1 it took 2.39 hours for critical services (after decision on switchover to DC2) as against the downtime window of 30 minutes for critical services. Restoration of backup in DC2 could be completed by 13.20, thus taking 6 hours for restoring the entire services against the targeted downtime of 4 hours.

In response to audit observation, GSTN stated (June 2020) that DR drill conducted in April 2019 was successful in terms of RTO for both critical and non-critical services. GSTN informed that the next DR drill was attempted on 1 September 2019. During the drill, critical services were successfully switched over but the activity encountered storage related issues for the non-critical services, and operations was switched back to primary DC. Subsequently, DR drill was planned several times after September 2019 but had to be cancelled due to rollout of urgently required critical functionalities and peak filing of returns due to which an appropriate window could not be arrived to conduct the DR drill. GSTN stated that the audit observations have been noted, and it

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[47] RTO is the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity.

[48] Data Centre: DC1 (NCT of Delhi) and DC2 (Bengaluru)

is being worked out such that DR drill is done more frequently to keep the system ready for any real time disaster.

These issues point out that the DR mechanism has not stabilised and the target RTOs are not achieved. The DR drills are not happening at the desired frequency to prepare the system for any failure / disaster in future.

GSTN stated (August 2020) that to ensure readiness at all time for a disaster, GSTN and MSP have agreed on quarterly DC-DR switchover, and creating a switchover calendar with designated dates and a fall back date in case the proposed date is not workable due to business reasons.

Recommendation 26: GSTN may ensure that RTO targets are achieved and accordingly strengthen the DR process so that in the event of disaster, critical services can be restored in reasonable time.

3.11 Conclusion

Absence of adequate controls in Refund module indicate the possibility of refund on unverified ITC being claimed. Similarly, lack of controls in case of transitional credits being claimed through forms TRAN-1 and TRAN-2 indicate the vulnerability of system to detect ineligible ITC being claimed.

Incomplete roll out of Returns module coupled with the fact that GSTN did not provide the requisite information, providing assurance on risks and vulnerabilities prevailing in the Returns module is difficult.

Regarding EWB module, in view of the discrepancies pointed out in the data analysis there is a need for a detailed examination of such patterns. So far as the performance of GST portal is concerned, in addition to upgrading the system to handle peak capacity, the causes for the incidents pointed out in this report need to be examined in detail.

In view of above, we have made 26 recommendations for consideration of the Ministry / GSTN. The recommendations pertain to implementation of adequate validations in the modules audited by us; incorporation of functionalities in the system to effectively implement GST laws and rules; and appropriate changes in the rules / forms for strengthening the GST administration.

Chapter IV: Compliance Audit of GST

This chapter includes audit findings related to Goods and Services Tax (GST). The instances mentioned in this chapter are those which came to notice in the course of test audit of GST transactions, conducted during the years 2018-19 and 2019-20. The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

4.1 Audit examination

During the years 2018-19 and 2019-20, we focused mainly on audit of transitional credits, GST registrations and refunds. Audit of GST returns is yet to be started as the original due date for filing annual return for 2017-18 by December 2018 has been subsequently extended to 5th/7th February 2020[49] in a staggered manner. Similarly, the original due date for filing annual return for 2018-19 by December 2019 has been subsequently extended to 31 December 2020[50].

The audit findings are included in the subsequent paragraphs:

Part A : Transitional credits

4.2 Introduction

With the introduction and implementation of GST, which subsumed multiple indirect taxes, there was also a need to clearly spell out provisions and arrangements to ensure smooth transition from the old tax regime to GST. This was needed especially to provide for carry forward of input tax credits (ITC), relating to pre-GST taxes 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.

[49] Notification No.6/2020-CT dated 3 February 2020

[50] Press release dated 24 October 2020

4.3 Provisions relating to transitional credits

4.3.1 Conditions for availing transitional credits

Section 140 of the CGST Act contains elaborate provisions relating to transitional arrangements for ITC. This section provides for a registered person, other than composition taxpayer, to carry forward closing balance of input tax credit under Central Excise and Service Tax Act as CGST and input credit under State VAT Acts as SGST, subject to specified conditions. The important conditions are discussed below : -

a) Credit can be carried forward as given in the last return filed under pre-GST statutes

b) Such credit should be admissible as ITC under GST Act and pre-GST Acts

c) Returns for at least previous six months before roll out of GST should have been furnished.

A registered person, not liable to be registered under the pre-GST law, or who was dealing with exempted goods / services or a first / second stage dealer or a registered importer or a depot of a manufacturer, is also entitled to carry forward credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock. The important conditions prescribed for this are that the said registered person should be in possession of invoice or other prescribed documents, evidencing payment of duty under the existing law in respect of such inputs, which were issued not earlier than twelve months immediately preceding the appointed day (viz. 1 July 2017).

4.3.2 Timelines for transitional credit returns

Rule 117 of the CGST Rules, 2017, provides that every registered person entitled to transitional credit, has to file a declaration electronically in FORM GST Tran-1, on the GST portal within 90 days of roll out of GST. This rule also provides for extension of this 90 days period by a further period not exceeding ninety days by the Commissioner, on recommendation of the GST Council. Thus, the *CGST Rules initially provided for a maximum of 6 months to file Tran-1*. However, to facilitate those taxpayers who could not file Tran-1 by the due date on account of technical difficulties on GST portal, a provision was inserted[51] in this rule for extension of date for Tran-1 by a further period not beyond 31 March 2020, on the recommendations of the Council.

The due date for filing or revising Tran-1, which *originally was 28 September 2017,* has been extended from time to time with final deadline extended to 31 March 2020 as detailed below : -

[51] Vide Notification no. 02/2020-CT dated 1 January 2020.

Date of Order	Extended due date	Reason for extension
18 and 21 Sep 2017	31 Oct 2017	The due date for submission of Tran-1 return was extended to facilitate revision of Tran-1.
28 Oct 2017	30 Nov 2017	No specific reason was found for extension but the GST Council discussed about the delay in development of the functionality for revision of Tran-1.
15 Nov 2017	27 Dec 2017	Based on deadlines provided by GSTN and discussions with GSTN, the due date for submission extended.
17 Sep 2018	Up to 31 Jan 2019 in certain cases	Owing to technical difficulties on common portal, extension recommended by the GST Council, for the class of registered persons who could not submit Tran-1 by the due date on account of technical difficulties on GST portal.
31 Jan 2019	Up to 31 March 2019 in certain cases	
7 Feb 2020	Up to 31 March 2020 in certain cases	

4.4 CBIC instructions for verification of transitional credits

CBIC issued instructions from time to time during September 2017 to March 2018 regarding verification of transitional credits by its field formations as detailed below : -

i. In September 2017, CBIC directed its field formations to verify claims of ITC of more than ₹ One crore by matching the credit claimed in transitional returns with the closing balance in returns filed under earlier laws, and checking eligibility of credit under GST regime.

ii. Through instructions dated 1 December 2017, field formations were directed to verify cases of transitional credit over ₹ One crore with special care and thereafter to undertake verification in descending order of credit availed.

iii. The circular issued (March 2018) by CBIC indicated that Central Tax Offices would verify transitional credit claims in respect of CGST in case of all taxpayers irrespective of whether the taxpayer was allotted to Central or State Tax Office. CBIC also shared the list of identified 50,000 cases of CGST credits along with datasets with Central Tax Offices and asked them to complete verification by March 2019. Ministry in

September 2020 informed that 37,622 Tran-I declarations have been verified by the CBIC field formations.

4.5 Inability to carry out audit of transitional credits due to non-furnishing of Tran-1 data by the DOR/CBIC

To conduct data analysis and identify areas of focus and to select units / cases for audit, we requested Department of Revenue to provide data relating to transitional credits. Despite repeated requests, we were not provided the requisitioned data[52] during FY 19 and FY 20.

In the absence of data, we could carry out only a limited audit of transitional credit claims in the units which we selected for audit based on other revenue related risk parameters. We had to restrict audit to mostly those Tran-I cases that had already been verified by the department, as access to other Tran-I declarations was not provided through the GST IT system.

4.6 Audit of transitional credits

Given the importance of transitional credits, being a one-time activity during transition to GST and its impact on revenue inflows in GST regime, we focussed on verification of transitional credit cases by CBIC field formations during our field audit in 2018-19 and 2019-20.

The individual cases noticed and the system lapses identified based on these cases are included in the subsequent paragraphs.

4.6.1 Overview of audit of transitional credits

During the period October 2018[53] to March 2020, we audited 626 ranges and 29 divisions in 81 Central GST Commissionerates and five Audit Commissionerates. We verified 5,822 out of 77,363 transitional credit cases in these units, and noticed 1,182 instances (20 *per cent*) of omissions with money value of ₹ 543.70 crore. Out of 1,182 instances issued as observations to CBIC field formations, 325 omissions had money value of more than ₹ 10 lakh in each case, and 857 omissions had money value of less than ₹ 10 lakh in each case.

105 significant observations pertaining to 36 Commissionerates have been included ***(Appendix-IV)*** in this report, involving a money value of ₹ 86.11 crore as detailed below: -

[52] The transitional credit data has now been provided in July 2020

[53] Audit objections noted before October 2018 have been reported in Audit Report No. 11 of 2019.

(₹ in crore)

Issue noticed	Commissionerates involved	No. of cases	Amount of audit objection
Irregular claim of transitional credit on input services in transit	4	18	36.77
Irregular availing of Cess of earlier regime as credit	13	16	4.52
Irregular claim of transitional credit on stock entered in books of accounts after the permissible period	11	13	6.67
Excess carry forward of Cenvat credit	12	13	4.01
Irregular availment of transitional credit on exempted goods	6	7	7.16
Irregular claim of transitional credit on goods in stock	1	5	7.69
Irregular availment of transitional credit without filing the ER-1/ST-3 returns	4	4	2.34
Irregular claim of transitional credit which do not fall in the ambit of inputs, input services and capital goods	3	3	0.69
Other irregularities related to transitional credits	15	26	16.26
Total		**105**	**86.11**

Out of these 105 cases, Ministry accepted the audit observation in 44 cases involving an amount of ₹ 21.18 crore and intimated recovery of ₹ 3.60 crore in 15 cases. Replies in the remaining cases are awaited (December 2020).

4.6.2 Irregular claim of transitional credit on input services in transit

The Point of Taxation Rules, 2011 provides that the point in time when a service shall be deemed to have been provided shall be earlier of the (1) Date of invoice or payment, whichever is earlier (if the invoice is issued within the prescribed period from the date of completion of the provision of service) (2) Date of completion of the provision of service or payment, whichever is earlier (if the invoice is not issued within the prescribed period as above) (3) Date of receipt of advance payment.

Para 8.1 of the Board's instructions of March 2018 required verification by the CBIC field formations that the duty paying document exists and confirming

from the taxpayer that the duty or the tax paying document were recorded in the books of account of such person as per the conditions prescribed in law.

During test check of 167 transitional credit declarations out of 333 in selected four[54] CGST Commissionerates, it was observed in eighteen cases that the taxpayers irregularly claimed transitional credit of ₹ 36.77 crore under table 7(b)[55] of Tran-1 declaration. During test check of invoice details in the statement of Cenvat credit transitioned through table 7(b) of Tran-1, we noticed that the taxpayers had irregularly carried forward Cenvat credits, which were invoiced before the appointed date. As per the provisions of Point of Taxation Rule, 2011, these input services had already been received on the invoice date i.e. before 30 June 2017. Accordingly, the credits were required to be taken through table 5(a)[56] instead of table 7(b) of Tran-1 declaration. Hence, the irregular credits claimed on such input services amounting to ₹ 36.77 crore need to be recovered.

Though these cases had been verified by the department, the lapses pointed out by Audit were not detected.

When we pointed these out (between November 2018 and May 2019), the department intimated that show cause notices (SCN) were issued in seven cases and the taxpayers had reversed credit in two cases. The department further stated (between July and October 2019) that the credit cannot be denied on the ground of procedural lapses. As the GST is a new tax scheme, the taxpayers were likely to commit such procedural mistakes.

Though the department in its reply admitted that there was procedural lapse, the departmental contention regarding allowance of such credit is not acceptable, as the possibility of the taxpayer claiming credit twice on the same invoice i.e., one through table 5(a) and again through table 7(b) cannot be ruled out. The department, therefore, needs to confirm this aspect for the above mentioned cases.

Reply of the Ministry is awaited (December 2020).

4.6.3 Irregular availing of cess of earlier regime as credit

Through the Taxation Law Amendment Act, 2017, the Education Cess (EC), Secondary and Higher Secondary Cess (SHEC), Swachh Bharat Cess (SBC), and Krishi Kalyan Cess (KKC) were abolished with effect from 1 July 2017 and had,

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54 Belapur, Bhiwandi, Mumbai south and Pune I

55 Table 7(b) : Amount of eligible duties and taxes/VAT in respect of inputs or input services under section 140(5) and section 140(7)

56 Table 5(a) : Amount of Cenvat credit carried forward to electronic credit ledger as central tax (Section 140(1), Section 140(4)(a) and Section 140(9)

thus, become ineligible to be carried forward to GST regime as input tax credit (ITC). This was also clarified by the directions of the CBIC in March 2018.

Section 140(9) stipulates that where any Cenvat credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed subject to the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

Para 4.1.1 of the Board's instructions of March 2018 requires the CBIC field formations to verify that the credit taken should not be more than the closing balance of credit in legacy Service Tax and Central Excise returns minus the cess.

We noticed in 16 cases, in 12[57] Commissionerates, that the taxpayer had availed input tax credit of the above mentioned cesses in Tran-1 amounting to ₹ 4.52 crore ***(Appendix-IV),*** which was inadmissible.

When we pointed this out (between September 2017 and March 2019), the Ministry, while admitting the observation in nine cases, intimated (between August and December 2020) recovery of ₹ 1.71 crore in seven cases. Reply of the Ministry in the remaining cases is awaited (December 2020).

One illustrative case is given below: -

During test check of transitional credit declarations in Alandur Outer range of Pallavaram Division under Chennai Outer Commissionerate, we observed that a taxpayer had carried forward the input tax credit of ₹ 44.40 lakh in respect of EC, SHEC and KKC. The taxpayer also reclaimed the transitional credit of ₹ 41.23 lakh in terms of Section 140 (9) of the Act, ibid, in respect of EC, SHEC and KKC. Since these cesses are not eligible to be carried forward, the total amount of ₹ 85.63 lakh needs to be recovered. Though this case was verified by the department, this lapse was not detected by the department.

When we pointed this out (September 2019), the Ministry while admitting the objection intimated (August 2020) that a show cause notice had been issued to the taxpayer. However, as regards reasons for non-detecting the lapse, it was stated that department had already detected the lapse during service tax internal audit conducted in January and June 2019.

The reply of the Ministry regarding non-detection of this lapse is partially acceptable. Though the department had detected irregular carry forward of

[57] Bengaluru East, Chennai Outer, Delhi South, Delhi East, Hyderabad (Audit-1), Bengaluru North, Bengaluru South, Howrah, Vadodara – I, Ahmedabad South, Visakhapatnam and Gurugram

₹ 44.40 lakh, it did not detect reclaimed transitional credit of ₹ 41.23 lakh. Further, the department had not issued SCN in respect of irregular carry forward of ₹ 44.40 lakh until the irregularity was pointed out by Audit.

4.6.4 Irregular claim of transitional credit on stock entered in books of accounts after the permissible period

As per Section 140(5) of CGST Act, 2017, transitional credit can be availed in respect of inputs or input services received on or after 1 July 2017, the duty or 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 duty or tax paying document of the same was recorded in the books of accounts of such person within a period of thirty days from the appointed day (1 July 2017). The period of thirty days may, on sufficient cause being shown, can be extended by the Commissioner for a further period not exceeding thirty days.

Para 8.1 of the Board's instructions of March 2018 required verification by CBIC field formations that the duty paying document exists and confirming from the taxpayer that the duty or the tax paying document were recorded in the books of account of such person as per the conditions prescribed in law.

In respect of 13 cases in 11 Commissionerates[58], we noticed irregular availment of transitional credit involving revenue of ₹ 6.67 crore **(*Appendix-IV*)** without adhering to the provisions quoted above.

When we pointed this out (between November 2018 to February 2020), the Ministry, while admitting the observation in ten cases, intimated (between August and December 2020) recovery of ₹ 40.19 lakh in two cases. Reply of the Ministry in the remaining cases is awaited (December 2020).

One illustrative case is given below: -

During test check of transitional credit declarations in Egmore III range of Egmore Division under Chennai North CGST Commissionerate, we noticed that a taxpayer claimed transitional credit of ₹ 24.59 crore under table 7(b) of Tran-1 declaration. It was noticed that 914 invoices were entered in the books of accounts beyond the permissible period of 30 days, which were not eligible to be carried forward under the Act, ibid. The ineligible transitional credit amounted to ₹ 3.36 crore, which needs to be recovered from the taxpayer.

When we pointed this out (August 2019), the Ministry while admitting the objection stated (September 2020) that a show cause notice had been issued for ₹ 3.36 crore.

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[58] Daman, Chennai North, Coimbatore (Audit), Hyderabad (Audit – 1), Visakhapatnam (Audit-1), Vadodara-II, Tiruchirappalli, Kolkata North, Bolpur, Ahmedabad South and Gandhinagar

4.6.5 Excess carry forward of Cenvat credit

As per Section 140 (1) of the CGST Act, 2017, a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of Cenvat credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed. Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as Cenvat credit under the existing law and is also admissible as input tax credit under this Act.

Further, as per section 50(3), a taxable person who makes an undue or excess claim of input tax credit under 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*.

Para 4.1.1 of the Board's instructions of March 2018 requires CBIC field formations to verify that the credit taken should not be more than the admissible closing balance of credit in legacy Service Tax and Central Excise returns.

In respect of 13 cases in 12 Commissionerates[59], we noticed irregular carry forward of excess Cenvat credit involving revenue of ₹ 3.84 crore **(*Appendix-IV*)** without adhering to the provisions quoted above.

When we pointed this out (between October 2017 to August 2020), the Ministry, while admitting the observation in seven cases, intimated (between September and December 2020) recovery of ₹ 77.08 lakh in one case. Reply of the Ministry in the remaining cases is awaited (December 2020).

One illustrative case is given below: -

During test check of transitional credit declarations in Range 4 under Kochi Commissionerate, we noticed that a taxpayer had availed Cenvat credit of ₹ 9.99 crore as per the ST-3 return for second half of 2016-17 as against ₹ 9.25 crore available as per Cenvat credit statement. This had resulted in availing of excess credit of ₹ 73.60 lakh which needs to be reversed.

When we pointed this out (October 2017), the Ministry while admitting the objection intimated (September 2019) that the taxpayer had reversed the excess credit.

[59] Bengaluru East, Chennai South, Coimbatore, Kochi, Delhi East, Dimapur East, Guwahati, Pune I, Bengaluru North, Delhi West and Medchal

4.6.6 Irregular availment of transitional credit on exempted goods

As per Section 140 (1) of the CGST Act, 2017 a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of Cenvat credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed. Provided that the registered person shall not be allowed to take credit where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

Further, as per section 50(3), a taxable person who makes an undue or excess claim of input tax credit under 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*.

Para 6.1 of the Board's instructions of March 2018 requires CBIC field formations to verify that if only exempted goods were being manufactured, Rule 6(2) of Cenvat Credit Rules (CCR) did not allow any credit in the Cenvat register and therefore, no credit can flow from the return in relation to inputs in such cases. The entry in table 5(a) of Tran-1 should, therefore, be Nil. In such cases, only credit of inputs and inputs contained in semi-finished goods which existed in stock on the day of the transition and for which conditions prescribed in section 140(3) are satisfied would be available.

In respect of seven cases in six Commissionerates[60], we noticed irregular availment of transitional credit on exempted goods involving revenue of ₹ 7.16 crore **(*Appendix-IV*)** without adhering to the provisions quoted above.

When we pointed this out (between November 2018 to August 2020), the Ministry, while admitting the observation in four cases, intimated (between November and December 2020) recovery of ₹ 5.42 lakh. Reply of the Ministry in the remaining cases is awaited (December 2020).

One illustrative case is given below: -

During test check of transitional credit declarations in Coimbatore Audit Commissionerate, we noticed that a taxpayer, manufacturer of viscose staple fibres (VSF), availed transitional credit of ₹ 1.94 crore towards carry forward of closing balance of Cenvat credit in table 5(a). The credit availed was utilised in full.

Since manufacturing of VSF, falling under central excise tariff 55101110, was exempt from payment of excise duty in terms of Notification No. 30/2004-CE,

[60] Coimbatore, Coimbatore (Audit), Gandhinagar, Madurai, Guntur and Ahmedabad South

dated 9 July 2004, the tax payer was not entitled to avail any Cenvat credit on inputs and input services and therefore, not eligible to carry forward any balance of credit in table 5(a). Thus, the carry forward of closing balance of ₹ 1.94 crore as transitional credit needs to be recovered. Further, as the credit was utilised in full, interest at 24 *per cent* amounting to ₹ 96.83 lakh was also recoverable from the taxpayer.

When we pointed this out (February 2020), the Ministry while not admitting the objection stated (August 2020) that the tax payer has only carried forward accrued eligible credit as per the provisions of Cenvat Credit Rules, 2004 from the erstwhile dubitable regime, and from the period 2008-09 onwards, the assessee was operating under both notifications Nos.29/2004-CE (partially exempted) and 30/2004-CE (fully exempted) dated 9 July 2004. Ministry further stated that on perusing the ER-1 data, the eligible carry forward credit pertaining to dubitable regime amounts to ₹ 1.71 crore as on April 2008 and that the tax payer has not availed input credit on raw materials meant for manufacture of exempted goods. The tax payer availed credit on raw materials only in the instances used for manufacture of dutiable goods as per notification 29/2004-CE dated 9 July 2004.

The reply of the Ministry is not acceptable as scrutiny of the ER-1 returns for the period January to June 2017, furnished to audit, revealed that the tax payer in fact had cleared the said goods by availing exemption under notification No.30/2004-CE dated 9 July 2004 and hence, Cenvat credit on inputs is not admissible. Thus, the carry forward of closing balance of ₹ 1.94 crore in Table 5(a) as transitional credit was ineligible.

4.6.7 Irregular claim of transitional credit on goods in stock

As per Section 140(3) of CGST Act, a registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing the benefit of notification No. 26/2012—Service Tax, dated 20 June 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties 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 eligible for input tax credit on such inputs under this Act; (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs; (iv) such invoices or other prescribed documents were issued not earlier than twelve months

immediately preceding the appointed day; and (v) the supplier of services is not eligible for any abatement under this Act.

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents as evidence of payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

Para 6.1 of the Board's instructions of March 2018 requires tax authorities to verify those cases carefully, where the credit is being shown by an assessee who was registered in Central Excise or Service on account of inputs relating to exempted goods, and to carefully check whether the assessee has followed the provisions of rule 6 of Cenvat Credit Rules.

During the scrutiny of 167 transitional credit declarations out of 333 in selected four[61] CGST Commissionerates, in five cases we observed irregular claim of transitional credit on goods in stock amounting to ₹ 7.69 crore by the taxpayers.

One illustrative case is given below: -

A taxpayer in Pune-I CGST Commissionerate, claimed transitional credit of ₹ 5.62 crore under table 7(a)[62] in Tran-1. On test check of invoices/documents, it was noticed that such inputs were procured from their existing registered manufacturing unit located at Jammu & Kashmir (J&K). The taxpayer cleared excisable goods availing benefit under notification No.1/2010-CE dated 6 February 2010, which exempts the clearance from a unit located in the state of J&K from levy of excise duty or additional excise duty. Further, it was noticed that a refund of ₹ 4.40 crore was sanctioned to the taxpayer on account of central excise duty paid by him under the said notification, which proves that the excise duty element which had been paid earlier by the manufacturing unit at J&K through PLA was returned back to the manufacturing unit by way of refund, which implies that the goods became exempted. Hence, the goods lying in the stock procured from J&K unit of the taxpayer were not eligible for claim of transitional credit. This resulted in incorrect claim of transitional credit on goods in stock amounting to ₹ 5.62 crore, which needs to be recovered.

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[61] Belapur, Bhiwandi, Mumbai south and Pune I

[62] Table 7(a) : Amount of duties and taxes on inputs claimed as credit excluding the credit claimed under Table 5(a) (under sections 140(3), 140(4)(b), 140(6) and 140(7))

When we pointed this out (May 2019), the department stated (June 2019) that the impugned goods received by the taxpayer on payment of duty from their unit in J&K cannot be considered as exempted goods for the reason that the J&K unit has claimed refund of duty payable on value addition. Department further stated that the taxpayer had received the goods under duty paying documents and the amount claimed as transitional credit under table 7(a) was found to be proper and in order. However, an SCN in this matter was being issued.

The reply of the department is not acceptable since Section 140(3) of CGST Act, 2017, clearly stipulates that the said registered person should be in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs. The excise duty element which had been paid earlier by the manufacturing unit at J&K through PLA was returned back to the manufacturing unit by way of refund, which implied that the goods became exempted from payment of duty. The taxpayer at Pune location received the goods under cover of tax invoice from its J&K unit and claimed transitional credit under table 7(a). Claim of such credit resulted in undue double benefit to the taxpayer once in the form of refund and second in the form of transitional credit.

Reply of the Ministry is awaited (December 2020).

4.6.8 Irregular availment of transitional credit without filing ER-1/ST-3 returns

As per Section 140 (1) of the CGST Act, 2017, a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of Cenvat credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed subject to the condition that the registered person should have filed all the returns under the existing law for the period of six months immediately preceding the appointed date.

Section 50(3) stipulates that a taxable person who makes an undue or excess claim of input tax credit under 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*.

Para 4.3 of the Board's instructions of March 2018, requires tax authorities to verify submission of last six months returns by the taxpayer claiming transitional credit.

During test check in four Commissionerates[63], we noticed Irregular availment of transitional credit of ₹ 2.34 crore by four taxpayers without filing the requisite ER-1/ST-3 returns **(*Appendix-IV*)**.

These cases were brought to the notice of the Ministry between June and August 2020. The reply of the Ministry is awaited (December 2020).

One illustrative case is given below: -

During the test check of transitional credit declarations in Chennai outer Commissionerate, it was observed that a taxpayer carried forward the closing balance of ₹ 25.34 lakh in the ER 1 return of June 2017 (filed belatedly on 17 November 2017) as transitional credit through Tran-1 declaration. However, the taxpayer had not filed ER-1 returns for the period from January to May 2017 thereby rendering the taxpayer ineligible to avail transitional credit as per the provisions cited above. The entire amount of transitional credit of ₹ 25.34 lakh, therefore, needs to be recovered along with interest of ₹ 13.68 lakh.

Though the issue of non –filing of ER-1 returns for consecutive 6 months prior to the appointed day was red-flagged by the system, the Range officer failed to act upon it by not disallowing the transitional credit during verification process.

When we pointed this out (December 2019) the department stated (February 2020) that the taxpayer has been instructed to pay the transitional credit of ₹ 25.34 lakh along with interest.

Reply of the Ministry is awaited (December 2020).

4.6.9 Irregular claim of transitional credit which do not fall in the ambit of inputs, input services and capital goods

Section 140 (2) of CGST Act, 2017, stipulates that a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed Cenvat credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed provided that the registered person shall not be allowed to take credit unless the said credit was admissible as Cenvat credit under the existing law and is also admissible as input tax credit under this Act.

Section 140(3) of the said Act provides that a first stage dealer shall be entitled to take in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock on the appointed day.

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[63] Bengaluru South, Belapur, Pune-I and Chennai outer

During test check in three Commissionerates[64], we noticed irregular claim of transitional credits in three cases which do not fall in the ambit of inputs, input services and capital goods involving revenue of ₹ 0.69 crore **(*Appendix-IV*)** without adhering to the provisions quoted above.

When we pointed these out (between August and December 2019), the Ministry while admitting the objection in one case intimated (August 2020) recovery of ₹ 18.83 lakh. Reply in the remaining cases is awaited (December 2020).

One illustrative case is given below: -

As per Rule 2(l) of Cenvat Credit Rules (CCR), 2004, as amended, 'input service' means any service used by a provider of output service for providing that service. Rule 3 of CCR provides that a provider of output service shall be allowed to take credit of duties and taxes specified thereunder paid on any input service received by the provider of output services.

During the test check of transitional credit declarations in Walajabad range, Maraimalai Nagar Division in Chennai outer Commissionerate, we observed that a taxpayer, a first stage dealer, also engaged in providing Business Auxiliary Service, availed transitional credit of ₹ 59.49 lakh in terms of section 140(1) and on duties paid on inputs held in stock on the appointed day under section 140(3) of the CGST Act.

We noticed that the taxpayer under the erstwhile law availed Cenvat credit of service tax paid on warehouse rent amounting to ₹ 18.83 lakh and carried forward the same as balance of credit. The warehouse was taken on lease to store the imported goods meant for subsequent sales and had no connection to the output service provided by the taxpayer, which was on account of the sales commission received from the parent company. Therefore, the lease rent paid for warehousing the imported goods did not fall within the ambit of "input service" as defined in the CCR, 2004. Consequently, the service tax credit of ₹ 18.83 lakh availed and carried forward as transitional credit was inadmissible and recoverable from the taxpayer along with interest of ₹ 10.17 lakh.

When we pointed this out (December 2019) the Ministry while admitting the objection intimated (August 2020) that the taxpayer had paid ₹ 18.83 lakh, and a show cause notice had been issued for interest.

[64] Chennai outer, Guntur and Medchal

4.6.10 Other irregularities related to transitional credits

In respect of 27 cases in 16 Commissionerates[65], we noticed irregular claim of transitional credit on issues other than those pointed out in the preceding paragraphs involving revenue of ₹ 17.20 crore **(*Appendix-IV*)**.

When we pointed these out (between November 2018 and February 2020), the Ministry while admitting the objection in 13 cases intimated (between August and December 2020) the recovery of ₹ 47.31 lakh in three cases. Reply in the remaining cases is awaited (December 2020).

A few illustrative cases are given below: -

(a) Irregular availment of transitional credit on works contract service

Section 140(3) of the Central Goods and Services Act (CGST Act), 2017 stipulates that a registered person who was providing works contract service and was also availing the benefit of Notification No. 26/2012-ST dated 20 June 2012 (provides abatement to the persons discharging service tax under the category of construction services) shall be entitled to avail credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

During test check of transitional credit declarations in AED-1 Range, under Bengaluru East Commissionerate, we noticed that a taxpayer was engaged in providing works contract services for construction of residential complexes in the erstwhile service tax regime. While verifying the transitional credit claimed by the taxpayer, we noticed that the taxpayer availed transitional credit of ₹ 4.81 crore in respect of inputs held in stock. Further verification revealed that the taxpayer was paying service tax under works contract service without availing the benefit of Notification No. 26/2012-ST, dated 20 June 2012. Hence, the taxpayer was not eligible to carry forward the said credit of ₹ 4.81 crore.

Though this case was verified by the department, this lapse was not detected by the department.

When we pointed this out (January 2019), the department stated (August 2019) that Bengaluru Audit Commissionerate-I verified the transitional credit availed by the taxpayer during Internal Audit (March 2019) and did not find any discrepancy.

The department's reply was generic and did not specify the grounds on which the taxpayer was eligible to avail the said credit. The department's reply shows not only the failure of Internal Audit in detecting the lapse but also the fact

[65] Gandhinagar, Bengaluru East, Chennai North, Coimbatore (Audit), Hyderabad, Hyderabad (Audit-I), Bhubaneswar, Rourkela, Belapur, Bhiwandi, Mumbai South, Pune-I, Ranchi, Visakhapatnam, Guntur and Ahmedabad South

that it did not substantively address the lapse pointed out in the audit observation.

Reply of the Ministry is awaited (December 2020).

(b) Irregular claim of transitional credit on inadmissible items

(i) Section 140(1) of the CGST Act, 2017 stipulates that a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of Cenvat credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed. Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as Cenvat credit under the existing law and is also admissible as input tax credit under this Act.

Section 140 (2) of CGST Act, 2017, stipulates that a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed provided that the registered person shall not be allowed to take credit unless the said credit was admissible as Cenvat credit under the existing law and is also admissible as input tax credit under this Act.

Further, natural gas being a petroleum product has been kept out of the ambit of GST and the existing central excise law is applicable to it.

During test check of Tran-1 declarations in Range I under Ahmedabad South Commissionerate, it was observed that a taxpayer claimed the input tax credit of ₹ 2.21 crore in respect of Cenvat credit related to manufactured products which are out of the ambit of Goods and Services Tax. The taxpayer is engaged in the business of gas distribution including sale, purchase, supply, distribution, transportation, trading in Natural Gas, Compressed Natural Gas (CNG) and Piped Natural Gas (PNG) through pipelines, trucks or other mode of transportations. After migration to GST regime, the assessee continued to maintain its registration under Central Excise regime for payment of central excise duty/VAT on its manufactured products (natural gas) that are outside the ambit of GST. Since the products (CNG, PNG) manufactured by the assessee do not attract GST, Cenvat credit on any input/input services/capital goods related to the manufacturing of these products was also not eligible to be carried forward as input tax credit (ITC) under GST Act. This resulted in carry

forward of inadmissible Cenvat credit of ₹ 2.21 crore, which needs to be recovered.

When we pointed this out (November 2019), the Ministry while admitting the objection intimated (December 2020) that the draft SCN was being issued.

(ii) As per Section 16(1) of the CGST Act, 2017, every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Further, as per Section 17(5) of the CGST Act, 2017, notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of (a) motor vehicles and other conveyances except when they are used for making taxable supplies, (b) supplies of foods and beverages, outdoor catering, any inward supplies for making an outward taxable supply, (b) (iii) rent-a-cab, life insurance and health insurance except where the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force, (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business, (g) goods or services or both used for personal consumption. In case where input credits has been wrongly availed or utilized for any reason can be recovered with interest under Section 73 or 74 of the Act.

During the course of audit (August 2019) of Paradeep II range under Bhubaneswar Commissionerate, audit scrutiny of GSTR-3B return, electronic credit ledger, and GST ITC register for the period from July 2017 to March 2018 of a taxpayer revealed that the taxpayer had irregularly availed ITC on GST paid on inadmissible goods viz., Cement, TMT bars, medicines for corporate hospitals, and supply of services viz., civil works, canteen, guest house expenses, maintenance of civil township etc., which are inadmissible as per provisions ibid. This resulted in irregular availment of input tax credit on inadmissible items amount to ₹ 1.14 crore which needs to be reversed along with interest and penalty.

When we pointed this out (January 2019), the Ministry while admitting the objection intimated (November 2020) that the SCN had been issued to the taxpayer.

(c) Irregular claim of transitional credit of VAT under value of tax deducted at source

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

During test check of transitional credit declarations in Range II of Giridih division falling under Ranchi CGST Commissionerate, we noticed that a taxpayer claimed VAT credit of ₹ 2.16 crore through Tran-1 declaration. After verification, the State tax authority intimated the Central Tax authority that the ITC claim of ₹ 2.16 crore by the taxpayer was inadmissible as the said amount was the value of tax deducted at source. Hence, action under section 73 of the Act, ibid, was to be initiated. However, till the date of audit (December 2018), action under section 73 had not been initiated by the department.

When we pointed this out (December 2018), the Ministry while admitting the objection stated (September 2020) that the action for recovery of ineligible ITC (under SGST) has been initiated as per section 73.

(d) Both transitional credit and refund allowed irregularly for the same Cenvat credit

Section 142(3) of CGST Act, 2017 provides that every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of Cenvat credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing Law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing Law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944. Provided that where any claim for refund of Cenvat credit is fully or partially rejected, the amount so rejected shall lapse. Provided further that no refund shall be allowed of any amount of Cenvat credit where the balance of the said amount as on the appointed day has been carried forward through Tran-1.

During test check of transitional credit declarations in Pune-I CGST Commissionerate, we observed that a taxpayer claimed transitional credit of ₹ 1.54 crore through Tran-I. We noticed that the taxpayer had filed two refund claims for the same amount of ₹ 1.54 crore under Rule 5 of Cenvat Credit Rules, 2004 read with notification No.27/2012-CE (NT) dated 18 June 2012 against the export of services for the period July 2016 to September 2016, and October 2016 to December 2016. The said refund claims were sanctioned to the taxpayer. Thus, the irregular transitional credit of ₹ 1.54 crore for which the refund has been sanctioned, needs to be recovered.

Though this case was verified by the department, it did not point out this lapse.

When we pointed this out (May 2019), the department while admitting the objection intimated (June 2019) that an amount of ₹ 1.38 crore had been recovered and the balance amount of ₹ 15.76 lakh was being recovered.

Reply of the Ministry is awaited (December 2020).

Systemic issue

4.6.11 Transitional credit verification done by the department on inadequate records

The Board had prescribed 14 checks to be carried out by the tax officials during transitional credit verification process. Different records/information were required to apply these 14 checks. As per para 13.1 of the guidance note, it was also directed that foremost effort should be taken to verify Tran-1 Credit on the basis of data already available with the department without contacting the taxpayer. Where such verification needs contact with the taxpayer, a letter may be written giving adequate lead time and calling for specific information which would assist in verification as per the fourteen checkpoints listed above. Record of results obtained shall be maintained in the Commissionerate concerned and reported to the Board on or before the 10thof the month following the quarter in which verification is completed.

During the course of audit of CGST Commissionerates of Pune-I and Belapur, to ascertain the status of records available in case files, Audit had requested to furnish all Tran-1 verified cases. On perusal of case files, it was noticed that the records and information in the case files were very limited, even basic records/information such as copy of Tran-1 form, Electronic Credit Ledger, Statement of credit claimed in different tables of Tran-1 form, ER-1/ST-3 returns for last 6 months, Electronic Cash Ledger etc. were not available in the produced case files. The records/information available in the Tran-I verification files were grossly inadequate.

When we pointed this out (May 2019), the department stated (July 2019) that AIOs computer terminals (all in one) were not fully functional, as all the back end systems of the department were not in place. Hence, the verification process carried out in Phase-1 mainly focussed on the documents/information that were readily available or the information submitted by the taxpayers.

The reply of the department indicates that the verification of Tran-1 cases was not performed as per the Board's guidance note and such limited exercise can not be considered optimal for achieving the objectives of Tran-1 verification.

Reply of the Ministry is awaited in all the above cases (December 2020).

Part B : Refunds

4.7 Overview of audit of refund claims

During the period October 2018 to March 2020, we examined the records relating to 4,736 refunds out of 23,106 in 33 CGST Commissionerates. We noticed non-adherence to extant provisions in processing of refunds in 280 claims (6 *per cent*) involving an amount of ₹ 16.16 crore. Out of these, the department while admitting the audit objections in 53 cases intimated recovery of ₹ 1.87 crore in 15 cases. Out of 280 claims against which audit observation was issued to CBIC field formations, 42 claims had money value of more than ₹ 10 lakh in each case, and 238 claims had money value of less than ₹ 10 lakh in each case.

Twenty five significant observations in six Commissionerates have been included (***Appendix-V***) in this report, involving a money value of ₹ 8.26 crore as detailed below: -

(₹ in crore)

Issue noticed	Commissionerates involved	No. of cases	Amount of audit objection
Irregular grant of refund due to non-consideration of minimum balance in electronic credit ledger	2	10	5.57
Irregular sanction of refund of input tax credit availed on capital goods	2	3	1.18
Other cases	3	12	1.51
Total		25	8.26

Out of these 25 cases, Ministry accepted the observation in two cases involving an amount of ₹ 32.54 lakh and intimated (between August and October 2020) recovery of ₹ 32.54 lakh. Replies in the remaining cases are awaited. Two

cases on compliance issue and two cases on systematic issues are narrated below:-

4.7.1 Irregular grant of refund due to non-consideration of minimum balance in electronic credit ledger at the end of tax period

Section 54 (3) of the Central Goods and Services Tax Act, 2017, stipulates that refund of ITC in respect of zero-rated supplies can be claimed by registered persons at the end of tax period. Rule 89 (3) of the Central Goods and Service Tax Rules, 2017 provides that for refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed. Further, Rule 89(4) of the Central Goods and Services Tax (CGST) Rules, 2017, prescribes the formula as per which the refund in the case of zero-rated supply of goods or services shall be granted.

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

where, "Net ITC" means input tax credit availed on inputs and input services during the relevant period, and refund amount means the maximum refund amount that is admissible.

The CBIC vide circular dated 4 September 2018 has clarified that in case of refund of unutilized input tax credit of zero rated supplies, the refundable amount is to be calculated as the least of the following amounts:

(a) The maximum refund amount as per the formula laid down in rule 89(4) of the CGST Rules, 2017;

(b) The balance in the electronic credit ledger of the claimant at the end of the tax period for which the refund claim is being filed after the return for the said period has been filed; and

(c) The balance in the electronic credit ledger of the claimant at the time of filing the refund application.

Further, according to Section 142 of CGST At 2017, refund of tax/duty paid under the existing law (Central Excise Act, 1944 and Finance Act, 1994) shall be disposed of in accordance with the provisions of existing law.

CBIC instructions dated 15 November 2017 directed inter alia that post-audit of all GST refund orders has to be carried out on the basis of extant guidelines. Para 2.6 of the Circular dated 16 May 2008 prescribed that post-audit be completed within two months of the date of refund Order-in-Original.

(i) During test check of refund claims (January 2019) in Central Tax and Central Excise Division Perumbavoor, we noticed that a taxpayer had applied (February 2018) for refund of ITC of ₹ 2.56 crore (₹ 2.34 crore as CGST and

₹ 22.56 lakh as SGST) for the month of July 2017, and the Department had sanctioned (April 2018) refund of ₹ 2.54 crore (₹ 2.32 crore as CGST and ₹ 22.04 lakh as SGST). The eligible refund was, however, ₹ 27.97 lakh (i.e. least of the three amounts as per CBIC criteria), being the unutilized ITC balance in ECL at the end of July 2017. As a result, there was irregular sanction of CGST refund of ₹ 2.27 crore. We further noticed that the sanctioned refund ₹ 2.54 crore (₹ 2.32 crore as CGST and ₹ 22.04 lakh as SGST) included Cenvat credit of ₹ 1.15 crore, refund of which was not in order.

Even though the refund in the above case was sanctioned in April 2018, post-audit was not carried out which was the only check available to ensure statutory compliance as well as arithmetical accuracy.

Further, SGST refund of ₹ 3.60 lakh was adjusted towards excess CGST refund of ₹ 2.27 crore, whereas Section 49(5)(f) of CGST Act, 2017 does not permit utilisation of State Tax or Union Territory Tax towards payment of Central Tax.

When we pointed this out (January 2019), the Ministry while not admitting the objection stated (October 2020) that the computation of refunds to be claimed as per refund application on GST portal included values as per Statement 3A, balance in electronic cash ledger, tax credit availed during the period and eligible amount (lowest of all). The option to calculate the least of the three amounts came in effect after circular dated 4 September 2018. It was further stated that a protective show cause demand has also been issued. As regards adjustment of ₹ 3.60 lakh SGST towards CGST, it was intimated that final adjustment of the CGST and SGST will be done during the adjudication of show cause notice.

The reply of the Ministry is not acceptable as the circular dated 4 September 2018 is clarificatory in nature and provides clarification of refund related issues. As per the provision quoted above, refund is required to be calculated as the least amount of the three as per the provisions of the statute. The reply of the Ministry is silent on the aspect of non-conducting of post audit of the refund case.

(ii) During test check of refund records of Division IV in Mumbai East Commissionerate, it was observed that a taxpayer was sanctioned (July and September 2018) refund of ₹ 2.45 crore on account of zero-rated supply of goods for the month of July 2017 as claimed. Audit scrutiny revealed that the balance in the electronic credit ledger of the claimant at the end of the tax period, after filing of the return for the said period, was at ₹ 1.10 crore. This being the least, the claimant was entitled to refund to the extent of ₹ 1.10 crore. Thus, there was an excess allowance of refund of ₹ 1.35 crore (CGST: ₹ 48.25 lakh, SGST: ₹ 48.25 lakh and IGST: ₹ 38.32 lakh).

When we pointed this out (February 2019), the department while not accepting (March 2019) the para contented that the refund amount was calculated by the GST portal as per the then existing instructions issued by the Board vide circular dated 15 November 2017, and the department had only manually processed the claims as per the instructions. Further, the department was of the view that the revised method of determining refundable amount was to be followed after the date of issue of circular dated 4 September 2018.

Reply of the department is not acceptable as the Board's circular is clarificatory in nature explaining the intention of the law. The intention of the legislature was not to allow full refund of ITC in respect of zero rated supplies when in fact it was partly utilised for discharge of liability for local supplies and balance in the credit ledger at the end of tax period was less than the ITC availed. It prima facie appeared that there were deficiencies in devising the refund module, and as such the common portal admitted the refund claim despite the balance in the electronic credit ledger, at the end of tax period, was less than the accumulated ITC claimed as refund. Further, contention of the department that the method of determining refund clarified in Board's circular dated 4 September 2018 was applicable from the date of issue of the circular is not acceptable.

Reply of the Ministry is awaited (December 2020).

4.7.2 Irregular sanction of refund of input tax credit availed on capital goods

During test check of refund claims in Maraimalai Nagar Division of Chennai Outer Commissionerate, it was observed that in three refund claims of a taxpayer for the tax-period October to December 2017, refund of unutilized input tax credit of ₹ 5.65 crore was sanctioned. While computing the "Net ITC" for arriving at the refund amount, the taxpayer included the ITC of ₹ 1.10 crore availed on capital goods. This resulted in irregular sanction of refund of ₹ 1.10 crore, which was recoverable with interest in terms of section 73 read with section 50 of the CGST Act, 2017. Though the refund claims were sent for post audit, this excess refund was not noticed.

When we pointed this out (October 2019), the Ministry stated (December 2020) that the excess refund of ₹ 1.10 crore was recovered (March 2020) along with interest of ₹ 27.28 lakh.

Systemic issues

4.7.3 Abnormal delay in communicating refund orders to counterpart tax authority

Section 54 (7) of the CGST Act, 2017 stipulates that refund order shall be issued within sixty days from the date of receipt of application complete in all respects. Further, Rule 91 (2) of the Central Goods and Service Tax Rules, 2017 provides that after scrutiny of the refund claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund, sanctioning authority can sanction the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days from the date of the acknowledgement under.

Further, as per Board circular dated 21 December 2017, refund order issued either by central tax authority or state tax/UT tax authority shall be communicated to the concerned counterpart tax authority within 7 working days for the purpose of payment of relevant sanctioned amount of tax or cess as the case may be. It was also reiterated therein to ensure adherence to time line specified under section 54(7) and rule 91(2) of CGST Act and Rules respectively for sanction of refund orders.

During test check of refund claims in Mumbai East Commissionerate, we observed that out of 3,730 refund orders issued upto December 2018, the Commissionerate forwarded 972 refund orders (26 *per cent*) involving ₹ 47 crore to the nodal officer in Principal Chief Commissioner's office Mumbai for onward transmission to state tax authority with a delay ranging from 16 to 195 days. Department did not intimate the exact dates of communication of these orders to state tax authority for subsequent payment of refund to the taxpayers concerned.

Further, it was observed from the data made available that out of 4,519 refund orders transmitted by state tax authority during financial years 2017-18 and 2018-19 (upto December 2018), 4,382 refund orders (97 *per cent*) involving ₹ 419.37 crore were forwarded by Mumbai East Commissionerate to PAO for payment of refund claim with a delay ranging from 16 to 383 days.

Department has been requested to ascertain whether interest was paid to the tax payers on delayed payment of refund on the above mentioned cases.

This was brought to the notice of the department in March 2019. Reply of the department is awaited.

Reply of the Ministry is awaited (December 2020).

4.7.4 Non-production of records for audit

We intimated Mumbai East Commissionerate in July 2018 that the audit of GST Refund cases would be taken up from October 2018. Subsequently, we issued requisitions calling for 652 GST Refund cases for audit in the month of October 2018. However, despite various reminders and follow up, department furnished records relating to only 478 GST cases. The remaining 174 GST Refunds cases (26.69 *per cent*) involving refund of ₹ 173.14 crore have not been furnished for audit without assigning any reason.

Reply of the Ministry is awaited (December 2020).

Part C : Other cases

4.8 Other irregularities noticed during GST audit

In addition to audit objections pointed out in the preceding paragraphs, we noticed irregularities relating to non-filing of GST returns, non-cancellation of GST registration of the non-filers of GST return, non/short payment of GST, non-payment of interest on delayed payment of GST etc., during test check in 56[66] Commissionerates.

Eight significant observations in respect of six Commissionerates[67] amounting to ₹ 6.77 crore were issued to Ministry (***Appendix-VI***). The Ministry while admitting the objection in six cases involving an amount of ₹ 5.51 crore intimated (between August and December 2020) the recovery of ₹ 3.40 crore along with interest. Reply in the remaining cases is awaited (December 2020).

A few cases have been narrated below :-

4.8.1 Non-payment of interest on delayed payment of GST

As per Section 50 (1) of the CGST Act, 2017, every person liable to pay tax in accordance with the provisions of this Act or the Rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay on his own, interest at such rate, not exceeding eighteen *per cent*, as may be notified by the Government on the recommendation of the Council. As per Section 50 (2) of the CGST Act, 2017, interest shall be calculated from

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66 Ahmedabad (South), Daman, Surat, Vadadora I & II, Alwar, Jaipur, Jodhpur, Udaipur, Belgavi, Bengalur East, Bengaluru West, Bengaluru North, Bengaluru South, Chennai North, Chennai South, Chennai Outer, Coimbatore, Madurai, Tiruchirapally, Kochi, Thiruvananthapuram, Chandigarh, Faridabad, Gurugram, Jalandhar, Ludhiana, Punchkula, Shimla, Delhi East, Delhi North, Delhi South, Raipur, Bhopal, Indore, Jabalpur, Ujjain, Guntur, Hyderabad, Medchal, Rangareddy, Secunderabad, Tirupathi, Visakhapatnam, Bhubaneswar, Rourkela, Agra, Gautham Budh Nagar, Jamshedpur, Patna I and II, Ranchi and Patna Audit, Mumbai West, Navi Mumbai, Nagpur and Howrah.

67 Rourkela, Varanasi, Ranchi, Jaipur, Jamshedpur and Agra.

the day succeeding the day on which such tax was due to be paid. Further as per Notification dated 28 June 2017, the interest rate notified is 18 *per cent*.

As per Notification Nos. 35/2017-CT dated 15 September 2017 and 56/2017-CT dated 15 November 2017, every registered person furnishing the return in FORM GSTR-3B shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax, interest, penalty, fee or any other amount payable under the said Act, by debiting the electronic cash ledger or electronic credit ledger, as the case may be, not later than the last date on which he is required to furnish the said return.

Section 46 of the CGST Act, 2017, read with rule 68 of the CGST Rules, 2017, requires issuance of a notice in FORM GSTR-3A to a registered person who fails to furnish return under section 39, requiring him to furnish such return within fifteen days of issuance of notice by the department. Further Rule 68 did not include the time limes for issuance of such notice.

During test check of GST return/records of taxpayers in Rajagangpur Range, under Rourkela CGST Commissionerate, we noticed that a taxpayer paid GST (CGST, SGST and IGST) with a delay ranging from 51 to 174 days for the period from July 2017 to March 2018 but did not pay interest for the delayed payment of GST. This resulted in non-payment of interest of ₹ 3.15 crore (including amount of ₹ 1.37 crore towards interest on SGST).

When we pointed this out (February 2019), the Ministry while admitting the objection stated (October 2019) that an amount of ₹ 1.03 lakh has been recovered and recovery process has been initiated for the remaining amount.

4.8.2 Non-payment of GST

Section 46 of the Central Goods and Services Tax Act, 2017 deals with notice to return defaulters, and stipulates that where a registered person fails to furnish a return a notice shall be issued requiring him to furnish such return within fifteen days.

Further, as per Section 50 (1) of the CGST Act, 2017 read with notification dated 28 June 2017, every person liable to pay tax in accordance with the provisions of the Act or rules made thereunder, who fails to pay the tax or any part thereof to the account of the Central or a State Government within the period prescribed, shall, on his own, for the period for which the tax or any part thereof remains unpaid, pay interest at 18 *per cent*.

During test check of the taxpayers' records in Daltoganj Range of Ranchi Commissionerate, we noticed non-payment of GST in one case. We noticed that a taxpayer had raised gross bills of ₹ 14.11 crore in February 2018 and ₹ 11.23 crore in March 2018, on which the taxpayer was liable to pay GST

amounting to ₹ 1.27 crore. However, the taxpayer had not discharged the liability of GST. The taxpayer had not filed GSTR-1 and GSTR-3B returns for the months of February 2018 and March 2018 till the date of audit (June 2018). This resulted in non-payment of GST amounting to ₹ 1.27 crore (CGST – ₹ 2.01 lakh, SGST – ₹ 2.01 lakh and IGST ₹ 1.23 crore) and interest thereon.

The department did not initiate any action on non-submission of returns by the taxpayer as per the provisions of Section 46 of the Central Goods and Services Tax Act, 2017.

When we pointed this out (June 2018), the Ministry while admitting the objection (November 2020) stated that the taxpayer had filed their GSTR-3B returns for the months of February 2018 and March 2018 with delay of 185 and 156 days and paid GST of ₹ 2.26 crore.

The taxpayer is also liable to pay interest of ₹ 19.59 lakh for delayed payment of GST, the status of which is yet to be conveyed to Audit.

As for the interest amount, the Ministry stated that the taxpayer has filed a petition before Hon'ble High Court, Ranchi and the High Court quashed/set aside the recovery of interest. However, the department has sent proposal for filing an SLP before the Hon'ble Supreme Court.

4.8.3 Short payment of GST

Section 61 of CGST Act, 2017, stipulates that the proper officer may scrutinize the return and related particulars to verify the correctness of the return and inform discrepancies if any, in such manner as may be prescribed and seek his explanation thereto. In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67,or proceed to determine the tax and other dues under section 73 or section 74.

As per Board's letter dated 27 November 2018, the Directorate General of Analytics and Risk Management (DGARM) prepares analytical reports through data analysis and the same are shared with the respective CGST zones to initiate necessary action by the field formations of the department. Further, the Zonal Chief Commissioners should submit monthly feedback on each of the analytical reports received from (DGARM).

During the test check of 15 (DGARM) reports received upto March 2019 of CGST Range XXVII, under Jaipur CGST Commissionerate, we noticed that in one (DGARM) report, in row no. 19 D (related to difference in liability reported in

GSTR-1 and GSTR-3B), it was reported that there was a difference in liability of ₹ 1.26 crore as per GSTR-1 and GSTR-3B return for the month of January 2019 submitted by an assessee. Acting upon the information received from DG (ARM), the Range officer scrutinised the return submitted by the assessee and found that the assessee paid ₹ 0.16 crore in GSTR-3B against liability of ₹ 1.42 crore declared in GSTR-1.The assessee accepted the discrepancies and submitted that the tax will be deposited at the time of filing of return for the months of March 2019 and April 2019 in the first week of May 2019. Range officer in the compliance report submitted to higher authorities marked the case as 'Action Completed' but the assessee failed to pay the tax upto the date of audit, *i.e.*, till September 2019. Thus, there was a short payment of ₹ 1.26 crore by the assessee for the month of January 2019.

When we pointed this out (September 2019), the Ministry while not admitting the objections stated (October 2020) that the issue was already in their knowledge. A show cause notice had been issued in February 2020 and the taxpayer deposited the amount in March 2020.

The reply of the Ministry is not acceptable, since the taxpayer had not deposited the amount till the date of audit i.e., September 2019 though he informed the department the tax would be deposited in the month of March and April 2019. However, the Range officer marked the case as 'Action completed' while submitting the report to the higher authorities. After it was pointed out by Audit, the department issued SCN in February 2020 and the taxpayer deposited the amount in March 2020. Hence, it is clear that if Audit had not pointed out this lapse, amount of GST would have remained unpaid since the case was marked as 'Action completed' by the Range Officer.

4.8.4 Non-cancellation of registration of the non-filers of GST return

Section 29(2)(b) and (c) of CGST Act, 2017, authorises the proper officer to cancel the registration of a person from such date, including any retrospective date as he may deem fit, where "a person paying tax under Section 10 has not furnished returns for three consecutive tax periods and any registered person has not furnished returns for a continuous period of six months".

During examination (August/September 2019) of the data of the non-filers of GSTR-3B returns in the Range-I and II of the Aligarh Division under Agra CGST Commissionerate, we noticed that 1,965 taxpayers out of 12,694, had not submitted their GST-3B returns for a continuous period of six or more than six months. However, the registration of these defaulters were not cancelled by the department after following the process laid down in Rule 22 of CGST Rules, 2017.

This was brought to the notice of the department in September and October 2019, reply of the department/Ministry is awaited (December 2020).

4.9 Impact on State Goods and Services Tax

For the audit observations highlighted in paragraphs 4.6, 4.7 and 4.8 of this chapter, the corresponding impact on the State Goods and Services Tax is given in **Appendix-VII**.

Chapter V: Show Cause Notices (SCNs) & Adjudication Process in CBIC

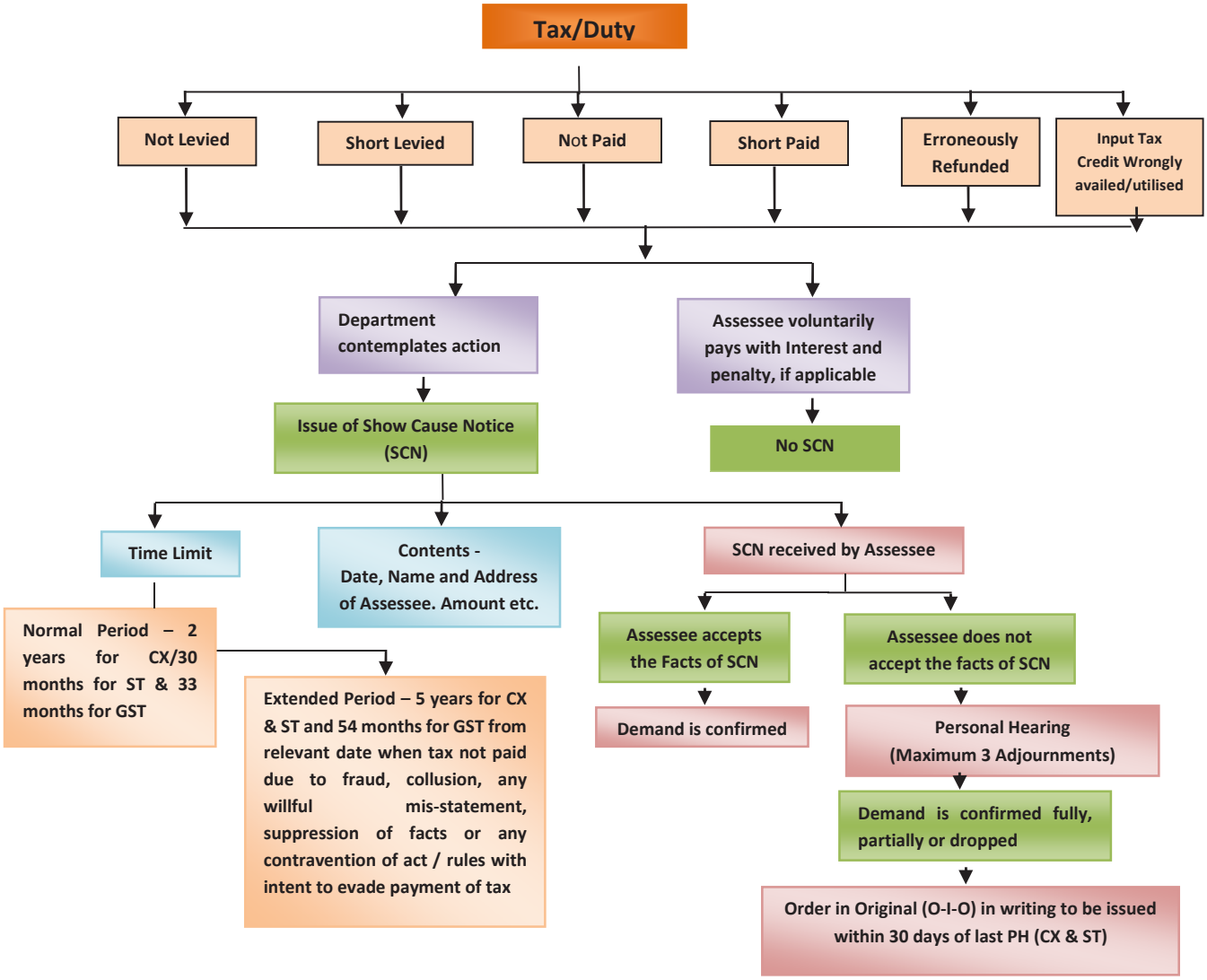
5.1 Introduction

Adjudication is a quasi-judicial function of the departmental officers of the Central Board of Indirect Taxes and Customs (CBIC). Through imposition of an appropriate penalty after adjudication, the department seeks to ensure that no revenue loss is caused by the contravention of applicable laws and rules, which may result in non/short payment of tax, erroneous refunds, irregular availing of CENVAT credit etc. It is mandatory that a Show Cause Notice (SCN) is issued if the department contemplates any action prejudicial to the assessee. The SCN would detail the provisions of law allegedly violated and ask the noticee to show cause why action should not be initiated against him under the relevant provisions of the Act/Rules. Thus, an SCN gives the noticee an opportunity to present his case.

5.2 SCN and adjudication process

Process for issue of SCNs and their adjudication under the three Acts viz. Central Excise Act, 1944, Finance Act, 1994 and CGST Act, 2017 are described in the relation chart below;

Chart 5.1
SCN and Adjudication Process



5.3 Administrative set up for Issue of SCNs and adjudication process

The organizational chart of Central Board of Indirect Taxes and Customs (CBIC) is depicted in Chart-5.2. As on 31 March 2019, CBIC was supported by 21 Zones, 107 Executive Commissionerates, 725 Divisions and 3,785 Ranges. In addition, there were 48 Audit Commissionerates alongwith 71 other units. The monetary limits in relation to adjudication[68] are depicted in Chart-5.3

[68] As per the Master Circular No.1053/02/2017-CX dated 10 March 2017

Chart 5.2
Organizational Structure for SCN & Adjudication Process

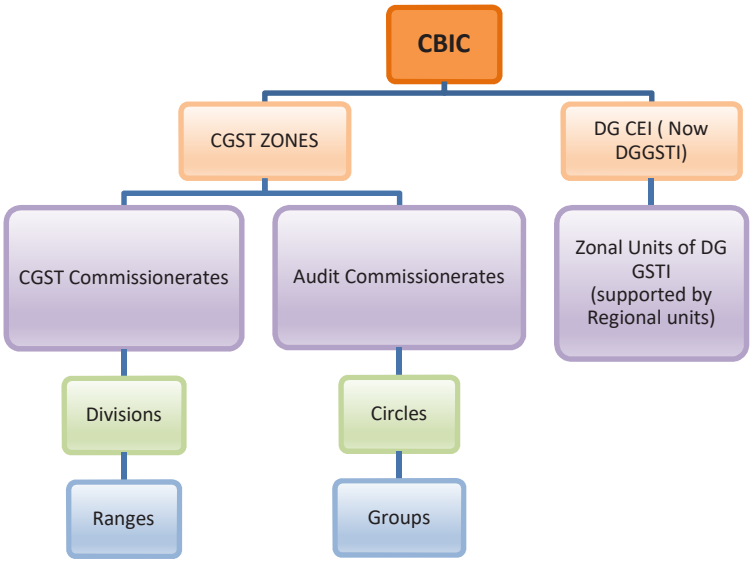


Chart 5.3
Monetary limit for Adjudication of SCNs

Commissioner	•Cases exceeding rupees two crore
Additional/ Joint Commissioner	•Above fifty lakh but not exceeding rupees two crore
Deputy/ Assistant Commissioner	•Above ten lakh but not exceeding rupees fifty lakh
Superintendent	•Not exceeding rupees ten lakh

5.4 Results of previous Audits

We had examined the SCN and adjudication process of the department in FY15 covering the period FY12 to FY14. This was included in Chapter-II of Report No. 1 of 2016 (Service Tax) and Chapter-V of Report No. 2 of 2016 (Central Excise). The major findings of that exercise, inter-alia, were incorrect invocation of extended period of time while issuing SCN resulting in demands getting timed barred, delay in adjudication of SCNs, non-issuance of adjudication orders within stipulated period and non-periodic review of Call Book cases resulting in irregular retention of cases in Call Book.

The Ministry in its Action Taken Note (ATN) (June 2016) stated that all the field formations had been instructed for timely issuance of SCN and strict monitoring to reduce delays in various stages and processing of SCN so that the interest of both the Government revenue and the assessee are protected. The Ministry further stated (March 2017) that a master circular dated 10 March 2017 had been issued for SCN & Adjudication process, which provided for strict adherence to time limit for issuance of SCN and rightful invocation of extended period of limitation, as prescribed in para 3.1 to 3.7 of the said circular. Para 14.10 of the circular further states that in all cases where personal hearing has been concluded, it is necessary to communicate the decision as expeditiously as possible but not later than one month in any case, barring in exceptional circumstances to be recorded in the file.

We followed up on the Ministry's reply, and during the course of current audit, noticed persistent compliance deviations with respect to issue of SCN and Adjudication process despite Ministry's assurance in the action taken note (March 2017). The audit findings are reported in the subsequent paras.

5.5 Audit Objectives

In the present audit, we examined:

a) the adequacy of rules, regulations, notifications, circulars/instructions etc. issued from time to time in relation to adjudication process;

b) whether the extant provisions of law and rules relating to issue of SCNs and adjudication process were being complied with adequately;

c) whether there was an effective monitoring and internal control mechanism to ensure timely corrective action by the department.

5.6 Scope of Audit, Audit Criteria and Audit Sample

5.6.1 Scope of Audit

During the audit, we had examined the SCN files, registers and monthly returns prepared by the departmental offices related to SCN and adjudication process for the period FY17 to FY19.

5.6.1.1 Audit Sample

We followed a risk based sampling method to identify departmental units for audit. We selected one to three executive Commissionerates from each CGST Zone depending on the number of Commissionerates in a Zone, based on stratified random sampling. In the zones where the number of executive Commissionerates is 1 to 5, one Commissionerate has been selected. In the zones where the number of executive Commissionerates is 5 to 10, two Commissionerates have been selected. In the zones where the number of

executive Commissionerates is more than ten, three Commissionerates have been selected. In addition to executive Commissionerates, one Audit Commissionerate from each Zone and one Zonal Unit of Directorate General of Goods and Services Tax Intelligence (DGGSTI) (earlier DG CEI) was selected in addition to the DGGSTI Headquarter for audit. The details of departmental units selected for audit are given in table 5.1 below-

Table No. 5.1: Universe and sample of departmental units

Type of units	Total number of units	Units selected as sample
Executive Commissionerate (CGST)	107	28 Commissionerates (including 28 division and 26 Ranges there under)
Audit Commissionerate	48	20
Zonal units of DGGSTI	25	14 (including DGGSTI Hqrs)

We have selected 116 units under Executive Commissionerates, Audit Commissionerates and Zonal units of GSTI including DGGSTI, New Delhi[69].

Further, sample of SCN related files, available in the selected units, was derived for detailed examination based on random sampling. The audit universe and sample for focus audit areas are detailed in table 5.2 below:

[69] Ghaziabad, Allahabad, Jamshedpur, Ahmedabad North, Rajkot, Vadodara II, Jaipur, Mumbai South, Mumbai West, Raigad, Pune II, Nashik, Hyderabad, Visakhapatnam, Bhubaneswar, Trichy, Chennai North, Thiruvananthapuram, Jalandhar, Gurugram, Bhopal, Bengaluru East, Mangalore, Kolkata North, Howrah, Guwahati, Agartala, Delhi South, Kanpur Audit, Meerut II Audit, Ahmedabad Audit, Vadodara Audit, Jaipur Audit, Raigad Audit, Pune II Audit, Nashik Audit, Hyderabad I Audit, Visakhapatnam Audit, Bhubaneswar Audit, Chennai I Audit, Kochi Audit, Ludhiana Audit, Gurugram Audit, Delhi II Audit, Bhopal Audit, Bengaluru I Audit, Kolkata I Audit, Guwahati Audit, DGGI Hqrs. Delhi, Lucknow DGGI, Ahmedabad DGGI, Jaipur DGGI, Pune DGGI, Hyderabad DGGI, Visakhapatnam DGGI, Bhubaneswar DGGI, Chennai DGGI, Ludhiana DGGI, Bhopal DGGI, Bengaluru DGGI, Kolkata DGGI and Guwahati DGGI.

Table No. 5.2: Universe and Sample of files selected for detailed examination

(₹ In crore)

Sl. No.	Focus Area	Period	Audit Universe	Audit Sample		Sample as % of population
				No.	Amount	
1.	**SCN pending for adjudication[70]**	As on 31 March 2019	11,723	4,457	29,672.96	**38**
2.	**SCNs adjudicated**	FY17 to FY19	8,766	3,335	17,208.40	**38**
3.	**SCNs pending in Call Books**	As on 31 March 2019	5,491	2,191	13,308.02	**40**
4.	**Remand back cases**	FY17 to FY19	748	622	3,358.21	**83**
5.	**Waiver of SCNs**	FY17 to FY19	17,095	1,020	1,155.69	**6**
6.	**Draft SCNs(DSCNs) pending for issuance**	As on 31 March 2019	203	203	1,282.80	**100**
7.	**CERA audit objections**	FY17 to FY19	1,079	373	912.15	**35**
8.	**SCNs & DSCNs transferred due to GST restructuring**	July 2017 to March 2019	551	500	523.26	**91**

5.6.2 Audit Criteria

The audit criteria included the provisions related to adjudication in the Central Excise Act, 1944,the Finance Act, 1994, rules and circulars issued by the Board to its field formations viz. the master Circular No. 1053/02/2017-CX dated 10 March 2017 vide which all other circulars on this subject were rescinded except the three circulars i.e. 984/08/2014-CX dated 16 September 2014, 137/46/2015-S.T. dated 18 August 2015 and 1023/11/2016-CX dated 8 April 2016. As for GST, audit criteria included provisions relating to demand and recovery as contained in Section 73 to 84 of Chapter XV of IGST Act, 2017 and rule 142 to 161 under chapter XVIII of the CGST Rules, 2017.

5.7 Performance of the department in adjudication of SCNs

5.7.1 Receipts, Disposal and Closing Balance of SCNs pending for adjudication

As per Sub-Section 11(b) of Section 11A of Central Excise Act, 1944 read with Sub-section 4B of Section 73 of the Finance Act, 1994 as amended with effect

[70] This also includes:
- 1,922 SCNs issued and transferred to other formations by the Audit Commissionerates
- 2,208 SCNs issued and transferred to other formations by DGGSTI Units.

from 06 August 2014, SCNs issued in normal cases were to be adjudicated within six months in respect of Central Excise (CE) & Service Tax (ST), and SCNs issued for fraud and collusion cases should be adjudicated within two years relating to CE and in one year relating to ST.

Details of receipt, disposal and closing balance of the SCNs during the last three years are given in table 5.3 below:

Table No. 5.3: Receipt, Disposal and closing Balance of SCNs

Table No. 5.3(A) - Central Excise

Amount (₹ in crore)

Year	Opening balance(SCN)		SCNs issued during the year		SCNs disposed during the year		Closing Balance (SCN)		Percentage of disposal
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	
FY17	23,104	29,354.68	55,520	50,218.92	68,166	59,097.92	10,347	20,474.20	86.69
FY18	10,347	20,474.20	28,876	50,513.21	30,321	53,776.60	8,534	17,401.47	77.30
FY19	8,534	17,401.47	17,174	28,219.49	18,719	28,210.50	6,989	17,410.46	72.81

Table No.5.3 (B) - Service Tax

Amount (₹ in crore)

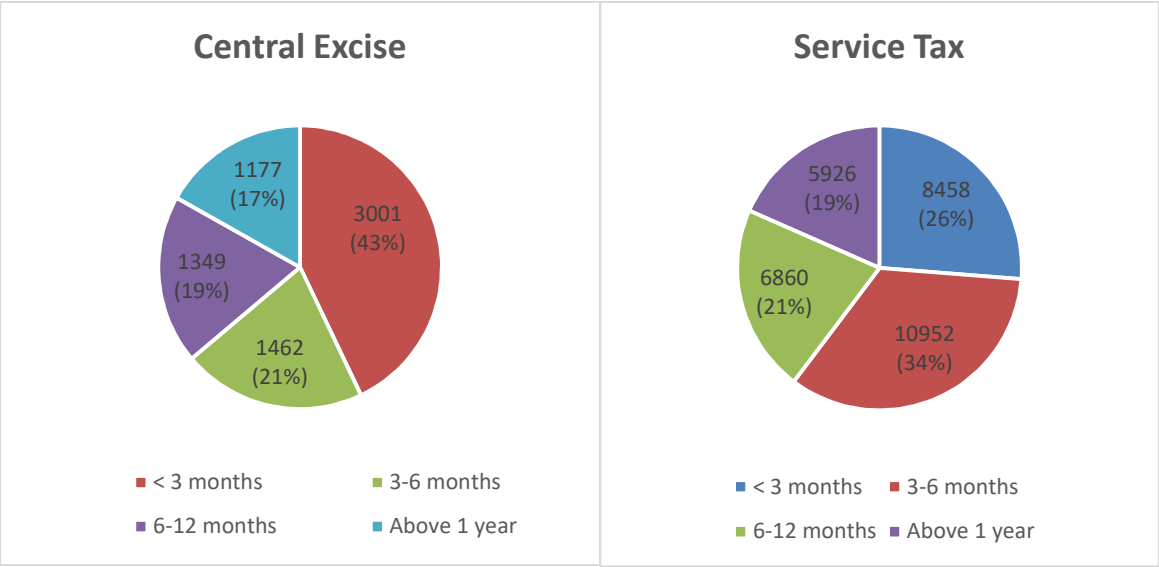
Year	Opening balance(SCN)		SCNs issued during the year		SCNs disposed during the year		Closing Balance (SCN)		Percentage of disposal
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	
FY17	30,453	76,123.74	54,310	67,413.25	65,702	74,594.52	19,053	68,940.78	77.51
FY18	19,053	68,940.78	35,173	70,918.42	32,349	55,931.20	22,208	81,280.44	59.65
FY19	22,208	81,280.44	44,776	1,25,740.29	34,788	92,256.81	32,196	1,14,764.40	51.93

As evident from the table above, as on 31 March 2019, 6,989 SCNs with Central Excise duty of ₹ 17,410.46 crore and 32,196 SCNs with Service Tax of ₹ 1, 14,764.40 crore were pending for adjudication. The disposal of SCNs was showing a declining trend as is evident from the tables above. Disposal of SCNs declined from 86.69 *per cent* in FY17 to 72.81 *per cent* in FY19 in respect of Central Excise. Similarly, disposal of SCNs in Service Tax declined from 77.51 *per cent* in FY17 to 51.93 *per cent* in FY19.

5.7.2 Age-wise analysis of pending SCNs

Age wise pendency of SCNs pertaining to Central Excise and Service Tax is shown in the Chart-5.4 below:

Chart 5.4 – Age-wise pendency of SCNs



From the chart, it is evident that 1,177 SCNs (17 *per cent*) pertaining to Central excise and 5,926 SCNs (19 *per cent*) pertaining to Service Tax were pending for adjudication for more than one year as against the prescribed time limit of six months in normal cases and one year in extended period of time. The department did not maintain further age-wise details of cases pending for more than one year.

5.8 Audit Findings

The following table 5.4 brings out the extent of deficiencies noticed in the sample of SCN/adjudication related records, selected for detailed audit. The extent of deviation from the law and rules ranges from 0.80 *per cent* to 45.92 *per cent* for various areas of focus selected for detailed audit.

Table No.5.4: Sample of files selected for detailed audit and deviations noticed

(₹ In crore)

Sl. No.	Area	Period	Audit Sample		No. of deficiencies noticed	Deficiencies as % of sample
			No.	Amount		
1.	**SCN pending for adjudication**	As on 31 March 2019	4,457	29,672.96	1,407	**31.57**
2.	**SCNs adjudicated**	FY17 to FY19	3,335	17,208.40	968	**29.03**
3.	**SCNs pending in Call Books**	As on 31 March 2019	2,191	13,308.02	1,006	**45.92**
4.	**Remand back cases**	FY17 to FY19	622	3,358.21	65	**10.45**
5.	**Waiver of SCNs**	FY17 to FY19	1,020	1,155.69	32	**3.14**
6.	**Draft SCNs (DSCNs) pending for issuance**	As on 31 March 2019	203	1,282.80	2	**0.99**
7.	**CERA audit objections**	FY17 to FY19	373	912.15	3	**0.80**
8.	**SCNs & DSCNs transferred due to GST restructuring**	July 2017 to March 2019	500	523.26	5	**1.00**

As evident from the table 5.4, we noticed high rate of deviation from the law/rules during detailed audit of SCNs pending in Call Books, SCNs pending

for adjudication and SCNs that had been adjudicated during FY17 to FY19. We noticed significant delays in adjudication of SCNs; delay in issuance of Orders-In-Original (OIOs) within stipulated period after completion of last Personal Hearing (PH); non-review of Call Book cases, periodically, non/delayed retrieval of SCNs from Call Book, incorrect transfer of SCNs to Call Book etc. The focus area wise audit findings are detailed in the following paragraphs.

5.9 Deficiencies noticed in SCNs pending for Adjudication

In the selected 116 offices, 11,723 SCNs were pending for adjudication as on 31 March, 2019. We examined 4,457 SCNs involving money value of ₹ 29,672.96 crore and noticed irregularities in 1,407 SCNs (31.57 *per cent*) involving money value of ₹ 12, 162.53 crore. Deficiencies noticed pertain to incorrect computation of demand in SCN, delay in adjudication and not taking steps to reduce litigation etc. as detailed in the table 5.5 below:

Table No. 5.5: Deficiencies noticed in SCNs pending for adjudication

Sl. No.	Type of Deficiency	No. of Deficiencies	Money value (in ₹ crore)	Deficiencies in % of sample (No.)
1.	Incorrect computation of demand in SCN resulting in Short demand raised	161	36.63	3.61
2.	Late issuance of SCNs which may result in demand getting time-barred in adjudication	71	30.17	1.59
3.	Delay in Adjudication	373	4,310.17	8.37
4.	Non-intimation regarding settlement commission	768	7,658.32	17.23
5.	Incorrect invocation of extended period	2	3.19	0.04
6.	Abnormal delay in Preparation of SCNs	23	94	0.52
7.	Short raising of demand due to delay in finalization of investigation	6	30.05	0.13
8.	Incorrect issue of SCN	3		0.07
	Total Deficiencies noticed	**1,407**	**12,162.53**	**31.57**
	Total Cases examined by Audit	**4,457**	**29,672.96**	
	Total Cases pending for adjudication in selected units	**11,723**		

5.9.1 Incorrect computation of demand in SCN resulting in short raising of demand

In seven Commissionerates[71],four audit Commissionerates[72] and one DGGSTI Zonal Unit[73], we noticed short raising of demand of ₹ 36.63 crore in 161 SCNs (3.61 *per cent*), out of 4,457 cases examined in 116 selected offices, due to

[71] Bhopal, Chennai North, Howrah, Mumbai South, Mumbai West, Pune-II and Raigad.
[72] Pune, Bhopal, Nashik and Raigad.
[73] Bhopal.

non-verification of the relevant records, adoption of incorrect rate of tax and non-verification of Income Tax Returns/Tax deducted at Source data etc.

When we pointed this out (November 2019 to December 2019), the Ministry admitted the facts in 141 cases. The Ministry did not accept the audit objection in 17 cases. Reply with respect to remaining three cases is awaited (December 2020).

One illustrative case is given below:

5.9.1.1 Issuance of SCN is a statutory requirement and it is the basic document for settlement of any dispute relating to tax liability or any punitive action to be undertaken for contravention of provisions of the Act. The Board, in Master circular (March 2017) had, inter-alia, reiterated that SCN being starting point of any legal proceedings against the party, it should be drafted with utmost care. It is clarified in the circular that principles and manner of computing the amounts due from the noticee are clearly laid down in the SCN.

In Pune II Commissionerate, an SCN was issued to an assessee in October 2018 for irregular availing of exemption and abatement in respect of works contract service provided. Audit examination revealed that the department incorrectly adopted gross value of service provided at ₹ 46.68 crore instead of ₹ 52.55 crore as indicated in ST-3 return. The error resulted in short assessment of taxable service by ₹ 4.21 crore, after allowing admissible abatement, with consequent short levy of Service Tax of ₹ 0.79 crore.

When we pointed this out (November 2019), the Ministry did not admit the audit observation (December 2020) and stated that the SCN was issued based on invoices issued to the government department only and not on all invoices issued by the assessee. The reply of the Ministry is not acceptable as invoices issued to customers other than Government departments had also been included in the annexure attached to the SCN.

5.9.2 Late issuance of SCNs that may result in demand getting time-barred in adjudication or exclusion of part-period demand

In four Executive Commissionerates[74] and one Audit Commissionerate[75], we noticed late issuance of SCNs in 70 cases (1.57 *per cent*), out of 4,457 cases examined in 116 selected offices, which may result in demand being declared time-barred in adjudication. Further, we also observed exclusion of part-period demand in SCN in one case. Thus, the overall demand of ₹ 30.17 crore in 71 SCNs may get time-barred due to late issuance of SCNs.

[74] Allahabad, Kolkata North, Guwahati and Pune-II.
[75] Bengaluru Audit

When we pointed this out (November 2019 to December 2019), the Ministry accepted the facts in one case and did not accept the facts in remaining cases (December 2020).

One illustrative case is given below:

5.9.2.1 The Internal Audit Party (IAP) of Bengaluru Audit-I Commissionerate, in January 2017, had taken an observation on an assessee relating to non-payment of Service Tax on services provided during January 2015 to March 2016 as intermediary to a foreign company, its Principal company, wrongly treating the same as export, amounting to ₹ 675.46 lakh. The Para was initially presented in Monitoring Committee Meeting (MCM) held in January 2017 and ratified in MCM held in May 2017. However, at the time of preparation of SCN, the IAP realised that the assessee had been rendering marketing services even before the marketing services and post-sales support services agreements were entered into with the their Principal Company (1 April 2015). To examine this aspect the issue was transferred to Executive Commissionerate after discussions in MCM held in September 2017 for further investigation.

It was noticed that no SCN had been issued till date in spite of lapse of 35 months from the date of internal audit. The date of issue of SCN within normal period had expired on 29 October, 2018, hence there was a risk of whole demand becoming time barred.

The delay was, therefore, due to ineffective audit by the IAP, and the absence of an effective system of monitoring by the Audit Commissionerate on the fate of cases/SCNs transferred to Executive Commissionerates.

When we pointed this out (October 2019), the Ministry stated (December 2020) that an SCN had been issued for the period November 2014 to April 2017 in May 2020 invoking extended period of time. As the last date for submission of ST-3 return for half year ending March 2015 was in April 2015, late issuance of SCN in May 2020, may result in time barring of transactions up to March 2015.

5.9.3 Non-adjudication of SCN within prescribed time limit

In 22 offices[76], we noticed that 373 SCNs (8.37 *per cent*), out of 4,457 cases examined, involving revenue of ₹ 4,310.17 crore, were not adjudicated in the

[76] Allahabad, Ahmedabad North, Bhopal, Chennai North, Delhi South, Bhubaneswar, Bengaluru East, Ghaziabad, Gurugram, Howrah, Hyderabad, Jalandhar, Jamshedpur, Kolkata North, Mangalore, Mumbai South, Mumbai West, Pune-II, Raigad, Thiruvananthapuram, Vadodara-II and DGGSTI Headquarters Delhi.

prescribed time limit of six months in normal cases and within the prescribed time limit of one year (ST)/two years (CX) in extended period cases.

When we pointed this out (September 2019 to December 2019), the Ministry admitted the facts in respect of all the cases except seven cases of Gurugram Commissionerate and stated that the delays were due to shortage of staff and heavy work load owing to introduction of GST (December 2020).

One illustrative case is given below:

5.9.3.1 In case of an assessee, an SCN was issued vide No. 574/CE/12/2016/INV dated 04 October, 2016 involving duty of ₹ 18.08 crore. The assessee filed writ petition in Delhi High Court against the SCN, which ordered (January 2017) to set aside the said SCN and directed to issue fresh SCN after clearly setting out what the proposed demands are. The department filed appeal in the Supreme Court (May 2017) against the Delhi High Court's order. Supreme Court (December 2017) had restored the SCN and ordered to conduct adjudication proceeding as per procedure. During audit we noticed that no action has been taken by the department or personal hearing fixed to adjudicate the case as of September 2019 i.e. even after more than 22 months from the date of issue of orders of Apex Court.

When we pointed this out (September 2019), the Ministry admitted (December 2020) the audit objection and stated that delays were due to shortage of staff, heavy work load and introduction of GST. However, efforts are being made to reduce the pendency.

5.9.4 Non-intimation regarding settlement of cases through Settlement Commission

Para 14.1 of Master Circular dated 10 March, 2017, issued by CBIC, provides that every show cause notice should be forwarded, along with a letter stating that assessee can approach settlement of case through Settlement Commission. Where the noticee approaches the Settlement Commission, the matter needs to be transferred to Call Book till the matter is decided by Settlement Commission.

In 27 offices[77],we noticed that in 768 cases (17.23 *per cent*),out of 4,457 cases examined in 116 selected offices, involving money value of ₹ 7,658.32 crore,

[77] Agartala, Ahmedabad North, Chennai North, Delhi South, Ghaziabad, Gurugram, Guwahati, Howrah, Hyderabad, Jalandhar, Kolkata North, Thiruvananthapuram, Visakhapatnam Commissionerates, Bhopal Audit, Chennai Audit-I, Guwahati Audit-I, Hyderabad Audit-I, Visakhapatnam Audit, DGGSTI Bhopal, DGGSTI Chennai, DGGSTI Guwahati, DGGSTI Hyderabad, DGGSTI Kolkata, DGGSTI Lucknow, DGGSTI Pune, DGGSTI Visakhapatnam and DGGSTI Headquarters Delhi.

no intimation regarding settlement of cases through Settlement Commission was forwarded to the noticees along with the SCNs.

When we pointed this out (October to December 2019), the Ministry (December 2020) accepted the audit observation in 694 cases and assured for compliance of the departmental instructions in future. Reply with respect to remaining 74 cases is awaited (December 2020).

5.9.5 Incorrect invocation of extended period for issuance of SCN

In NOIDA Audit and Bengaluru Audit-I Commissionerates, we noticed that two SCNs, with monetary value of ₹ 3.19 crore were issued for extended period. However, the ingredients for invoking extended period were not clearly detailed in the SCNs, and hence invocation of extended period may be held invalid at the time of adjudication resulting in demand being declared time-barred in adjudication.

The Ministry did not accept the audit objection (December 2020) and stated that invocation of extended period was correct in both the cases. Reply of the Ministry is not acceptable as the errors were already reflected in the ST-3 returns of the assesses, hence invocation of extended period was not correct.

5.9.6 Abnormal Delay in preparation and finalisation of SCN

In Nashik Audit Commissionerate, it was observed from Draft SCN register that there was abnormal delay in finalisation of 23 draft SCNs ranging from 119 to 1,435 days**.** This had ultimately led to delay in adjudication and consequential blockage of Government revenue to the tune of ₹ 94 crore. The reason for delay in preparation and finalisation of draft SCN was apparently due to absence of regular follow up by Audit Commissionerate.

When we pointed this out (December 2019), the Ministry stated (December 2020) that the draft SCNs are received from audit groups, and as they are continuously on field duty, clarifications, if any, are received from them after their return to Headquarters. Further, for complying with the queries, audit groups have to seek information from the assessees. The Ministry further stated that from December, 2016 onwards, where the demand is more than ₹ 50 lakh, pre SCN consultation was to be done. Due to these factors it took some time to issue SCN, however the same were issued to the party in time.

The Ministry's reply is not acceptable as there were long delays in finalisation of SCNs ranging from 119 to 1435 days leading to subsequent delay in adjudication and blockage of Government revenue.

5.9.7 Short raising of demand due to delay in finalization of investigation

In DGGSTI Zonal Unit Pune, we noticed short raising of demand of ₹ 30.05 crore in six SCNs (0.13 *per cent*), out of 4,457 cases examined in the selected 116 offices, due to late finalization of investigation. An example is given below:

5.9.7.1 Abnormal delay in issuance of SCN leading to loss of revenue

DGGSTI, Pune Zonal Unit (earlier Regional Unit) had initiated investigation in 13 cases, in FY13, for taxation of service on deployment of Transit Mixtures for transportation of Ready Mix Concrete from various plants of an assessee. In all 13 cases, the department had initiated proceedings to tax the said service by classifying it under the 'Cargo Handling Service' (CHS) and the proposal was accordingly sent to Mumbai Zonal Unit for approval (vide common incident report). In October 2013, the Mumbai Zonal Unit opined that the service was appropriately classifiable under the head 'Supply of tangible Service (STG).' After re-examination, Pune Zonal Unit in December 2013, intimated that it would be appropriate if the service was taxed under 'CHS' instead of 'STG'. It was observed from the Pune Zonal Unit, that no action was taken in the matter during 2014 to 2016. After the receipt of clarification from Mumbai Zonal unit in April 2017, proceedings were initiated and five SCNs, demanding ₹ 17.99 crore, were issued between October, 2018 and April 2019 to eight assessees covering the period FY14 onwards. Audit examination revealed that in 2013, ₹ 30 crore Service Tax evasion was estimated by the department in 11 cases but since the investigation proceedings were abnormally delayed, the department could not cover the period prior to March 2013 as the same was time barred. Time barred demand in respect of all 13 cases could not be determined by Audit as relevant records for earlier period were not available in the respective files.

When we pointed this out (December 2019), the department replied (December 2019) that owing to contradicting views on the classification of service, the issue was kept in abeyance for want of suitable clarification regarding classification of the said service.

The reply is not acceptable as the amount involved in the issue was very high and therefore, prompt and appropriate action, within time, should have been taken to determine the classification of service and to protect the revenue. Reply of the Ministry is awaited (December 2020).

5.10 Deficiencies noticed in Adjudicated SCNs

In the selected 116 offices, 8,766 SCNs were adjudicated during FY17 to FY19. We examined 3,335 cases involving money value of ₹ 17,208.40 crore and noticed irregularities in 968 cases (29.03 *per cent*) involving money value of

₹ 9,006.86 crore. Deficiencies noticed pertained to incorrect computation of demand in SCN, incorrect invocation of extended period of time for issuing SCN, delay in adjudication, not taking steps to reduce litigation etc. as per the table 5.6 below:

Table No.5.6: Deficiencies noticed in adjudicated SCNs during FY17 to FY19

Sl. No.	Type of Deficiency	No. of Deficiencies	Money value (in ₹ crore)	Deficiencies in *per cent* of sample (No.)
1.	Invocation of extended period of time held irregular in adjudication	10	17.32	0.3
2.	Invocation of extended period of time for issuing periodical SCN which may be held irregular in further appeal	9	4.94	0.27
3.	Non-inclusion of demand for part period due to late issuance of SCN	4	8.26	0.12
4.	Incorrect computation of demand resulting in short confirmation of demand in adjudication	15	147.81	0.45
5.	Delay in adjudication	340	4,716.09	10.19
6.	Delay in issuance of OIO within stipulation period after completion of last PH	581	4,063.89	17.42
7.	Dropping of demand due to non-availability of Relied upon documents	9	48.55	0.27
	Total Deficiencies noticed	**968**	**9006.86**	**29.03**
	Total Cases examined by Audit	**3,335**	**17,208.40**	
	Total Cases adjudicated in selected units	**8,766**		---

5.10.1 Invocation of extended period of time held irregular in adjudication

In four Commissionerates[78], we noticed that invocation of extended period of time for issuance of SCN was held irregular in 10 cases (0.30 *per cent*), out of 3,335 cases examined in 116 selected offices, involving revenue impact of ₹ 17.32 crore.

When we pointed this out (November 2019 to December 2019), the department accepted the facts in two cases. Reply in remaining eight cases is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

One illustrative case is given below:

5.10.1.1 An SCN was issued to an assessee in Kolkata North Commissionerate in December, 2015, based on internal audit observations and covered the demand period from December 2010 to October 2015. However, the noticee contested the demand on merit as well as on point of limitation of extended period. The adjudicating authority while passing the order mentioned that there were no allegations of non-submission of monthly ER-1 Returns in the SCN; and that the Tariff Classification of the goods, and the availing of benefit of the Notification were in the knowledge of the department. The adjudicating authority further noted that as no allegation of

[78] Kolkata North, Ghaziabad, Guwahati and Vadodara.

fraud, collusion, wilful mis-statement or suppression of facts against the noticee was brought out in the SCN, the invocation of extended period was not justified. As such, the noticee was liable for payment of Central Excise duty not paid/short paid for the period of one year from the date of issue of SCN (dated 22 December 2015) i.e. from December 2014 to October 2015. Demand for the rest of the period as mentioned in the SCN amounting to ₹ 3.83 crore was dropped due to limitation of extended period.

We pointed this out in October 2019. The reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.10.2 Invocation of extended period of time for issuing periodical SCN which may be held irregular in further Appeal

In four Commissionerates[79], we noticed that in nine cases (0.27 *per cent*), out of 3,335 cases examined in selected 116 offices, involving revenue impact of ₹ 4.94 crore, periodical SCNs for subsequent period were issued by invoking the extended period of time which were confirmed in the adjudication but the same may be held time barred in appeal as the issue was already in the knowledge of the department.

When we pointed this out (November 2019 to December 2019), the department accepted the facts in one case. The reply in remaining eight cases is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

One illustrative case is given below:

5.10.2.1 Para 3.7 of the master circular of March, 2017 stipulates that after the issue of first SCN invoking extended period, subsequent SCNs should be issued within the normal period of limitation.

An SCN was issued to an assessee for non-payment of Service Tax of ₹ 1.86 crore for the period FY14 to FY16 by invoking the extended period of time (October 2018) by the Additional Commissioner, CGST Commissionerate, Ghaziabad. Further examination of records revealed that another SCN was issued to the same assessee on the same grounds in January, 2015. Thus, issuance of second SCN by invoking the extended period of time in October, 2018 was contrary to the provisions cited above. The Demand was confirmed with equal amount of penalty under section 78 of the Finance Act, 1994 but the assessee filed an appeal against the O-I-O.

When we pointed this out (August 2019), the department stated (September 2019) that the CESTAT (December 2018) remanded the case for

[79] Ghaziabad, Howrah, Mumbai South and Trichy.

fresh adjudication and proceedings, in this regard, were being initiated. Reply of the Ministry is awaited (December 2020).

5.10.3 Non-inclusion of demand for part period due to late issuance of SCN

In four Commissionerates[80], we noticed late issuance of SCNs in four cases (0.12 *per cent*), out of 3,335 cases examined in selected 116 offices, which had resulted in exclusion of part-period demand of ₹ 8.26 crore.

When we pointed this out (November 2019 to December 2019), the department accepted the fact in one case. The reply in remaining three cases is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

One example is given below:

5.10.3.1 In Nashik Commissionerate, it was observed that DGCEI Mumbai Zonal Unit had initiated investigation in the case of an assessee in connection with non-payment of excise duty on industrial promotion subsidy received. In response to Mumbai Zonal unit's enquiry, the assesse had furnished entire details of subsidy received amounting to ₹ 202.54 crore in November, 2015. Audit scrutiny revealed that DGCEI had concluded investigation and issued SCN in June, 2017 to tax industrial promotion subsidy of ₹ 146.52 crore to tax. The subsidy to the tune of ₹ 61.24 crore received by the assesse in March, 2012 was not considered due to time barring of demand of FY12 by the time of issuing of SCN. As the relevant information was furnished by the assessee in November 2015, the delay of 19 months by the department for issuing the SCN had resulted in exclusion of revenue of ₹ 6.12 crore in the SCN and consequent loss of revenue.

We pointed this out in December 2019. The reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.10.4 Incorrect computation of demand leading to short demand being raised in SCN

In six Commissionerates[81], we noticed short raising of demand of ₹ 147.81 crore in 15 cases (0.42 *per cent*), out of 3,335 cases examined in selected 116 offices, mainly due to incorrect adoption of taxable value by the department while computing the demand in the SCN.

We pointed this out from November 2019 to December 2019. The department did not accept the audit observation in one case. The reply of the department in remaining 14 cases is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

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[80] Ghaziabad, Guwahati, Mumbai South and Nashik.

[81] Agartala, Bhopal, Chennai North, Ghaziabad, Mumbai South and Mumbai West

One illustrative case is given below:

5.10.4.1 In Mumbai South Commissionerate, while examining adjudication order passed in the case of an assessee, it was observed, that, at the time of framing SCN, the department held construction activity carried out by the assesse as falling under works contract service, which was chargeable to tax after allowance of abatement at the rate of 60 *per cent*. Audit scrutiny revealed that the department had first allowed abatement at the rate of 75 *per cent* of the value of flats towards cost of land and, thereafter, further abatement at the rate of 60 *per cent* was allowed considering the service as 'Works Contract Service', which was not in conformity with the Rule 2A(ii) of Valuation Rules, 2006. Since, the service was proposed to be taxed as works contract service, the assessee was liable to pay Service Tax on 40 *per cent* of gross value without allowance of additional abatement at the rate of 75 *per cent*. Though the error was noticed by Adjudication Authority, as per the settled law, he was not able to travel beyond the SCN and had to adjudicate the case as per the charges framed in the SCN. Thus, the mistake in framing of SCN had led to loss of revenue to the tune of ₹ 22.26 crore including mandatory penalty under section 78 of the Finance Act, 1994.

We pointed this out in October 2019. The reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.10.5 Inordinate delay in adjudication

In 14 offices[82], we noticed that 340 SCNs (10.19 *per cent*), out of 3,335 cases examined in selected 116 offices, involving revenue of ₹ 4,716.09 crore, were not adjudicated in prescribed time limit of six months in normal cases and within the prescribed time limit of one year (ST)/two years (CX) in extended period cases.

When we pointed this out (September 2019 to December 2019), the department in respect of Hyderabad, Visakhapatnam, Jaipur, Delhi South, Ghaziabad, Pune-II, Raigad, Mumbai South Commissionerates and DGGSTI, New Delhi accepted the delay in adjudication and stated that the delays were due to heavy pendency of cases and frequent change in adjudicating authorities.

Replies in respect of rest of the Commissionerates are awaited (June 2020). Reply of the Ministry is awaited (December 2020).

[82] Agartala, Allahabad, Bengaluru East, Delhi South, Ghaziabad, Hyderabad, Jaipur, Mumbai South, Mumbai West, Pune-II, Raigad, Thiruvananthapuram, Visakhapatnam Commissionerates and DGGSTI Headquarters Delhi.

One illustrative case is given below:

5.10.5.1 A demand of ₹ 0.47 crore along with the penalty of same amount under section 11 AC Central Excise Act, 1944 against an assessee was confirmed[83] (February 2001) by Commissioner Central Excise, Meerut. Aggrieved by the order, the assessee filed an appeal in CEGAT New Delhi and the tribunal vide its final order 292-94/2001-A dated 03 January 2001 upheld the demand for the period from March 1994 to 14 January 1997. Regarding penalty under section 11AC and interest under section 11 AB of the Central Excise Act, 1944, the Tribunal held that the penalty and interest cannot be imposed prior to the dates when the provisions of Section 11 AC and section 11 AB came into force, and accordingly directed adjudicating authority to re-quantify the amount of duty, penalty and interest.

The party as well as the department filed appeal before Hon'ble Supreme Court vide Civil Appeal Number 8529-8531/2001 and Civil Appeal Number 2008-2010 of 2002, respectively. Hon'ble Supreme Court, vide its final Decision dated 27 October 2007, directed to implement the order passed by CEGAT by re-adjudicating the case. However, it was noticed during audit that the case was re-adjudicated[84] by the Commissioner CGST Ghaziabad in 2018, i.e. after 11 years of the decision passed by Hon'ble Supreme Court by fixing the personal hearing (PH) on 30 November 2017.

When we pointed this out (August 2019), the department replied (September 2019) that when the appeal was filed in Supreme Court, the case was under the jurisdiction of Meerut Commissionerate. Due to re-structuring of the department, the case was transferred to Ghaziabad Commissionerate in 2002, which was again transferred back to the jurisdiction of Meerut Commissionerate in the subsequent re-structuring of the department, held in October 2014. However, the case was finally re-adjudicated by CGST Commissionerate, Ghaziabad as the case was transferred back again to Ghaziabad Commissionerate due to restructuring of the department in 2017, owing to implementation of GST.

Reply of the Commissionerate is not acceptable as the case was decided by the Hon'ble Supreme Court in 2007 and the case file was with the Ghaziabad Commissionerate from 2007 to 2014. Hence, Ghaziabad Commissionerate could have re-adjudicated the case and re-quantified the amount during the seven years, when the case file was with them. Reply of the Ministry is awaited (December 2020).

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[83] vide O-I-O Number 01/Commr/M-01/2001 dated 02 February 2001 for the period March 1994 to March 1997 demanded by SCN Dated 19 March 1999.

[84] Vide O-I-O Number V(15)/ADJ-01/51/99 334- 340 dated 31 January 2018

5.10.6 Non-issuance of adjudication orders within stipulated period after completion of personal hearings

As per master circular dated 10 March 2017, personal hearing should be given at least three times and where personal hearings are concluded, it is necessary to communicate the decision as expeditiously as possible but not later than one month from the date of last personal hearing, barring in exceptional circumstances to be recorded in file. Further, the order is required to be communicated to the assessee in terms of provisions of Section 37C of the CEA, 1944 which is applicable to Service Tax also as per Section 83 of Finance Act, 1994.

In 25 offices[85], we noticed that O-I-Os in 581 cases (17.42 *per cent*) with monetary value of ₹ 4,063.89 crore, were issued with delay beyond the prescribed period of one month without any reasons being recorded in case files. This has resulted in delayed initiation of recovery proceedings of ₹ 4,063.89 crore.

When we pointed this out (September to November, 2019), the Ahmedabad North, Vadodara-II, Rajkot, Jaipur, Hyderabad, Visakhapatnam, Bangalore East, Jalandhar, Gurugram, Delhi South, Kolkata North, Howrah, Bhubaneswar, Guwahati, Agartala, Pune-II, Mumbai South, Mumbai West, Nashik, Bhopal Commissionerates and DGGSTI Headquarters, Delhi had replied that the delay in issue of O-I-Os beyond one month was due to verification of facts before issuing orders, shortage of staff and heavy workload due to introduction of the GST.

Replies of the Commissionerates are not acceptable as the circular clearly specified that in exceptional cases where O-I-Os might not be issued within one month, reasons had to be recorded in files. No justification was found recorded in the adjudication files. Replies from the rest of the Commissionerates are awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.10.7 Dropping of demand due to non-availability of Relied upon documents in SCN files

In the Kolkata-North, Howrah Commissionerate and DGGSTI headquarters, it was noted that in nine cases (0.27 *per cent*), out of 3,335 cases examined, demands amounting to ₹ 48.55 crore were dropped, as these demands raised

[85] Allahabad, Agartala, Ahmedabad North, Bengaluru East, Bhopal, Bhubaneswar, Chennai North, Delhi South, Ghaziabad, Gurugram, Guwahati, Howrah, Hyderabad, Jaipur, Jalandhar, Kolkata North, Mumbai South, Mumbai West, Nashik, Pune-II, Rajkot, Thiruvananthapuram, Vadodara-II, Visakhapatnam Commissionerates and DGGSTI Headquarters Delhi.

under the SCNs were not supported by documentary evidence. The case noticed in DGGSTI Headquarters is given below:

5.10.7.1 Master Circular No. 1053/02/2017-CX dated 10 March 2017, provides that a Show Cause Notice and the documents relied upon in the Show Cause Notice need to be served on the assessee for initiation of the adjudication proceedings.

During scrutiny of files relating to adjudicated cases, it was noticed that an SCN dated 21 March 1995, was issued by the Commissioner, Central Excise, New Delhi. The case was adjudicated by confirming the demand against an assessee (October 2013). Aggrieved with the said O-I-O, the assessee preferred appeal in CESTAT and CESTAT remanded the cases back in October, 2013 for re-adjudication considering the demand in the light of Relied Upon Documents (RUDs). The case was assigned to Additional Director General (Adjudication), DGCEI, New Delhi. The adjudicating authority vide order No. 60/2018-CE dated 31 March 2018, dropped the demand of ₹ 46.52 crore as 395 RUDs, out of 440 RUDs, were not available with the case files.

When we pointed this out (September 2019), the department replied (December, 2019) that the adjudicating authority had decided the matter on the basis of available documents and that the RUDs were not made available to the noticee by the Commissioner, Central Excise, New Delhi. As a result, no action could be initiated.

The reply is silent on the reasons as to why RUDs were not available with the case files which led to the loss of revenue of ₹ 46.52 crore. Reply of the Ministry is awaited (December 2020).

5.11 Monitoring of Call Book cases

The Board, vide Circular No. 162/73/95- CX.3, dated 14 December 1995 read with Circular Nos. 992/16/2014-CX, dated 26 December 2014 and 1023/11/2016–CX dated 08 April 2016 and Master circular no. 1053/02/2017/CX dated 10 March 2017, has specified the categories of cases, which cannot be adjudicated immediately due to certain specified reasons such as department has filed appeal in similar case, injunction order has been issued by the courts etc. and as a result adjudication of such cases is kept in abeyance, which can be transferred to call book.

Further, CBIC, vide its circular[86] dated 08 April 2016, intimated its field formations that the procedure of transferring the show cause notices arising out of contested CAG's audit objections to Call Book had been discontinued

[86] Circular No. 1023/11/2016-CX New Delhi dated 08 April 2016

and in the future no such show cause notice should be transferred to the Call Book. The circular further stated that past SCNs kept in Call Books shall also be reviewed and adjudicated in the manner as prescribed in the circular, ibid. The Board vide D.O. letter dated 4 March 1992 had issued instructions to Commissioners to periodically review the cases transferred to Call Books on monthly basis.

Status of pendency of SCNs, of Call Book at the end of 31 March 2019 is given in table 5.7 below:

Table No.5.7: Breakup of SCNs pending in Call Book

(₹ In crore)

Category	No. of cases (CX)	Amount	No. of cases (ST)	Amount
Cases in which department has gone in appeal to the appropriate authority	20,687	64,530.92	14,516	54,677.94
Cases where injunction has been issued by SC/HC/Tribunal etc.	1,289	5,492.68	1,555	6,513.14
Cases where CERA Audit objections are contested	704	2,263.04	401	938.59
Cases where Board has specifically ordered the case to be kept in Call Book/Others	288	2,081.04	546	3,348.92
Cases Where parties had filed applications in Settlement Commission, which are pending	43	68.49	84	411.26
TOTAL	**23,011**	**74,436.17**	**17,102**	**65,889.84**

It is evident from the table 5.7 above that as on 31 March 2019 Central Excise duty of ₹ 74,736.17 crore and Service Tax of ₹ 65,889.84 crore were lying in the form of un-confirmed demand in the Call Books. Further, it is noticed that in spite of clear instructions of the Board, field formations did not retrieve the SCNs based on contested CAG audit objections from the Call Book, indicating lack of effective monitoring mechanism to review Call Book cases.

In the selected 116 offices, 5,491 SCNs were kept in Call Book as on 31 March 2019. We examined 2,191 cases involving money value of ₹ 13,308.02 crore and noticed irregularities in 1,006 cases (45.92 *per cent*) involving money value of ₹ 6,918.57 crore. Deficiencies noticed pertained to incorrect computation of demand in SCN, incorrect invocation of extended period of time for issuing SCN, incorrect transfer of SCNs to Call Book, non/delayed retrieval of SCNs from Call Book, non-intimation of transfer of SCNs to the noticees etc. as per table 5.8 below:

Table No. 5.8: Deficiencies noticed in SCNs pending in Call Book

Sl. No.	Type of Deficiency	No. of Deficiencies	Money value (in ₹ crore)	Deficiencies in % of sample
1.	Incorrect computation of demand resulting in short raising of demand in SCN	7	25.99	0.32
2.	Incorrect Invocation of extended period of time for issue of periodical SCN	4	307.78	0.18
3.	Non-issuance of periodical SCN	8	0	0.37
4.	Incorrect transfer of SCNs to Call Book	23	120.73	1.05
5.	Non-periodical review of Call Book Cases	370	2,251.92	16.89
6.	Non/delayed retrieval of SCNs from Call Book	137	437.64	6.25
7.	Non-intimation to the noticees regarding transfer of SCNs to Call Book	415	3,225.17	18.94
8.	No prior approval of Commissioner taken to transfer cases to Call Book	10	13.18	0.46
9.	Inordinate delay in issuance of periodical SCNs	32	536.16	1.46
	Total Deficiencies noticed	**1,006**	**6,918.57**	**45.92**
	Total Cases examined by Audit	**2,191**	**13,308.02**	
	Total Cases pending in Call Book in selected units	**5,491**		---

5.11.1 Short computation of demand in SCN kept in Call Book

In Trichy and Pune-II Commissionerates, we noticed short raising of demand of ₹ 25.99 crore in seven SCNs (0.32 *per cent*), out of 2,191 Call Book cases examined in selected 116 units, due to adoption of incorrect rate of tax and non-consideration of full amount.

When we pointed this out (August 2019 to December 2019), the department accepted the facts in six cases and did not accept the audit observation in one case. Reply of the Ministry is awaited (December 2020).

One illustrative case is given below:

5.11.1.1 In Pune-II Commissionerate, we observed that an SCN was issued to an assessee in March 2013, for non-payment of Service Tax of ₹ 6.55 crore for the period 2010-11, in respect of services availed from abroad on reverse charge basis. The assessee paid ₹ 1.21 crore under protest before issue of SCN, paid balance amount of ₹ 5.34 crore subsequently, and availed CENVAT credit of the entire amount of ₹ 6.55 crore. Since, the payment was made under protest, the department objected to availing of the CENVAT under Rule 9(bb) of CENVAT Credit Rules, 2004 and the short payment of tax was due to suppression of facts with intention to evade payment of tax. Consequently, the

department issued fresh SCN in June 2016 seeking reversal/payment of aforesaid CENVAT availed. Audit examination revealed that the SCN was issued for ₹ 5.34 crore excluding payment of ₹ 1.21 crore made before issue of first SCN. Since the case involved suppression of facts and the payment was made under protest, the SCN was required to be issued for entire amount of CENVAT availed of ₹ 6.55 crore invoking the extended period. Though the department had further instructed the concerned division to verify availing of CENVAT of ₹ 1.21 crore, there was nothing on record to indicate that any action to rectify the irregularity was initiated by the concerned Division, in order to protect the interest of revenue. The omission had endangered Government revenue to the extent of ₹ 1.21 crore.

When we pointed this out (December 2019), the department stated (January 2020) that the amount of ₹ 1.21 crore was paid as service tax under reverse charge before issuance of SCN dated 31/03/2013. Subsequently availing of CENVAT credit thereof, is informed to the department. Hence, SCN of ₹ 5.34 crore issued for irregular availment of CENVAT credit is legal and correct.

The reply is not acceptable as the assessee had paid service tax under protest after Internal Audit pointed out the non-payment of service tax. Hence, CENVAT credit availed by the assesse should be disallowed as per Rule 9(1) (bb) of the CENVAT Credit Rules, 2004 and the department should have issued SCN of ₹ 6.55 crore instead of ₹ 5.34 crore. Reply of the Ministry is awaited (December 2020).

5.11.2 Incorrect invocation of extended period of time for issue of periodical SCNs/ non-issuance of periodical SCNs

In three Commissionerates[87], we found incorrect invocation of extended period of time for issue of periodical SCNs of ₹ 307.78 crore in four SCNs (0.18 *per cent*) and non-issuance of periodical SCNs in eight SCNs (0.37 *per cent*), out of 2,191 Call Book cases examined in 116 selected office.

We pointed this out from August, 2019 to December, 2019. The reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

One illustrative case is given below:

5.11.2.1 An SCN was issued (December 2013) to an assessee, under Trichy Commissionerate, engaged in the manufacture of cement falling under Tariff item 2523 2910 and 2523 2930 of the First Schedule to the CE Tariff Act, 1985, for the clearance of cement in 50 kg bags, to industrial customers, during the

[87] Chennai, Mangalore and Trichy.

period from December 2008 to November 2013, invoking extended period demanding duty of ₹ 89.01 crore. This is despite the fact that an SCN on the same ground had already been issued (December 2008) covering the period from December 2007 to October 2008. Hence, issuance of subsequent SCN by invoking the extended period is incorrect as the matter was already in the notice of the department and the demand may be held time barred at the time of adjudication.

We pointed this out in August, 2019. The reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.11.3 Incorrect transfer of SCN in Call Book

In six Commissionerates[88], we found incorrect transfer of 23 SCNs (1.05 *per cent*) involving money value of ₹ 120.73 crore, out of 2,191 Call Book cases examined in Audit in the selected 116 units.

When we pointed this out (September 2019 to December 2019), the department, accepted the facts in five cases. The Reply is awaited in remaining 18 cases (June 2020). Reply of the Ministry is awaited (December 2020).

One illustrative case is given below:

5.11.3.1 In Gurugram Commissionerate, it was noticed that SCN No. 4867 dated 24 October 2008 for recovery of Service Tax for ₹ 2.12 crore along with interest and penalty, was issued to an assessee by Addl. Director General (DGCEI) with the direction to appear before Commissioner Central Excise Delhi-III. The noticee submitted reply to the Commissioner, Service Tax New Delhi on 30 December 2008. Thereafter, the case was assigned to the Commissioner, Central Excise by the Chief Commissioner (Delhi Zone) Central Excise New Delhi. Three PHs were fixed on 20 May 2009, 4 June 2009 and 12 June 2009. The noticee submitted its reply on 04 June 2009. No action was taken by the department after that, and the case was transferred in Call Book on 16 December, 2015 without mentioning any ground.

When we pointed this out (September 2019), the department admitted (January 2020) the audit objection and noted the same for future compliance. Reply of the Ministry is awaited (December 2020).

5.11.4 Periodical review of Call Book cases not done

The Board vide D.O. letter dated 4 March 1992 had issued instructions to Commissioners to periodically review the cases transferred to Call Books on monthly basis.

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[88] Delhi South, Ghaziabad, Gurugram, Jamshedpur, Kolkata North and Pune-II.

In 11 offices[89], we noticed that 370 SCNs (16.89 *per cent*) were not reviewed periodically, involving money value of ₹ 2,251.92 crore, out of 2,191 Call Book cases examined in selected 116 units, in contravention of the instructions cited above.

When we pointed this out (August 2019 to December 2019), the department accepted the facts in 121 cases and did not accept the audit observation in 96 cases. Reply in remaining 153 cases is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.11.5 Non/delayed retrieval of cases from Call Book

In 13 Commissionerates[90], we noticed non/delayed retrieval of 137 SCNs (6.25 *per cent*), involving money value of ₹ 437.64 crore, out of 2,191 Call Book cases examined in selected 116 units.

When we pointed this out (October 2019 to December 2019), the department accepted the facts in 60 cases. The reply in remaining 77 cases is awaited (June, 2020). Reply of the Ministry is awaited (December 2020).

One illustrative case is given below:

5.11.5.1 In Chennai North Commissionerate, 532 Call Book cases, pending as on 31 March 2019, were examined wherein the departmental appeals against the assessees were pending in various judicial forums on similar issues. The cases were verified by CAG Audit with respect to status of disposal of cases in the official website of Honourable Supreme Court and Madras High Court. It was noticed that 29 SCNs of Central Excise and 29 SCNs of Service Tax were still kept in the Call Book wherein the similar cases were disposed off by the judiciary. Therefore, these cases were fit for retrieval from Call Book for adjudication, but the same were retained in Call Book irregularly.

This indicates that the Commissionerate did not monitor the cases pending in appeal with the aim to retrieve the SCNs from Call Book, transferred on the grounds of such appeal.

When we pointed this out (September 2019), the Commissionerate stated (October 2019) that eight cases had been retrieved from the call book for adjudication in September 2019; 12 cases had been retained in Call Book pending outcome of the appeal before the Honourable Supreme Court; three cases were under examination by legal section; and one case belonged to

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89 Bhopal, Bhubaneswar, Ghaziabad, Hyderabad, Jalandhar, Kolkata North, Mumbai West, Pune-II, Raigad, Visakhapatnam Commissionerates and DGGSTI headquarter New Delhi.

90 Bhubaneswar, Chennai North, Delhi South, Ghaziabad, Gurugram, Guwahati, Jalandhar, Mangalore, Mumbai West, Pune-II, Raigad, Thiruvananthapuram and Visakhapatnam.

Mangalore Commissionerate. Reply in respect of remaining 34 cases is awaited from the department. Reply of the Ministry is awaited (December 2020).

5.11.6 Non-intimation to the noticee regarding transfer of SCN to the Call Book

As per para 9.4 of Master Circular dated 10 March 2017, issued by CBIC, a formal communication should be issued to the noticee, where the case has been transferred to the call book.

In eight offices[91], we noticed that in 415 SCNs (18.94 *per cent*), involving money value of ₹ 3,225.17 crore, out of 2,191 Call Book cases examined in selected 116 units, the noticees were not informed about transfer of their cases to the Call Books.

When we pointed this out (October 2019 to December 2019), the department accepted the facts in 54 cases. Reply is awaited in remaining 361 cases (June 2020). Reply of the Ministry is awaited (December 2020).

5.11.7 Prior approval from the Commissioner not taken before transfer of SCN to Call Book

The Board vide D.O. letter dated 4 March 1992 had instructed that SCNs should be transferred to Call Books with the prior permission of the Commissioner.

We noticed that in 10 cases (0.46 *per cent*) involving money value of ₹ 13.18 crore, in Thiruvananthapuram and Delhi South Commissionerate, out of 2,191 Call Book cases in the selected 116 units, prior approval of the Commissioner was not taken before transferring the cases to Call Books.

We pointed this out from August 2019 to December 2019. The reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.11.8 Abnormal delay in clarification from Board on the issue of levy of Service Tax on brokerage charges, on services provided by Indian Stock Brokers to Foreign Institutional Investors (FII), leading to blockage of revenue

The stock brokers provide stock broking services to several Foreign Institutional Investors (FIIs)/other foreign clients as well as domestic clients. After the negative list regime, came into effect from 01 July, 2012, the stock brokers stopped paying service tax for the services provided to FII & other foreign clients, as the location of the service recipient was outside India. The stock brokers stopped paying service tax on the stock broking services

[91] Bhopal, Delhi South, Gurugram, Jalandhar, Pune-II, Thiruvananthapuram, Trichy Commissionerates and DGGSTI Headquarters Delhi.

provided to their foreign clients from 01 July 2012 to 30 September 2014. They started paying service tax from 01 October 2014 after the definition of the term "intermediary" was amended to include facilitation of supply of goods and consequently they being located in India, and acting as an intermediary, the place of the provision of service was in India, as per clause (c) of Rule 9 of the place of the provision of service Rules.

On the issue of taxability of brokerage charges for services provided to FII during the intervening period from July 2012 to September 2014, Mumbai Zone took stand that securities fall within the ambit of goods that are made available in electronic form and hence taxable. Accordingly, in several stock brokers' cases, the department issued SCNs for levy of ST during the intervening period. However, in the meantime Stock Brokers Association, Asia Securities Industry & Financial Market Association (ASIFMA) made representation to the Board in August, 2014, to avoid retrospective levy of service tax on Stock Broking Services provided to Foreign Institutional Investors.

From the records made available to Audit in Mumbai South Commissionerate, it was observed that the Board in August 2016 called for certain details regarding SCNs pending on this issue from all the zones. In response, the then Pr. Commissioner ST-III, Mumbai, in October, 2016, intimated that, in Mumbai Zone, 32 SCNs on this issue, involving revenue of ₹ 536.16 crore, had been kept in Call Book for want of clarification from Board. It was observed that, in July, 2018, Chief Commissioner, Mumbai Zone had intimated its Commissionerates that request of ASIFMA was rejected by the Board and instructed to take up adjudication of these cases kept in call book.

In view of above, it is evident that the Board took around four year to provide clarification to the Mumbai zone. This abnormal delay in issue of clarification by the Board led to undue retention of cases in Call Book, to the tune of ₹ 536.16 crore in 32 SCNs, for four years in Mumbai Zone alone.

We pointed this out in December, 2019. Reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.12 Deficiencies noticed in Remand Cases

In case of *de novo* adjudication in pursuance of order of appellate authority, such cases should be decided by adjudicating authority of the same rank who had passed the order, which was in appeal before the appellate authority, notwithstanding the enhancement of power of adjudication of the officers. On receipt of the order for *de novo* adjudication from the appellate authority, such case should be shown as pending, in the list of cases pending adjudication of

such adjudicating authority, till it is decided by him. Remand cases should be adjudicated in the same manner as adjudication of the fresh SCN.

In 13 offices[92] 748 SCNs were remanded back for adjudication during FY17 to FY19. We examined 622 cases involving money value of ₹ 3,358.21 crore and noticed irregularities in 65 cases (10.45 *per cent*) involving money value of ₹ 419.52 crore. Deficiency pertains to non/delay in adjudication of remand cases.

When we pointed this out (October 2019 to December 2020), the department accepted the facts in 15 cases. Reply in remaining 50 cases is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

Two illustrative cases are given below:

5.12.1 Commissioner Service Tax, Bengaluru confirmed (December 2012) ineligible input service credit availed by an assessee of ₹ 5.20 crore. The assesse preferred appeal to CESTAT, and CESTAT remanded[93] (September,2014) back the case to the Original Adjudicating authority to verify the related input service invoices and allow CENVAT credit to the assesse, wherever eligible. It was noticed during audit that Assistant Commissioner, East Division-I, Bengaluru East Commissionerate, submitted his verification report to the Commissioner on 24 June, 2019, i.e. after a delay of almost five years, stating that out of the total input service, CENVAT credit of only ₹ 2.29 crore was irregular. The case is still pending for adjudication. Thus, due to late submission of the verification report by the division, the case was still pending for adjudication resulting in pendency of huge amount under litigation for a long period.

We pointed this out in September, 2019. The reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.12.2 Non-adjudication of remanded case due to non-appointment of Common adjudication authority

During scrutiny of records/SCN pending for adjudication at Delhi South Commissionerate, it was noticed that in five cases, involving money value of ₹ 9.27 crore, the Hon'ble Supreme Court had dismissed the Departmental appeal against the CESTAT order vide its judgement No. Civil Appeal Nos. 4964-4976 of 2004 dated 29 April 2015, and remanded back the cases for re-adjudication.

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92 Agartala, Ahmedabad North, Bengaluru East, Bhopal, Chennai North, Delhi South, Jaipur, Jamshedpur, Mangalore, Pune-II, Raigad, Thiruvananthapuram Commissionerates and DGGSTI Headquarters Delhi

93 vide their final order No.21693/2014 dated 08 September, 2014

We observed that the Commissioner, Central Excise Delhi II fixed PH on 17 January 2017, wherein Counsel on behalf of above noticees requested that common adjudicating authority may be appointed in eight similar cases, (three of which are located in Greater Noida and five in Delhi) as the issue involved was common, in order to maintain uniformity in the decision. The Commissioner, Central Excise Delhi II on 23 January 2017 requested Chief Commissioner, Central Excise Delhi Zone to take up the matter with the Board for appointment of common adjudication authority. Similar requests were made on 28 February 2017, 09 March 2017, 19 May 2017, 22 November 2017, 12 October 2018 and 20 March 2019. Despite several requests, the Board did not appoint a common adjudication authority and the cases are still pending for adjudication. As a result, Government Revenue to the tune of ₹ 9.27 crore is yet to be adjudicated since 2015.

When we pointed this out (October 2019), the department stated (December, 2019) that the competent authority had been requesting the Board for necessary approval and there was no lapse on its part as action could be taken only after the Board appointed common adjudicating authority.

It can be seen from above, and from the department's reply, that even after a lapse of three years, the common adjudicating authority had not been appointed for cases involving revenue of ₹ 9.27 crore. Reply of the Ministry is awaited (December 2020).

5.13 Closure of cases on payment of duty/Tax demand before issuance or within one month of issuance of SCN (Waiver of SCN)

Government vide Finance Act 2015 liberalized the penal provisions under the Service Tax and Central Excise Act with effect from 14 May 2015, which provides that, if an assessee is willing to pay duty/tax along with interest either before issue of SCN or within 30 days of issue of SCN, there shall be:

(a) No penalty in case of non-fraud cases.

(b) Reduced penalty of 15 percent in fraud cases.

5.13.1 In the selected 116 offices, 17,095 SCNs were closed without issuance, on payment of due amount during FY17 to FY19. We examined 1,020 cases involving money value of ₹ 1,155.69 crore and noticed irregularities in 30 cases (2.94 *per cent*) involving money value of ₹ 6.50 crore in Thiruvananthapuram Commissionerate. The irregularities pertained to non-intimation to the assessees regarding closure of the proceedings in their cases. We further noticed in Noida Audit Commissionerate that in two cases, (DARs), proceedings were closed before ensuring the payment of objected amount of ₹ 0.66 crore.

When we pointed this out (November 2019), the Noida Audit Commissionerate (November 2019), recovered the objected amount in one case and details are awaited in the second case. Reply of the Thiruvananthapuram Commissionerate is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.14 Draft SCNs pending for issuance

In the selected 116 offices, 203 draft SCNs were pending for issuance as on 31 March 2019. We examined all 203 draft SCNs involving money value of ₹ 1,282.80 crore. We noticed irregularities in two cases (0.99 *per cent*) involving money value of ₹ 35.06 crore in Pune II Commissionerate. One illustrative case is given below:

5.14.1 Improper drafting of Draft SCN (DSCN)

As per the Board's master Circular dated 10 March 2017, Show Cause Notice (SCN) is the starting point of any legal proceedings against the defaulter. It lays down the entire framework for the proceedings that are intended to be undertaken and, therefore, it should be drafted with utmost care. Issuance of SCN is a statutory requirement and it is the basic document for settlement of any dispute relating to tax liability or any punitive action to be undertaken for contravention of provisions of the Act and the rules made there under.

In Pune II Commissionerate, a draft SCN was prepared in the case of an assessee demanding erroneous refund of ₹ 197.77 crore pertaining to the period, October 2016 to March 2017. Audit examination revealed that while granting the original refund, the department had held CENVAT credit to the tune of ₹ 17.39 crore inadmissible. However, in the draft SCN, the department omitted to demand reversal/payment of this ineligible CENVAT credit. This omission was fraught with the risk of loss of revenue to the extent of ₹ 17.39 crore. It was further noticed that the department had issued an SCN, in the month of May 2017, covering earlier period from April, 2016 to September, 2016 demanding erroneous refund of ₹ 90.91 crore. In the said SCN also, the department did not demand reversal/payment of inadmissible CENVAT credit to the extent of ₹ 15.24 crore, which was held inadmissible while granting original refund. This resulted in loss of revenue of ₹ 15.24 crore to the exchequer.

We pointed this out in December, 2019. Reply from the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.15 Evaluation of internal controls

The Board vide letter dated 23 May 2003 had instructed the Commissioners and Chief Commissioners to analyze the reasons for pendency of adjudication

cases and strengthen the monitoring system. MPR DPM-ST-1A and DPM-CE-1A of the Monthly Progress Reports (MPR) incorporate information relating to adjudication of pending cases and their disposal.

5.15.1 Non/improper Maintenance of Registers

The Board, in its Circular dated 24 December, 2008, envisaged the functions, responsibilities and duties to be performed by Range Officers and Sector officers under the Central Excise Act, 1944 and the rules made there under for maintenance of proper records/registers and timely review and preparation of monthly abstract.

During examination of records in 116 offices, we noticed non/irregular maintenance of records, registers in Ghaziabad, Guwahati, Agartala, Mumbai South, Pune-II, Nasik, Trichy, Chennai North, Bhopal, Delhi South, Thiruvananthapuram, Ahmedabad North, Rajkot, Bhubaneshwar Audit, Nashik Audit Commissionerates and Lucknow DGGSTI zonal unit. An example is given below:

5.15.1.1 In CGST Range 28 under Ghaziabad Commissionerate, confirmed/un-confirmed registers, needed to watch status of SCNs were not maintained. In Mumbai South Commissionerate, Range IV under Division–VII, and Division-VII under Pune–II Commissionerate, DSCN registers were not maintained. CERA audit objection register to watch progress of action taken on audit objections, was not found maintained in Pune-II Commissionerate.

In the selected 28 Commissionerates audited by us, we observed that monthly abstracts of receipt and disposal of SCNs were not found maintained with the signature of the competent authority. Due to non-maintaining of proper registers, mismatch in the figures shown in the register and the MPRs were noticed in Pune-II and Ghaziabad Commissionerates.

We pointed this out from August 2019 to December 2019. The reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.16 Non-production of records to Audit

Despite Board's instructions[94] regarding cooperation with the C&AG during audit, by procuring and providing complete and comprehensive information, the department did not produce the complete records. The details of the records not produced by the department for detailed examination during audit are given below in table 5.9.

[94] Board's DO letter F.No.232/Misc DAPs/2018-CX-7, dated 26 April, 2018.

Table No. 5.9: Records not produced

Sl. No.	Auditee Unit	Nature of Records Sought	Number of records not produced
1.	Jamshedpur Commissionerate	DSCN Files	13
2.	Pune-II Commissionerate	Waiver of SCN Case files	33
3.	Jamshedpur Commissionerate	SCNs pending for Adjudication	24
4.	Pune-II Commissionerate	SCNs pending for Adjudication	6
5.	Raigad Commissionerate	SCNs pending for Adjudication	24
6.	Jamshedpur Commissionerate	Adjudicated Cases	16
7.	Agartala Commissionerate	Adjudicated Cases	4
8.	Jamshedpur Commissionerate	Call Book	1
9.	Delhi South Commissionerate	Transfer of records due to GST	List of records not provided
10.	Gurugram Audit Commissionerate	List of total records	List of records not provided
11.	Bengaluru Audit-I Commissionerate	Transfer of records due to GST	559 case files received from other field formations not provided. 115 case files transferred to other field formations also not provided.
12.	DGGSTI Headquarters	Transfer of records due to GST	List of records not provided
13.	DGGSTI Zonal Units (Hyderabad and Kolkata)	Waiver of SCN Case files	45
Total			**843**

Non production of the records by the department not only prohibits Audit from seeking assurance whether the codal provisions and due procedures were followed in these cases, but it is also not in compliance with the Board's instructions regarding production of records to Audit.

We pointed this out from August 2019 to December 2019. The reply of the department is awaited (June 2020). Reply of the Ministry is awaited (December 2020).

5.17 Conclusion

We noticed persistent compliance deviations with respect to issue of SCNs and adjudication process. We noticed significant deviations from law/rules such as incorrect computation of demand in SCNs, late issuance of SCNs, delay in adjudications etc. during audit of SCNs that were pending for adjudication as on 31 March 2019. As for SCNs adjudicated between FY17 to FY19, the

irregularities pertained to incorrect invocation of extended period, non-inclusion of demand for part period due to late issuance of SCN, incorrect computation of demand, delay in adjudication, delay in issuance of adjudication order, non-availability of documents in the case file resulting in the dropping of demand etc. As for SCNs kept in Call Book as on 31 March, 2019, the irregularities observed pertained to non-issuance of periodical SCNs, short computation of demand in SCNs kept in Call Book, incorrect transfer of SCNs in Call Book, non/delayed retrieval of cases from Call Book, non-conducting the periodical review of Call Book, non-approval of competent authority before transfer of SCNs to Call Book etc. Apart from this, we also observed irregularities in remand cases, waiver of SCNs and draft SCNs pending for issuance. We also reviewed transfer of adjudication records during GST transition and did not notice any significant observation.

We identified lack of effective monitoring mechanism, inadequate coordination among CBIC field formations, delay in issuing clarifications by the Board, delay in investigation/ verification by CBIC field formations, delay in appointment of common adjudicating authority, non-availability of records in the case files etc. as the reasons for many irregularities noticed by Audit. Further, the department cited transition to GST, shortage of staff, heavy pendency of cases, frequent changes in adjudicating authority, delay in transfer of records etc. as the reasons for delays in adjudication and other irregularities observed in Audit.

5.18 Recommendations

In order to address persistent delays in adjudication process, manual mistakes, and other irregularities noticed in Audit, and to strengthen monitoring of SCNs, the department may consider end-to-end computerization/ automation of the SCN and adjudication process, with following components:

(i) The process of issuance of SCN may be computerized with inbuilt controls to ensure correct computation of demand, timely issuance of SCN, valid invocation of extended period of time and correctness of the SCN issued.

(ii) Computerization of adjudication process with inbuilt controls to ensure effective monitoring, conducting of personal hearings and timely issuance of OIOs

(iii) Maintenance of Call Book may be computerized with inbuilt mechanism to ensure issuance of periodical SCNs, timely retrieval of SCNs from Call Book, intimation to the assessee regarding transfer of cases to Call Book, prior approval of competent authority before transfer of SCNs to Call Book and controls regarding transfer of valid cases to Call Book.

Chapter VI: Effectiveness of Tax administration and Internal Controls (Central Excise and Service Tax)

6.1 Audit of Central Excise and Service Tax

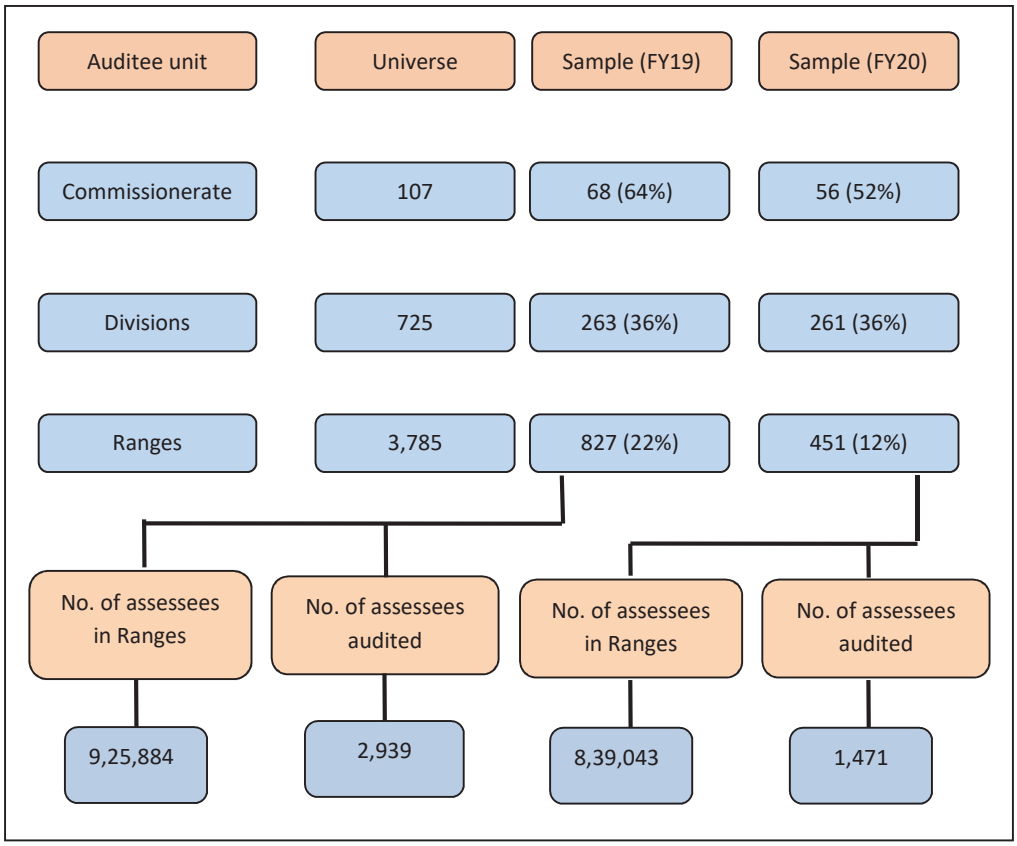
This chapter includes audit findings related to legacy indirect taxes viz. Central Excise and Service Tax. Indian Central Excise and Service Tax administration was a self-assessment system in which the tax payers prepared their own tax returns and submitted them to the Department. This system was guided by the fiscal laws including the Central Excise Act, 1944 and Finance Act, 1994. The tax Department scrutinized the returns by way of preliminary scrutiny and detailed scrutiny, and carried out internal audit to ensure the correctness of the tax so deposited by the tax payer.

We examined the records related to the returns submitted by the assessees along with the records of various field formations and functional wings of the Board.

6.2 Audit Sample

The Ranges are the departmental units where the assessees are registered and submit returns. Ranges are, therefore, responsible for verification of the registrations, scrutiny of returns, monitoring of revenue collection etc. Divisions and Commissionerates are the monitoring units supervising the functions of Ranges and Divisions, respectively. During FY19 and FY20, in order to examine the efficacy of the system and procedures put in place for administration of revenue collection in respect of Central Excise and Service Tax, we selected sample units of Commissionerates, Divisions and Ranges as depicted below:

Chart 6.1: Audit Universe and Sample



During FY19, in 827 selected Ranges, we selected records of 2,939 assessees for detailed examination with respect to assessment and payment of Central Excise duty and Service Tax. During FY20, in 451 selected Ranges, we selected records of 1,471 assessees for detailed examination. Audit was conducted by our nine field offices headed by Directors General (DsG)/Principal Directors (PDs) of Audit, as per Regulations on Audit and Accounts (Amendments) 2020, and in conformity with the Auditing Standards, issued by the Comptroller and Auditor General of India.

6.3 Overview of audit observations

Out of total 4,410 assessees, records of which were audited during FY19 and FY20, we noticed non-compliance of tax laws and rules in respect of 1,562 assessees (35.42 *per cent*). We raised 2,712 audit observations having monetary impact of ₹ 1,036.35 crore. In 494 observations, having monetary impact of ₹ 1,011.77 crore, money value was ₹ 10 lakh or more in each case.

Out of 2,712 audit observations, Department furnished replies in respect of 1,669 observations (61.54 *per cent*) of which 1,141 observations (68.36 *per cent*) were admitted by the Department. In 841 observations (50.39 *per cent*), action was taken by the Department by way of issuing of SCNs or recovering the amount.

Out of 4,410 assessees, records of which were examined by us, 1,244 assessees had already been audited by Internal Audit wing of the Department. We observed that Internal Audit had failed to detect lapses in 1,104 instances pertaining to 594 assessees (47.75 *per cent*), having monetary impact of ₹ 420.39 crore.

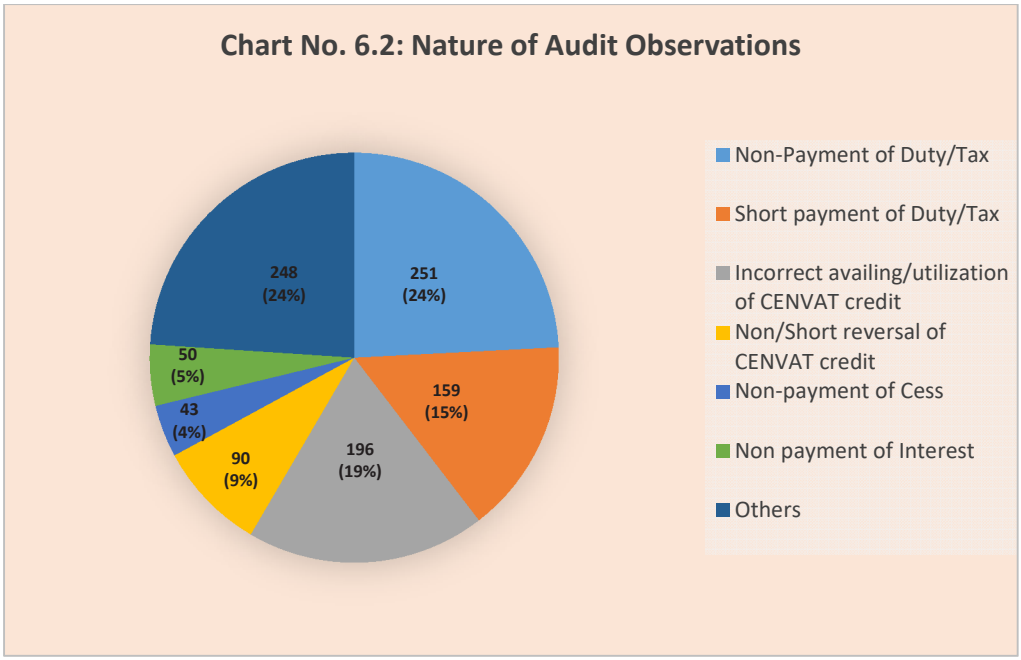
Out of the remaining 3,166 assessees, which were not subject to Internal Audit, we noticed 1,608 observations pertaining to 968 assessees (30.57 *per cent*), having monetary impact of ₹ 615.96 crore.

Issue wise summary of audit observations is tabulated below:

Table No. 6.1: Audit Observations detected during FY19 and FY20

Category of observations	Sub-category of observations	Total No. of observations	Amount (in crore)	No. of observations having monetary impact of ₹ 10 lakh or more	Amount (in ₹ crore)
Non-Payment of Duty/Tax	Incorrect exemption	49	57.01	16	56.39
	Reverse Charge Mechanism	155	15.43	23	14.08
	Others	401	178.22	86	173.72
Short payment of Duty/Tax	Incorrect assessable value	65	73.39	23	72.72
	Reverse Charge Mechanism	96	12.64	17	11.71
	Incorrect exemption	25	6.98	12	6.54
	Related party transaction	11	3.86	2	3.81
	Others	321	62.63	72	58.79
Incorrect availing/utilization of CENVAT credit		499	195.54	101	190.10
Non/Short reversal of CENVAT credit	Non-maintaining of separate accounts for dutiable and exempted goods	60	54.19	20	53.23
	Others	81	35.35	13	34.73
Non-payment of Cess		57	42.82	10	42.52
Non-payment of Interest		236	49.99	42	48.14
Others		656	248.30	57	245.29
	Total	**2,712**	**1,036.35**	**494**	**1,011.77**

The nature of audit observations and their proportion in terms of monetary value is depicted in chart 6.2



During FY19 and FY20, non/short payment of tax accounted for 39 *per cent* of the total monetary value of audit objections. Incorrect availing/utilization and non/short reversal of CENVAT credit accounted for 28 *per cent* of the total monetary value of the audit objections.

We issued 146 significant[95] observations having monetary impact of ₹ 472.30 crore to Ministry for comments, as detailed in Table 6.2. The details of observations are given in **Appendix-VIII**.

Table No.6.2: Significant observations issued to the Ministry

Duty/Tax	Observations issued		Observations accepted		Amount recovered	
	No.	Amount (₹ in crore)	No.	Amount (₹ in crore)	No.	Amount (₹ in crore)
Central Excise	42	93.80	23	15.17	9	6.74
Service Tax	104	378.50	66	280.61	50	19.01
Total	**146**	**472.30**	**89**	**295.78**	**59**	**25.75**

The Ministry admitted 76 observations having monetary impact of ₹ 288.45 crore. Out of these 76 observations, in 74 cases, the Ministry had initiated/completed rectificatory action by way of issuing/confirmation of SCNs or recovery of amount. In two cases, rectificatory action is yet to be initiated. In 13 observations having monitory impact of ₹ 7.33 crore, Ministry admitted revenue implication but did not admit departmental lapse. The Ministry did not admit 10 observations having monitory impact of ₹ 8.82 crore. In 47 observations having monitory impact of ₹ 167.70 crore, reply from the Ministry was awaited (December 2020).

[95] The observations issued to the Ministry involved systemic issues or high monetary value.

Some of the audit observations are discussed in the subsequent paragraphs-

6.4 Lapses of assessees that remained undetected despite Internal Audit by the Department

Internal Audit helps to measure the level of compliance by the assessees in light of the provisions of the Central Excise and Service Tax laws, and rules made thereunder. The Board had issued detailed procedure of Internal Audit in the form of Central Excise and Service Tax Audit Manual, 2015 (CESTAM, 2015).

After restructuring of the Department in October 2014, the auditable units have been re-organized into three categories i.e. large, medium and small units based on centralized risk assessment carried out by Director General (Audit). The manpower available with the Audit Commissionerate is allocated in the ratio 40:25:15 among large, medium and small units, respectively, and remaining 20 *per cent* manpower is utilized for planning, coordination and follow up.

As pointed out in para 6.3, out of 4,410 assessees, records of which were examined by us, 1,244 assessees had already been audited by Internal Audit wing of the Department. We observed that Internal Audit had failed to detect lapses in 1,104 instances pertaining to 594 assessees (47.75 *per cent*), having monetary impact of ₹ 420.39 crore.

We issued 30 draft paragraphs to the Ministry involving revenue of ₹ 255.32 crore where due to inadequacies in the system of internal audit, non-compliance by the taxpayers was not detected, as detailed below:

Table No.6.3: Lapses of assessees remained undetected despite internal audit by the Department

Category of observations	Total No. of observations	Amount (in ₹ crore)
Non-Payment of duty/Tax	9	16.21
Short payment of duty/Tax	8	11.18
Incorrect availing/utilization of CENVAT credit	6	190.25
Non/Short reversal of CENVAT credit	5	37.15
Non-payment of interest	2	0.53
Total	**30**	**255.32**

A few illustrative cases are given below:

6.4.1 Non-payment of Service Tax on Declared Services – not detected by Internal Audit

Section 66E(e) of the Finance Act, 1994 stipulated that 'agreeing to the obligation to tolerate an act or situation' is a taxable service. A person agreeing to the said obligation for a consideration is liable to pay Service Tax under Section 66B.

During test check of Service Tax and financial records of assessees falling under Hospet 'C' Range of Belagavi Commissionerate, we noticed non-payment of Service Tax by an assessee. The assessee (job worker) had entered into an agreement for carrying out job work for its customer (the Principal manufacturer). As per the terms of the agreement, the Principal manufacturer agreed to send inputs in sufficient quantity to utilise the full capacity of the job worker. Whenever the Principal manufacturer failed to send inputs in sufficient quantity as agreed, the job worker charged compensation as prescribed in the agreement. This compensation is in the nature of consideration for tolerating the situation where the job worker is not able to utilise the full capacity for job work and this has to be treated as taxable service. However, it was noticed that the assessee did not pay Service Tax of ₹ 4.22 crore during FY16 and FY17 on such compensation collected from the Principal manufacturer.

Internal audit carried out (July 2019) by the department on the records of the assessee failed to detect this non-payment of Service Tax, resulting in error remaining undetected until pointed out by CAG audit.

When we pointed this out (February 2020), the Commissionerate contested (July 2020) the audit observation on the grounds that the amount paid was purely compensatory in nature and not a consideration for any service in the nature of forbearance or tolerating an act. The department cited the Apex Court's decision in the case of Bhayana Builders (P) Ltd. in which the Apex Court had held that there has to be a nexus between the amount charged and the service provided. Any amount charged which has no nexus with the taxable service does not become part of the value which is taxable under section 67 of the Finance Act, 1994. The Commissionerate further stated that the CESTAT (Kolkata Bench), in the case of Amit Metaliks Ltd. & Others, had held that the compensation amount of compensation or liquidated damages received for default on the sale of goods cannot be treated as service under section 66E(e) of the Finance Act, 1994.

The reply of the Commissionerate is not acceptable as the agreement for job work had a specific clause for collecting the amount whenever the principal failed to supply sufficient quantity of inputs. Thus, the agreement stipulated a

consideration for tolerating the said situation. Hence, there is an inherent nexus between the service and the consideration, as stipulated in the decision of the Apex Court in the case of Bhayana Builders (P) Ltd. Further, the decision in the case of Amit Metaliks Ltd. & Others by CESTAT (Kolkata Bench) is not applicable in the present case as that case was related to compensation for default on the sale of goods whereas in the present case, the compensation clause is prefixed in the agreement.

The reply of the Ministry is awaited (December 2020).

6.4.2 Non-payment of Excise duty on sale of capital goods – not detected by Internal Audit

As per sub-rule (5A) (a) (ii) under Rule 3 of CENVAT Credit Rules, 2004, if the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output service shall pay an amount equal to the CENVAT credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified for each quarter of a year or part thereof from the date of taking the CENVAT credit. Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

During test check of Central Excise and financial records of assessees falling under Range IV of Chennai South Commissionerate, we noticed non-payment of Central Excise duty by an assessee. The assessee had sold imported cinema projectors and their accessories during the period FY15 to FY18 valuing ₹ 6.03 crore. The assessee had availed CENVAT credit on countervailing duty (CVD) paid on the imports on these goods but did not pay applicable Central Excise duty of ₹ 75.27 lakh on the sale of these goods, which was required to be recovered alongwith interest as applicable.

The department conducted internal audit of the assessee in April 2016 for the period from FY15 to FY16 but it did not detect the lapse.

When we pointed this out (April 2018), the Ministry admitted the observation and stated (March 2020) that the amount liable to pay/reverse was calculated as ₹ 76.19 lakh. The assessee paid the amount alongwith interest of ₹ 25.77 lakh. The Ministry further stated that explanation was being called for from the concerned officers.

6.4.3 Short-payment of Service Tax on advances received – not detected by Internal Audit

Rule 3 of Point of Taxation Rules, 2011 stipulates that the point of taxation for taxable services shall be the time when invoices are issued for the services provided or to be provided. In case an advance is received for the services before issue of invoices, the point of taxation shall be the time when such advances are received.

During test check of Service Tax and financial records of assessees falling under DED-1 Range of Bengaluru East Commissionerate, we noticed short-payment of Service Tax by an assessee. The assessee, a service provider engaged in construction activities, received advances from its customers of the project but short-declared the value of advances received in its ST-3 Returns. This resulted in short-payment of Service Tax of ₹ 1.13 crore for the period from April 2014 to June 2017.

The department conducted internal audit (August-September 2015) of the assessee covering the period upto March 2015 but it did not detect this lapse.

When we pointed this out (March 2019), Ministry admitted the observation (October 2020) and stated that an SCN demanding Service Tax of ₹ 1.13 crore had been issued.

6.4.4 Short payment of duty due to non-inclusion of freight amount in transaction value – Not detected by Internal Audit

Explanation-II below Rule 5 of the Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000, clarified that if the factory is not the place of removal, the cost of transportation from the factory to the place of removal such as depot, consignment agent's premises etc cannot be excluded for the purpose of determining the value of the excisable goods. Board's circular No.988/12/2014-CX dated 20 October 2014 also stipulated that, 'the place where sale has taken place or when the property in goods passes from the seller to buyer is the relevant consideration to determine the place of removal'.

During test check of Central Excise and financial records of assessees falling under Range III of Daman Commissionerate, we noticed short-payment of Central Excise duty by an assessee. The assessee had recovered (April 2013 to June 2017) freight charges of ₹ 51.51 crore from its customers which was not included in transaction value for the purpose of determining the value of the excisable goods. The terms and conditions of the contract documents of a buyer of the assessee indicated that the assessee had the responsibility for delivery of goods to the buyer's store. Thus, the buyer's store was the place of removal in this case and the freight charges were to be included for

determining the value of excisable goods. The assessee did not include freight charges in assessable value which resulted in short payment of Central Excise duty of ₹ 7.29 crore which was recoverable alongwith applicable interest.

Internal Audit of the assessee was conducted by the department in February-March 2016 for the period up to September 2015 but it did not detect the lapse.

When we pointed this out (October 2018), the Department accepted (April 2019) the audit observation and informed that SCN for ₹ 6.83 crore for the period from January 2014 to June 2017 had been issued to the assessee. Reply on failure of Internal Audit and exclusion of the period from April 2013 to December 2013 in the SCN was awaited (October 2020).

The reply of the Ministry is awaited (December 2020).

6.4.5 Irregular availing of CENVAT credit on Service Tax paid on non-taxable service – not detected by Internal Audit

As per Section 65B (51) of the Finance Act, 1994, "taxable service" means any service on which Service Tax is leviable under Section 66B. As per Section 65B (44) of the Act ibid, definition of "Service" means any activity carried out by a person for another for consideration and includes a declared service.

As per Rule 2(l), "input service" means any service used by a provider of output service for providing an output service, or used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal.

During the examination of Service Tax and financial records of assessees falling under Paradeep-I Range of Bhubaneswar Commissionerate, we noticed irregular availing of CENVAT credit by an assessee. The assessee, engaged in the manufacture of High speed diesel oil, motor spirit, Liquefied petroleum gas and Superior kerosene oil, had availed CENVAT credit on invoices issued by one of its service providers amounting to ₹ 129.51 crore during FY16 and FY17. As per the agreement between the assessee and the service provider, payments were made in respect of three components (i) monthly fixed charges towards return on fixed capital investment for complete tankages facilities (ii) monthly charges towards operation of complete tankages facilities and (iii) monthly charges towards maintenance of complete tankages facilities. The service provider was charging Service Tax on all these components. As per the rules ibid, the credit of ₹ 123.21 crore availed on monthly fixed charges towards return on fixed capital investment was irregular, as it was a return on fixed capital investments and not a service.

Similarly, the assessee during FY16 and FY17 availed input service credit on invoices issued by another service provider amounting to ₹ 400.01 crore for payments made in respect of (i) monthly fixed charges towards return on capital for transportation of water from intake structure in Mahanadi river to Paradeep, and (ii) monthly charges for transportation of water through pipeline. The credit of ₹ 32.50 crore availed on monthly fixed charges towards return on capital was irregular This resulted in irregular availing of CENVAT credit on Service Tax paid on non-taxable service amounting to ₹ 155.71 crore.

Internal audit of the assessee was conducted for the period upto FY16 by the department, but it did not detect these lapses.

When we pointed this out (February 2019), the Ministry accepted the observation (November 2020) and stated that a show cause notice for ₹ 183.37 crore upto the period June 2017 was issued in June 2020.

6.4.6 Irregular availing of CENVAT credit – not detected by Internal Audit

As per Rule 2(l) of CENVAT Credit Rules, 'Input service' means any service, used by a provider of output service for providing an output service; or used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, up to the place of removal. Further, Rule 7 of CENVAT Credit Rules, 2004 prescribes the manner of distribution of credit by Input Service Distributor (ISD), as per sub-rule (c) of which "credit of Service Tax attributable to service, used wholly by a unit, shall be distributed only to that unit**".**

During test check of Central Excise and financial records of assessees falling under Range III of Daman Commissionerate, we noticed irregular availing of CENVAT credit by an assessee. The assessee, a manufacturer of products falling under chapter tariff heading (CTH) 27101990 (viz., light liquid paraffin, white oil, transformer oil) had availed CENVAT credit of ₹ 6.06 crore (including cess) on intellectual property services (i.e. royalty), distributed by its head office, an input service distributor (ISD) situated at Mumbai during the period FY14 to FY18. We observed that the ISD had paid royalty to various auto sector companies for selling lubricants (falling under CTH 27101980), manufactured by its units other than the assessee, under their brand names. The ISD availed credit of Service Tax paid on this royalty and distributed the same among its units, including the aforementioned assessee not involved in manufacturing of lubricant, in the ratio of their turnover. Since the assesse was not engaged in the manufacture of lubricating oil, credit of ₹ 6.06 crore availed by the assessee for services related to lubricants was incorrect in view of the above provisions, and this amount was required to be recovered alongwith applicable interest.

Internal Audit of the assessee was conducted by the Department in February-March 2016 for the period up to September 2015 but it did not detect the lapse.

When we pointed this out (October 2018), the Department accepted (April 2019) the audit observation and informed that SCN was being issued to the assessee. Reply on lapse of internal audit was awaited (August 2019).

Reply of the Ministry is awaited (December 2020).

6.4.7 Failure of internal audit in detecting short reversal of CENVAT credit and not taking timely action on audit observation resulted in part demand becoming time barred – not detected by Internal Audit

Trading is a non-taxable service by virtue of its inclusion in the negative list of services under Section 66D(e) read with Section 66B of the Finance Act 1994 and qualifies as an 'exempted service' under Rule 2(e) of CENVAT Credit Rules, 2004. The provider of output service, opting not to maintain separate accounts for receipt and use of inputs/input services for provision of both taxable and exempted services, has to reverse the portion of CENVAT credit pertaining to the input services utilised for provision of exempted services by opting any one of the methods under Rule 6(3) or 6(3A) of CENVAT Credit Rules, 2004.

Further, Section 11A of the Central Excise Act, 1944 prescribes issue of Show Cause Notice (SCN) within two years from the relevant date in normal case and within five years in case of fraud, collusion, wilful mis-statement or suppression of facts.

During test check of Central Excise and financial records of assessees falling under Range AND-1 of Bengaluru North Commissionerate, we noticed short reversal of CENVAT credit by an assessee. The assessee, a manufacturer of various goods and a provider of various taxable services, was also engaged in trading of goods, which is an exempted service. The assessee availed CENVAT credit on input services commonly utilised for provision of exempted services, provision of taxable services and manufacturing of excisable goods. Verification of the CENVAT credit records of the assessee revealed that even though the assessee opted for payment of amount under Rule 6(3A) of CENVAT Credit Rules, 2004 for not maintaining separate accounts, the assessee short-reversed CENVAT credit of ₹ 34.84 crore during the period from FY14 to FY16.

Internal audit of the assesse was conducted (September 2017) by the department, covering the period upto FY16, but it did not detect this lapse.

When we pointed this out (April 2018), the department issued (October 2019) an SCN to the assessee demanding ₹ 28.13 crore for FY15 to FY17, but did not include the demand for ₹ 6.71 crore in respect of FY14.

Despite the observation being pointed out by CAG Audit in April 2018, the department took one and half years in issuing the SCN. By the time of issue of the SCN, the demand for FY14 had become time-barred. Hence, the amount short-paid in FY14 appears to be irrecoverable. Had the department issued SCN in time on receipt of the audit observation, the amount pertaining to FY14 would have been included in the SCN. Thus, lack of timely action by the department on the audit observation resulted in loss of revenue of ₹ 6.71 crore.

Reply of the Ministry is awaited (December 2020).

6.4.8 Non-payment of interest – not detected by Internal Audit

As per Rule 7 of Point of Taxation Rules, 2011, the 'point of taxation' in respect of the persons required to pay tax as recipients of service, shall be the date on which payment is made. Where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months. Further, Rule 6 of Service Tax Rules, 1994, stipulates that Service Tax is to be paid by 6th of the month following the month in which the service is deemed to be provided. In case of payment for the month of March, the due date for the payment is 31st of the same month. Section 75 of the Finance Act, 1994 prescribes payment of interest on belated payment of Service Tax.

During test check of Service Tax and financial records of assessees falling under AED-5 Range of Bengaluru East Commissionerate, we noticed non-payment of interest on late payment of Service Tax by two assessees. First assessee had paid Service Tax belatedly on services received from outside India under Reverse Charge Mechanism for the period from April 2013 to June 2017 under rule 7 of Point of Taxation Rules, 2011. The assessee, however, did not pay interest of ₹ 28.46 lakh on these belated Service Tax payments.

The second assessee did not pay interest of ₹ 28.77 lakh for belated payment of Service Tax under Rule 6 of Service Tax Rules, 1994, for the period from April 2015 to June 2017. The total short-payment of interest by these two assessees amounted to ₹ 57.23 lakh.

Internal Audit of first assessee was carried out (May 2014) by the department covering the period upto March 2014, but it did not detect this lapse. Reply of the Commissionerate on the failure of IAP had not been received (June 2020).

We have requested for the details of internal audit of second assessee, but the same have not been furnished by the department.

When we pointed this out (December 2018), the Ministry admitted the observation (October 2020) and stated that the total amount recoverable was ₹ 42.15 lakh. The Commissionerate recovered (March 2019 to December 2019) ₹ 27.11 lakh from these assessees and for the balance amount, the first assessee filed application under SVLDRS scheme which was accepted by the Department.

6.5 Lapses of assessees not covered by Internal Audit wing of the Department

We issued 88 draft audit paragraphs involving revenue of ₹ 136.76 crore pertaining to assessees not covered by Internal Audit wing of the Department, as detailed below.

Table No. 6.4: Audit observations pertaining to assessees not covered by Internal Audit

Category of observations	Total No. of observations	Amount (in ₹ crore)
Non-Payment of Duty/Tax	29	33.00
Short payment of Duty/Tax	19	48.73
Incorrect availing/utilization of CENVAT credit	14	11.66
Non/Short reversal of CENVAT credit	11	34.99
Non/Short payment of Cess	1	0.31
Non/Short payment of interest	14	8.07
Total	**88**	**136.76**

A few illustrative cases are given below:

6.5.1 Non-payment of Service Tax

Section 65(44) of the Finance Act, 1994 defines service as any activity carried out by one person for another person for a consideration and includes declared service but excludes such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of Clause 29A of Article 366 of the Constitution. Transfer of goods by way of hiring, leasing, licensing or in any manner without transfer of right to use such goods is declared as a service under Section 66E(f) of the Act.

During test check of Service Tax and financial records of assessees falling under AND-8 Range of Bengaluru North Commissionerate, we noticed non-payment of Service Tax by an assessee. The assessee, engaged in provision of flight courses/training services and other related services to individuals and airline companies, did not pay Service Tax on 'Dry Training' services provided on the ground that the same amounted to 'transfer of right to use'. 'Dry training' involved providing license to each airlines for using the simulator and other infrastructure for hands-on training on hourly basis without the instructors.

Perusal of the general terms of training agreements revealed that the assessee retained effective control and possession of the simulator and was responsible for daily operation, maintenance and support of the equipment during 'dry training'. The assessee used the same simulators for providing training at different hour durations to other clients during the same period and thus, never transferred the right to use to their customers. Hence, the activity amounted to Declared Service and was taxable under Service Tax. The assessee collected ₹ 31.60 crore for FY16 to FY18 (upto June 2017), however, did not pay Service Tax of ₹ 4.59 crore.

When we pointed this out (May 2019), the Ministry admitted the observation (October 2020) and stated that a Show Cause Notice demanding ₹ 5.93 crore, on dry training services provided by the assessee, had been issued for FY15 to FY18 (upto June 2017).

6.5.2 Short payment of Service Tax due to irregular availing of exemption

Clause 12(f) of notification No. 25/2014 dated 20 June 2012 provides for exemption to the services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting, repair, renovation or alteration of an residential complex predominantly meant for self-use or the use of their employees or other persons specified in the explanation 1 to clause 44 of section 65B of the said Act.

Further, clause (h) of Serial No. 29 of notification ibid, provides exemption to the sub-contractors of contractors of the above work.

During examination of Service Tax and financial records of assessees falling under Range IV of Division V of the Mumbai East Commissionerate for the period April 2015 to March 2017, we noticed short payment of Service Tax by an assessee. The assessee had incorrectly claimed exemption under serial no. 29(h) of the notification ibid, in respect of various civil construction projects by private developers approved by the Slum Rehabilitation Authority (SRA) of Maharashtra. The assessee had provided services of ₹ 1,027.93 crore till June 2017, to private developers in respect of projects approved by SRA of Maharashtra and paid tax on the value of ₹ 534.52 crore only. The assessee had claimed irregular exemption to the extent of ₹ 493.41 crore on which tax payable worked out to ₹ 29.60 crore. Thus, there was irregular claim and allowance of exemption to the extent of ₹ 493.41 crore resulting in short levy of tax of ₹ 29.60 crore.

When we pointed this out (April 2018), the Ministry admitted the para and stated (May 2020) that an SCN had been issued for recovery of the amount of ₹ 29.60 crore.

6.5.3 Irregular availing of CENVAT Credit

Rule 4 of the CENVAT Credit Rules (CCR), 2004, provides conditions for allowing the CENVAT credit on input, input services and capital goods. As per Rule 4(7) of CCR, the CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in Rule 9, is received.

During test check of the Central Excise and financial records of assessees falling under Range IV of Division V of Mumbai East Commissionerate for the period April 2015 to March 2017, we noticed irregular availing of CENVAT credit by an assessee. The assessee had availed CENVAT credit twice on the same invoice in respect of five invoices. Further, the assessee, in respect of one invoice, irregularly availed CENVAT credit on xerox copy of the invoice. The total irregular CENVAT credit availed by the assessee amounted to ₹ 32.27 lakh, which was recoverable.

When we pointed this out (April 2018), the Department replied (August 2018) that the assessee had reversed the Service Tax CENVAT credit of ₹ 32.39 lakh.

6.5.4 Irregular distribution of ISD Credit

In accordance with the provisions of Rule 7 of CENVAT Credit Rules, 2004, the Input Service Distributor (ISD) shall distribute the credit of Service Tax attributable to service used by more than one units pro rata on the basis of turnover of such units during the relevant period to the total turnover of all its units, which are operational in that year. Further, it provides that the credit of Service Tax attributable as input service to a particular unit shall be distributed only to that unit.

During examination of Service Tax and financial records of assessees falling under Range IV of Goa Commissionerate, we noticed irregular availing of CENVAT credit by an assessee. The ISD of the assessee had availed CENVAT credit of ₹ 3.92 crore and ₹ 14.78 crore and distributed credit of ₹ 3.31 crore and ₹ 4.83 crore to the assessee during FY16 and FY17, respectively. As per the CA certificate, the turnover ratio of the assessee was 31.23 *per cent* and 13.16 *per cent* during FY16 and FY17, respectively, for the purpose of distribution of ISD credit. Therefore, the ISD credit required to be distributed to Goa unit was ₹ 1.23 crore (31.23 *per cent* of 3.92 crore) and ₹ 1.95 crore (13.16 *per cent* of ₹ 14.78 crore) as against ₹ 3.31 crore and ₹ 4.83 crore, respectively, distributed during the above mentioned period. This resulted in excess availing of ISD credit of ₹ 2.75 crore by the Goa unit.

When we pointed this out (July 2018), the Ministry admitted the audit objection (September 2020) and stated that demand for ₹ 3.08 crore had been confirmed.

6.5.5 Short-reversal of CENVAT Credit in respect of exempted services provided

Trading, which is a non-taxable service by virtue of its inclusion in the negative list of services under Section 66D of the Finance Act, 1994, qualifies as an 'exempted service' under Rule 2(e) of CENVAT Credit Rules, 2004 read with Section 66B of the Act. A provider of output service, opting not to maintain separate accounts for receipt and use of input services commonly for provision of both taxable and exempted services, has to reverse the portion of CENVAT credit pertaining to the input services utilised for provision of exempted services by opting any one of the methods prescribed under Rule 6(3) of CENVAT Credit Rules, 2004.

During test check of Service Tax and financial records of assessees falling under BED-5 Range of Bengaluru East Commissionerate, we noticed short-reversal of CENVAT Credit in respect of exempted services by one assessee. The assessee, a provider of taxable services, was also involved in trading of goods which is an exempted service. The assessee was availing CENVAT credit on services commonly used for provision of both taxable and exempted services and was reversing a portion of such credit availed every month. Verification of the CENVAT credit records of the assessee revealed that the assessee reversed only ₹ 17.56 crore against the amount of ₹ 32.28 crore that should have been reversed during FY17, resulting in short-payment of ₹ 14.72 crore.

It was further noticed that the assessee had communicated to the department its intention to avail the option under Rule 6 of CENVAT Credit Rules in May 2011, but did not send any communication for the subsequent years. Even though the assessee was reversing certain amounts under Rule 6 every month during FY17 provisionally, the assessee did not furnish the details of actual reversals as prescribed in the Rules. The department did not take any action to verify the actual reversals, as a result of which short reversal of CENVAT credit remained undetected until pointed out by CAG audit. The information whether ST-3 returns of the assessee were subjected to detailed scrutiny by the range was not made available.

When we pointed this out (January 2019), the Ministry admitted the observation (September 2020) and stated that Show Cause Notice was being issued.

6.5.6 Non-payment of interest on delayed payment of Service Tax

Section 75 of the Finance Act, 1994 envisages that where any Service Tax or part thereof has not been paid within the stipulated period, the person liable to pay tax shall pay interest at the rates specified in the Act.

During examination of Service Tax and financial records of the assessees falling under Range-121 of Delhi West Commissionerate for the period FY18 and FY19, we noticed non-payment of interest on delayed payment of Service Tax by an assessee. The assessee had not paid interest of ₹ 5.44 crore on delayed payment of Service Tax for the months of November 2016, January 2017, February 2017 and May 2017.

When we pointed this out (December 2019), the Ministry admitted the observation (October 2020) and stated that the assessee had deposited the actual interest payable amounting to 4.82 crore.

6.6 Observations pointed out by Audit before the year FY19, where action was pending by the Department

In addition to the audit observations mentioned in para 6.4, 6.5 and 6.7, we issued 66 observations (**Appendix-IX**), involving ₹ 667.71 crore, which were noticed during CAG audit conducted prior to FY19. The observations pertain to issues such as non/short payment of duty/tax, irregular availing and utilisation of CENVAT credit and non/short payment of interest etc. With respect to 52 observations, involving ₹ 197.31 crore, action was completed by the department by either issuing of SCNs or recovery of revenue. As for the remaining 14 observations, involving ₹ 470.40 crore, action for recovery of revenue was pending/under process. Ministry admitted 45 audit observation, involving ₹ 180.12 crore and reported recovery of ₹ 9.07 crore. Ministry did not admit observations in six cases involving ₹ 19.19 crore. Ministry's reply is awaited in remaining 15 cases (December 2020).

6.7 Lapses committed by departmental officers

We noticed 28 cases involving revenue of ₹ 80.22 crore indicating shortcomings in functioning of jurisdictional Commissionerates, as detailed below.

Table No. 6.5: Observations indicating lapse in Department functions

Category of observations	Total No. of observations	Amount (in ₹ crore)
Irregularity in processing of refunds	3	1.44
Irregularities in issuing/monitoring of SCNs	6	1.68
Ineffective monitoring of call book cases	5	NMV
Non-levy of late fee/penalty	4	1.03
Non-completion of anti-evasion investigations	2	58.00
Observations regarding broadening of tax base	2	11.4
Lack of timely action by departmental officers	3	1.63
Irregularities in recovery of arrears	3	5.04
Total	**28**	**80.22**

A few instances are illustrated below:

6.7.1 Incorrect calculation of short levy while issuing SCN and adjudication of the same

As per rule 5 of Central Excise Rules, 2002, the rate of duty of tariff value applicable to any excisable goods shall be the rate or value on the date when such goods are removed from a factory or a warehouse, as the case may be. As per Notification No. CE 18/2012 dated 17 March 2012, basic excise duty was increased to 12 *per cent* from 10 *per cent* with effect from 17 March 2012.

During test check of records related to SCN and adjudication in Nashik I Division of the Nashik Commissionerate, we observed that in case of one assessee, registered in the Satpur Range, the Department issued SCN to the assessee for recovery of short payment for the period from FY11 to FY15, calculating excise duty at the rate of 10 *per cent* for the period from 17 March 2012 to 31 March 2012 instead of 12 *per cent*, as was required under the notification above. This resulted in short levy of excise duty of ₹ 29.14 lakh, including applicable interest.

When we pointed this out (July 2018), the Ministry admitted the observation (October 2020) and stated that the mistake occurred due to clerical arithmetical mistake, and the assessee had accepted the differential tax liability with interest amounting to ₹ 29.14 lakh. However, the assesse had already filed appeal in CESTAT against the Order-in-original and the recovery of differential duty and interest would be governed by the outcome of appeal in CESTAT.

6.7.2 Delay in initiation/completion of investigation by the Department

Any service provided to business entities by Government or Local Authority are liable to Service Tax under Section 66B read with 66D(a)(iv) of Finance Act, 1994, with effect from 01 April 2016. Services provided by Government or a local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Government or local authority on or after 01 April 2016, are liable to payment of Service Tax under Serial No.61 of Notification No.25/2012-ST dated 20 June 2012 (Mega Exemption Notification), as amended vide Notification No.22/2016-ST dated 13 April 2016. As per Serial No.6 of the Table under Notification No.30/2012-ST dated 20 June 2012, such Service Tax needs to be paid by the recipient of service.

We verified the data pertaining to royalty payments made by business entities to the Government of Karnataka (GOK) against the mines taken on lease by these business entities, as maintained by the Department of Mines and Geology (DMG) under GOK. We observed that 31 business entities paid a total of ₹ 772.50 crore to the GOK towards royalty in respect of the mines assigned to them during FY17 but did not pay Service Tax. We further observed that the

department had started investigation (July 2016) in respect of 23 cases out of these 31 cases based on the information obtained from the Monitoring Committee (MC) under the DMG. The department issued Show Cause Notices (SCNs), demanding Service Tax on royalty paid to the Government for leasehold of mines, in respect of five of these cases, consequent to the investigations. The department did not furnish the status of investigation in respect of the balance 18 cases involving Service Tax of ₹ 53.16 crore. Further, the department did not take any action in respect of the remaining eight cases involving Service Tax of ₹ 4.64 crore.

We communicated this to Belagavi Commissionerate (April 2019) and to the Bengaluru Zone (March 2020). Belagavi Commissionerate stated (December 2019) that jurisdiction of the assessees was not known in respect of the said eight contractors. The Commissionerate sought the details of these eight contractors from Audit.

We obtained the address and contact details of seven out of these eight contractors from the DMG and communicated to the department. Details of the remaining one assessee were not available. Action taken by the department on the details provided by Audit is awaited (October 2020).

The reply of the department revealed that the department did not initiate any action in respect of eight assessees even after obtaining the royalty payment details from the monitoring committee under DMG and Audit. Further, the fact that the department did not issue demand notices in 18 cases where action was initiated already, indicates ineffective monitoring mechanism.

Reply of the Ministry is awaited (December 2020).

6.7.3 Irregular transfer of SCN to Call Book

Board Circular No. 1028/2016-CX dated 26 April 2016 specifies the following categories of cases which can be transferred to call book:

Where no action can be taken on SCN due to various reasons as specified below:

(i) Cases in which the Department has gone in appeal to the appropriate authority.

(ii) Cases where injunction has been issued by Supreme Court/High Court/CEGAT etc.

(iii) Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book

(iv) Cases referred to Settlement Commission

Further, extant instructions issued to field formations require monthly review of pending call book cases.

During audit of the Bengaluru East Commissionerate and its field formations, we noticed that 254 Show Cause Notices (SCNs) were pending in Call Book

under the Commissionerate. We test checked 72 cases and found that 21 SCNs involving a demand of ₹ 34.88 crore, issued by various adjudicating authorities under the Commissionerate, were pending in Call Book for the period ranging from two to six years. These cases were incorrectly retained in Call Book even after the grounds on which the cases were transferred to Call Book no longer existed.

When we pointed this out (May 2018 to December 2018), the Department stated (July 2019) that all the 21 SCNs had been taken out of Call Book on the basis of the audit observation. Out of these, 17 cases had been adjudicated confirming a demand of ₹ 10.78 crore, and dropping the demand for balance amount. Remaining four cases were pending for adjudication.

The irregular retention of SCNs in Call Book indicates ineffective periodical review of Call Book cases by the Commissionerate, resulting in inordinate delay in confirming the demand of ₹ 10.78 crore in the above mentioned SCNs.

The Ministry stated (March 2020) that due to implementation of GST and re-organisation of the Commissionerates, large number of files were transferred from one jurisdiction to another. Also due to shortage of staff and workload of GST, review of call book cases was not taken up on monthly basis. Officers had been sensitized to review call book cases on monthly basis.

6.7.4 Not ensuring reversal of ineligible credit before sanctioning refund

As per Rule 5 of the CENVAT Credit Rules, 2004; refund of the unutilized credit is admissible to the assessee who clears goods/services for export without payment of duty/tax under bond or Letter of Undertaking (LOU). Notification (27/2012 CE (NT)) issued under rule ibid requires the Department to call for any document, in case the sanctioning authority (AC/DC) has reason to believe that information provided in the refund claim is incorrect or insufficient and further enquiry needs to be caused before the sanction of refund claim and shall satisfy himself or herself in respect of the correctness of the claim and facts regarding export of goods/services before sanction of refund. Thus, the provisions require the Department to ensure the correctness of CENVAT credit claim by the assessee before sanction of the refund relating to such unutilized credit.

In terms of the provisions of rule 4(1) CENVAT Credit Rules, 2004, the CENVAT credit in respect of inputs required to be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service. Further, the notifications 21/2014-CE (NT) dated 11 July 2014 and 6/2015-CE (NT) dated 01 March 2015 restrict claim of credit within six months and one year, respectively, from date of issue of invoices under Rule 9.

During test check of refund claims in Division IV of the Goa Commissionerate, we observed that an assessee had filed refund claim for ₹ 12.88 crore in

June 2017. The Department sanctioned amount of ₹ 12.71 crore and rejected ₹ 16.60 lakh (December 2017) from the refund claimed due to ineligible credit of ₹ 41.96 lakh included in the total CENVAT credit of ₹ 25.06 crore, considered for computation of said refund. Though ineligible credit was detected by the Department during the course of processing of refund of the assessee, the Department failed to take any action for recovery of the ineligible credit.

When we pointed this out (June 2018), the Ministry did not admit the observation (March 2020) stating that the assessee had already reversed the credit of ₹ 41.96 lakh. Refund claim of ₹ 16.60 lakh was rejected with the instruction not to take re-credit of the amount.

The reply is not acceptable as the balance credit of ₹ 25.35 lakh was reversed by the assessee in November 2018 after being pointed out by Audit in June 2018 indicating that the credit was not reversed by the assessee before filing the refund claim.

6.7.5 Interest payment on refund claim

As per Section 35 FF of the Central Excise Act, 1944, where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and if such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount.

During test check of the refunds sanctioned by the CGST Division Hauz Khas of Delhi South Commissionerate during FY18, we noticed that an assessee was issued SCNs in view of the inadmissible availing of CENVAT credit pertaining to pre-GST period. The SCNs were adjudicated by the department. Aggrieved by the adjudication, the assessee filed five appeals in CESTAT and the assessee was directed by the CESTAT to pre-deposit ₹ 3.03 crore under Section 35F of Central Excise Act, 1944. The appeals filed were decided in favour of the assessee vide CESTAT orders dated 21 May 2013 and 22 December 2016. As the refund orders were not processed in view of the CESTAT orders by the department, the assessee filed a refund claim application on 20 February 2017 for ₹ 3.03 crore along with interest. The department, however, issued refund orders along with interest of ₹ 70.83 lakh on 25 September 2017 and 01 September 2017. Thus, delay up to more than three years in sanction of refund amount since the date of the order of appellate authority resulted in avoidable payment of interest of ₹ 70.83 lakh by the department.

When we pointed this out (March 2019), the Ministry did not admit the undue delay pointed out by Audit stating (September 2020) that the department had undergone cadre restructuring twice, and subsequently jurisdictions were changed. The present jurisdictional officer received the refund file in July 2017 and refund claim was settled in September 2017.

Reply of the Ministry is not acceptable in view of considerable delay of up to more than three years in sanction of refund even after considering cadre restructuring of the Department.

6.7.6 Failure of the department in initiating coercive measures for recovery of arrears

CBIC vide Circular No. 967/01/2013-CX dated 1 Jan 2013 issued directives regarding the recovery proceedings against confirmed demands, which were further re-iterated in the Master Circular on Show Cause Notice, Adjudication and Recovery dated 10 March 2017. As per these directives, the department should proceed for recovery of arrears on confirmed demands after the appeal period is over in cases where appeal is not filed against the orders. Recovery of Service Tax dues can be made by exercising any of the powers under Section 87 of the Finance Act, 1994 such as adjustment from refunds payable, issue of Garnishee Notice to a third person who owes money to the person against whom the demand is confirmed, distrain or sale of immovable properties or through certificate action treating the recoverable amounts as arrears of land revenue.

During the audit of Belagavi Commissionerate and its field formations in FY20, we carried out verification of 168 cases of confirmed demands of Service Tax involving tax dues of ₹ 171.55 crore pending for recovery at various levels under the Commissionerate. Verification of the Tax Arrears Report (TAR) and the related files revealed that the department did not initiate coercive measures for recovery of arrears prescribed under Section 87 ibid in 69 cases involving tax dues of ₹ 46.62 crore even though these cases were fit for such action, as follows:

i. Four cases pertaining to two assessees involving tax dues of ₹ 5.59 crore were incorrectly classified under the category “unit closed or defaulters were not traceable” even though these two assessees were registered under Goods and Services Tax (GST), and were filing returns.

ii. The department classified 51 cases involving confirmed demands of ₹ 28.03 crore under the category of “appeal period not over” even though the appeal period was over, and appeals were not filed by the assessees.

iii. The department did not initiate any action in 14 cases involving confirmed demands of ₹ 12.80 crore under the category “appeal period over”, even

though these assessees were registered under the GST regime and were filing returns.

Thus, erroneous classification of arrears and inaction on the part of the department for recovery of arrears resulted not only in delay in recovery of ₹ 46.62 crore but also placed these amounts under the risk of non-recovery.

We have pointed this out in July 2019 and February 2020. Reply of the Commissionerate has not been received (October 2020).

Reply of the Ministry is awaited (December 2020).

6.7.7 Non-registration and Non-payment of Service Tax

As per the Director General of Service Tax's action plan circulated to Chief Commissioners on 26 May 2003, field formations were required to take necessary action to broaden the tax base. Further, the Board issued instructions (November 2011) to create a special cell in each Commissionerate to identify unregistered service providers from different sources such as yellow pages, newspaper advertisements, Income Tax department, regional registration authorities and websites, information from municipal corporations, major assessees etc.

Section 68 provides that the person providing taxable services shall be liable to pay Service Tax unless specifically exempted from payment of Service Tax. Rule 4 of Service Tax Rules, 1994 stipulates that every person liable to pay Service Tax should get registered within 30 days from the date on which Service Tax becomes leviable on the services provided.

As a follow-up audit of 'Para No. 5.3.2: Non-registration of local body and consequent non-payment of Service Tax' included in the Audit Report No. 4 of 2019, we examined the Service Tax accounts of one society, formed by the Government of Karnataka, and observed that even though the society neither registered itself under Service Tax nor discharged its Service Tax liability, the department did not initiate any action.

The society is engaged in conceptualizing, implementing and monitoring various e-governance initiatives in the State. In addition to that, the society had an e-procurement section which functions as a nodal agency and enables the contractors to download notice inviting tenders and tender schedules and submit the tenders online. The society collects charges such as tender processing, e-auction fees, supplies registration fees, renewal fees etc., from the clients as consideration for the services provided. Further, the society also provides services to various electricity companies and collects service charges from these companies in respect of portal usages and mobile one app usages. Though these services are taxable under Service Tax provisions, the society

neither got itself registered under the Service Tax provisions nor discharged the Service Tax liability of ₹ 9.95 crore for the period April 2014 to March 2017.

When we pointed this out (December 2018), the Commissionerate admitted the audit observation (November 2019) and issued Show Cause Notice to the assessee demanding Service Tax of ₹ 11.05 crore for the period April 2014 to June 2017.

The reply is silent on the reasons as to why the department failed to initiate any action to bring the assessee under tax base and to recover the dues, until pointed by Audit.

Reply of the Ministry is awaited (December 2020).

6.7.8 Non-initiation of action for best judgment assessment by the Jurisdictional officer

Section 72 of the Finance Act, 1994 bestows powers on the departmental officers to carry out assessment of the taxable value to the best of their judgment and determine the tax payable by the assessee by issuing an order in writing, in case of assessees who do not file ST-3 Returns. Section 73 of the Act prescribes issue of Show Cause Notice (SCN) within 30 months from the relevant date unless extended period is to be invoked. The Section also prescribes issue of Statement of Demand (SOD) in case of demands in continuation of SCNs issued earlier on similar grounds.

During the audit of AED-1 Range under Bengaluru East Commissionerate, we noticed that an offence case was registered (October 2012) by Anti-Evasion wing of the erstwhile Service Tax Commissionerate, Bengaluru, against an assessee for non-remittance of Service Tax collected from customers for the period upto March 2012. Consequently, the department issued (October 2012) an SCN and confirmed (May 2013) the demand of Service Tax along with applicable interest and penalty. The assessee paid the dues only partly and the balance amount was pending for recovery. We further noticed that the assessee neither paid Service Tax nor filed ST-3 Returns for the period from April 2013 onwards. Details obtained from the Income Tax Department by us revealed that the assessee had declared an income of ₹ 491.42 lakh for the period from FY14 to FY16 and was liable to pay Service Tax of ₹ 61.89 lakh[96] thereon. Since the assessee did not file ST-3 Returns, the department should have initiated action for best judgment assessment as prescribed under Section 72 ibid. Even though the department was aware of the assessee not filing returns and not paying Service Tax, the department did not initiate any action in this regard.

[96] The amount is provisionally calculated as ₹ 61.89 lakh based on gross service income of as declared in Income Tax returns of the assessee and tax rates of 12.36 *per cent* for FY14 & FY15 and 14 *per cent* for FY16.

When we pointed this out (October 2018), Ministry did not admit failure on the part of department (September 2020) stating that the assessee filed (February-March 2019) ST-3 returns for the period from April 2013 to June 2017 belatedly. The department did make efforts to trace the assessee but the assessee was not available in its registered premises. The department could trace the assessee only in GST regime and again asked the assessee to file its returns for the previous period after which the assessee filed its returns. The department verified the issue in detail and issued (April 2019) an SCN to the assessee demanding Service Tax of ₹ 55.60 lakh for the period from October 2013 to June 2017. The Ministry further stated (February 2020) that the assessee filed an application under Sabka Vishwas–Legacy Dispute Resolution Scheme, 2019 (SVLDRS) for this case and paid Service Tax of ₹ 27.80 lakh under the Scheme.

Ministry's reply is not acceptable in view of the delay of more than five years in tracing the assessee during which the assessee was providing taxable services to its customers, showing deficiency in the efforts made by the department in tracing the assessee.

6.7.9 Non-levy of late fee in respect of delayed filing of ST-3 Returns

Section 70 of the Finance Act, 1994, read with Rule 7C of Service Tax Rules, 1994, prescribes submission of returns to the Range Officer by the persons liable to pay Service Tax. Late fee is payable in case of delay in filing of returns. Late fee is prescribed at ₹ 500 for delay upto 15 days and ₹ 1000 for delay of more than 15 days upto 30 days. In case of delay beyond 30 days, the late fee is ₹ 1000 plus ₹ 100 for each day from 31st day subject to a ceiling of ₹ 20,000.

During the audit conducted in FY19, we noticed that 193 ST-3 Returns were filed belatedly by the assessees in three Ranges[97] falling under Bengaluru North Commissionerates with delays ranging from one day to 638 days. However, the Range Officers did not take any action to recover late fees of ₹ 18.77 lakh from the assessees.

When we pointed this out (October 2018 and May 2019), the Commissionerate replied (January 2020) that ₹ 2.57 lakh had been recovered in respect of 39 returns and that three assessees filed application under Sabka Vishwas – Legacy Dispute Resolution Scheme, 2019. Action had been initiated in respect of 106 cases, while the department was taking efforts to trace out 42 assessees. Compliance is awaited in respect of three assessees whose jurisdiction was stated to be outside the respective Range. Even though the department accepted the revenue implication, the department did not admit its failure in taking timely action for recovery of late fee, on the grounds that there is no time limitation prescribed under rules for collection of late fee. The

[97] Range AND-3, AND-5 and DND-4

department further stated that since suitable action has been taken, the recovery would be completed in a couple of months.

Although there is no time limit prescribed for recovery of late fee, the department did not initiate any action for recovery of late fee under the old tax regime even after one and half years from 1 July 2017, when the new GST tax regime came into effect, until CAG Audit pointed out the same. The fact that assessees are not traceable in respect of 42 cases indicate the importance of timely action. Since the returns were to be filed to the Range Officer through Automation of Central Excise and Service Tax (ACES) system, the department had enough information at hand to initiate immediate action for recovery. The fact that the department did not devise requisite mechanism, either in ACES or manually, for this purpose and did not initiate any action to recover the late fee even though a large number of returns were filed belatedly indicates serious control lapse on the part of the department even after implementation of ACES. The department's reply is, therefore, not acceptable.

Reply of the Ministry is awaited (December 2020).

New Delhi **(SATISH SETHI)**
Dated: 15 February 2021 **Principal Director (Goods and Services Tax-II)**

Countersigned

New Delhi **(GIRISH CHANDRA MURMU)**
Dated: 15 February 2021 **Comptroller and Auditor General of India**

APPENDICES

Appendix-I: Status of certification of revenue under Section 7(3)(b) of Goods and Services Tax (Compensation to States) Act, 2017 for 2017-18

(Reference: Paragraph 1.5)

Sl. No.	State/UT
Certified	
1	Andhra Pradesh
2	Arunachal Pradesh
3	Assam
4	Chhattisgarh
5	Goa
6	Himachal Pradesh
7	Jammu and Kashmir
8	Jharkhand
9	Karnataka
10	Kerala
11	Manipur
12	Meghalaya
13	Mizoram
14	Nagaland
15	Orissa
16	Puducherry
17	Sikkim
18	Tamil Nadu
19	Tripura
Under process	
20	Delhi
21	Gujarat
22	Haryana
23	Punjab
24	Rajasthan
25	West Bengal
Not certified due to non-receipt of requisite information/records from State Government	
26	Bihar
27	Madhya Pradesh
28	Maharashtra
29	Telangana
30	Uttar Pradesh
31	Uttarakhand

Appendix-II: Key Validations/functionalities not aligned to provisions

(Reference Paragraph 3.5.1)

Para No.	Issue in brief	Provided in SRS	Implementation failure
Refund Module			
3.7.3.3	Deficient re-crediting facility of ITC where Deficiency Memo was issued on second and subsequent occasion	Yes	Yes
3.7.3.4	Excess refund allowed by system in case of export without payment of tax (LUT)	No	-
3.7.3.5	Mandatory validation not put into the system (Endorsement detail of invoices of supplies to SEZ was not made mandatory)	Yes	Yes
3.7.3.6	Non implementation of "With-hold" request functionality at Back Office	Yes	Yes
3.7.3.7	Functionality for interest on delayed payment of Refund were not implemented in the system	No	-
3.7.3.8	Non allocation of RFD 10 of 'Other notified persons' to State jurisdictional Authority	Yes	Yes
3.7.3.9	Absence of auto–exclusion functionality to deduct the ITC of Capital goods	No	-
3.7.3.10	Excess claim of refund in the absence of adequate controls/validations	No	-
3.7.3.11	Functionality for unregistered person / consumer to apply for refund not implemented	Yes	Yes
3.7.3.12.1	Reconciliation between GST Portal and ICES	Yes	Yes
3.7.3.12.2	Non-deployment of validation to restrict the shipping bills having higher rate of duty drawback	No	-
3.7.3.12.3	Absence of system validation led to excess IGST Refund amount	Yes	Yes

Returns Module			
3.8.3.3	Incorrect creation of GSTR-2A led to irregular availability of ITC	No	---
3.8.3.4	Absence of validation on turnover, leading to no restriction being imposed on composition taxpayers, in regard to filing of GSTR-4, even after crossing the threshold limit.	Yes	Yes
3.8.3.5	Absence of provisions in the system, leading to non-payment of tax on RCM basis by NRTPs.	No	--
3.8.3.6	Incorrect mapping of Rule to SRS diluted the criteria of declaring HSN details in GSTR-1 by relevant taxpayers.	No	--
3.8.3.7	Non-computation of actual interest liability and non-enforcement of payment thereof through the system.	Yes	Yes
E-way Bills (EWB)			
3.9.5.1	Rejection of EWBs	Yes	Yes
3.9.5.2	Supply to or by SEZ	Yes	Yes
3.9.5.3	Extension of EWBs	Yes	Yes
3.9.5.4	Automatic calculation of distance based on PIN Code	No	-
3.9.5.5	Multivehicle Mode of Transport	Yes	Yes
3.9.5.6	Transportation by Rail	Yes	Yes

Appendix – III: Status of corrective action taken on audit observations of IT Audit of GSTN (Phase – I)

(Reference Paragraph 3.6)

Table A (Summary)

Status	Status of corrective action	Number of observations
S	Corrective action successfully implemented.	19
1	Issues still persist despite GSTN assuring corrective action	6
2	Corrective action is being taken up by GSTN and will be implemented in due course	12
3	Rectificatory action is pending at the end of other agencies	5

Table B (List of all observations with status)

Para No.	Caption	Status
Registration module		
2.1 (a)	Same PAN holder found under Composition Levy Scheme as well as Normal Taxpayer	S
2.1 (b)	Ineligible tax payers allowed registration under Composition Levy Scheme	S
2.2 (a)	Different legal name of the same PAN holder	S
2.2 (b)	Non-validation of Type of assessee in PAN with the Type of business registered at GSTN	S
2.2 (c)	PAN made optional for registration of Other Notified Persons (ONPs)	S
2.3	Registration for ONPs – Non-availability of facility for validating notification number or for obtaining/uploading the required documents	2
2.5	Non Resident Taxable Person (NRTP)/Casual Taxpayer -Tax Officer not alerted for non-registration	S
2.6	Delay in issuance of ARN, GSTIN and UIN	2
2.7	Tax deductor / Tax collector - Deficiencies in Registration process	S
2.8	GST Registrations allowed under restricted HSN Codes due to inadequate validation	2
2.9	Non-validation of CIN of Companies	1
2.10	TDS/TCS: Legal Name and Approving authority found blank	S
2.11 (a)	Upload of vital documents not provisioned yet in Online Information Database Access and Retrieval Services (OIDAR)	S
2.11 (b)	Non-validation of mandatory field TIN	S
2.11 (c)	Credentials of authorised representatives for OIDAR applicants not captured	S
2.13	Incorrect SMS of validation	S

2.14	Search gave output beyond the criteria period at GST portal	1
2.15.1	No option for different Languages at GSTN portal	2
2.15.3	Registration for multiple business verticals	2
2.15.5	Prerequisite of Unique combination of PAN, email and mobile on registration of taxpayer in violation of GST rules	S
2.15.6	No record for officers' contact or office address on GST Portal	S
2.15.7 (a)	Selection of Centre/State GST jurisdiction are left with taxpayer who entered them incorrectly	2
2.15.7 (b)	Incorrect address of Place of business	2
2.15.8	Complaint/Grievances Portal	S
Payments module		
3.1	(i) ECL credited without confirmation from Bank	3
	(ii) ECL was not credited on real-time where payment made successful	S
	(iii) Payment confirmation received from RBI e-scroll but the same was not received from GSTN by PCCA.	S
	(iv) Issues of delay in remittances, bank rating and penalty mechanism to be discussed with Banks and PCCA	3
3.2	Non-acceptance of payment where payment details are received after expiry of Challan	2
3.3	System level controls found absent in reconciliation files	S
3.4	Payment through debit/credit cards not provided in the GSTN System	3
3.6	Display of messages are not in sync with the actual status of the transaction	S
IGST Settlement		
4.1	Reports not being prepared	2
4.2	Non-utilisation of import data, IGST portion of appeal, refund, and prosecution data are not being utilised for generation of respective reports	2
4.4	Non-Settlement of interest	2
4.5	Duplicate records	1
4.6	Incorrect computation of IGST Settlement	2
4.7	Both way cross-utilisation for the same return period for the same taxpayer	S
4.8	Erroneous entries in settlement report STL 01.02/ 01.03	1
4.9	Erroneous entries in settlement report STL 01.04	3
4.1	Erroneous entries in settlement report STL 01.05	1
4.11	Erroneous entries in settlement report STL 01.06	1
4.13	Mismatch of entries in STL 01.04	S
4.14	Unrealistic claims of ITC of IGST	3

Table C (Details of observations that have not been implemented so far)

Issues still persist despite GSTN assuring corrective action has been taken	Corrective action is being taken up by GSTN and will be implemented in due course	Rectificatory action is pending at the end of other agencies
Registration		
– Search gave output beyond the criteria period at GST portal – Non-validation of Corporate Identification Number (CIN) of Companies	– Registration for Other Notified Persons – Non-availability of facility for validating notification number or for obtaining/uploading the required documents – Delay in issuance of Application Reference Number, GSTIN and Unique Identification Number – GST Registrations allowed under restricted HSN Codes due to inadequate validation – No option for different languages at GSTN portal – Registration for multiple business verticals – Selection of Centre / State GST jurisdiction are left with taxpayer who entered them incorrectly – Incorrect address of Place of business	
Payments		
	– Non-acceptance of payment where payment details were received after expiry of challan.	– ECL getting updated without confirmation from banks and issues of delay in remittances, bank rating – Penalty mechanism to be discussed with Banks and PCCA

		– Payment through debit/credit cards not provided in the GST IT system
IGST Settlement		
– Duplicate records – Erroneous entries in settlement reports (STL) 01.02, 01.03, 01.05 and 01.06.	– Reports not being prepared – Non-utilisation of import data, IGST portion of appeal, refund, and prosecution data are not being utilised for generation of respective reports – Non-Settlement of interest – Incorrect computation of IGST Settlement	– Erroneous entries in STL 01.04 – Unrealistic claims of Input Tax Credit (ITC) of IGST

Appendix-IV: Overview of audit of transitional credits

(Reference: Paragraph 4.6.1)

(₹ in lakh)

DAP No.	Name of Commissionerates involved	No. of cases	Objection Amount	Accepted Amount	Recovered Amount
Paragraph 4.6.2: Irregular claim of transitional credit on input services in transit					
35	Belapur, Bhiwandi, Mumbai south and Pune I	18	3676.52		
Paragraph 4.6.3 : Irregular availing of cess of earlier regime as credit					
4	Bengaluru East	1	10.56	10.56	10.56
9	Bengaluru East	2	26.23		
12	Chennai Outer	1	85.63	85.63	
19	Delhi South	1	17.68	17.68	17.68
21	Delhi East	1	13.97		
22	Hyderabad (Audit – 1)	1	13.45	13.45	13.45
23	Hyderabad (Audit – 1)	1	38.87	38.87	38.87
37	Bengaluru North	2	77.01	77.01	77.01
42	Bengaluru South	1	15.83		
63B	Howrah	1	12.31		
83	Vadodara I	1	67.75		
84	Ahmedabad South	1	13.60	13.60	13.60
93	Visakhapatnam	1	48.62	48.62	
4.6.4 Irregular claim of transitional credit on stock entered in books of accounts after the permissible period					
3	Daman	1	10.25	10.25	10.25
10	Chennai North	1	21.35	21.35	
11	Chennai North	1	336.00	336.00	
16	Coimbatore (Audit)	1	43.92	43.92	29.94
25	Hyderabad (Audit – 1)	1	33.09	33.09	
27	Visakhapatnam (Audit – 1)	1	23.97	23.97	

DAP No.	Name of Commissionerates involved	No. of cases	Objection Amount	Accepted Amount	Recovered Amount
46	Vadodara II	1	21.29	21.29	
63A	Kolkata North	1	43.45		
63C	Bolpur	1	24.76		
68	Tiruchirapalli	1	62.26	62.26	
69	Tiruchirapalli	1	21.05	21.05	
87	Ahmedabad South	1	14.02		
88	Gandhinagar	1	11.62	11.62	
Paragraph 4.6.5: Irregular carry forward of excess Cenvat credit					
6	Bengaluru East	1	41.34		
7	Bengaluru East	1	46.54		
18	Kochi	1	74.05	74.05	77.08
20	Delhi East	1	10.95	10.95	
35	Pune – I	1	34.69		
49	Guwahati	1	14.81	14.81	
56	Chennai South	1	30.18		
61	Coimbatore	1	17.18	17.18	
64	Dimapur East	1	14.68		
81	Bengaluru North	1	35.94	35.94	
82	Delhi West	1	21.52	21.52	
92	Medchal	1	45.71	45.71	
101	Ludhiana	1	13.70		
Paragraph 4.6.6 : Irregular availment of transitional credit on exempted goods					
1	Gandhinagar	1	26.62	26.62	
13	Coimbatore (Audit)	1	290.83		
59	Coimbatore	1	116.22	116.22	
60	Madurai	1	124.00		
65	Guntur	1	10.57	10.57	5.42
77	Madurai	1	111.33		

DAP No.	Name of Commissionerates involved	No. of cases	Objection Amount	Accepted Amount	Recovered Amount
86	Ahmedabad South	1	36.84	36.84	
Paragraph 4.6.7 : Irregular claim of transitional credit on goods in stock					
35	Pune – I	5	769.00		
Paragraph 4.6.8: Irregular availment of transitional credit without filing the ER-1/ST-3 returns					
8	Bengaluru South	1	14.75		
35	Pune – I, Belapur	2	180.17		
50	Chennai Outer	1	39.02		
Paragraph 4.6.9: Irregular claim of transitional credit which do not fall in the ambit of inputs, input services and capital goods					
17	Chennai outer	1	29.00	29.00	18.83
52	Guntur	1	14.54		
53	Medchal	1	25.17		
Paragraph 4.6.10: Other cases					
2	Gandhinagar	1	20.33	20.33	
5	Bengaluru East	1	481.00		
11	Chennai North	1	24.00	24.00	
14	Coimbatore (Audit)	1	15.89	15.89	16.86
24	Hyderabad	1	19.76	19.76	19.76
26	Hyderabad (Audit-I)	1	36.92	36.92	
29	Bhubaneswar & Rourkela	2	79.91	79.91	
35	Belapur, Bhiwandi, Mumbai south and Pune I	12	357.27		
40	Ranchi	1	216.00	216.00	
66	Visakhapatnam	1	10.69	10.69	10.69
74	Hyderabad (Audit-I)	1	16.72	16.72	
85	Ahmedabad South	1	221.00	221.00	
89	Bhubaneswar	1	114.00	114.00	

DAP No.	Name of Commissionerates involved	No. of cases	Objection Amount	Accepted Amount	Recovered Amount
90	Coimbatore (Audit)	1	93.20		
94	Guntur	1	13.04	13.04	

Appendix-V: Overview of audit of refund claims

(Reference: Paragraph 4.7)

(₹in lakh)

DAP No.	Name of Commissionerates involved	No. of cases	Objection Amount	Accepted Amount	Recovered Amount
38	Bengaluru West	1	13.53	16.06	16.06
41	Ludhiana	1	15.22	16.48	16.48
45	Chennai Outer	1	110.00	110.00	110.00
57	Vadodara II	1	31.98		
47	Mumbai East	19	402.00		
67	Kochi	1	227.00		

Appendix-VI: Other irregularities noticed during GST audit

(Reference: Paragraph 4.8)

(₹in lakh)

DAP No.	Name of Commissionerates involved	No. of cases	Objection Amount	Accepted Amount	Recovered Amount
28	Rourkela	1	315.00	315.00	1.03
30	Varanasi	1	9.71	9.71	9.71
33	Ranchi	1	56.30	56.30	56.30
54	Jaipur	1	126.00		
58	Ranchi	1	127.00	127.00	225.90
75	Jamshedpur	1	17.67	17.67	17.67
76	Jamshedpur	1	25.46	25.46	29.11
32	Agra	1	NA		

Appendix-VII: Impact on State Goods and Services Tax

(Reference: Paragraph 4.9)

(₹in lakh)

DAP No.	Name of State	Audit Para No.	Number of cases	Nature of audit observation	SGST amount involved	SGST amount accepted	SGST amount recovered
41	Punjab	4.7	1	Irregular claim of refund of ineligible input tax credit	8.24	8.24	8.24
57	Gujarat	4.7	1	Grant of Excess Refund	15.99	0.00	0.00
47	Maharashtra	4.7	8	• Excess grant of refund due to non-consideration of minimum balance in ECL • Irregular refund of ITC of IGST despite drawback at higher rate • Irregular grant of refund on ITC pertaining to capital goods	136.89	0.00	0.00
67	Kerala	4.7	1	Payment of excess GST refund	25.64	0.00	0.00
40	Jharkhand	4.6.10(c)	1	Ineligible ITC under SGST in Tran-1	216.00	216.00	0.00
28	Orissa	4.8.1	1	Non-payment of interest	137.00	0.00	0.00
30	Uttar Pradesh	4.8	1	Non-payment of GST	4.85	4.85	4.85
58	Jharkhand	4.8.2	1	Non-payment of GST	2.01	2.01	2.01
76	Jharkhand	4.8	1	Non-payment of GST	8.06	8.06	8.06

Appendix-VIII:
List of observations issued based on Audit conducted in FY19 & FY20
(Reference: Paragraph: 6.3)

(₹ in crore)

Sl. No.	DAP No.	Category	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
Section A: Lapses not detected by Internal Audit						
1	26D	ST	0.11	0.11	0.11	Chennai Outer
2	28D	ST	0.19	0.19		Rourkela
3	71D	ST	183.37	183.37		Bhubaneswar
4	75D	ST	0.33			Bengaluru East
5	90D	ST	1.11	1.11		Bengaluru West
6	27D	ST	0.11	0.11	0.11	Rourkela
7	59D	ST	0.42	0.42	0.27	Bengaluru East
8	85D	ST	0.39			Raipur
9	12D	ST	0.18		0.18	Palghar
10	46D	ST	0.32			Bhopal
11	63D	ST	0.16	0.16	0.16	Daman
12	55D	ST	0.34		0.34	Bengaluru North
13	88D	ST	4.22			Belagavi
14	54D	ST	1.13	1.13		Bengaluru East
15	58D	ST	0.18	0.18	0.18	Bengaluru East
16	76D	ST	0.92			Bengaluru North
17	91D	ST	0.21			Ahmedabad South
18	93D	ST	0.39			Aurangabad
19	10D	CX	6.06			Daman
20	20D	CX	0.13			Surat
21	4D	CX	0.43	0.43	0.43	Chennai Outer
22	23D	CX	34.84			Bengaluru North
23	32D	CX	0.44	0.44		Rourkela
24	7D	CX	1.02	1.02	1.02	Chennai South
25	33D	CX	9.37			Raipur
26	18D	CX	0.21	0.21	0.06	Surat
27	11D	CX	6.83			Daman
28	13D	CX	0.30	0.30		Medchal
29	16D	CX	0.92			Nagpur I
30	31D	CX	0.69			Rourkela
Section B: List of observations of non-compliance by the assessees						
Non-payment of Service Tax/Central Excise duty						
31	30D	ST	0.46	0.46		Delhi South
32	34D	ST	5.7	5.7		Delhi South
33	43D	ST	2.95	2.95		Hyderabad

Sl. No.	DAP No.	Category	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
34	21D	ST	0.40	0.40	0.40	Hyderabad
35	37D	ST	0.27	0.27	0.27	Allahabad
36	48D	ST	0.41		0.03	Bengaluru South
37	62D	ST	0.70		0.70	Chennai Outer
38	77D	ST	0.44			Bengaluru East
39	81D	ST	0.62		0.13	Ranchi
40	15D	ST	1.12	1.12	0.78	Medchal
41	26A	ST	0.57	0.57		Raipur
42	11B	ST	0.15	0.15	0.15	Chennai Outer
43	14B	ST	0.29	0.29	0.29	Daman
44	4B	ST	0.54	0.54		Thane
45	12B	ST	0.15	0.15	0.15	Thiruvananthapuram
46	3A	ST	5.93	5.93		Bengaluru North
47	18B	ST	0.13	0.13	0.13	Delhi South
48	16B	ST	0.14	0.14		Gandhinagar
49	17B	ST	0.25	0.25		Gandhinagar
50	10A	ST	0.72			Bengaluru North
51	20B	ST	0.14	0.14	0.07	Bengaluru North
52	21B	ST	0.32	0.32	0.08	Bengaluru East
53	23A	ST	1.30	1.30		Bengaluru North
54	26B	ST	0.15	0.15	0.15	Bengaluru East
55	27B	ST	0.12	0.12	0.08	Belagavi
56	31A	ST	0.18			Guntur
57	32A	ST	0.21			Medchal
58	10B	CX	1.90	1.90		Ujjain
59	14D	CX	6.74	6.74	1.98	Allahabad
Short payment of Service Tax/Central Excise duty						
60	44D	ST	0.42	0.42		Hyderabad
61	22D	ST	1.93	1.93	1.93	Mumbai South
62	50D	ST	0.35		0.35	Bengaluru East
63	19D	ST	0.2	0.2	0.2	Hyderabad
64	84D	ST	2.89		2.89	Bengaluru East
65	13B	ST	29.60	29.60		Mumbai East
66	1A	ST	1.69	1.69	0.11	Pune-II
67	22B	ST	0.11	0.11	0.03	Bengaluru East
68	22A	ST	2.64	2.64	0.15	Bengaluru East
69	24A	ST	2.53			Bengaluru North
70	25A	ST	0.76	0.76	0.48	Bengaluru East
71	19A	ST	0.21	0.21		Guntur
72	30A	ST	1.89			Guntur

Sl. No.	DAP No.	Category	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
73	92D	ST	0.28			Chandigarh
74	5A	CX	0.26	0.26		Pune-II
75	8B	CX	0.25	0.25		Medchal
76	11B	CX	0.17	0.17		Tirupati
77	12B	CX	0.75	0.75		Medchal
78	8D	CX	1.80			Ranga Reddy
Irregular availing/utilisation of CENVAT credit						
79	47D	ST	1.13		0.06	Bengaluru South
80	60D	ST	0.27	0.27	0.27	Kochi
81	2A	ST	0.33	0.33		Jodhpur
82	15B	ST	3.08	3.08		Goa
83	7B	ST	0.37	0.37		Goa
84	21A	ST	0.69			Bengaluru East
85	10A	CX	2.70		2.20	Belagavi
86	34D	CX	1.02			Raipur
87	37D	CX	0.83			Vadodara II
88	9B	CX	0.32	0.32	0.32	Mumbai East
89	13B	CX	0.20	0.20		Jaipur
90	9A	CX	0.33			Tirupati
91	25D	CX	0.22	0.22	0.22	Chennai North
92	6B	CX	0.17	0.17	0.17	Chennai Outer
Non/short reversal of CENVAT credit						
93	32D	ST	0.30	0.30		Delhi West
94	83D	ST	0.14	0.14		Bengaluru South
95	19B	ST	0.72	0.72	0.37	Bengaluru North
96	23B	ST	0.21	0.21	0.06	Bengaluru East
97	25B	ST	0.11	0.11	0.03	Bengaluru East
98	27A	ST	4.04	4.04		Bengaluru North
99	28A	ST	1.49	1.49		Bengaluru East
100	39D	ST	14.72	14.72		Bengaluru East
101	8A	CX	0.49	0.49		Ujjain
102	35D	CX	0.61			Raipur
103	41D	CX	12.16			Belagavi
Non-payment of Interest						
104	31D	ST	0.54	0.54	0.54	Delhi West
105	45D	ST	0.38	0.38		Guntur
106	41D	ST	0.18	0.18	0.17	Allahabad
107	23D	ST	0.24	0.24	0.24	Chandigarh
108	18D	ST	0.17	0.17	0.17	Hyderabad
109	20D	ST	0.20	0.20	0.20	Hyderabad
110	24D	ST	0.17	0.17	0.17	Thiruvananthapuram

Sl. No.	DAP No.	Category	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
111	35D	ST	0.17	0.17		Delhi South
112	42D	ST	0.5	0.5	0.1	Thiruvananthapuram
113	57D	ST	0.26			Bengaluru East
114	78D	ST	0.14		0.14	Bengaluru North
115	17A	ST	0.13	0.13	0.05	Delhi South
116	11A	ST	4.82	4.82	4.82	Rajouri Garden
117	24B	ST	0.17	0.17	0.17	Bengaluru North
Non-payment of Cess						
118	30D	CX	0.31	0.31		Bhopal
Section C: List of observations indicating lapse in Departmental functions						
Irregularity in processing of refunds						
119	33D	ST	0.71			Delhi South
120	15D	CX	0.34		0.34	Goa
121	24D	CX	0.39	0.39		Rohtak
Irregularities in issuing/monitoring of SCNs						
122	29D	ST	0.34	0.34		Mumbai Central
123	25D	ST	0.56			Mumbai Central
124	82D	ST	0.29			Delhi South
125	94D	ST	NMV			Thane Rural
126	26D	CX	0.20	0.20		Salem
127	29D	CX	0.29	0.29		Nashik
Ineffective monitoring of call book cases						
128	12D	CX	NMV	NMV		Bengaluru East
129	22D	CX	NMV			Bengaluru North
130	27D	CX	NMV			Patna-II
131	38D	CX	NMV			Bengaluru South
132	39D	CX	NMV			Belagavi
Non-levy of late fee/penalty						
133	36D	ST	0.24		0.07	Ghaziabad
134	38D	ST	0.49	0.49	0.07	Dehradun
135	52D	ST	0.19		0.03	Bengaluru North
136	28D	CX	0.11	0.11		Ghaziabad
Non-completion of anti-evasion investigations						
137	61D	ST	57.80			Belagavi
138	87D	ST	0.20			Belagavi
Observations regarding broadening of tax base						
139	72D	ST	0.35	0.35		Lucknow
140	49D	ST	11.05			Bengaluru North
Lack of timely action by departmental officer						
141	40D	ST	0.49			Rourkela
142	51D	ST	0.56	0.56	0.28	Bengaluru East

Sl. No.	DAP No.	Category	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
143	53D	ST	0.58		0.1	Mysuru
Irregularities in recovery of arrears						
144	86D	ST	5.04			Bengaluru North
145	89D	ST	NMV			Belagavi
146	40D	CX	NMV			Belagavi
	Total		**472.30**	**295.78**	**25.75**	

Appendix-IX

List of observations issued based on Audit conducted in period prior to FY19.

(Reference: Paragraph: 6.6)

(₹ in crore)

Sl. No.	DAP No.	Category	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
Section A: Cases in which rectificatory action is pending						
1	2D	ST	1.91			Mumbai East
2	79D	ST	2.92			Kolkata North
3	80D	ST	18.31			Lucknow, Agra, Allahabad, GB Nagar, Greater Noida, Ghaziabad, Kanpur, Meerut, Noida and Varanasi
4	10D	ST	0.54		0.24	Bengaluru West
5	74D	ST	3.06			Bengaluru West
6	67D	ST	0.87			Surat
7	70D	ST	0.67			Varanasi
8	20A	ST	433			Mumbai East
9	18A	ST	0.44			Bengaluru West
10	33A	ST	2.60			Bengaluru East
11	17D	CX	1.61			Ahmedabad North
12	1A	CX	0.65	0.65		Ahmedabad North
13	21D	CX	1.31			Bengaluru North West
14	36D	CX	2.51			Raipur
Section B: Cases in which rectificatory action has been taken by the department						
15	15A	ST	0.26	0.26	0.15	Chennai South
16	13A	ST	1.70	1.70		Bengaluru East
17	14A	ST	3.44	3.44		Bengaluru North
18	6A	ST	6.5	6.5		Vadodara-I
19	5A	ST	1.92	1.92	1.15	Bengaluru South
20	65D	ST	1.99	1.99		Bengaluru East
21	29A	ST	0.2	0.2		Raipur
22	73D	ST	10.37	10.37		Bengaluru East
23	16A	ST	0.28	0.28	0.09	Salem
24	66D	ST	1.87	1.87		Daman
25	12A	ST	0.18	0.18		Vadodara-II
26	7A	ST	4.07	4.07		Patna-I
27	8A	ST	0.21	0.21		Patna-I
28	8D	ST	1.82	1.82		Mangalore
29	69D	ST	0.22	0.22	0.1	Meerut
30	9A	ST	0.3	0.3		Patna-II

Sl. No.	DAP No.	Category	Amount Objected	Amount Accepted	Amount Recovered	Name of Commissionerate
31	68D	ST	0.41	0.41	0.41	Jamshedpur
32	4A	ST	1.43	1.43		Hyderabad
33	1D	ST	30.67	30.67		Mumbai Central
34	3D	ST	0.67	0.67	0.67	Mumbai East
35	1B	ST	0.11	0.11	0.11	Ludhiana
36	14D	ST	1.49	1.49	1.49	Medchal
37	13D	ST	1.02	1.02	1.02	Hyderabad
38	16D	ST	0.29	0.28	0.18	Jaipur
39	10B	ST	0.41	0.41	0.41	Jaipur
40	4D	ST	0.52	0.52		Bengaluru North
41	5D	ST	0.37	0.37	0.37	Mangalore
42	6D	ST	0.45		0.45	Bengaluru North
43	7D	ST	0.19	0.19	0.19	Bengaluru West
44	2B	ST	0.18	0.18	0.17	Mumbai Central
45	3B	ST	0.30	0.30	0.30	Palghar
46	17D	ST	0.35			Udaipur
47	8B	ST	94.71	94.71		Jaipur
48	9D	ST	15.48			Belagavi
49	11D	ST	0.33			Belagavi
50	9B	ST	1.16	1.16		Mumbai East
51	6B	ST	4.19	4.19		Mumbai West
52	5B	ST	3.60	3.60		Mumbai West
53	1B	CX	0.33	0.33	0.33	Pune-I
54	1D	CX	0.38	0.38		Daman
55	2A	CX	0.20	0.20		Palghar
56	2B	CX	0.27	0.27	0.14	Nagpur-I
57	2D	CX	0.15		0.15	Vadodara-II
58	3A	CX	0.16	0.16		Palghar
59	3B	CX	0.16	0.16	0.16	Mangalore
60	3D	CX	0.15		0.15	Bengaluru North
61	4A	CX	0.56			Ranchi
62	4B	CX	0.27	0.27	0.27	Palghar
63	5B	CX	0.15	0.15	0.06	Nagpur-I
64	5D	CX	0.20	0.20		Ranchi
65	6D	CX	0.36			Medchal
66	9D	CX	0.31	0.31	0.31	Ahmedabad North
	Total		**667.71**	**180.12**	**9.07**	

Glossary

AC	Assistant Commissioner
ACES	Automation of Central Excise and Service Tax
ACM	Audit Committee Meeting
AIS	Application & Infrastructure Support
ARN	Application Reference Number
BCP	Business Continuity Plan
BI	Business Intelligence
BM	Bill of Material
CAS	Content-addressed storage
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CCR	Cenvat Credit Rules
CE/CX	Central Excise
Cenvat	Central Value Added Tax
CEO	Chief Executive Officer
CESTAM	Central Excise and Service Tax Audit Manual
CESTAT	Central Excise and Service Tax Appellate Tribunal
CGST	Central Goods and Services Tax
CMP	Change Management Process
CNG	Compressed Natural Gas
CR	Change Request
CTH	Chapter Tariff Heading
DAR	Draft Audit Report
DC	Data Centre
DG	Director General
DGGSTI	Director General of Goods and Service Tax Intelligence

DGS	Directorate General of Systems & Data Management
DM	Deficiency Memo
DMG	Department of Mines and Geology
DoR	Department of Revenue
DR	Disaster Recovery
EC	Education Cess
ECL	Electronic Cash/credit ledger
ER	Excise return
EVP	Executive Vice President
EWB	E-Way Bills
FY	Financial Year
GOK	Government of Karnataka
GST	Goods and Services Tax
GSTN	Goods and Services Tax Network
GSTR	Goods and Service Tax Return
GTA	Goods Transport Agency
ICEGATE	Indian Customs Electronic Gateway
ICES	Indian Customs Electronic Data Interchange System
IDS	Inverted Duty Structure
IGST	Integrated Goods and Service Tax
IMP	Incident Management Process
ISD	Input Service Distributor
IT	Information Technology
ITC	Input tax credit
KKC	Krishi Kalyan Cess
LAR	Local Audit Report
LMP	License Management Process

LOU/LUT	Letter of Undertaking
MCA	Ministry of Corporate Affairs
MF	Main Flow
MPR	Monthly Performance Report
MSP	Managed Service Provider
NIC	National Informatics Centre
NRTP	Non Resident Taxable Person
NT	Non-Tariff
OEM	Original Equipment Manufacturer
OIO	Order in Original
ONP	Other Notified Persons
PD	Principal Director
PFMS	Public Financial Management System
PNG	Piped Natural Gas
QCM	Quarterly Coordination Meeting:
RCA	Root Cause Analysis
RCM	Reverse Charge Mechanism
RPO	Refund Processing Officer
RR	Railway Receipt
SBC	Swachh Bharat Cess
SCN	Show cause notice
SEZ	Special Economic Zone
SGST	State Goods and Service Tax
SHEC	Secondary and Higher Secondary Cess
SLA	Service Level Agreement
SOP	Standard Operating Procedure
SQA	Software Quality Assurance

SRA	Slum Rehabilitation Authority
SRS	System Requirements Specification
ST	Service tax
SVLDRS	Sabka Vishwas Dispute Resolution Scheme
SVP	Senior Vice President
TAR	Tax Arrear Report/Recovery
UIN	Unique Identification Number
VAT	Value Added Tax
Y-o-Y	Year-on-Year