Chapter II

Value Added Tax and Goods and Services Tax

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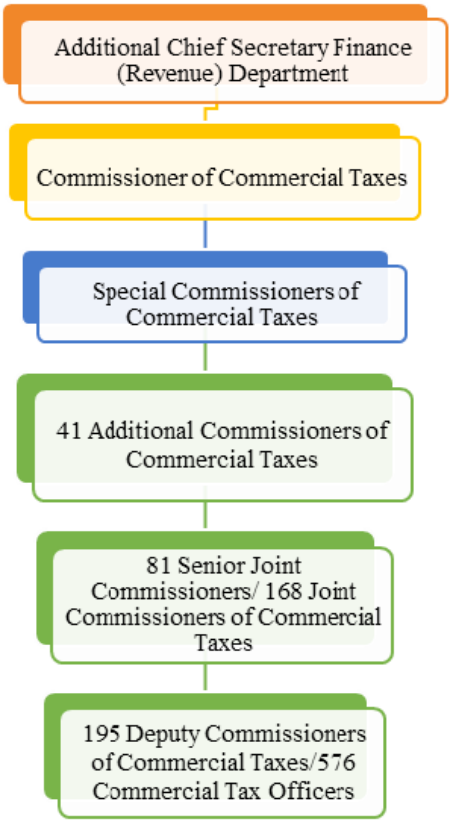
2.1 Tax administration

During 2018-19, for administering the relevant Value Added Tax (VAT) laws and rules framed thereunder, the following tax administration was in place:

Chart 2.1: Tax Administration



2.2 Internal Audit

The Department has an Internal Audit Wing (IAW) under the charge of the Special Commissioner of Commercial Taxes. He is assisted by one Additional Commissioner of Commercial Taxes, two Senior Joint Commissioners, five Joint Commissioners, two Deputy Commissioners and two Commercial Tax Officers. This Wing conducts scrutiny and detects irregularities in the assessment of VAT cases as well as checks different records and registers to ascertain whether internal control system as envisaged in the Acts and Rules made thereunder are properly followed.

Of the 68 Charge Offices, 17 Circles and 10 Ranges under the Directorate of Commercial Taxes (DCT), West Bengal, the IAW did not plan for internal audit during 2018-19.

2.3 Results of audit

In 2018-19, test check of the records of 45 units relating to VAT assessments and other records showed under-assessment of tax and other irregularities involving ₹ 295.14 crore in 735 cases (**Table 2.1).**

Table 2.1: Results of audit

(₹ in crore)

Sl. No.	Categories	Number of cases	Amount
1.	Incorrect determination of Contractual Transfer Price (CTP)/ Turnover of Sales (TOS)	292	121.18
2.	Non/ short levy of purchase tax/ penalty/ interest	217	85.69
3.	Irregular allowance of transfer of goods/ Input Tax Credit (ITC)/ remission	66	21.74
4.	Application of incorrect rate of tax/ mistake in computation	43	1.53
5.	Others	117	65
Total		**735**	**295.14**

During the course of the year 2018-19, the Department accepted under-assessment and other deficiencies in 483 cases amounting to ₹ 74.87 crore, of which 447 cases involving ₹ 57.13 crore were pointed out in audit during the year 2018-19 and the rest in earlier years. An amount of ₹ 70.16 lakh was realised in 42 cases during the year 2018-19.

Compliance Audit

Audit was conducted in 45 out of 95 units administering Value Added Tax during financial year of April 2018 to March 2019 and in 17 units between January and March 2018. Audit test checked 23,996 out of 39,341 cases assessed in 62 Charge Offices. The cases mentioned in the succeeding paragraphs are those which came to notice in the course of test audit for the period 2018-19 as well as those which came to notice between January and March 2018, but could not be reported in the previous Audit Report. The cases were examined to ascertain the extent of compliance of provisions of the Acts and Rules framed thereunder. The audit findings in 550 cases involving ₹ 67.10 crore in 42 units are discussed in the following paragraphs:

2.4 Incorrect determination of Turnover of Sales (TOS)

The Assessing Authorities (AAs) incorrectly determined turnover of sales at ₹ 2,487.61 crore instead of ₹ 2,775.09 crore in 52 cases. This resulted in short determination of TOS of ₹ 287.48 crore with consequent short levy of VAT of ₹ 20.79 crore.

In terms of Section 2(55) of West Bengal Value Added Tax (WBVAT) Act, 2003, TOS in relation to any period means the aggregate of the sale prices/ parts of sale prices received/ receivable by a dealer in respect of sales of goods made during such period which remains after making deductions[112] prescribed under the Act. Section 16 of WBVAT Act, 2003 provides applicable rates for levy of VAT on such part of the TOS, which remains after making deductions therefrom as prescribed under the Act. Further, when a dealer imports taxable goods from any place outside West Bengal, he is required to obtain an e-way bill in Form 50A, in respect of transport of such goods. With effect from 01 December 2010, provisions have been made under Rule 110B of the WBVAT

[112] *Sale price of goods, tax on which has been paid on M.R.P.at the time of purchase and Intra-state sales return within six months from the date of sale.*

Rules for selected[113] registered dealers to obtain way bills electronically. Section 42 of the WBVAT Act, 2003 provides that correctness of TOS furnished in returns by the assesse may be verified with reference to the accounts, registers or documents, including those in electronic records maintained or kept by the dealer. Information in respect of TOS and utilisation of way bills is also available in the database of the DCT, which can be accessed through the Information Management for Promotion of Administration in Commercial Taxes (IMPACT), a web based application software developed by DCT for better tax administration.

Audit found that in 52 cases[114]of 49 dealers in 15 Charge Offices, the AAs determined TOS at ₹ 2,487.61 crore instead of ₹ 2,775.09 crore. This resulted in short determination of TOS of ₹ 287.48 crore, with consequent short levy of VAT of ₹ 20.79 crore as detailed in the following table:

Table 2.2: Incorrect determination of TOS

(₹ in crore)

Sl. No.	Nature of irregularity	No. of cases/no. of dealers	Name of the Charge Office	TOS assessable	TOS assessed	TOS determined short	VAT levied short
(1)	(2)	(3)	(4)	(5)	(6)	(7)= (5-6)	(8)
1.	TOS based on the value of goods imported from outside West Bengal as per database maintained by DCT and books of accounts of the dealers was higher than that assessed on the basis of returns by the dealers.	34/31	Bhowanipore, Kadamtala, Large Taxpayers Unit (LTU), N S Road, Radhabazar	1,962.96	1,741.9	221.06	16.94
2.	Turnover of sales assessed by AAs was short of that shown in books of Accounts.	18/18	Barrackpore, Bally, Berhampore, Chandney Chawk, Ezra Street, LTU, Midnapore, N S Road, Park Street, Serampore, Shibpore, Siliguri	812.13	745.71	66.42	3.85
	Total	**52/49**		**2,775.09**	**2,487.61**	**287.48**	**20.79**

In the cases pointed out in the table, the concerned AAs did not verify the correctness of the declared TOS with reference to the other records and the discrepancies were overlooked during assessment. This resulted in under assessment of TOS and short levy of tax of ₹ 20.79 crore.

After this was pointed out (between January 2018 and March 2019), 11 Charge Offices, while accepting the audit observations in 19 cases involving ₹ 1.66 crore, stated (between February 2018 and July 2019) that:

[113] *Registered dealers who are required to furnish returns quarterly and electronically transmitting data in the returns.*

[114] *Assessed between June 2015 and October 2017 for assessment periods between 2012-13 and 2014-15.*

- Proposal for *suo motu* revision of the cases had been sent to higher authorities in 11 cases involving ₹ 1.25 crore, and
- Necessary actions were being taken in eight cases involving ₹ 41.43 lakh.

However, no report on realisation of tax was furnished. In the remaining 33 cases, the Charge Offices did not furnish any reply (December 2020). The matter was reported to the Government in March 2020, followed by a reminder in October 2020. Reply was awaited (December 2020).

2.5 Irregular allowance of input tax credit

In 59 cases of 57 dealers, the AAs allowed Input Tax Credit (ITC) of ₹ 35.17 crore instead of ₹ 13.43 crore admissible to the dealers. This resulted in irregular allowance of ITC of ₹ 21.74 crore.

Section 22 of the WBVAT Act 2003 read with Rules 20 and 23 of the WBVAT Rules, 2005 prescribe that a registered dealer can avail benefits of Input Tax Credit (ITC) to the extent of tax paid or payable by him in respect of purchase of taxable goods from registered dealers of West Bengal. Any amount of ITC, which remains in excess at the end of assessment period, shall be carried over to the next assessment period. Further, ITC shall not be allowed where original tax invoice has not been issued by the selling dealer from whom the goods are purported to have been purchased. Excess of ITC beyond admissible amount shall be reversed.

Audit observed that in 59 cases of 57 dealers in 25 Charge Offices, the AAs allowed ITC of ₹ 35.17 crore. The dealers were, however, eligible for ITC of ₹ 13.43 crore only. This resulted in irregular allowance of ITC of ₹ 21.74 crore as detailed in the following table:

Table 2.3: Irregular allowance of ITC

(₹ in crore)

Sl. No.	Nature of irregularity	Name of Charge Office	No. of cases/ dealers	ITC ALLOWED	ITC allowable	ITC allowed in excess
(1)	(2)	(3)	(4)	(5)	(6)	(7) = (5-6)
1.	ITC was allowed on purchases made from dealers whose registration certificates were cancelled before purchases were made.	Belgachia, Ezra Street, Kadamtala, Radhabazar, Strand Road	7/7	0.3	Nil	0.3
2.	ITC was allowed on purchases made from dealers who did not show any sale in their returns.	Ballygunge, Barrackpore, Beliaghata, Bhawanipore, Fairlie Place, LTU, Maniktola, Midnapore, Postabazar, Salt Lake, Siliguri, Tamluk	23/22	5.73	Nil	5.73
3.	ITC was allowed on claim of purchases higher than the sales disclosed by selling dealers.	Bally, Beliaghata, Burdwan, Krishnanagar, LTU, Manicktola, Salt Lake, Siliguri	16/15	2.24	1.42	0.82

Sl. No. (1)	Nature of irregularity (2)	Name of Charge Office (3)	No. of cases/ dealers (4)	ITC ALLOWED (5)	ITC allowable (6)	ITC allowed in excess (7) = (5-6)
4.	Claim of ITC brought forward from previous assessment period by a dealer was allowed by AA despite the fact that the dealer did not have any ITC to be carried forward from previous assessment period.	Radhabazar	1/1	0.28	Nil	0.28
5.	The AA allowed ITC as brought forward from previous assessment period, though the dealer did not have such claim of ITC in his returns.	Siliguri	1/1	0.11	Nil	0.11
6.	Net ITC was allowed excess in assessment.	Asansol, Bally, Berhampore, Siliguri,Suri	7/7	9.27	7.94	1.33
7.	Claim of ITC was allowed by the AA on purchases made by the dealer that did not have valid invoices.	LTU, Park Street	3/3	17.19	4.05	13.14
8.	ITC was reversed short in assessment.	Behala	1/1	0.05	0.02	0.03
Total			**59/57**	**35.17**	**13.43**	**21.74**

After this was pointed out (between January 2018 and March 2019), the Berhampore Charge Offices intimated (July 2019) realisation of ₹ 4.06 lakh out of ₹ 11.71 lakh in one case. Eighteen Charge Offices, while accepting the audit observations in 41 cases involving ₹ 7.78 crore, stated (between February 2018 and September 2019) that:

- Proposal for *suo motu* revision had been/ were being sent to higher authorities in 10 cases involving ₹ 1.45 crore;
- Proposals had been sent to higher authorities to re-open 13 cases involving ₹ 4.52 crore;
- Necessary action would be taken in 13 cases involving ₹ 75.33 lakh;
- In one case involving ₹ 2.93 lakh, where the dealer's ITC did not match the seller's return, the dealer agreed to reverse the ITC and paid tax on such amount;
- Assessment proceedings had been initiated in three cases involving ₹ one crore; and
- Revised demand notice had been issued after *suo motu* revision in one case involving ₹ 2.08 lakh.

However, report on levy and realisation of tax in the 41 cases were yet to be furnished. In the remaining 17 cases involving ₹ 13.84 crore, the Charge Offices did not furnish any reply (December 2020). The matter was reported to the Government in February 2020 followed by a reminder in October 2020. Reply was awaited (December 2020).

2.6 Incorrect determination of Contractual Transfer Price

The AAs incorrectly determined Contractual Transfer Price (CTP) of ₹ 223.43 crore instead of ₹ 501.33 crore in 255 cases. This resulted in short determination of CTP of ₹ 277.90 crore with consequent short levy of tax of ₹ 16.29 crore.

In terms of Section 2(10) the WBVAT Act, 2003, Contractual Transfer Price (CTP) in relation to any period is the amount received or receivable by a dealer in respect of transfer of property in goods in the execution of any works contract. Sections 14 and 18 of the Act prescribe that any transfer of property in goods involved in the execution of a works contract shall be deemed to be a sale by the person making such transfer. Under Section 40 of the Act, a contractee shall deduct tax at source at the rate of three *per cent* from payments made to a registered dealer for execution of a works contract. Details of all payments made by contractees to a contractor for execution of works contract and the tax deducted at source thereon are available in the database of the DCT, which can be accessed through a web based application software IMPACT developed by the Directorate for better tax administration. Value Added Tax on CTP payable by registered dealers and dealers other than registered dealers is assessed under Section 46 and 48 of the Act, respectively.

Audit observed in 37 Charge Offices that in 255 cases of 241 dealers, the AAs incorrectly determined CTP at ₹ 223.43 crore instead of ₹ 501.33 crore. This resulted in short determination of CTP of ₹ 277.90 crore with consequent short levy of tax of ₹ 16.29 crore as detailed in the following table:

Table 2.4: Incorrect determination of CTP

(₹ in crore)

Sl. No.	Nature of irregularity	No. of dealers/ cases	CTP assessable	CTP assessed	Short determination of CTP	Short levy of tax
1.	Payments made by the contractees as per details available in the database of IMPACT was higher than that assessed/ shown in returns of dealers/ contractors.	230/240	483.98	218.83	265.15	15.50
2.	CTP assessed by AAs was short of that shown in audit reports of the dealers/ contractors.	2/2	5.37	3.02	2.35	0.13
3.	CTP from a work in progress in 2013-14 was not considered in assessment of tax for the period 2014-15 on completion of the work during 2014-15.	1/1	3.68	0	3.68	0.26
4.	Payments made by the contractees as per details available in the database of IMPACT to the unregistered dealers/ contractors were not assessed by the AAs.	7/11	6.06	0	6.06	0.35
5.	CTP assessed by AA was short of that shown in return.	1/1	2.24	1.58	0.66	0.05
Total		**241/255**	**501.33**	**223.43**	**277.90**	**16.29**

The AAs concerned did not cross-verify CTP disclosed by the dealers with payments received by the dealers from contractees in execution of works contract as available in the database of IMPACT and return/ audit reports of the dealers. This resulted in short levy of tax of ₹ 16.29 crore.

After this was pointed out (between January 2018 and March 2019), 33 Charge Offices, while accepting audit observations in 229 cases involving ₹ 12.89 crore, stated (January 2018 and March 2019) that:

- Proposal for *suo motu* revision had been/ would be sent to higher authorities in 41 cases involving ₹ 4.32 crore;
- Proposals had been sent to higher authorities to reopen 124 cases involving ₹ 5.03 crore;
- Assessment proceedings would be initiated in 37 cases involving ₹ 1.45 crore and
- Necessary actions were being taken in 27 cases involving ₹ 2.08 crore.

However, no report on realisation of tax was furnished. In the remaining 26 cases involving ₹ 3.40 crore, the Charge Offices did not furnish any reply (December 2020).

The matter was reported to the Government in February 2020, followed by a reminder in October 2020. Reply was awaited (December 2020).

2.7 Incorrect determination of taxable Contractual Transfer Price

In 14 cases, the AAs allowed excess deduction towards payment to sub-contractors and labour, services and other like charges. This resulted in short determination of taxable CTP by ₹ 16.55 crore with consequent short levy of tax of ₹ 1.73 crore.

Under Section 18(2) of WBVAT Act, 2003, the part of CTP, which remains after deducting labour, service and other like charges, payment to sub-contractors *etc*., is taxable CTP. Further, Section 18(2)(C) provides for deduction towards payment made to a sub-contractor, provided that the sub-contractor is a registered dealer under the Act and he has paid tax on the amount of such deduction and which has been included in his return. The labour, service and other like charges to be deducted from the CTP have been specified under clauses (a) to (g) of Rule 30(1) of WBVAT Rules, 2005. Tax deducted at source (TDS) and security deposit are not admissible as deduction from CTP in terms of clauses of Rule 30(1) of WBVAT Rules, 2005.

Audit observed in four Charge Offices and Jalpaiguri Circle Office that in 14 cases, the AAs incorrectly allowed deductions of ₹ 22 crore instead of ₹ 5.45 crore from CTP of ₹ 402.01 crore. This resulted in short determination of taxable CTP by ₹ 16.55 crore with consequent short levy of tax as detailed in the following table:

Table 2.5: Incorrect determination of taxable CTP

(₹ in crore)

Sl. No. (1)	Nature of irregularity (2)	Name of Charge Office (3)	No. of cases (4)	CTP (5)	Deduction allowed (6)	Deduction admissible (7)	Excess allowance (taxable CTP) (8)=(6-7)	Short levy of tax (9)
1.	Deduction from CTP towards labour, service and other like charges was allowed by AA in excess of that admissible under Rule 30(1).	Jalpaiguri Circle, LTU, Tamluk	4	189.94	14.92	5.45	9.47	0.76
2.	Tax deducted at source (TDS) from CTP was allowed by AAs which was not admissible under section 18(2).	Coochbehar	8	199.03	5.31	Nil	5.31	0.76
3.	Deduction from CTP towards security deposit was allowed by AA which was not admissible in terms of clause (a) to (g) of Rule 30(1).	Jalpaiguri Circle	1	3.70	0.30	Nil	0.30	0.02
4.	Deduction towards payment made to unregistered sub-contractor was not admissible under section 18(2)(C).	Midnapore	1	9.34	1.47	Nil	1.47	0.19
Total			**14**	**402.01**	**22.00**	**5.45**	**16.55**	**1.73**

The aforementioned cases indicate that the AAs did not comply with the provisions of the Rules while determining taxable CTP of the dealers concerned, resulting in under assessment of taxable CTP and short levy of tax of ₹ 1.73 crore.

After this was pointed out in audit, the Charge Offices, while accepting the audit observations in five cases involving ₹ 92.35 lakh, stated (between February and June 2018) that:

- *Suo motu* revision had been/ was being initiated in three cases involving ₹ 70.01 lakh; and
- Notice had been issued for review of two cases involving ₹ 22.34 lakh.

Report on levy and realisation of tax was yet to be furnished. In the remaining nine cases involving ₹ 80.32 lakh, the Charge Offices did not furnish any reply (December 2020). The matter was reported to the Government in February 2020. Reply was awaited (December 2020).

2.8 Penalty on evaded tax not levied

The AAs did not initiate proceedings to levy penalty despite evasion of tax by dealers in 120 cases. Penalty to the extent of ₹ 52.09 crore was not levied for such evasion of tax/ineligible claims of ITC.

1. Section 96 of the WBVAT Act, 2003, prescribes levy of penalty if a dealer has concealed any sale/ purchase/ CTP or claimed excess amount of ITC without entering into valid transactions with the selling dealers.

The quantum of penalty should not exceed twice the amount of tax, which would have been avoided if such concealment was not detected. A minimum penalty of 25 *per cent* of the amount of evaded tax was to be levied in cases where dealer has admitted the evasion of tax and paid the evaded tax.

Audit observed in 31 Charge Offices that in 110 cases of 99 dealers, Bureau of Investigation and AAs detected evasion of tax of ₹ 31.10 crore by the dealers. Of these, in 85 cases of 81 dealers, the AAs did not initiate proceedings to levy penalty against the dealers for suppression of sales/ purchases/ ITC. Penalty not exceeding ₹ 48.42 crore, being twice the amount of tax evaded of ₹ 24.21 crore was leviable for such evasion of tax in these cases. In the remaining 25 cases, 18 dealers admitted the evasion of tax and paid the evaded tax. The AAs, however, did not initiate proceedings to levy minimum penalty of ₹ 1.72 crore at the rate of 25 *per cent* of the amount of evaded tax after detection of evasion. Reasons for non-initiation of penalty proceedings were not available in the assessment case records.

After this was pointed out (between January 2018 and March 2019), 26 Charge Offices, while accepting the audit observations in 83 cases involving ₹ 20.14 crore, stated that

- Penal proceedings had been/ were being initiated in 65 cases involving ₹ 17.75 crore;
- Proposal for *suo motu* revision had been forwarded to higher authorities in three cases involving ₹ 3.99 lakh;
- Penalty had been imposed and notice of demand of penalty had been issued in seven cases involving ₹ 82.88 lakh, and
- Necessary action was being taken in eight cases involving ₹ 1.52 crore.

However, no report on realisation of penalty was furnished (December 2020). In the remaining 27 cases involving ₹ 30 crore, the Charge Offices did not furnish any reply (December 2020).

2. Section 22A of the WBVAT Act, 2003 prescribes levy of penalty if a dealer has claimed ITC without entering into a valid transaction of purchase with another dealer. Penalty at the rate of 25 *per cent* of ineligible claim of ITC is leviable, if the dealer admits in writing the fact of such ineligible claim of ITC and pays the full amount of tax involved therein within one month of inspection or enquiry. In all other cases, penalty is leviable at the rate of 150 *per cent* of ineligible claim of ITC.

Audit observed in five Charge Offices that in 10 cases, ITC of ₹ 1.30 crore was claimed without entering into valid transactions with other dealers. These included cases where

- The registration certificates of the selling dealers from whom goods were claimed to have been purchased by the dealers mentioned in the paragraph, were found to have been cancelled prior to the purchases;
- The selling dealers were found non-existent at their declared place of business;
- Invoices were issued without movement of goods.

Of these, four cases of inadmissible ITC claims were detected by Bureau of Investigation (BOI) for an amount of ₹ 0.69 crore between March 2016 and January 2017 and six cases by AAs for ITC claims of ₹ 0.61 crore between June 2016 and June 2017. The dealers, however, neither admitted in writing the fact of such ineligible claims of ITC nor paid the full amount of tax involved therein within one month of inspection or enquiry. The AAs did not initiate proceedings to levy penalty under Section 22A of the WBVAT Act. This resulted in non-levy of penalty of ₹ 1.95 crore.

After this was pointed out (between April 2018 and February 2019), four Charge Offices while accepting audit observations in nine cases involving ₹ 92.21 lakh, stated that penal proceedings had been/ were being initiated in eight cases and notice of demand of penalty had been issued in one case. However, no report on realisation of penalty was furnished (December 2020). In the remaining one case, the Charge Office did not furnish any reply (December 2020). The matter was reported to the Government in March 2020 followed by a reminder in October 2020. Reply was awaited (December 2020).

2.9 Non/ short levy of interest

Interest of ₹ 5.01 crore was not levied/short levied in 29 cases

In terms of Section 33 of the WBVAT Act, 2003, a dealer shall be liable to pay interest if he:

- fails to adjust the amount of any inadmissible ITC by way of deduction from the amount of ITC claimed for a tax period, or
- fails to furnish return by the prescribed date or thereafter in respect of any return period before assessment, or
- makes delay in payment of net tax in respect of any tax period.

The interest shall be payable at the rate of 12 *per cent* per annum up to 31 March 2015 and from 1 April 2015 at the rates as specified below: -

i. At the rate of one *per cent* per month up to the first 90 days of the period for which such interest is payable;

ii. At the rate of one and half *per cent* per month after the first 90 days and up to 300 days of the period for which such interest is payable; and

iii. At the rate of two *per cent* per month after the first 300 days of the period for which such interest is payable.

Audit observed in 11 Charge Offices that in 29 cases of 26 dealers, the AAs did not levy interest of ₹ 4.95 crore in 27 cases and short levied interest of ₹ six lakh in two cases as detailed in the following table:

Table 2.6: Non/ short levy of interest

(₹ in crore)

Sl. No. (1)	Nature of irregularity (2)	Name of Charge Offices (3)	No. of cases/ dealers (4)	Tax on which interest was leviable (5)	Interest leviable (6)	Interest levied (7)	Non/short levy of interest (8)= (6-7)
1.	Interest not levied on inadmissible claim of ITC.	Belgachia, Colootola, Fairlie Place, Kadamtala, LTU, N.D. Sarani, Radhabazar, Serampore	23/20	14.51	4.71	Nil	4.71
2.	Interest not levied on tax admitted but not paid by dealers within the prescribed dates.	Coochbehar	1/1	0.63	0.20	Nil	0.20
3.	Interest not levied/ short levied for non-submission of returns.	Krishnanagar, Shibpore	5/5	0.56	0.23	0.13	0.10
Total			**29/26**	**15.70**	**5.14**	**0.13**	**5.01**

The cases pointed out in the table above indicate that provisions for levy of interest were not being complied with by the AAs concerned at the time of assessment. This resulted in non/ short levy of interest of ₹ 5.01crore.

After this was pointed out, seven Charge Offices, while accepting the audit observations in 10 cases involving ₹ 1.19 crore, stated that:

- Proposal for *suo motu* revision had been/ were being sent to higher authorities in eight cases involving ₹ 39.40 lakh;
- Interest would be levied in one case involving ₹ 78.44 lakh, and
- Final reply would be sent later in one case involving ₹ 1.22 lakh.

They, however, did not furnish any report on realisation of interest.

In the remaining 19 cases involving ₹ 3.82 crore, Charge Offices did not furnish any replies (December 2020).

The matter was reported to the Government in March 2020, followed by a reminder in October 2020. Reply was awaited (December 2020).

2.10 Short levy of tax due to incorrect computation

In 21 cases, the AAs assessed output tax of ₹ 18.48 crore instead of ₹ 20.02 crore due to error in computation. This resulted in short levy of tax of ₹ 1.54 crore.

Under the WBVAT Act, 2003, tax is to be computed at prescribed rates along with interest and penalty, if any, on the goods sold.

Audit observed in 10 Charge Offices that in 21 cases, the AAs assessed output tax of ₹ 18.48 crore instead of ₹ 20.02 crore due to incorrect computation of tax. This resulted in short levy of tax of ₹ 1.54 crore as detailed in the following table:

Table 2.7: Short levy of tax due to incorrect computation

(₹ in crore)

Sl. No. (1)	Nature of irregularity (2)	Name of the Charge Office (3)	No. of cases (4)	Tax leviable (5)	Tax levied (6)	Short levy of tax (7) =(5-6)
1.	Amount of tax computed at the applicable rates was less than that computable at those rates	Bally, Behala, Kadamtala, LTU, Serampore, Siliguri	7	3.76	3.47	0.29
2.	Tax on TOS was computed less than that payable by the dealers due to mistake in computation of TOS by AAs.	LTU, N S Road, Postabazar, Serampore	5	11.49	11.20	0.29
3.	Tax on CTP was computed less than that payable by the dealer due to mistake in computation of taxable CTP.	Asansol, LTU, Midnapore, Serampore	9	4.77	3.81	0.96
Total			**21**	**20.02**	**18.48**	**1.54**

In the cases pointed out in the table above, the AAs concerned did not check the computations before passing the assessment orders and issuing demand notices thereafter to the dealers concerned. This resulted in short levy of tax of ₹ 1.54 crore.

After this was pointed out (between January 2018 and January 2019), eight Charge Offices accepted (between March 2018 and September 2019) audit observations in 13 cases involving ₹ 1.05 crore. Of these, Postabazar Charge Office intimated (July 2019) realisation of ₹ 2.33 lakh in one case. The remaining seven Charge Offices, in 12 cases involving ₹ 1.03 crore stated (between March 2018 and September 2019) that:

- Revised demand notice has been issued after *suo motu* revision in one case involving ₹ 1.08 lakh;
- Proposals for *suo motu* revision had been sent/ were being sent to the higher authorities in nine cases involving ₹ 99.02 lakh; and
- Necessary action was being taken in two cases involving ₹ 2.97 lakh.

However, they did not furnish any report on realisation of tax.

In the remaining eight cases, the Charge Offices did not give any reply/ specific reply (December 2020).

The cases were reported to the Government in March 2020, followed by a reminder in October 2020. Reply was awaited (December 2020).

The paragraphs discussed above bring out under-assessment of VAT mainly because of inadequate compliance of the provisions of the Act and Rules framed thereunder, under-utilisation of the database accessible through IMPACT software to ascertain the correctness of dealer's claim against TOS, CTP, ITC disclosed in returns etc. Accordingly, corrective measures need to be taken immediately to make good the deficiencies during assessment, to ensure that there is no shortfall in revenue realisation.

Goods and Services Tax (GST)

Introduction

Goods and Services Tax (GST) came into effect in West Bengal on 1 July 2017. GST[115] is being levied on intra-State supply of goods or services (*except alcohol for human consumption and five specified petroleum products*[116]) separately but concurrently by the Union and the States/ Union territories. Further, Integrated GST (IGST) is being levied on inter-State supply of goods or services (including imports) and the Central Government has the exclusive power to levy IGST. Prior to implementation of GST, VAT was levied on intra-State sale of goods as per the WBVAT Act, 2003 and Central Sales Tax (CST) on sale of goods in the course of inter-State trade or commerce as per the CST Act, 1956.

The State Government is empowered to regulate the provisions of WBVAT Act whereas provisions relating to GST are being regulated by Centre and State on the recommendation of Goods and Services Tax Council (GSTC) which was constituted with representation from Centre and all the States to recommend on matters related to GST. The West Bengal Goods and Services Tax (WBGST) Ordinance was notified by the State Government in June 2017 and subsequently the WBGST Rules, 2017 and the WBGST Act, 2017 were notified in June 2017 and August 2017, respectively. Various taxes[117] were subsumed in the GST.

Goods and Services Tax Network (GSTN) was set up by the Government of India as a private company to provide IT services. It provides front-end IT services to taxpayers namely registration, payment of tax and filing of returns. Back-end IT services, *i.e.*, registration approval, taxpayer detail viewer, refund processing, MIS reports, *etc.* are also being provided by GSTN to Model-II[118] States. West Bengal has opted for Model-II.

Trend of Revenue

The total receipts under GST for the period 2018-19 were ₹ 29,044.20 crore which include GST worth ₹ 27,067.20 crore and compensation received worth ₹ 1,977 crore. Against target of ₹ 13,094 crore, the State collected ₹ 27,067.20 crore in the year 2018-19. The actual receipts during 2017-18 and 2018-19 are given in **Table 2.8.**

Table 2.8: Trend of Revenue

(₹ in crore)

Financial Year	Budget Estimates (BE)	Receipts under GST	Compensation received	Total receipts under GST
2017-18	-	14,963.74	1,608.00	16,571.74
2018-19	13,094.00	27,067.20	1,977.00	29,044.20

**Source: Finance Accounts of the Government of West Bengal.*

[115] *Central GST: CGST and State/ Union Territory GST: SGST/ UTGST.*

[116] *Petroleum products: crude, high speed diesel, petrol, aviation turbine fuel and natural gas.*

[117] *Value Added Tax, Central Sales Tax, Entry Tax, Entertainment tax, Luxury tax, Taxes on Betting, Gambling and Lotteries and Taxes on Medicinal and toilet preparations.*

[118] *Model-I States: only Front-end services provided by GSTN, Model-II States: both Front-end and Back-end services provided by GSTN.*

After implementation of GST, the DCT has not provided access to the data pertaining to GST transactions. Based on available manual records and MIS reports of Charge Offices, audit of only three functional areas related to GST, namely refunds, transitional credits and registration could be taken up. Audit observed irregularities with regard to compliance of Act, Rules, circulars *etc*. in respect of these functional areas. Significant compliance deficiencies noticed in audit are discussed involving ₹ 12.45 crore in the succeeding paragraphs:

2.11 Migration of taxpayers in GST regime

Audit was conducted in 15 Charge Offices during the period from April 2019 to September 2019 in which the following compliance deficiencies related to migration of taxpayers under GST regime were noticed:

2.11.1 Non-verification of information and documents furnished by the taxpayers before migration to GST

In 12 Charge Offices, 33,020 taxpayers migrated to GST without verification of information and documents furnished by the taxpayers with the application. Migration of taxpayers without proper verification frustrates the basic objective to restrict tax evasion under GST.

Under provisions of Rule 24 of the West Bengal Goods and Services Tax (WBGST) Rules, 2017, every person who has been granted a provisional registration shall submit an application in Form- GST REG-26 along with the information and documents specified in the application. If the information and particulars furnished in the application are found to be correct and complete by the proper officer, a certificate of registration in Form- GST REG-06 is to be issued.

Rule 24 (3A) prescribes that where a certificate of registration has not been made available to the applicant within a period of 15 days from the date of furnishing information and particulars and no notice has been issued within that period, the registration shall be deemed to have been granted.

IMPACT database of DCT, West Bengal revealed that 33,020 taxpayers under twelve Charge Offices have migrated to GST. As per provision of the Rules, information and documents furnished by the taxpayers with GST REG-26 was to be verified by the proper officer before granting certificate of registration in Form-GST REG-06. However, verification of information and documents specially related to details of principal place of business, details of additional place of business, total bank accounts maintained for conducting business, details of proprietors/ partners/ Directors, *etc*. (as specified in Sl. No. 10, 11, 13 and 14 of Form GST REG-26) was not made by the proper officers, as no record related to such verification was available with the Charge Offices in respect of migration of any of the 33,020 taxpayers. Granting registration under the GST without verifying the credentials of the taxpayers frustrates the basic objective of restricting tax evasion under the GST.

After this was pointed out, Joint Commissioner of Sales Tax (JCST), Purulia accepted the audit observation in 4,189 cases and stated (September 2019) that the information had not been verified at the time of migration of the taxpayers and guidance from the higher authority was desired in this regard. JCST,

Berhampore, in 6,916 cases stated (June 2019) that there is no rule under GST regime for compulsory physical verification of place of business or documents. JCST, Colootola, in 1,560 cases stated (August 2019) that the Charge Office was not involved in the process of migration of the dealers registered under the VAT Act or any other earlier existing Act. JCST, Esplanade, in 1,420 cases stated (June 2019) that no system of verification in respect of migrated taxpayers was available in GST back office dashboard. JCST, Raiganj, in 3,120 cases stated (August 2019) that migration of taxpayers was done through GSTN. JCST, Taltala, in 1,847 cases stated (August 2019) that the existing taxpayers migrated to GST through special provisions made by GSTN but GSTN could not make available the provisions under Rule 24 in the system and as such all such provisions could not be exercisable.

Replies of all these five Charge Offices were not tenable as the fact remained that due verification, as prescribed under provisions of the Rules, was not complied before migration of the taxpayers to GST. In the remaining cases, six Charge Offices did not furnish any/ specific reply.

2.11.2 Non-migration of eligible taxpayers to GST

In 11 Charge Offices, 196 taxpayers, eligible for registration under GST were not registered. The Charge Offices neither conducted any survey/ enquiry to ensure the status of taxpayers' business nor assigned any reasons for their non-migration to GST.

Section 22(2) of the West Bengal Goods and Services Tax (WBGST) Act, 2017 prescribes that every person who on the day immediately preceding the appointed date is registered or holds a license under an existing law, shall be liable to be registered under GST Act with effect from the appointed date. Further, Section 22(1) prescribes that every supplier shall be liable to be registered under GST Act if his aggregate turnover in a financial year exceeds ₹ 20 lakh.

The VAT registration database (IMPACT) of eleven Charge Offices revealed that 27,805 dealers were registered as on 30 June 2017. Out of these, 25,693 dealers were selected for checking their status of migration to GST. Crossverification of this data with the migration/ registration database of Goods and Services Tax (as available under IMPACT) revealed that 5,210 dealers did not migrate to GST. Summary of VAT returns for the year 2016-17 revealed that aggregate turnover of 415 taxpayers was more than ₹ 20 lakh. Cross verification of information of these 415 taxpayers with the information available on GSTN portal (through their PAN) revealed that 219 taxpayers had migrated while the remaining 196 taxpayers, though liable, had not been migrated to GST.

No survey/ enquiry was found to be conducted by the Charge Offices to ascertain whether these 196 taxpayers were still in business. Neither the reasons for non-migration of these eligible taxpayers to GST were found analysed nor any step to get these taxpayers migrated to GST was found to be taken by concerned Charge Offices.

After this was pointed out, the eight Charge Offices, in 148 cases, accepted (June, August and September 2019) the audit observations and stated that necessary verification was being/ would be taken. In the remaining cases, the Charge Offices did not furnish any/ specific reply.

2.12 Non-submission of final returns by the Goods and Services Tax Identification Number (GSTIN) cancelled taxpayers

In 14 Charge Offices, 421 GSTIN cancelled taxpayers, liable to furnish their final return within three months of the date of cancellation or the date of order of cancellation, whichever is later, did not furnish the returns.

Under provisions of Section 45 of the WBGST Act, 2017 read with Rule 81 of the WBGST Rules, 2017, every registered person whose registration has been cancelled, shall furnish a final return in Form GSTR-10 within three months of the date of cancellation or the date of order of cancellation, whichever is later. As per Section 46 of the Act, where the taxpayer fails to furnish return under Section 45, a notice shall be issued requiring him to furnish such return within 15 days.

It was observed from the internal website of the DCT, West Bengal that GSTIN of 3,753 taxpayers, who were registered under the jurisdiction of 14 Charge Offices, were cancelled. Cross verification with the GSTN portal revealed that GSTIN of 3,332 taxpayers were cancelled with effect from 1 July 2017, i.e., the date of commencement of GST regime and therefore, they were not required to submit returns. GSTIN of balance 421 taxpayers were cancelled with effect from dates between 14 July 2017 and 3 June 2019. Thus, these 421 taxpayers were liable to submit their final returns in Form GSTR-10 within three months of the date of cancellation or the date of order of cancellation, whichever is later. However, no final return was submitted by the taxpayers. Further, no notice, as required under provisions of Section 46 of the Act, was found to have been issued by the proper officers. Delayed action in this regard may result in loss of Government revenue in case the cancelled taxpayers become missing or untraceable.

After this was pointed out in audit, nine Charge Offices, in 283 cases, accepted (May to September 2019) the audit observations and stated that notices for submission of final return were issued/ being issued. Taltala Charge Office in 10 cases stated (August 2019) that out of the 10 taxpayers only two are under their jurisdiction and further stated that Goods and Services Tax Network (GSTN) was not yet prepared for online submission of GSTR-10. The reply is not tenable as in the list of GSTIN cancelled taxpayers of the Directorate, the charge jurisdiction of all these 10 taxpayers was mentioned as Taltala charge. Moreover, the discrepancy, regarding availability of provisions for online submission of GSTR-10, was not taken up with GSTN. In the remaining cases, the Charge Offices did not furnish any/ specific reply.

2.13 Transitional Credit

A report regarding discrepancy between "State Goods and Services Tax (SGST) claim as per Form- GST TRAN-01" and "ITC available to be carried forward as per last VAT return" in respect of 556 taxpayers of 15 Charge Offices (audited between April 2019 and September 2019) was forwarded by the Information System Division (ISD) of the Directorate of State Tax, West Bengal to the concerned Charge Officers for necessary action. Under the provisions of the

GST Act, all these cases were liable to be verified by the proper officer and proceedings, wherever applicable, were to be initiated in respect of any credit wrongly availed by the taxpayers.

All these cases were checked in audit to ascertain reconciliation/ realisation of excess credit with interest, if any, in these cases. During checking of these cases, discrepancies noticed by Audit are discussed under the following paragraphs:

2.13.1 Excess claim of transitional SGST credit

In 10 Charge Offices, 263 taxpayers claimed excess transitional credit of ₹ 10.75 crore. The proper officers neither verified nor initiated proceedings under Section 73 or 74 against taxpayers for such irregular claims.

As per provisions under Rule 117 (3) of the WBGST Rules, 2017, the amount of credit specified in the application in Form- GST TRAN-01 shall be credited to the Electronic Credit Ledger of the applicant maintained in Form- GST PMT-02 on the common portal. Further, Rule 121 prescribes that the amount so credited under Rule 117 (3) may be verified and proceedings under Section 73 (Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilised for any reason other than fraud or any willful misstatement or suppression of facts) or, as the case may be, Section 74 (Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts) shall be initiated in respect of any credit wrongly availed, whether wholly or partly.

The compliance of ISD report regarding discrepancy between "SGST claim as per Form-GST TRAN-01" and "ITC available to be carried forward as per last VAT return" was checked in audit. Audit noticed that 263 taxpayers under 10 Charge Offices claimed SGST ITC of ₹ 12.83 crore as transitional credit of SGST. However, as per VAT returns for the period quarter ending June 2017, the total amount of ITC carried forward was ₹ 2.08 crore only.

Thus, the taxpayers claimed ITC of ₹ 10.75 crore in excess as transitional credit of SGST under GST. The cases were to be verified by the proper officers and proceedings under Section 73 or 74 of the WBGST Act, 2017 were to be initiated, if required, but no such verification/ initiation was found to have been taken. This resulted in excess claim of transitional credit of SGST of ₹ 10.75 crore.

After this was pointed out, the five Charge Offices, in 108 cases involving ₹ 4.47 crore, accepted (June to August 2019) the audit observations and stated that e-mail to the taxpayers were sent for payment/ reconciliation. In the remaining cases, the Charge Offices did not furnish any/ specific reply.

2.13.2 Non-realisation of interest

Twenty eight taxpayers in six Charge Offices did not pay interest for excess/irregular claim of transitional credit. No action was taken by the proper officers for realisation of interest of ₹ 0.72 crore.

Section 73 of the WBGST Act 2017 prescribes determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.

Further, Section 73(5) of the WBGST Act 2017 prescribes that the person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under Section 50, at the rate of 18 *per cent*.

Scrutiny of the report of ISD regarding discrepancy between "SGST claim as per Form-GST TRAN-01" and "ITC available to be carried forward as per last VAT return" revealed that 28 taxpayers under six Charge Offices claimed ITC of ₹ 7.19 crore in TRAN-01 whereas ITC of ₹ 0.86 crore only was available in their last VAT returns. Thus, these taxpayers claimed excess SGST of ₹ 6.33 crore. Of these excess claims of ₹ 4.41 crore was reversed/ paid by the taxpayers, however, interest was not paid. Proper officers did not take any action to realise the interest from the taxpayers. This resulted in non-realisation of interest of ₹ 71.79 lakh.

After this was pointed out, two Charge Offices, in 17 cases involving ₹ 13.88 lakh, accepted (Behala-September 2019 and Colootola-August 2019) the observation and stated that necessary action was being taken to recover the amount. Taltala Charge Office, in one case involving ₹ 3.85 lakh, stated (August 2019) that the excess ITC had not been utilised for payment; the claim of the taxpayer was being verified and if it was found correct, interest was not applicable. Contention of the local office is not acceptable because under provisions of GST, if a taxpayer claims ITC in excess of his eligibility in TRAN-1, he is liable to pay interest irrespective of the fact of utilisation of that excess ITC for payment of GST. In the remaining cases, the Charge Offices did not furnish any/ specific reply.

2.14 Refund under GST

As per online refund application MIS report of 15 Charge Offices, a total 2,234 refund applications were filed online. All the cases were checked in audit to ascertain non-disposal of refund cases due to non-submission of hard copy of the refund applications along with relevant documents by the applicants. Further, to ascertain other deficiencies related to refund like delayed disposal of refund, incorrect allowance of refund, refund without adjusting the arrears of dues, refund granted by the central tax authority instead of state tax authority, *etc*., 1,200 cases out of 2,234 cases were selected for checking on the basis of high money value of the refund cases. The local offices produced 1,095 cases which were checked in audit. Compliance deficiencies noticed by audit are discussed under the following paragraphs:

2.14.1 Non-disposal of refund cases

In 11 Charge Offices, 737 refund cases of ₹ 15.72 crore filed online by the taxpayers remained un-disposed due to lack of action on the part of the proper officers.

Under Section 54(7) of the WBGST Act, the proper officer shall issue the order of refund within 60 days from the date of receipt of application complete in all respects.

Further, as per instructions under trade circular No.-57/2018 of the Commissioner of Commercial Taxes, West Bengal issued in December 2018, in respect of

refund applications that have been generated on the portal but not physically received in the jurisdictional tax offices, a communication is to be sent to all such claimants on their registered e-mail IDs informing that the application needs to be physically submitted to the jurisdictional tax office within 15 days of the date of the e-mail. If the claimant does not submit the application physically within the period, the application shall be summarily rejected and the debited amount shall be re-credited to the Electronic Credit Ledger.

Cross-verification of the refund cases filed online with the refund registers and refund case records revealed that 737 refund cases of 578 taxpayers under 11 Charge Offices were not attended to by the offices. Further, the proper officers did not communicate the claimant on their registered e-mail ids that the application needed to be physically submitted to the jurisdictional tax office within 15 days from the date of the e-mail, failing which the application would be summarily rejected and the debited amount would be re-credited to the Electronic Credit Ledger/ Electronic Cash Ledger. Non-compliance with the provisions of the trade circular resulted in non-disposal of 737 refund cases involving refund amount of ₹ 15.72 crore.

After this was pointed out, five Charge Offices, in 177 cases involving ₹ 52.62 lakh, accepted (June to September 2019) the audit observation and stated that e-mail to the taxpayers were sent for submission of hard copy of the refund application for early disposal of refund cases and Lalbazar Charge Office further stated (June 2019) that four refund cases involving ₹ 0.13 lakh were rejected for non-production of hard copy of the application. Berhampore Charge Office, in 120 cases involving ₹ 21.29 lakh, stated (June 2019) that there was no reflection of refund on the dash board of the proper officers, hence it was not possible to dispose of those refund applications. The reply is not tenable as the refund data was available and easily accessible by all the Charge Offices on the internal website of the Directorate and required to be disposed of as per provisions of the circular. In the remaining cases, the Charge Offices did not furnish any/ specific reply.

2.14.2 Incorrect allowance of refunds

In 19 cases of six taxpayers in two Charge Offices, inadmissible claims of refund of ₹ 97.72 lakh were allowed by the proper officers.

Proviso to Section 54 (3) of the WBGST Act prescribes that refund of accumulated Input Tax Credit (ITC) shall be allowed in case the accumulation was due to rate of tax on input supplies being higher than the rate of tax on output supplies, except supplies of goods or services or both, as may be notified by the Government. Further, Notification No. 1129-F.T. and Notification No.5/2017-Central Tax (Rate) issued in June 2017 by West Bengal Government and Central Government, respectively specify the list of goods on which no refund of accumulated ITC shall be allowed to a taxpayer for supply of those goods.

Proviso to Section 54 (3) of the Central Goods and Services Tax (CGST), Act, 2017 prescribes that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies. Further, as per circular

no. 37/2018-Customs issued in October 2018 and circular no. 23/2017-Customs issued in June 2017, exporters are not allowed to avail CGST and IGST refund if they have claimed the benefit of higher duty drawback under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

Scrutiny of the refund case records revealed that six taxpayers in 19 cases under two Charge Offices claimed refund of ₹ 97.72 lakh for the months of July 2017 to December 2018 and the entire amount was allowed (Behala-September 2019 and Taltala-August 2019) to be refunded by the proper officers. In 13 cases, the refunds of ₹ 74.81 lakh were not allowable as the taxpayers had availed duty drawback at higher rate and in six cases inadmissible refunds of ₹ 22.91 lakh were claimed against supply of goods notified under Notification No. 1129-F.T. and Notification No.5/2017-Central Tax (Rate) issued in June 2017. This resulted in incorrect allowance of refund amounting to ₹ 97.72 lakh.

After this was pointed out in audit, Behala Charge Office, in nine cases involving ₹ 27.17 lakh, accepted (September 2019) the audit observation and stated that necessary action as per law would be taken. In the remaining cases, the Charge Offices did not furnish specific reply.

The paragraphs discussed above bring out irregularities in migration of taxpayers to GST, claims of transitional credit and disposal of GST refunds, mainly because of inadequate compliance of the provisions of the Act and Rules framed thereunder. Accordingly, corrective measures need to be taken immediately to make good the deficiencies during disposal of refunds, verification of transitional credit and migration of taxpayers to GST, to ensure that there is no shortfall in revenue realisation.

The above paragraphs are based on the results of the test check of GST refund case records and MIS reports related to GST as available in IMPACT. There may be similar irregularities, errors/ omissions in other units under the Department but not covered in the test audit. Department may, therefore, examine all the units with a view to ensure that the revenue of the Government is protected as per provisions of the Act and Rules.