

Action Taken Note on Para 2.3 of Report No 21 of 2022 on “Avoidable payment of Taxes and Duties of ₹69.02 lakh”

Para No.	Audit Observations	Reply of the Department
(1)	(2)	(3)
2.3	<p>Avoidable payment of Taxes and Duties of Rs. 69.02 lakh</p> <p>Due to incorrect classification, VSSC incurred an avoidable payment of safeguard duty Rs. 26.37 lakh in the import of launch vehicle consumables. Further, VSSC also made an irregular payment of IGST amounting Rs. 42.65 lakh on the import of DC converters.</p> <p>Vikram Sarabhai Space Centre (VSSC), Thiruvananthapuram a unit of Indian Space Research Organisation (ISRO) of the Department of Space (DOS) is responsible for the program for the design and development of launch vehicles. VSSC procures launch vehicle consumables from various agencies for this program. We examined selected purchase files during the audit of VSSC, PAO (Project pertaining to the period 2017-19 and observed two instances of avoidable payment of safeguard duty and IGST as discussed below:-</p> <p>(i) Avoidable payment of Safeguard Duty</p> <p>A purchase order for the procurement of 1500 numbers of MOSFET (a type of solid-state Devices) amounting to USD 451500 (Rs.2.97 crore) was placed (May 2018) on M/s Irys Electronics Engineering</p>	<p>-No comments-</p>

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	<p>services Private Limited, Pune. These devices were received between August to December 2018 against the stipulated delivery of Feb 2019 and an amount of Rs. 3.69 crore was paid against the supply.</p> <p>A duty called 'Safeguard duty' is levied to safeguard the domestic industry against the market disruptions due to increased import of an article to India. As per the customs Act 'Safeguard Duty' (for the items manufactured in India) is payable for the items manufactured in India as per safeguard duty notification mentioned in Bill of Entry (BE). Further, Custom Notification No 01/2018 (SG) dated 30 July 2018 imposed safeguard duty on goods falling under the heading 8541 with effect from 30 July 2018.</p> <p>Audit observed that while importing 497 numbers of MOSFET, pertaining to the order mentioned above, in August 2018, the custom housing agent of VSSC i.e. M/s Aspinwall wrongly classified the item under tariff '8541 1000' in Bill of Entry and an amount of Rs.26.37 lakh was paid towards safeguard duty without any protest. The duty was paid despite the fact that safeguard duty is not payable for 'MOSFET' and the tariff item '8541 1000' was meant for imposing safeguard duty on 'Solar Cells whether or not assembled in modules or panels and other such components'.</p>	<p>The observation of audit pertains to the import of Power MOSFET, B/E No,75090069 dated 10.08.2018 and an amount of ₹32,96,864/- was paid as duty. As it was Customs Duty, the same was paid upon intimation of the clearing agent. On receipt of Bill of Entry, it was noticed that ₹26,37,492 was on account of safeguard duty which was due to misclassification in the Bill on Entry. A claim has been filed refund with the Assistant Commissioner, Air Customs, Trivandrum. The application was rejected by Customs with the observation that re-opening of classification may not be possible since the subject goods were cleared from Customs notified area long past. Hence, an appeal has been filed with the Commissioner of Customs (Appeals), Kochi. The request for refund is presently pending for hearing , for which necessary application has already been filed.</p>

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	<p>The matter was subsequently taken (July 2019) up by VSSC with customs authorities and a request for refund was filed as safeguard duty is not payable for 'MOSFET'. The customs authorities refused refund (March 2019) on the ground that; (a) importer (VSSC) opted for self-classification and self-assessment (b) custom housing agent of VSSC had misclassified the item in BE; and (c) the duty was paid without any protest. The request of VSSC (July 2019) was also rejected by Customs (Feb 2020) in its order. Thus, wrong classification of the item by the custom housing agency of VSSC had resulted in avoidable payment of safeguard duty of Rs.26.37 lakh.</p> <p>According to clause 9.9.2 of the Rate Contract entered by VSSC with M/s Aspinwall (June 2015), expenses incurred on losses occasioned on account of clearing agents negligence or failure have to be reimbursed by the agent. On being pointed out by audit, VSSC claimed compensation (October 2021) of Rs. 26.37 lakh from the clearing agent, which has not been realised yet.</p> <p>DOS replied (Feb 2022) that though an appeal (July 2019) filed with the Customs was refused (Feb 2020), a request for refund is now pending for personal hearing at customs end.</p> <p>Thus, VSSC made a payment of Rs.26.37 lakh as safeguard duty, which was avoidable.</p>	

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	<p>(ii) Avoidable payment of IGST of Rs.42.65 lakh</p> <p>VSSC placed another purchase order in August 2017 for the procurement of Inter Point converters on M/s Irys Electronics Engineering Services Private Limited, Pune for Rs. 236.92 lakh. These converters are procured for fabrication of interface units of ISRO's launch vehicles (PSLV & GSLV). These converters were received in October 2017 and payment of Rs.2.8 crore was released (December 2017) to the firm.</p> <p>As per Custom Notification No.50/2017 dated 30 June 2017, the raw materials and consumables required for launch vehicles; the integrated tax (IGST) leviable under section 5 of the Integrated GST Act, 2017 was 'Nil'.</p> <p>Audit scrutiny of the import of these converters revealed that for the items received in October 2017, VSSC paid (December 2017) IGST at the rate of 18 per cent amounting to Rs. 42.65 lakh, even though IGST was not payable for the import of raw materials and consumables for the launch vehicles. Audit observed that VSSC did not obtain refund from the supplier, resulting in avoidable payment of IGST of Rs.42.65 lakh. VSSC replied (October 2021) that for the 'electronic circuits' (HSN Code 8542) and 'electrical machines and apparatus' (HSN Code 8543) the applicable IGST is 18 per cent as</p>	<p>The Goods and Services Tax Act was passed in Parliament on 29th March, 2017 and came into effect from 1st July, 2017. VSSC obtained Schedule VI: List of goods at various (%) rates to classify GST payments on all on-going procurements. The Interpoint DC/DC convertor was classified under 8542, Electronic Integrated Circuit since there was an initial confusion in classification of the items owing to the transitional phase and the GST terms being a relatively new concept. Thus, the IGST @18% was paid.</p> <p>As the payment of GST has already been made and accounted under the CFI, the same cannot be recovered from the supplier.</p> <p>It may be noted that the audit observations pertain to the procurements that were during the transition period and very close to the respective notifications. In the 1st case, it was pertaining to a PO placed in May 2018 before the Custom notification of July 2018</p>

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	<p>per Custom Notification of June 2017. VSSC added that the IGST was reduced to five per cent in Custom Notification of Nov 2017.</p> <p>Reply of VSSC is not acceptable as these converters are consumables used in launch vehicles. As per the custom notification of June 2017 (SI.No.539 of the Table), the applicable IGST for the consumables required for launch vehicles is 'Nil'.</p> <p>DOS replied (Feb 2022) that though the item is being directly imported by the supplier from its foreign principal against necessary custom duty exemption certificate, but IGST at 18 per cent was leviable as per the quote, since the sale from the supplier to VSSC was second sale. The Reply is not acceptable since the applicable IGST for the import of the item to the ultimate buyer (VSSC) was Nil. Further, the import of the item by the Indian Agent from its principal for VSSC being the ultimate buyer could not be treated as a second sale.</p> <p>As such, the payment of IGST of Rs.42.65 lakh was avoidable.</p>	<p>and in the 2nd case, the relevant customs notification of June 2017 was very close to the month that GST came into effect (July 2017).</p> <p>However, the observations of audit are noted for compliance.</p>