MSME

MICRO, SMALL & MEDIUM ENTERPRISES

Disallowance under Section 43B(h)

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MSMED 2006

- Micro, Small, Medium Enterprises (MSMEs)
  - Entities that are involved in the production, manufacturing and processing of goods and commodities.
  - Backbone of the Indian economy
  - India has approximately 6.3 crore MSMEs.
- Contribution
  - 29% of India’s GDP,
  - employ over 120 million people,
  - enormous share of more than 40% in the exports
  - more than 45% in the manufacturing sector.

Classification

Size of the Enterprise	Investment in Plant and Machinery	Annual Turnover
Micro	Not more than ₹1 Crore	Not more than ₹5 Crore
Small	Not more than ₹10 Crore	Not more than ₹50 Crore
Medium	Not more than ₹50 Crore	Not more than ₹250 Crore

Computation of Limits

- Investment in plant and machinery or equipment means "**the net investment in plant and machinery** or equipment" (net of depreciation **as per IT Act** and IT Rules) and **not original cost or book value**.
- "**Net Turnover**" means Total turnover less export turnover.
- **One PAN – One enterprise**
  - All units with Goods and Services Tax Identification Number (GSTIN) listed against the same Permanent Account Number (PAN) shall be collectively treated as one enterprise and the turnover and investment figures for all of such entities shall be seen together and only the aggregate values will be considered for deciding the category as micro, small or medium enterprise.

S.43B

Certain deductions to be only on actual payment

43B Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—

……………..

……………..

(h) any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006),

Payment made before due date of filing of return

"*Provided that nothing contained in this section* ***except the provisions of clause (h)*** *shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return.*"

Benefit of allowance on payment till due date not available

Micro and Small Enterprise Development Act

Section 15: Liability of buyer to make payment.

15. Where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

Unregistered Supplier?

Section 15 refers to "*supplier*" and "*buyer*"

"supplier" means a micro or small enterprise, which has <u>filed a memorandum with the authority</u> referred to in sub-section (1) of section 8, …..

The term "buyer" is defined u/s 2(d) of MSMED Act to mean whoever buys any goods or receives any services from a supplier for consideration

How to know if the supplier is registered or not?

Time Limit

- Written agreement
  - Yes — **Agreed period** *(subject to max 45 days)* from Date of Acceptance
  - No — 15 days Before Appointed date

Date of Acceptance or Deemed Acceptance:

(a) the day of the actual delivery of goods or the rendering of services; or

(b) where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;

Day of deemed acceptance

- *Further, the day of deemed acceptance means <u>where no objection is made in writing</u> by the buyer regarding acceptance of goods or services <u>within fifteen days from the day of the delivery of goods or the rendering of services</u>, the day of the actual delivery of goods or the rendering of services.*

How will the time limit be computed in cases where there are certain objections or say there is a delay in delivery of goods?

The question can be answered by way of illustrations as tabulated below:

Particulars	Case 1	Case 2
Agreed Period	No Agreement	No Agreement
Date of invoice	15/12/2023	15/12/2023
Date of delivery	18/12/2023	15/12/2023
Communication of dispute to supplier	31/12/2023 (Within 15 days)	15/01/2024 (After 15 days)
Conclusion of dispute by supplier	20/03/2024	20/03/2024
Appointed Day	**05/04/2024** *(Day after 15 days from date of conclusion)*	**31/12/2023** *(Day after 15 days from date of delivery)*
Buyer to make payment to supplier by	**04/04/2024** *(i.e. before appointed date)*	**30/12/2023** *(i.e. before appointed date)*

Date of invoice

Date of invoice is not relevant

Date of actual delivery is important

However PO and invoice can together be considered as written agreement

Appointed date

No Agreement cases

Date of invoice	Date or delivery	Appointed date as per MSME	Date of payment	Allowable in
02.03.24	02.03.24	17.03.24	25.03.24	2023-24
03.03.24	03.03.24	18.03.24	03.04.24	2024.25
05.03.24	18.03.24	02.04.24	01.04.24	2023-24
05.03.24	18.03.24	02.04.24	02.04.24	2024-25

Written agreement cases

Date of invoice	Date or delivery	Agreement Days/ Credit period	Due Date as per Agreement	Due date as per MSME	Paid on	Allowable in
03.03.24	03.03.24	15	18.03.24	18.03.24	28.03.24	2023-24
03.03.24	03.03.24	15	18.03.24	18.03.24	06.04.24	2024-25
06.03.24	18.03.24	15	02.04.24	02.04.24	02.04.24	2023-24
03.02.24	20.02.24	60	20.04.24	05.04.24	08.04.24	2024-25

Applicable to any Payer

Any Assessee

Irrespective of payer being an MSME or not

Registration

Udyog Aadhar/EM-II

- Not valid from 30.06.2022
- No automatic migration
- Not MSME now

Udhyam Registration

भारत सरकार
Government of India
सूक्ष्म, लघु एवं मध्यम उद्यम मंत्रालय
Ministry of Micro, Small and Medium Enterprises

MSME
सूक्ष्म, लघु एवं मध्यम उद्यम
MICRO, SMALL & MEDIUM ENTERPRISES

UDYAM
REGISTRATION CERTIFICATE

TYPE OF ENTERPRISE	SMALL	MANUFACTURING
UDYAM REGISTRATION NUMBER	UDYAM[redacted]	
NAME OF ENTERPRISE	M/S [redacted]	
SOCIAL CATEGORY OF ENTREPRENEUR	General	

NAME OF UNITS

SNo.	Udyog Aadhaar Memorandum	Unit Name
1	[redacted]	[redacted]

OFFICAL ADDRESS OF ENTERPRISE

Flat/Door/Block No.	D.NO :31-171	Name of Premises/ Building	[redacted]
Village/Town	[redacted]	Block	Enugupalem road
Road/Street/Lane	[redacted]	City	VINUKONDA
State	[redacted]	District	[redacted]
Mobile	[redacted]	Email:	[redacted]

DATE OF INCORPORATION / REGISTRATION OF ENTERPRISE	24/05/2020
DATE OF COMMENCEMENT OF PRODUCTION/BUSINESS	18/12/2013

NATIONAL INDUSTRY CLASSIFICATION CODE(S)

SNo.	NIC 2 Digit	NIC 4 Digit	NIC 5 Digit	Activity
1	10 - Manufacture of food products	1061 - Manufacture of grain mill products	10613 - Dal (pulses) milling	Manufacturing

DATE OF UDYAM REGISTRATION	03/11/2020

Disclaimer: This is computer generated statement, no signature required.
Printed from https://udyamregistration.gov.in

For any assistance, you may contact:

1. DIC	GUNTUR
2. MSME-DI	HYDERABAD

Actual payment

Date of tender is relevant

Not date of actual clearing of amount

Actual payment

- CIT v. Ogale Glass Works Ltd. [1954] 25 ITR 529 (SC)
  - when a cheque is not dishonoured but encashed, the payment relates back to the date of tendering of cheque. The date of payment would be the date of delivery of the cheque
- CIT v. Punalur Paper Mills Ltd.[2019] 111 taxmann.com 50 (Kerala)

Traders?

- Payment made to Trader registered under MSMED

    (e) "**enterprise**" means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, ………. or engaged in providing or rendering of any service or services;

Traders?

No. 5/2(2)/2021-E/P & G/Policy
(E-19025)
Government of India
Ministry of Micro, Small & Medium Enterprises
(Policy Division)
*****

710, Nirman Bhawan, New Delhi
Dated:02.07.2021

OFFICE MEMORANDUM

Subject: Activities (NIC code) under MSMED Act, 2006 for Udyam Registration –Addition of Retail and Wholesale Trade- regarding

This Ministry's O.M. No. UAM/MC/01/2017-SME dated 27.06.2017 on the subject 'Activities (NIC codes) not covered under MSMED Act, 2006 for registration of Udyog Aadhaar Memorandum (UAM)' excluded certain activities from registration on UAM Portal. This O.M. was further validated for Udyam Registration vide O.M. no. 5/2(1)/2020-P&G/Policy dated 17.07.2020. Certain changes were made vide 5/2(1)/2020/E-P&G/Policy dated 01.12.2020; where it was clarified that in Table. 1 of O.M. no. UAM/MC/01/2017-SME dated 27.06.2017, NIC codes 45, 46 and 47 and the activities mentioned against these NIC codes, are not permitted for registration in Udyam Registration Portal (https://udyamregistration.gov.in).

2. The Government has received various representations and it has been decided to include Retail and wholesale trades as MSMEs and they are allowed to be registered on Udyam Registration Portal. However, benefits to Retail and Wholesale trade MSMEs are to be restricted to Priority Sector Lending only.

1/4(1)/2021-P&G/Policy
Government of India
Office of Development Commissioner (MSME)
Ministry of Micro, Small and Medium Enterprises
MSME Policy Division
Nirman Bhavan, New Delhi
E-19630

Office Memorandum (OM) No. 1/4(1)/2021-P&G/Policy, Dated: *01*.09.2021

Subject: – Benefits of provisions of delayed payments as per MSMED Act, 2006 available to MSMEs viz-a-viz Traders related

Vide **OM No. 5/2(2)/2021-E/P&G/Policy dated 2.7.2021** issued by this office, Retail and Wholesale Trades have been included as MSMEs, allowing them to be registered on Udyam Registration Portal and benefits to Retail and Wholesale trade MSMEs are to be restricted to Priority Sector Lending only.

2. In this context, some MSEFCs have been approached by Traders to get the benefits of provisions of delayed payments as per MSMED Act, 2006 available to MSEs. It is clarified that as mentioned in the aforesaid OM, the benefits to Retail and Wholesale trade MSMEs are restricted upto Priority Sector Lending **only,** and any other benefits, including provisions of delayed payments as per MSMED Act, 2006, are **excluded**.

3. This issues with the approval of the competent authority.

(Amit K. Tamaria)

Deputy Director(Policy)

Supply of goods before registration

Not a supply from Micro or small enterprise unless registration obtained

- No disallowance of pre registration supply
- No retrospective effect

In **Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods Pvt. Ltd. [SLP(C) No. 12884/2020],** the Apex Court held that in order to seek the benefit under the MSMED Act, the seller should be registered under the MSMED Act, as on the date of entering into the contract. If any registration is obtained subsequently, the same would have an effect prospectively and would apply to the supply of goods and rendering services subsequent to the registration.

Supplier both Manuf. & Trader

The MSME registration and S. 15

- qua a person and not qua a segment.

Adventurous that S. 43B(h)

- would not apply qua the trading segment, unless courts take such a view.

Opening balances

Not applicable on opening balance

As the same is not claimed as expense

Capital expenditure

Not claimed as deduction u/s 37(1)

S.43B not applicable on capital expenses

Status of supplier

Automatic updation of supplier on portal

Based on 2 year old data fetched from GST

Status on registration certificate relevant

Advisory to MSME

- OM No.2(28)/2007-MSME(Pol) dated 26.08.2008
  - *It is advisable that the Micro or small enterprises should mention/ get printed on their letter heads, supply order sheets, invoices, bills, relevant documents, the Entrepreneurs Memorandum number….., so that there always remain an identification of being an MSE supplier”*

Dear Vendor,

Respected Sir/ Ma’am,

Ref: **The Micro, Small and Medium Enterprises Development Act, 2006.**

With reference to the above subject, we request you to kindly inform us whether you are registered under the Micro, Small, and Medium Enterprises Development Act, 2006. If yes, then select your category mentioned in your registration certificate.

- ◯ Micro enterprise
- ◯ Small enterprise
- ◯ Medium enterprise

In support of your selection of your any of above categories, kindly send us a scanned copy of your UDYAM REGISTRATION CERTIFICATE.

We request you to respond to this mail within 15 days from the date of this email. If your company is not registered under the MSMED Act, 2006, please send us the confirmation of non-applicability, for our records.

If we don’t receive a response within the specified timeframe, we will assume that your Company is not registered under the MSMED Act, 2006.

Please send the required information to our email at ………………@gmail.com without fail. We would appreciate your cooperation in this matter.

With kind regards

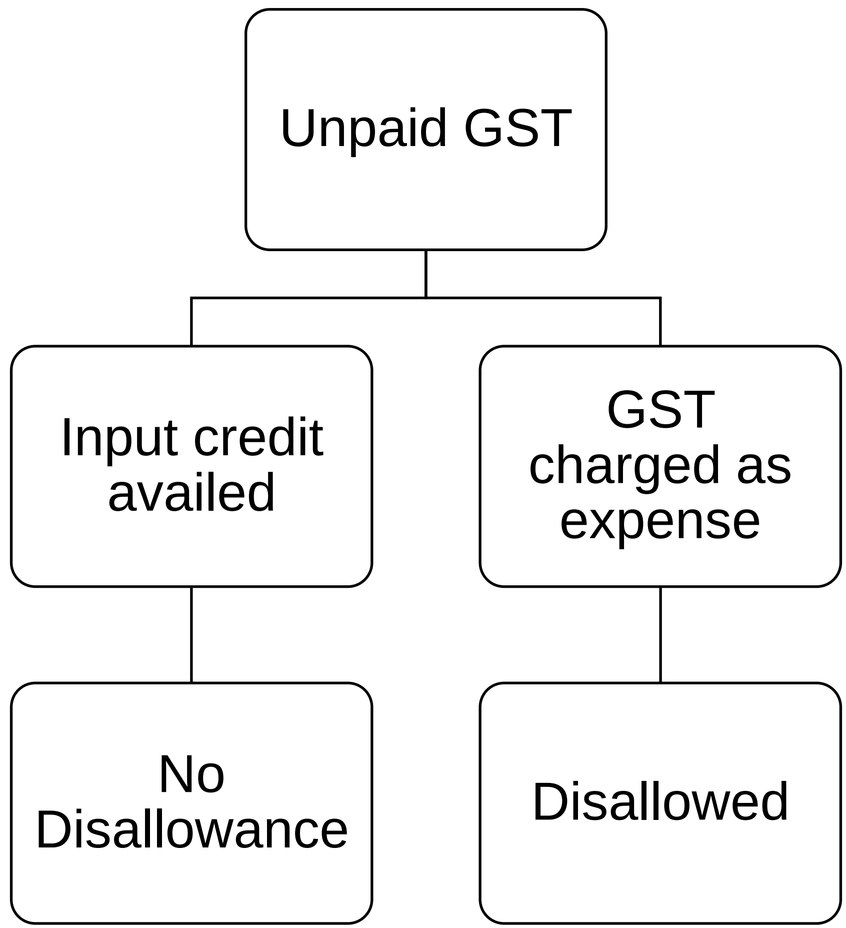
Payment to be considered FIFO/Invoice wise

Depends on communication

If payment is made invoice wise and is so conveyed then allowed

If nothing mentioned then FIFO

GST Component



Late payment interest

16.Date from which and rate at which interest is payable.—

Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, **be liable to pay compound interest with monthly rests to the supplier** on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, **at three times of the bank rate** notified by the Reserve Bank.

Interest not allowable under Income tax

23.Interest not to be allowed as deduction from income.—

Notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), the amount of interest payable or paid by any buyer, under or in accordance with the provisions of this Act, shall not, for the purposes of computation of income under the Income-tax Act, 1961, be allowed as deduction.

Disclosure requirement

22. Requirement to specify unpaid amount with interest in the annual statement of accounts.— Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:—

(*i*) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;

(*ii*) the amount of interest paid by the buyer in terms of section 16, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;

(*iii*) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act;

(*iv*) the amount of interest accrued and remaining unpaid at the end of each accounting year; and

(*v*) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23.

TDS on Interest to MSME

- If provision made in books
- No question of S.40(a)(ia)
- However Assessee may be treated in default
- Penalty u/s 271C of Act

Form MSME-1

- Samsung R&D Institute India-Bangalore Private Limited
  - Half yearly filing
  - Did not provide complete disclosures in Form MSME I for specific transactions
- ROC Imposed penalties as per Section 405(4) Co Act
  - Default Instance I (266 days): Rs. 2,85,000 Each on the company and its 2 directors.
  - Default Instance II (85 days): Rs. 1,04,000 Each on the company and its 2 directors.
  - **Total Penalty amounted to Rs. 11,67,000.**

Section 44AD and Disallowance

- Books are not maintained and
- Section 44AD states

“Notwithstanding anything to the contrary contained in sections 28 to 43C, ……………

Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.”

No Disallowance in 44AD cases

Impact of cancellation

If registration surrendered by Micro or small enterprise

- Subsidies under MSME
- Concessional interest of 1% Not available

No benefit available under law

Auditor to ensure

- Steps taken by management to obtain details of registration of vendors?
- Verify invoices, PO and communication of supplier
- Prepare a list of MSME suppliers
- Management representation
- Disclaimer in Notes to accounts and audit report

S.43B vs. 40(a)(ia)

Harmonious interpretation

S.43B

S.40(a)(ia)

Googly

- Interplay with Indian Contract Act 1872
- S. 24
  - Agreements void, if considerations and objects unlawful in part.—If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.
- S.65
  - Obligation of person who has received advantage under void agreement, or contract that becomes void.

Questions?

Thank You

CA. Pankaj Shah

969 189 3040

Indore