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Yogesh Kale, Executive Director, Nangia Andersen India



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45-Day Payment DILEMMA

Section 43B(h) of Income Tax Act - mandating payment to micro and small enterprises (MSEs) within 45 days of supply - was welcomed when announced in Budget 2023-24. However, MSEs are now facing a peculiar problem of losing orders from large firms because of it. Rakesh Rao explores more on this issue and the road ahead.



On 6 May 2024, Micro and Small Enterprise (MSE) traders received a setback when the Supreme Court declined to hear their plea against the new Income Tax provision, allowing MSEs to pursue their case in the High Court. The petition sought an interim stay and quashing the amendment in the Income Tax Act prescribing that companies not making payments to micro and small enterprises during a fiscal year will have to wait for a full year for deductions under the IT Act.

To promote timely payments to MSEs, a new clause (h) in Section 43B of the Finance Act 2023 was inserted to provide that any sum payable by the assessee (the buyer) to a MSE beyond the time limit specified in Section 15 of the Micro, Small and Medium Enterprises Development (MSMED) Act 2006 shall be allowed as deduction only on actual payment. The Union Government has repeatedly stressed that the amendment is meant to ensure timely payment to micro and small businesses and to help them. **Anil Bhardwaj, Secretary General, Federation of Indian Micro and**

Small & Medium Enterprises (FISME), observes, "The amendment under 43B are additions to two already legal provisions for MSEs: delayed payment provisions under MSMED Act and MoCA Notification dated 11 October 2018 requiring Companies to 'disclose' outstanding payments separately under MSE and other heads in Schedule VI of Balance sheet. Companies have been already dealing these requirements. The new



“The apprehensions some people have about Section 43B(h) are absolutely unwarranted. The Income Tax Amendment gets triggered on balance sheet date i.e. 31st March. The transactions during the rest of the year have nothing to do with the amendment.”

Anil Bhardwaj, Secretary General, FISME

amendment, Section 43B(h), requires payment to be made within 15 days without any agreement and within 45 days with agreement. In case it not adhered, the outstanding amount would not be allowed as expenses and treated as income."

The provision was announced in Budget 2023 to take effect from FY 2023-24. "This was perceived to be a welcome step by micro and small enterprises, as it was intended to help them in tackling the working capital crunch. However, towards the end of FY 2023-24, the micro and small enterprises started finding themselves dealing with a peculiar problem. The large and medium enterprises (buyers) either started cancelling orders with the registered MSMEs and placing these orders with

unregistered MSMEs, or forcing the micro and small enterprises to forsake their registrations as micro or small enterprises under the MSMED Act, 2006, exercising their financial influence. This is leading to major loss of revenue to the micro and small enterprises,” states Yogesh Kale, Executive Director, Nangia Andersen India.



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Boon turns into a bane

In the interim budget on 1 February 2024, companies were expecting the government to change or postpone the rule for 2023-24. However, nothing was announced. “Many were expecting a relaxation of the payment terms before the budget. However, after the budget was announced with no changes, panic ensued,” says Baljit Singh Bedi, Chairman, Association of



“**The MSE sector is experiencing significant difficulties, as they are losing orders and their**

customers are also facing challenges. This creates a complex situation for both buyers and sellers.

Baljit Singh Bedi, Chairman, Association of Entrepreneurs

Basics of Section 43B(h)

According to Palak Ratwani, Legal Associate, SRGA Global, Section 43B(h) strutted onto the tax scene with the swagger of a debt collector on a mission with its key objectives as:

- **Timely payments to MSEs:** Section 43B(h) aims to ensure Micro and Small Enterprises (MSEs) receive payments promptly for goods and services provided to businesses, thus safeguarding their financial interests.
- **Enhanced compliance:** By imposing stricter payment timelines and disallowing deductions for delayed payments, the provision seeks to enhance compliance with the timelines specified under the MSMED Act, 2006.
- **Protection of MSEs:** The introduction of Section 43B(h) serves to protect MSEs from cash flow disruptions and financial strain caused by delayed payments, fostering a more equitable business environment.

Entrepreneurs (AOE).

Another issue is the interest on delayed payments. “If payments are not made on time, interest will accrue. Many are unaware of this clause. Auditors will need to highlight this, and ask companies to make provision for the interest (if any),” adds Bedi.

It is no doubt that the MSEs are now feeling the squeeze from Section 43B(h). Palak Ratwani, Legal Associate, SRGA Global, observes,



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between suppliers and buyers who often work with these small businesses on a credit system.

Palak Ratwani, Legal Associate, SRGA Global

“The tighter payment deadlines are throwing a wrench into their cash flow plans. The new rule could impact relations between suppliers and buyers who often work with these small businesses on a credit system. Industries like textile, automobile, agro-based sector, etc, which are largely dependent on

micro and small businesses, may face severe financial and regulatory challenges. Considering the implications, businesses may tend to prefer medium enterprises, resulting in a loss of business for MSEs. Many MSEs may be willing to work with a larger credit period, with a commercial interest of big business opportunities and business volume. However, the regulatory change, supposed to be a boon, is turning out to be a bane for them.”

The reason why concerns are being voiced now, as opposed to earlier, is due to the enhanced understanding and clarity businesses have gained through detailed clarifications. “As these clarifications provided a clearer picture of the practical implications of Section 43B(h), more MSEs recognised the potential negative impact on their operations,” she informs.

Rahul Mehta, Chief Mentor, The Clothing Manufacturers Association Of India (CMAI), adds, “This move by the government, to implement Section 43B(h), was intended to protect MSMEs and benefit them by reducing their buyers’ payment cycles, thereby improving their financial positions. However, the government failed to consider that payment cycles vary from industry-to-industry and took a uniform approach, applying this rule to all MSMEs and industries. For example, in the textile industry, the