

SPCM & ASSOCIATES

Chartered Accountants



SPCM
LEGAL

SAMĀCĀRA FEBRUARY 2024







SAMĀCĀRA – FEBRUARY 2024

TEAM SAMĀCĀRA

INCOME TAX

			
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GOODS AND SERVICES TAX


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SAMĀCĀRA – FEBRUARY 2024

COMPANY LAW, BANKING AND FINANCE

			
CA. Manoj R. Jain	CA. Chetan R. Parakh	CA. Vishnu S. Rathi	CA. Prerna S. Bora

CIVIL, CRIMINAL, REAL ESTATE AND OTHER LAWS



FINANCE AND VALUATIONS





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SAMĀCĀRA – FEBRUARY 2024

EDITORIAL

Dear All,

In a significant stride towards shaping the future, the Hon'ble Finance Minister of India unveiled the Naye Kal Chakra - Ram Rajya Ka First interim budget for 2024-25 on 01.02.2024, setting the stage for the upcoming general election. Prioritizing the fundamental needs and aspirations of the GYAN segments—Garib, Youth, Annadata, and Nari—this budget stands as a testament to a Viksit Bharat.

Addressing key facets of socio-economic development, the proposals encompass rooftop solarization, dairy development, extension of Ayushman Bharat healthcare cover, and the Atmanirbhar Oil Seeds Abhiyaan. The budget's holistic approach spans innovation, infrastructure development, green energy, the electrical vehicle ecosystem, tourist center development, and the promotion of foreign investment in India.

Maintaining a steadfast commitment to macro-economic and fiscal stability, the budget projects a fiscal deficit of 5.8% of GDP for FY 2023-24, aiming at 5.1% for FY 2024-25 and envisioning a reduction below 4.5% by FY 2025-26. Notably, the Hon'ble FM has upheld this commitment by refraining from introducing major tax proposals, keeping the tax rates and import duties unchanged.

In summary, the Interim Budget 2024, Naya Kal Chakra - Ram Rajya Ka First Budget, echoes the principles of Continuity, Consolidation, and Confidence, fostering sustained growth for India.

On the GST front also January 2024 witnessed a commendable gross GST revenue of ₹1,72,129 crore, reflecting a robust 10.4% Year-on-Year growth compared to January 2023. Remarkably, this marks the second-highest monthly collection ever, reinforcing the fiscal strength with three months in the current financial year surpassing ₹1.70 lakh crore.

At SPCM also we have started implementing and working on the direction road map Innovation, Growth & Succession as set in the SPCM Vision - 2024.

As we embark on the path of progress and envision the future shaped by the Naye Kal Chakra - Ram Rajya Ka First interim budget, let us echo the sentiments of Malcolm X: "***The future belongs to those who prepare for it today.***" May our collective efforts drive innovation, growth, and success, aligning with the principles of Continuity, Consolidation, and Confidence outlined in the Interim Budget 2024

Thanking You.

With Warm Regards,



CA. Suhas P. Bora
Founder Partner,
SPCM and Associates,
Chartered Accountants



GLIMPSE OF EVENT

Adv. Sanket Bora Sir, delivered lecture on the topic, “Recovery of unpaid dues under MSMED & recent Case Laws” at Pune City CPE Study Circle lecture series on “All about MSMEs – Part I”



WE ARE PROUD OF OUR STUDENTS



CA Qualified:

1. Yash Agrawal (**AIR-50**)
2. Meet Oswal
3. Pratham Samdadiya
4. Manali Ghodke
5. Vishal Prajapati
6. Shreya Maloo.
7. Ghansham Kuvar
8. Sheetal Shetty

CA Final - one group cleared:

1. Riya Oswal
2. Purva Solanki.
3. Anshika Puri
4. Shankesh Katariya

IPCC Cleared

1. Vedanti Nage
2. Prapti Parakh
3. Pranav Sanghvi
4. Janhvi Goyanka



DUE DATES

Income Tax, PF and ESIC due date calendar for the month of February 2024:

DATE	DUE DATE FOR
07-02-2024	<ul style="list-style-type: none"> • Deposit of depositing any Tax Deducted at Source (TDS) or Tax Collected at Source (TCS) for the month of January, 2024.
14-02-2024	<ul style="list-style-type: none"> • Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194M, 194S in the month of December, 2023. (Note: Applicable in case of specified person as mentioned under section 194S.)
15-02-2024	<ul style="list-style-type: none"> • Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending December 31, 2023. • Payment of ESI Contribution for the month of January, 2024. • Payment of PF for the month of January, 2024.


GST due dates for the month February 2024: -

DUE DATE	RETURN	PERIOD	DESCRIPTION
10 th February	GSTR-7 (Monthly)	January'24	Summary of Tax Deducted at Source (TDS) and deposited under GST laws.
10 th February	GSTR-8 (Monthly)	January'24	Summary of Tax Collected at Source (TCS) and deposited by E-commerce operators under GST laws.
11 th February	GSTR-1 (Monthly)	January'24	Summary of outward supplies where turnover exceeds Rs.5 crore or have not chosen the QRMP scheme for the quarter of January-March 2024.
13 th February	Furnishing Invoices in IFF Facility (Quarterly)	January- March2024	Taxpayers who have opted for the Invoice Furnishing Facility (IFF) and choose to upload B2B outward supply invoices for first two months of the quarter. The B2B invoices relating to last month of the quarter are too uploaded while filing GSTR – 1 along with B2C invoices of entire quarter.
13 th February	GSTR-6	January'24	Details of ITC received and distributed by ISD.



DUE DATE	RETURN	PERIOD	DESCRIPTION
13 th February	GSTR-5 (Monthly)	January'24	Summary of outward taxable supplies & tax payable by a non-resident taxable person.
20 th February	GSTR-3B (Monthly)	January'24	Summary of outward supplies, ITC claimed, and net tax payable for taxpayers with turnover more than Rs.5 crore in the last FY or have not chosen the QRMP scheme for the quarter of January-March 2024.
20 th February	GSTR-5A (Monthly)	January'24	Summary of outward taxable supplies and tax payable by OIDAR.
25 th February	GST Challan for all Quarterly filers	January - March 2024	GST Challan Payment if no sufficient ITC for January 2024, (for all Quarterly Filers).

**INCOME TAX****Analysis of Sec. 43B(h) of the Income Tax Act 1961-
as applicable for A.Y. 2024-25****A. Sec. 43B(h) of Income Tax Act 1961, reads as under:**

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), shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him:

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.

B. CBDT Circular 1/2024, dt. Dated the 23rd of January, 2024 explains that:

21) Promoting timely payments to Micro and Small Enterprises (is the object).

21.1) Section 43B of the Act provides for certain deductions to be allowed only on actual payment. Further, the proviso of this section allows deduction on accrual basis, if the amount is paid by due date of furnishing of the return of income.

21.2) In order to promote timely payments to micro and small enterprises, payments made to such enterprises have been included within the ambit of section 43B of the Act vide FA 2023. A new clause (h) has been inserted in section 43B of the Act to provide that 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 (MSMED) Act 2006 shall be allowed as deduction only on actual payment. However, it has also been provided that the proviso to section 43B of the Act shall not apply to such payments.

21.3) Section 15 of the MSMED Act mandates payments to micro and small enterprises within the time as per the written agreement, which cannot be more than 45 days. If there is no such written agreement, the section mandates that the payment shall be made within 15 days. Thus, this amendment to section 43B of the Act allows the payment as deduction only on payment basis. It can be allowed on accrual basis only if the payment is within the time mandated under section 15 of the MSMED Act.

Applicability: This amendment takes effect from 1st April, 2024 and will accordingly apply in relation to the assessment year 2024-25 and subsequent assessment years.

C. MSMED Act: Important definitions:

Sec. 2(b) (b) “appointed day” means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

Explanation. — For the purposes of this clause, —

- (i) “the day of acceptance” means, —
 - (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;

- (ii) “the day of deemed acceptance” means, where no 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 of the actual delivery of goods or the rendering of services;

Sec. 2(d) buyer means whoever buys any goods or receives any services from a supplier for consideration.

Sec. 2(n) supplier means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8 and includes, –

- (i) The national Small Industries Corporation, being a company, registered under the Companies Act 1956 (1 of 1956),
- (ii) The small Industries Development Corporation of a State or Union Territory, by whatever name called being a company registered under the Companies Act 1956 (1 of 1956),
- (iii) Any company, cooperative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises.

Sec.15. Liability of buyer to make payment

Where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefore 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.

D. Explanations

1. The conditions apply if the supplier has filed a memorandum with the authority referred to in sub-section (1) of section 8 of the MSMED Act.

This means the buyer will have to ensure first whether the supplier has the memorandum filed with the authority by obtaining required information from the supplier. If the supplier has not filed the memorandum, the provisions shall not apply.

2. As the section is applicable for computation of income from AY 2024-25, the payments to check shall be for the previous year ending 31-3-2024. For most of the businesses following mercantile system of accounting, the amounts debited to P/L account shall be from 1-4-2023 and not any earlier year. Thus, the provisions shall not apply for the any outstanding prior to 1-4-2023.
3. As the provisions of MSMED Act are now applicable to all and one including traders and professionals, all the suppliers including manufacturers are at par if they have filed the memorandum. It may be carefully noted that the concept of registration is done away with and filing of memorandum, which is a completely online and optional process, is applicable.
4. As per MSMED Act following are the investment and turnover criteria:

Amounts	in	Rs.	Crores
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The twin conditions of investment and turnover limits have to be complied to be covered under the Micro/Small/Medium enterprise.

For the purpose of Investment in Plant and Machinery WDV as per IT is to be considered. However, cost of pollution control, R & D and industrial safety devices is not to be included.

The criteria of investment and turnover limits are applicable equally to manufacturing, trading and services also and is applicable irrespective of the type of constitution of the enterprise.

5. If any one of the twin conditions is crossed, the enterprise goes out of the criteria and loses the benefits. If a micro enterprise exceeds either of the investment or turnover, then it enters the next criteria of Small enterprise and so on and loses the benefit of delayed payment when it exceeds the investment of Rs.10 crore or turnover of Rs.50 crores.

It must be carefully noted that the definition of supplier covers only a micro or a small enterprise. Hence, the Medium enterprise is not covered for the benefit of delayed payments and is not covered for disallowance u/s 43B.

This makes it compulsory to obtain the information about its status under MSMED Act from the supplier.

If this condition under Sec. 43B is to be strictly beneficial, it is expected that the information of the supplier be made available openly and to make it available openly. This is possible to be achieved by making it compulsory to be uploaded on GST portal so that the buyer can check the status on the GST portal.

6. The time limits specified under the MSMED Act are 45 days if there is a written agreement, otherwise it is 15 days by default.

It means if the clear terms of agreement are not specified then the payments must be made within 15 days. However, even the written agreement cannot override the limit of 45 days which will prevail over any agreement, as the words “in no case” in Sec. 15 of the Act are very specific.

The words “in no case” rule out any other possibility for any purchases of material or goods from the “supplier’. A doubt is raised about the purchases/expenses from the dates 16 March to 31 March. It may be noted that Sec. 43B has clearly put out the clause (h) from the condition of payment before due date u/s 139(1). The reason that the MSMED Act is a specific law and specifically provides for payment time limits.

7. In an interesting case Hon. Supreme Court has held that the MSMED Act is a special act and overrides any general act like the Arbitration Act. It further held that if the supplier on the date of transaction is not holding the registration/memorandum and is not covered under the MSMED Act, it can't claim benefits with subsequent registration.

Please see- **Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd. (unit2) & Anr. (2003) 6 SCC 401.**

This makes it mandatory to check the status of the supplier on the date of transaction.

E. To avail benefits

1. To avail the benefits, it is advisable to file the memorandum online and obtain registration.
2. A question arises as to how a buyer would know the status of the supplier under the MSMED Act unless informed by it or inquired by the buyer.

This difficulty was conveyed to the Govt. and it has issued an advisory vide Office memorandum No. No.2(18)/2007-MSME(pol), dt. 26-08-2008 which states in para 3 that,

“The matter has been examined. It is considered advisable that the Micro and Small Enterprises should mention/ get printed on their letter heads, supply order sheets, invoices, bills and other relevant documents, the Entrepreneurs Memorandum (EM) Number {as allotted after filing of the said Memorandum, by the District Industries Centre (DIC) or competent authority, as notified by their respective State Government/ UT administration}, so that there always remains an identification of being a MSE supplier.”

Thus, it is not only enough to obtain Udyam Registration but necessary to print the said number on the tax and other invoices and letter heads etc. along with GST number and also include a declaration to the effect of its validity similar to that of declaration under the GST law. This will automatically cover the supply for 15 days limit except where a written agreement is there for time limit of payment.

3. As a corollary to the above clarification/advisory, it seems to absolve the buyer and its auditors for not disallowing the amounts or non-disclosures of dues to suppliers covered under MSMED, if the Udyam Registration is not mentioned in the tax invoices and/or other correspondence to the buyer.
4. From 1-7-2020 Udyam Registration (UR) has replaced the earlier Udyog Adhar Memorandum (UAM).

In case of those registered under the earlier UAM would be regarded as unregistered unless they have obtained the new UR.

For the time between 30-6-2020 and obtaining the new UR, the entity would be treated as unregistered. Consequently, the benefits under the MSMED Act would not be available for the transactions entered during that period.

5. **One of the question is whether the Chapter V i.e. delayed payment benefits are available to a trading concern.**

M/o Housing and Urban Affairs vide their D.O. letters No. K-12017(33)/1/2021-UPA-I-UD (9111371) dated 09.07.2021 and 19.07.2021

has requested for inclusion of urban street vendors in the ambit of MSME. Accordingly, M/o MSME vide notification 16/17/2020-P&G/Policy (E-19421) dated 09.08.2021 clarified that the Street Vendors can register as retail trades on Udyam Registration (UR) portal. The registration process does not differentiate between urban and rural enterprises.

However, the benefits to Retail and Wholesale trade MSMEs are to be restricted to Priority Sector Lending only.

- 6. To fall under the definition of “enterprise”, the service provider should be an industrial undertaking or a business concern or any other establishment.** It seems that an individual service provider without an undertaking/concern/establishment would not qualify as an enterprise.

Thus, a CA of firm of CA having an office shall be enterprise. But an individual practicing without an establishment will not be a service enterprise. To give an example, a photographer with a studio will qualify as an enterprise but without it he will not.

Thus, the tax professionals in practice with an establishment can avail benefits even of Chapter V i.e. delayed payments. This is a very beneficial provision for the profession.

- 7. The purchases made in last 15 days of the previous year will have to be checked carefully for disallowance.** e.g. the payment for last purchase on 31st March will have to be paid on or before 15th April or 15th May (without agreement or with agreement) as the case may be.

This is due to the specific exclusion of Sec.43B(h) from the condition for payment on or before the due date u/s 139(1) in Sec.43B. In case this exclusion would not have been on statute book, still the payment would have been covered as held by Hon. SC that the MSMED Act is a special act and hence overrides any general act. That may be the reason to insert the exclusion of Sec. 43B(h) from the same.



8. Impact on Businesses:

8.1. Compliance:

Businesses need to be aware of this clause and ensure timely payments to MSMEs to claim tax deductions. Failure to do so could result in increased tax liability. Cash flow management: Businesses may need to adjust their payment cycles to adhere to the stipulated timeframe, potentially impacting their cash flow.

8.2. Supplier relationships:

Timely payments are crucial for maintaining good relations with MSMEs.

9. Due date calendar for section 43B(h)*

Due Date Calendar for Section 43B(h)*

Date of Invoice	Due Date for Payment	
	If No Agreements	If Written Agreement
15/02/2024	01/03/2024	31/03/2024
16/02/2024	02/03/2024	01/04/2024
17/02/2024	03/03/2024	02/04/2024
18/02/2024	04/03/2024	03/04/2024
19/02/2024	05/03/2024	04/04/2024
20/02/2024	06/03/2024	05/04/2024
21/02/2024	07/03/2024	06/04/2024
22/02/2024	08/03/2024	07/04/2024
23/02/2024	09/03/2024	08/04/2024
24/02/2024	10/03/2024	09/04/2024
25/02/2024	11/03/2024	10/04/2024
26/02/2024	12/03/2024	11/04/2024
27/02/2024	13/03/2024	12/04/2024
28/02/2024	14/03/2024	13/04/2024
29/02/2024	15/03/2024	14/04/2024

Date of Invoice	Due Date for Payment	
	If No Agreements	If Written Agreement
01/03/2024	16/03/2024	15/04/2024
02/03/2024	17/03/2024	16/04/2024
03/03/2024	18/03/2024	17/04/2024
04/03/2024	19/03/2024	18/04/2024
05/03/2024	20/03/2024	19/04/2024
06/03/2024	21/03/2024	20/04/2024
07/03/2024	22/03/2024	21/04/2024
08/03/2024	23/03/2024	22/04/2024
09/03/2024	24/03/2024	23/04/2024
10/03/2024	25/03/2024	24/04/2024
11/03/2024	26/03/2024	25/04/2024
12/03/2024	27/03/2024	26/04/2024
13/03/2024	28/03/2024	27/04/2024
14/03/2024	29/03/2024	28/04/2024
15/03/2024	30/03/2024	29/04/2024
16/03/2024	31/03/2024	30/04/2024
17/03/2024	01/04/2024	01/05/2024
18/03/2024	02/04/2024	02/05/2024
19/03/2024	03/04/2024	03/05/2024
20/03/2024	04/04/2024	04/05/2024
21/03/2024	05/04/2024	05/05/2024
22/03/2024	06/04/2024	06/05/2024
23/03/2024	07/04/2024	07/05/2024
24/03/2024	08/04/2024	08/05/2024
25/03/2024	09/04/2024	09/05/2024
26/03/2024	10/04/2024	10/05/2024
27/03/2024	11/04/2024	11/05/2024
28/03/2024	12/04/2024	12/05/2024
29/03/2024	13/04/2024	13/05/2024
30/03/2024	14/04/2024	14/05/2024
31/03/2024	15/04/2024	15/05/2024



*Assumed
Date of Invoice & Date of Acceptance is Same
Supplier is Not Traders
Supplier is Mirco or Small Enterprise
Supplier has Registered on UDYAM Portal
Buyer is Not Filing ITR u/s 44AD/44ADA/44AE

10. Frequently Ask Questions.

Q-1: From which Financial Year this amendment is applicable?

A-1. This amendment is made applicable from AY 2024-25 i.e. FY 2023-24.

Q-2: Which entities can be categorised as MSMEs?

A-2: Entity can be categorised as MSME – Micro, Small & Medium Enterprises

Particular	Micro	Small	Medium
Investment in Plant & Machinery or equipment	Up to Rs.1.00 Crores	Up to Rs. 10.00 Crores	Up to Rs. 50.00 Crores
AND			
Turnover (excluding export turnover)	Up to Rs.5.00 Crores	Up to Rs. 50.00 Crores	Up to Rs. 250.00 Crores

Note that this amendment applies to only Small and Micro Enterprises and does not apply to Medium Enterprises.

Q-3: Whether this amendment can be made applicable for an amount outstanding to micro and small enterprise as on 31/03/2023?

A-3. This amendment is made applicable from AY 2024-25 i.e. FY 2023-24. Hence, this amendment is not applicable for an amount outstanding to micro and small enterprises as of 31/03/2023. It will apply to the transactions from 1st April 2024.

Q-4: To attract the disallowance u/s 43B(h), is it mandatory that supplier should have registration under the MSMED Act?

A-4. From the combined reading of section 8 and section 2(n) of the MSMED Act, 2006, it casts responsibility on MSME units to file a memorandum with the notified Authorities. However, that does not mean that Micro / Small

Enterprise, which have not obtained Udyam Registration/filed memorandum are not be considered as Micro / Small Enterprise Creditor for Section 43B(h).An Enterprise, which is not registered under MSME but has merely furnished the Declaration in writing clarifying their Type of Enterprise viz. “Micro / Small” are required to be considered as such for all purposes of Section 43B(h) as Micro / Small Enterprise.

Reference is invited to the case below

Case Name: M/s Ramky Infrastructure Private Limited Vs Micro And Small Enterprises Facilitation Council & ANR (Delhi High Court)
Appeal Number: W.P.(C) 5004/2017 & CM No. 21615/2017 Date of Judgement/Order: 04.07.18

Q-5: How to verify whether a supplier is registered under the MSMED act or not?

A-5.: After the amendment in section 43B(h) in Budget 2023, many suppliers have started to include their MSME registration numbers on their invoices. Through the MSME Portal, one can verify MSME registration and the type of enterprise (Micro/ Small/ Medium) using the registration number. By this way, one can find that whether supplier is registered under MSMED act or not.

Q-6: What if a supplier has not intimated his registration under MSME in any manner to buyer?

A-6.: It is the responsibility of the supplier to intimate its registration to the buyer. If in any case, the supplier has not in any manner intimated his MSME registration, then in the absence of availability of information, no disallowance can be made under section 43B(h).

Q-7: Whether section 43B(h) is applicable for dues outstanding to traders having MSME registration?

A-7: As per section 2(e) of MSMED act, 2006 – “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, pertaining to any industry specified in the First Schedule to

the Industries (Development and Regulation) Act, 1951 (65 of 1951) or engaged in providing or rendering of any service or services. Hence, the definition of enterprise does not include traders.

The Ministry of Micro, Small and Medium Enterprises vide Office Memorandum (OM) No. 5/2(2)/2021-E/P & G/Policy dated July 2, 2021, has allowed Udyam registration for retail and wholesale trade. However, benefits to Retail and Wholesale trade MSMEs are restricted to Priority Sector Lending only. Hence, other benefits available under the MSMED act do not apply to traders. Resultantly benefit of section 15 of the MSMED act is not available to traders and hence 43B(h) cannot be made applicable to dues outstanding to traders. It is advisable to yearly examine the classification of creditors.

Q-8: If a supplier is engaged in both i.e. trading as well as manufacturing/services, in that situation whether section 43B(h) apply for dues outstanding to that supplier?

A-8.: In such a situation, section 43B(h) can be made applicable for dues outstanding to such suppliers.

Q-9: Can disallowance be attracted under section 43B(h) for dues outstanding in relation to capital expenditure?

A-9.: Section 43B reads as – “Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of.....” It is clear from above that 43B can be made applicable only to those deductions which is otherwise available under the Income Tax Act. Capital expenditure is not an allowable expense under the Income Tax Act. Hence, no disallowance will be attracted under section 43B(h) for dues outstanding to capital expenditure.

Q-10: How year-end provisions will be dealt with for disallowance under 43B(h)?

A-10.: As mentioned above, as per section 15 and section 2(b) of MSMED Act, 2006 payment must be made within 15/45 days from the actual delivery of goods or services. Hence, for any provision made for which actual delivery of

goods or services does not take place till the end of the year, no disallowance can be made under section 43B(h).

Q-11: what if the buyer makes payment to the supplier after 15/45 days, but before the end of the financial year?

A-11.: In such a situation, a deduction can be claimed in a same financial year as payment is made in the same year.

Q-12: What if the buyer makes payment to the supplier after 15/45 days, but before filing the return of income for that financial year?

A-12.: As per the amendment made in the first proviso to section 43B, the benefit of the first proviso will not be available for due to micro and small enterprises, Hence, though payment is made before filing a return of income, the deduction can only be claimed in the year in which actual payment is made and not in the year of accrual.

Q.13 What if the MSME extends the payment deadline?

A-13. The original invoice date still applies for calculating the timeframe.

Q.14 What are the consequences of delayed payments?

A-14. Disallowance of deduction under Section 43B(h) and potential interest liability on the delayed amount.

Q.15 Does Section 43B(h) apply to all businesses?

A-15. No, it applies only to businesses exceeding the turnover threshold specified in the MSMED Act.

Q-16: Disallowance under 43B(h) can be attracted for assessee opting presumptive taxation i.e., 44AD/44ADA/44AE etc.?

A-16: Section 43B does not apply to the assessee opting for presumptive taxation. Hence, no disallowance can be made in such cases.

Q-17: Chargeability of interest on delayed payments to MSME entities:

A-17: In case of failure to pay within the time limit specified in section 15 of the MSME Act, Section 16 charges liability to pay compound interest with monthly rests (i.e. interest will be calculated on the closing balance of the previous month) to the supplier @ Three times of bank rate notified by the Reserve Bank for the period of delay. The amount of interest payable or paid by the buyer shall not be allowed as a deduction under the Income Tax Act, 1961 as per provisions of section 23 of the MSME Act, 2006.

Q-18: Goods reaches late than how to compute the number of days?

A-18: Let us understand the question with the help of an illustration: X Dealt with an MSME where he received an invoice dated 16 March 2024 with respect to the supply of goods delivered on the same day. E having an issue with regards to the quality of goods supplied, communicated the same to the MSME vendor on 18 March 2024. Both the parties concluded with regards to the dispute on 30 April 2024 and accordingly E made a payment on 31 May 2024.

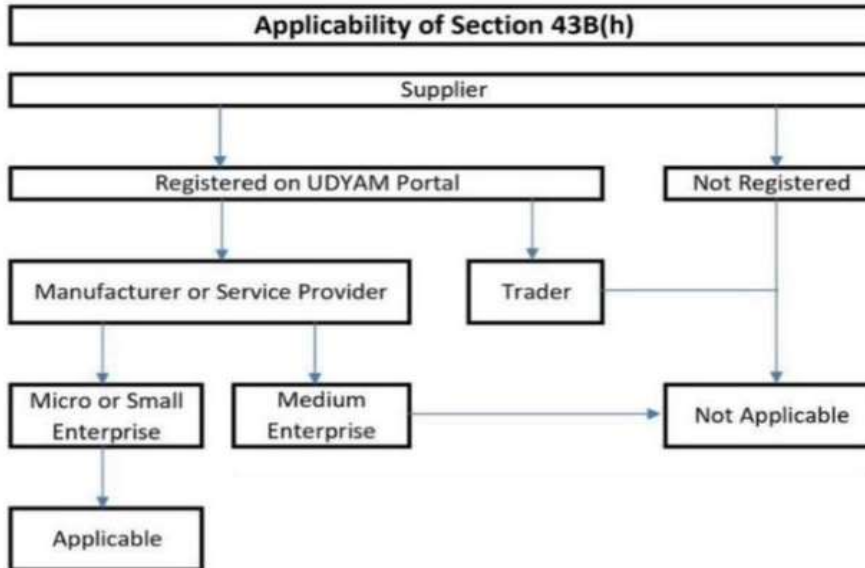
In this scenario, as a dispute with regards to the invoice was communicated within 15 days of the date of delivery therefore time limit under section 15 of the MSME Act 2006 is applicable from the date on which dispute is resolved. And accordingly, as the payment is made within 45 days from the date on which the dispute was resolved, E will be eligible for deduction of the said payment in the financial year 2023-24 when the expenses accrued.

Conclusion:

While Section 43B(h) may pose challenges for some businesses, it ultimately aims to benefit both MSMEs and the overall economy by promoting timely payments and fostering a healthy business ecosystem. Understanding this clause and proactively managing payments is crucial for businesses to ensure tax compliance and maintain positive relationships with their suppliers.



Summary of applicability of section 43B(h) of the Act:



Applicable for	
The Amount payable for Goods & Services	
The Amount payable to Micro and Small enterprises only	
The Amount payable to Manufacturer and Service Provider only	
Major Activity	Manufacturing
Major Activity	Services

Not Applicable for	
The Amount payable to Traders	
Major Activity	TRADING [For availing benefits of Priority Sector Lending(PSL) ONLY]

For Sum Payable for Invoices dated on or before 31/03/2023, section 43B(h) is Not Applicable

If Invoice between 01/04/2023 to 15/02/2024 were paid before 31/03/2024 then allowed as expense in FY 2023-24

If Invoice between 16/02/2024 to 31/03/2024 were paid within 45 days then allowed as expense in FY 2023-24 (Assumed Written Agreement of 45 Days is there between Buyer and Supplier)

If Not Paid then within due date then allowed as expense in the year of payment only, it means if purchase invoice dated 31st March 2024 paid in June 2024 then such purchase will be allowed as expense in FY 2024-25 and not in FY 2023-24

**GST****GIST OF GST NOTIFICATIONS**

NOTIFICATION NO.	DATE	SUBJECT / HIGHLIGHTS
05/2024- Central Tax	30-01-2024	CBIC notified the amendmend in notification No. 2/2017- Central Tax dated 19-06-2017- In the said notification, in Table II which relates to Territorial Jurisdiction of Principal Commisioner / Commisioner of Central Tax, in serial number 83 for Pune II, in column (3), in clause (ii), after the figure and letter “411060,” the figure and letter “411069,” shall be inserted
04/2024- Central Tax	05-01-2024	CBIC notified special procedure to be followed by a registered person engaged in manufacturing of certain goods
03/2024- Central Tax	05-01-2024	CBIC notified Rescinding the Notification No. 30/2023-Central Tax, which specifies the special procedure to be followed by a registered person engaged in manufacturing of certain goods i.e. Pan masala, Tobacco items. The Notification shall be effective w.e.f. 01.01.2024



NOTIFICATION NO.	DATE	SUBJECT / HIGHLIGHTS
02/2024-Central Tax	05-01-2024	CBIC notified due date for filing FormGSTR-9 and GSTR-9C for the FY 2022-23 extended for the persons districts of Tirunelveli, Tenkasi, Kanyakumari, Thootukudi and Virudhunaga in the state of Tamil Nadu upto 10 th Jan 2024.
01/2024-Central Tax	05-01-2024	CBIC notified due date filing GSTR-3B for Nov. 2023 extended for the persons districts of Tirunelveli, Tenkasi, Kanyakumari, Thootukudi and Virudhunaga in the state of Tamil Nadu upto 10 th Jan 2024.

GST UPDATES

1. Advisory on introduction of new Tables 14 & 15 in GSTR-

As per Notification No. 26/2022 – Central Tax dated 26th December 2022 two new tables Table 14 and Table 15 were added in GSTR-1 to capture the details of the supplies made through e-commerce operators (ECO) on which e-commerce operators are liable to collect tax under section 52 of the Act or liable to pay tax u/s 9(5). These tables have now been made live on the GST common portal. These two new tables will be available in GSTR-1/IFF from January-2024 tax periods onwards.

2. Advisory on Payment through Credit Card (CC)/Debit Card (DC) and Unified Payments Interface (UPI)-

To facilitate the taxpayer registered under GST with more methods of payment, two new facilities of payment have now been provided under e-payment in addition to net-banking. The two new methods are Cards and Unified Payments Interface (UPI). Cards facility includes Credit Card (CC) and Debit Card (DC) namely Mastercard, Visa, RuPay, Diners(CC only) issued by any Indian bank.

3. Advisory for furnishing bank account details by registered taxpayers under Rule 10A of the Central Goods and Services Tax Rules, 2017.-

All Registered Taxpayers are required under the provisions of CGST Act, 2017 and the corresponding Rules framed thereunder to furnish details of their bank account/s within 30 days of the grant of registration or before the due date of filing GSTR-1/IFF, whichever is earlier.

Taxpayers are therefore advised to promptly furnish their bank account details, who have not provided it so far if 30 Days period is shortly going to expire to avoid disruption in business activities and the subsequent suspension of GSTIN.

1) Failure to furnish the bank account in the stipulated time: It would result into following:

- a) Taxpayer Registration would get suspended after 30 days and intimation in FORM REG-31 will be issued to the Taxpayer.
- b) Get the Taxpayer debarred from filing any further GSTR-1/IFF.

2) Revocation of Suspension: If the taxpayer updates their bank account details in response to the intimation in FORM REG-31, the suspension will be automatically revoked.

3) Cancellation of Registration:

If the bank account details are not updated even after 30 days of issuance of FORM REG-31, the registration after suspension may also be taken up for cancellation process by the Officer.

Taxpayers are requested to take immediate action to provide the necessary information and avoid any adverse consequences.



GST related amendments proposed through the Finance Bill, 2024

There are two amendments have been proposed to the CGST Act vide the Finance Bill, 2024

- a) To make registration as Input Service Distributor (ISD) mandatory in case of procurement of common input services and distribution of ITC thereof to distinct persons. Clause (61) of section 2 relating to the definition of ISD and section 20 dealing with the manner of distribution of credit by ISD are proposed to be substituted for this purpose.

Earlier, in the light of the controversy surrounding ISD v/s Cross Charge, MoF had issued Circular No. 199/11/2023-GST dated 17-07-2023 to clarify that the Head Office (HO) had an option to distribute ITC in respect of such common input services either by following ISD mechanism or cross charge and that the ISD route was not mandatory as per the current provisions of the CGST Act and Rules. Therefore, the present amendment proposed by the Finance Bill, 2024 was anticipated. It remains to be seen whether this amendment puts the ISD v/s cross charge controversy to rest or gives rise to a fresh round of challenges.

- b) A new section 122A is proposed to be inserted to provide for penalty for failure to register certain machines used in manufacture of goods as per special procedure notified u/s 148 of CGST Act. The amount of penalty shall be Rs. 1 lakh per unregistered machine and the same shall be in addition to the other penalties specified in the CGST Act. There is also a provision for confiscation of unregistered machines.

Recently, Notification No. 4/2024-Central Tax, dated 05-01-2024 was issued to prescribe the special procedure to be followed by registered persons engaged in manufacturing notified goods. The list of notified goods includes products such as pan masala, unmanufactured tobacco, hookah, smoking tobacco, chewing tobacco, Gutkha, etc.



THANK YOU!

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