

Trade bodies challenge new I-T provision on micro, small enterprises

Shishir Sinha
New Delhi

Three trade bodies have moved the Supreme Court against a new income tax provision related to payment to micro and small enterprises.

The Federation of All India Vyapar Mandal, the Federation of Madras Merchants and Manufacturers Association and the Confederation of West Bengal Trade Associations have sought an interim stay and quashing of the amendment in the Income Tax Act.

The petitions were registered on April 27 and are now awaiting listing. The matter is related to an amendment in the I-T Act which prescribes that companies not making payment to micro and small enterprises during a fiscal will have to wait for a full year for deductions under the IT Act.

The amendment came into effect for AY25 starting April 1, 2024.

THE AMENDMENT

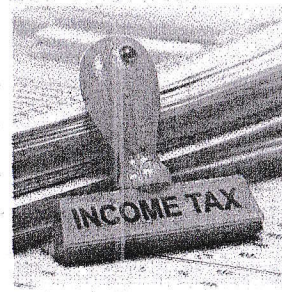
While the Finance Ministry has repeatedly stressed that the amendment is meant to ensure timely payment to micro and small business and to help them, the trade bodies disagree.

Section 43B of the I-T Act provides for certain deductions to be allowed only on actual payment.

Further, the proviso allows deduction on accrual basis if the amount is paid by due date of furnishing of the return of income.

To promote timely payments to micro and small enterprises, the Finance Act 2023 provided that payments made to such enterprises be included within the ambit of section 43B of the Act.

Accordingly, a new clause h in Section 43B of the Act was inserted to provide that any sum payable by the as-



sessee 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.

The trade bodies, in their petitions, have argued that the new clause is violative of their fundamental rights.

It has been maintained that it is "colourable legislation", the principle that implies that the government has enacted this legislation under the guise of having authority even though it

does not possess any competent authority.

ARTICLE 19

The basis for this is that while seven clauses (a to g) of Section 43B of the IT Act deal with governmental or industrial institutions, clause h deals with private businesses. This particular clause infringes upon the fundamental right under Article 19(1)(g) of micro and small enterprises to do business on their own terms by granting the credit of more than 45 days to the buyers, the petitioners argued.

It affects the allowability of purchases which cannot be termed as mere expenditure as purchases along with sales constitute business which has been mistaken for an expenditure of business. At the same time, it disregards the norm that the RBI in export and import allows letter of credit for 90 days.

Section 15 of the MSMED

Act 2006 mandates payments to micro and small enterprises within 45 days in case of written agreement and 15 days in case of no-written agreements. There have been numerous instances, when payment was delayed. To resolve this, while announcing the Budget for FY24, Finance Minister Nirmala Sitharaman said: "To support MSMEs in timely receipt of payments, I propose to allow deduction for expenditure incurred on payments made to them only when payment is actually made."

An explanatory memorandum made it clear that this will be applicable for small and medium enterprises only. Micro enterprises means a unit where the investment in plant and machinery or equipment does not exceed ₹1 crore and turnover does not exceed ₹5 crore. For small enterprises, these figures will be ₹10 crore and ₹50 crore, respectively.