

# **Micro Small & Medium Enterprises Development (MSMED) Act 2006**

## **A Welfare Legislation For SMEs**

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In a Democratic Country, Laws are made with an intention to **check some bad practice** or to **promote a good practice**

**II परित्राणाय साधुनाम विनाशाय च दुष्कृताम II**

However, Whether only making of good law is enough?

What about the spirit of implementation?

And most important

**?? What is my role as a CA ??**

# Contents

- Status of SMEs today in India
- Important Provisions of MSMED Act 2006
- Our duty as an Auditor and as a consultant
- Scope for Improvement in the Act



# Status of SMEs today in India



# About..

- MSME = Micro, Small & Medium Enterprises
- More popularly known as SMEs or SSIs
- Manufacturing and Service entities with low or medium investment in Plant & Machinery or Equipment.
- Govt. Prgms such as Mudra, Startup, Stand up are all aimed to strengthening the MSME sector.

# Strength...

- 3.6 crores units which include Home, cottage, village, tiny units
- 8 cr + workforce, Second biggest after Agri.
- 6,000+ products
- Contributes about 40% to GDP, 45% to the total manufacturing output and 45% to the exports
- Growth rate of 13% YoY

# *What is the problem??*

*Biggest problems for MSME today are*

- *longer Credit Periods*
- *Lack of access to formal bank finance*
- *Lack of Awareness about Govt. Initiatives*

# Facts

## Low awareness:

- More than 60% SMEs don't know that there exists such an act; Many know the act but are not registered;
- Those registered don't know their rights;
- Many know the rights but they do not claim them;
- Many claim their rights but the buyer neither makes the payment on time nor he pays any interest;
- No of SMEs registered are less 15% of total numbers.

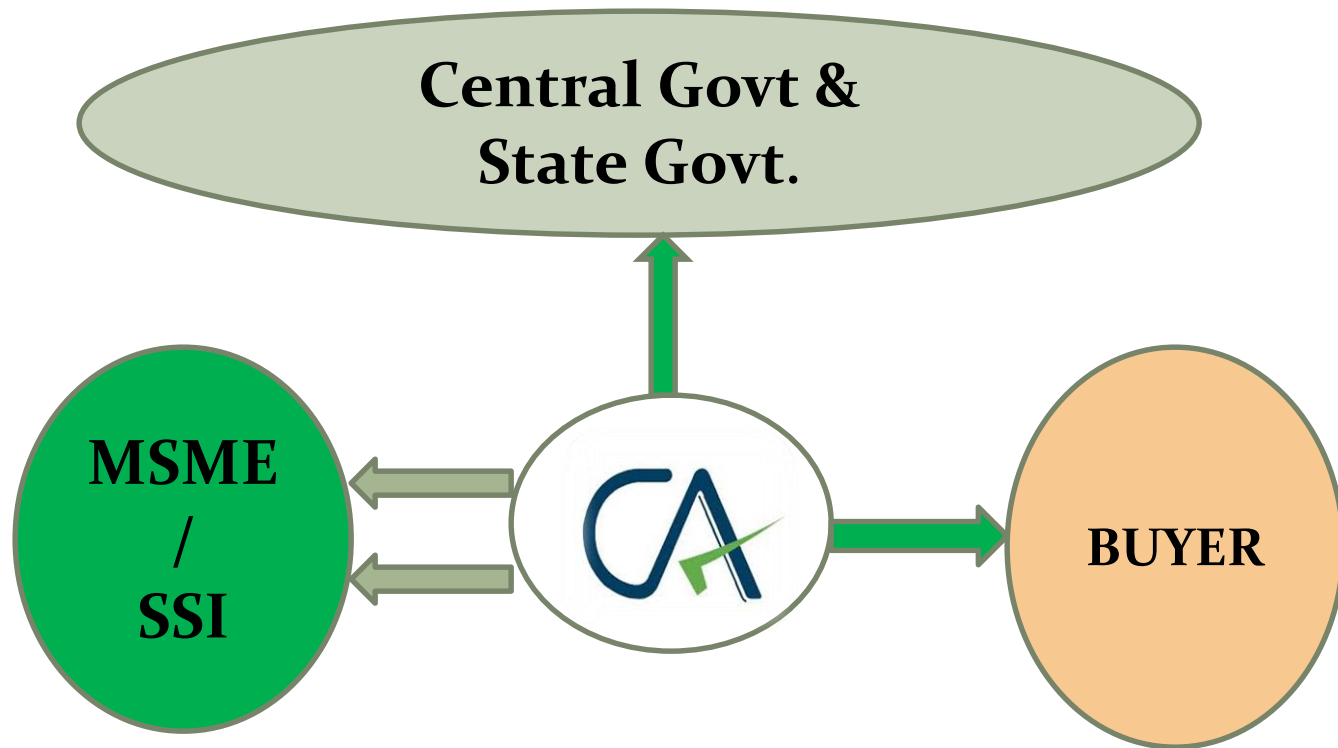
# Facts

## CRISIL:

- In a study 5000 SMEs, CRISIL says ‘if the SMEs get paid from their large corporate customers within the limits prescribed under this act then their profitability shall go up by 15%.
- Timely payments will help reduce interest cost
- Have positive impact on the long-term health and sustainability of India’s SME sector.

# What is the Solution??

## MSMED Act



**CA in the center of Solution**



# Important Provisions of MSMED Act 2006

# MSMED Act 2006 – Objectives

- 1. To facilitate promotion, development and enhance competitiveness amongst SMEs.
- 2. To regulate the credit period and to improve liquidity position of SMEs.
- 3. To provide a single legal framework for quick resolution of disputes



# Definition – Classification

Classification of Entity depends on “Investment” in Plant and Machinery or Equipment

Type of Unit	Manufacturing	Service
Inv. in	P&M	Equipment
Micro	25 Lk (50)	10 Lk (25)
Small	5 Cr (10)	2 Cr (5)
Medium	10 Cr (30)	5 Cr (15)

Figures in bracket indicate the proposed limits as per MSMED Amendment bill 2015

# Exclusions from Investments

- Pollution control, R&D, industrial safety devices
- Tools, jigs, dies, molds, spare parts & consumables
- installation and transportation cost of P&M
- Generator, Extra transformer
- Gas producer Plants
- Cost of Know-how for P&M
- Fire fighting Equipment
- VAT and Cenvat

# What are “Services”

Circular dated 16-11-2007 –

- There is no negative list
- Illustrative list as per WTO

Business Services

Communication

Construction

Distribution

Educational

Environmental

Health related

Financial

Tourism & Travel

Recreational

Transport

Others

# Registration

- Discretionary to - Micro & Small Entp.  
Medium (Service) Entp.
- Compulsory to - Medium (Mnf) Entp.

## Udhyog Aadhar (From Sep-2015)

- Registration is online and user-friendly.
- UAM can be filed on self-declaration basis
- No documentation required
- No Fee for filing
- File more than one Udyog Aadhaar with same Aadhaar Number

# S15: Buyers Liability to make Payment

Where any supplier supplies any goods/services, the buyer ***shall*** make payment thereof on or before the date agreed upon between him and the supplier in ***writing***.

Where there is no agreement in this behalf, before the ***appointed day***;

***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***.

- ***Appointed Day***: the day following immediately after the expiry of the period of fifteen days from the day of acceptance
- ***Day of Acceptance***: the day of the actual delivery of goods/rendering of services.  
In case of written objection (***within fifteen days***) - the day on which such objection is removed by the supplier
- ***Day of Deemed Acceptance***: ***The day of the actual delivery of goods***/rendering of services

# Credit period interpreted

Appointed Day, Day of Acceptance, Day of Deemed Acceptance				
SN	Scenario	Deciding date	Payable within (days)	Credit Period
S 1	No agreement, no Query	Day of delivery (deemed acceptance)	15 of delivery	<b>15</b>
S 2	No agreement, but Query	Day of acceptance (15 days from delivery)	15+15 days i.e. 30 days from delivery	30
S 3	Agreement, but no Query	Max 45 days from delivery	45 days of delivery	45
S 4	Agreement & Query	Max 45 Days from deemed acceptance (15 days from delivery)	15 days+ 45 days	<b>60</b>

## **S16: Interest on Delayed Payments**

Where any buyer fails to make payment to the supplier as per Section 15 – he is liable to pay **Compounded interest with monthly at three times of the bank rate**

Present Bank rate is 7% hence ROI u/s 16 is **21%**

## **S17: Payment with Interest**

Buyer shall be liable to pay the amount ***with interest*** thereon as provided under section 16.



# S18: Arbitration and Conciliation

- Dispute with regard to any amount due under section 17, to be referred to the MSE Facilitation Council.
- The Council shall conduct conciliation u/s 65 to 81 of the Arbitration and Conciliation Act, 1996.
- Where the conciliation fails, dispute shall be taken up for arbitration under A&C Act, 1996, as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

# Provisions conti....

- Every reference made under this section shall be decided within a period of **90 days** from the date of making such a reference.
- No application for setting aside any award shall be entertained by any court unless the appellant (***not being a supplier***) has deposited with it **75%** of the amount
- Pending disposal of the application, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable.

# Disclosure u/s 22

Any buyer required to get his accounts audited under any law for the time being in force, such buyer shall furnish the 5 point info in his annual statement of accounts,

SN	PARTICULATS	Principle Amt. RS.	Interest Amt. Rs.
1	Interest & Principle paid beyond due date (During the year)	800000	100000
2	Interest & Principle o/s (Year end)	1600000	150000
3	Interest due for principle paid beyond due date (Out of 2 above, but relating to 1 above)	-	80000
4	Balance Interest accrued for principle unpaid (2-3)	-	70000
5	Status of Interest up to reporting date (As on date of signing of balance sheet)	-	40000



# Corporate Thinking

Corporate *Buyers* have two lines of thinking towards payments to MSME

Considering the importance of MSMEs for the overall economy paying within 45 days is part of Corporate Social Responsibility (CSR)

- Renegotiate the terms with MSMEs and pay them within 45 days
- Provide the interest, build the provision for 3 years and write it off at the end of 3<sup>rd</sup> year stating it as unclaimed and non payable – this treatment amounts to non-compliance of section 17.

# Provisions conti....

## **S23 – Interest not deductible:**

Notwithstanding anything contained in the Income-tax Act, 1961, the amount of interest payable or paid by any buyer, is not allowed as deduction.

*[Whether TDS is applicable on this interest???*

- 194A – ‘Income by way of interest other than interest on securities’
- Bombay HC- In CIT Vs Vidyut Corporation [2010] - The interest payable by the purchaser for delay in payment of purchase consideration of goods, will partake the nature and character of purchase consideration in the hands of the purchaser.

# Penalties (Sec 27)

- Whoever contravenes any of the provisions of sub-sec (1) of Sec 8 (Rgn) or Sec 26 (Info to officer) shall be punishable
  - In the case of the first conviction up to Rs. 1000; and
  - In the case of any second or subsequent conviction up to Rs. 10000
- Where a buyer contravenes the provisions of **section 22**, he shall be punishable with a fine which ***shall not be less than Rs. 10000.***

# Judicial pronouncement



# Overriding Provisions

## S24 – Overriding Effect

The provisions of sections 15 to 23 shall have effect *notwithstanding anything inconsistent* therewith contained in any other law for the time being in force.

*[Whether these provisions hinder buyer's Constitutional Rights]*

# Case law

***1) M/S. Eden Exports Company & other vs Union Of India on Aug-2010 - Madras High Court.***

- **Writ:** To declare Sections 15 to 24 of Chapter V of the MSMED Act, 2006 as unconstitutional and strike down the same.
- **Judgment:** The contentions raised in the writ petitions are misconceived and lack in merits. Accordingly, they deserve to be dismissed.

# Judgment

- After having found that the previous Act was a toothless Tiger, the Parliament provided tooth and claws in the MSMED Act.
- The fixing of time limit is to save the Micro and Small Enterprises from going out of existence due to undue delay in payments by the buyers.
- To that extent, right to enter into contract can be curtailed. Such curtailment cannot be said to be either arbitrary or unconstitutional.

# Judgment Conti...

- Every legislation will create some trouble for some persons, when it seeks to confer benefits on others. Such crudities and inequities are not available as grounds for challenging a legislation

***2) Madras High court on deposit of 75% of award amount. Goodyear India Ltd Vs. Nortan Intec Rubber (P) Ltd.***

- Petition dismissed due to non deposit of 75% of the disputed amount.

# Legal Opinion

A listed company has an accumulated Int provision of Rs. 65 laks - Legal opinion sought on whether the company can write back the same by obtaining a no due undertaking from the supplier:

Supreme court advocate opined –

1. Such undertaking may run contrary to provisions of Sec 16 and could be held void in law.
2. As the audited financials already state the payables the said undertaking would prove to be false.
3. All provisions are mandatory and aimed at fortifying the SMEs in their transactions with large entities.
4. Writeback or adjustment is not advisable

# TAX AUDIT REPORT

3CD

# Clause 22 (Old 17A) of 3CD

- Auditor should seek info regarding status of the Entp i.e. whether the same is covered under the MSMED Act, 2006.
- Where the info is available and has been disclosed the same should be reported as such in Form No. 3CD. Where the info is not available the auditor should also mention the same in the 3CD.
- Obtain a full list of suppliers of the assessee which fall within the purview of the definition of “Supplier” under section 2(n)

# Clause 22 of 3CD Conti.....

- Review the list so obtained.
- Verify from the books of account whether any interest payable or paid to the buyer in terms of section 16 of the MSMED Act has been debited or provided for in the books of account.
- Where the tax auditor, upon due verification, finds that the auditee has neither provided for nor paid any interest payable under the MSME Act, the no amount is inadmissible under section 23 of MSME Act. In such a case 'Nil' can be reported against clause 17A.



# Scope for Improvement in the Act

- Increase in limit of investments - Proposed amendment in the act pending with parliament for more than 1.5 years since Apr 2015. – **NEED ACTION.**
- S.2(n)-Definition of Supplier, NEEDS AMENDMENT /CLARIFICATION. Presently, Rgn for Micro and Small entities is not compulsory[S.8(1)] BUT definition of SUPPLIER requires filing of EM. Unregistered SME can not go to MSME Facilitation council for dispute resolution?? This is defeating the purpose of Act.

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# Scope for Improvement in the Act

- **Making the SME registration data online and public.**

Registration of SME has been made online, many complements to the central government for the facilitation.

Now making this data online and public is most necessary, so that every buyer can check whether his supplier is SME or not and if he is SME than will pay him within 45 days as per the provisions of the act.

Even the auditor will report based on the SME data available online.

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# What is the Fight?



The fight is between

**Low profit margins of SMEs**

**Vs.**

**Hefty salaries of Corporate bosses**

## **My role as a CA**

In 'Kaliyug'

The 10<sup>th</sup> Avatar of Lord Vishnu 'Kalki' will come in the form of 'Unity of Good People'

II धर्म संस्थापनार्थाय सम्भवामि युगे युगे II

**So, lets unite and Fight for the Good.**

Than Q?  
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