

विकास आयुक्त का कार्यालय  
(सूक्ष्म, लघु और मध्यम उद्यम)  
सूक्ष्म लघु और मध्यम उद्यम मंत्रालय  
(भारत सरकार)

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No. 4/5(1)/2017-MSME Pol.

Dated: 14<sup>th</sup> March 2018

**Subject: Clarification sought by Rajasthan MSEFC in respect of delayed payment cases where MSEs have got themselves registered/filed Memorandum subsequent to the supplies made to the buyer**

Reference is invited to MSEFC Rajasthan letter no. F9(54)(904)COI/Mkt/RMEFC/2017 dated 28.12.17 on the above cited subject.

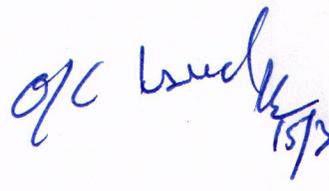
2. In the above context, it is informed that MSEFCs constituted as per the provisions of MSMED Act in the States/UTs, are semi-judiciary in nature and empowered to take decisions as per the rules framed by the respective States/UTs. However, there have been several cases where the supplies have been made by MSEs and Memorandum/UAM was filed later on to make a reference to MSEFC for delayed payment as per the provisions of MSMED Act. It is observed that Honourable High Court of Andhra Pradesh, referring to the provisions of MSMED Act has confirmed (refer para 8 of page 9) that a micro or small enterprise is not mandatorily required to file a memorandum with the authority specified by the State Government or Central Government, as the case may be, and discretion is given in this regard. However, Section 2(n) in so far as it defines a supplier to mean a micro or small enterprise is followed with the qualification that it should have filed a memorandum with the authority referred to in sub-section (1) of Section 8. However, the inclusive part of the definition under Section 2(n)(iii) states that any company, cooperative society, trust or body, by whatever name called, and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises, would also qualify as a supplier. In the context of this inclusive part of the definition, there is no requirement that the micro or small enterprise, whose goods are being sold or whose services are being rendered by the company, cooperative society, trust or body, should have filed a memorandum under Section 8(1) of the Act of 2006.

In the same case, Shri Ashok Anand Kumar, learned counsel would contend that Section 2(n) of the Act of 2006 has to be interpreted to mean that filing of a memorandum is only a qualifying phrase and it cannot be construed to curtail the definition, so as to exclude micro and small enterprises which did not file such a memorandum. He referred to M/s Hameed Leather Finishers Vs. M/s Associated Chemical Industries Kanpur Pvt. Ltd., wherein a Division Bench of the Allahabad High Court held that filing of a memorandum under Section 8 was not compulsory for a small enterprise to fall within the definition of a supplier.

3. In the light of above, it is informed that in view of the decisions already given by Hon'ble High Court of Andhra Pradesh, M/o MSME is also of the view that there is no bar on the MSEs to necessarily file a memorandum and it is as per the MSMED Act 2006, is at the discretion of MSEs to file the memorandum. This may be considered.

4. This issues with the approval of AS & DC(MSME).

Yours faithfully,

  
(PIYUSH AGARWAL)  
Deputy Director (Policy)

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