

Encashing of cheque

HT Chandigarh Live
Tax Matters/ S.P. Babuta
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Q1: If payment of tax is made by cheque, what will be the effective date of Payment?

Ans: If Payment of tax is made by cheque and it is accepted and cheque on presentation is encashed, the payment relates back to the date when the cheque had been received.

As held by the **supreme court in case of K. Saraswatty vs. P. S. S. Somasundaram Chettier (1989)**

Thus in a case where the facility for acceptance of cheque is available and when an assessee has made Payment by cheque which was honoured on presentation, the date of acceptance of the cheque is the material date of payment .

Q2: If a cheque is presented on 15th march but not cleared and returned on 17 th march . If the same cheque is presented again on 15th April and encashed on 16th April , Whether Interest u/s 234B and 234C will be leviable?

Ans:It has been held that once the cheque issued on March 15 had been returned on March 17 , it had ceased to be a live instrument and could not be rejuvenated by a fresh presentation on a subsequent date . The payment could be said to have been made at the earliest only on April 15 and therefore applicant was liable to pay Interest u/s 234B and 234C.

Q3: Whether section 43B is attracted if there is belated encashment of cheque?

Ans: It may be noted that the 2nd proviso to section 43B relating to the payment made by cheque or draft before the due date being considered valid if the cheque is realized within 15 days from the due date of payment under the respective laws has been omitted w.e.f. Ass. Yr. 2004-05.

Thus in order to save oneself from 43B the payments have to be realized on/before the prescribed date.

Q4: Dishonouring of a cheque is an offence under the negotiable instrument act, what are the conditions that make dishonouring of a cheque an offence?

Ans: The offence under section 138 of the act for dishonouring of a cheque can be completed only with the linking together of a number of acts.

The main condition is that the cheque should be issued for discharge of a legally enforceable liability or debt, and the same has been returned by the bank for insufficiency of funds in the account. Further it will become an offence only if proper notice in writing to the drawer of the cheque demanding payment is issued and failure on the part of the drawer to make payment within 15 days of receipts of the notice.

Q5: Instances when dishonouring of cheque is not an offence?

Ans: Where a cheque is issued to a charitable trust for gift or donation , Issued for applying for shares in a company , there is no offence if the cheque is dishonoured for want of

insufficiency of funds because it was not issued in discharge of legally enforceable debt or other liability.

If a cheque is dishonoured because of certain reasons like – drawer's signature differs, or the amount stated in words and figures in the cheque differs, alteration in the cheque requires attestation by drawer, cheque mutilated etc. Thus in these cases dishonouring of the cheque is not an offence as the cheque is not dishonoured for want of funds.

Q6: What is the Penalty for dishonouring of cheque?

Ans: In cases Where offence is committed by person other than a Company:

The drawer of the dishonoured cheque is liable to be punished with imprisonment for a term which may extend to two years or with fine upto twice the amount of cheque or with both .

In cases where offence is committed by a Company:

A company is an artificial person created by law. It has no body or mind on its own. Hence the maximum Punishment that can be imposed on a Company if its cheque is dishonoured is fine upto twice the amount of cheque.