

TRADE CIRCULAR

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No. VAT/MMB-2015/47/2016-17/ADM-8
Trade Cir. No. 19T of 2016

dated 30th June 2016.

Subject : FAQ's on Settlement of Arrears in Disputes Act, 2016.

Ref. : (1) The Maharashtra Settlement of Arrears in Disputes Act, 2016. (Act No. XVI of 2016)
(2) Trade Circular No. 10T of 2016 dated 3rd May 2016.

Gentlemen/Sir/Madam,

You are well aware that the Maharashtra Settlement of Arrears in Disputes Act, 2016 (hereinafter referred to as "the Settlement Act") has come into force with effect from 26th April 2016. In order to disseminate the information and set out the process of Settlement of Arrears in Dispute in motion the Trade Circular cited at Ref.-(2) above was issued. With regards to the Settlement Act representations have been received from the Trade and Associations about the scope of the said Act and the procedure to be followed.

This office has considered the same and decided to clarify the points raised through such representations. In view of this a Trade Circular in the form of questions and answers is being issued. It is further clarified that the subsequent set of FAQ's will be added from time to time.

(Rajiv Jalota)

**Commissioner of Sales Tax,
Maharashtra State, Mumbai.**

FAQ'S
(Dated 30th June 2016)

1. Which are the Acts that are covered under the Settlement Act?

Ans. The Maharashtra Settlement of Arrears in Disputes Act, 2016 provides the opportunity of settlement of arrears in disputes that have arisen as a result of any Statutory order passed under the below given Acts administered by the Maharashtra Sales Tax Department:

- (a) the Central Sales Tax Act, 1956;
- (b) the Bombay Sales of Motor Spirit Taxation Act, 1958;
- (c) the Bombay Sales Tax Act, 1959;
- (d) the Maharashtra Purchase Tax on Sugarcane Act, 1962;
- (e) the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975;
- (f) the Maharashtra Sales Tax on the Transfer of the Right to use any Goods for any Purpose Act, 1985;
- (g) the Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987;
- (h) the Maharashtra Tax on Luxuries Act, 1987;
- (i) the Maharashtra Sales Tax on the Transfer of Property in Goods involved in the Execution of Works Contract (Re-enacted) Act, 1989;
- (j) the Maharashtra Tax on Entry of Goods into Local Areas Act, 2002;
- (k) the Maharashtra Value Added Tax Act, 2002,

2. For which period(s) the Arrears in Disputes may be settled under the Settlement Act, 2016?

Ans. The Maharashtra Settlement of Arrears in Disputes Act, 2016 provides the Settlement of Arrears in Disputes for any period ending on or before 31st March 2012.

3. What is the extent of the waiver for the demand raised by statutory order in respect of Tax, Interest and Penalty?

Ans. The Maharashtra Settlement of Arrears in Disputes Act, 2016 provides the Settlement of Arrears in Disputes only in respect of interest and penalty amount.

It should be kept in mind that this Act does not provide any relief towards the Tax determined as payable by any Statutory Order.

The waiver in respect of Interest and Penalty will depend upon the period of Arrears in Disputes. The details are presented in the TABLE below:

(a) For periods ending on or before 31st March 2005.

**TABLE-1
UNDISPUTED AMOUNT**

Sr. No.	Particulars	Amount to be paid	Extent of Waiver
1.	Tax	100%	NIL
2.	Interest	100%	NIL
3.	Penalty	100%	NIL

**TABLE-2
DISPUTED AMOUNT**

Sr. No.	Particulars	Amount to be paid	Extent of Waiver
1.	Tax	100%	NIL
2.	Interest	NIL	100%
3.	Penalty	NIL	100%

(b) For periods starting on or after 1st April 2005 and ending on or before 31st March 2012.

**TABLE-3
UNDISPUTED AMOUNT**

Sr. No.	Particulars	Amount to be paid	Extent of Waiver
1.	Tax	100%	NIL
2.	Interest	100%	NIL
3.	Penalty	100%	NIL

**TABLE-4
DISPUTED AMOUNT**

Sr. No.	Particulars	Amount to be paid	Extent of Waiver
1.	Tax	100%	NIL
2.	Interest	25%	75%
3.	Penalty	NIL	100%

4. Whether benefits under Settlement Act in respect of the Undisputed Dues can be claimed?

Ans. No, the benefits of waiver in respect of dues Viz., Interest and Penalty is available only in respect of disputed amount. If dealer has

in the Appeal memo or during the pendency of Appeal stated any amount payable as per Statutory Order as undisputed then no waiver is provided in respect of said undisputed amount, notwithstanding that the amount is interest or penalty.

5. Under Settlement Act what is the meaning of 'Arrears in Dispute'?

Ans. For the purposes of Settlement Act the Arrears in Dispute should satisfy the following ingredients,-

- (1) it is a Tax, interest or, as the case may be, penalty payable as per any Statutory Order passed under the Relevant Act(s);
- (2) appeal has been filed against aforesaid order;
- (3) the appellate authority has granted the stay either in full or part of the recovery of the demand so raised.
- (4) the stay so granted is effective at least till the date of appeal withdrawal order.

6. For the Settlement of Arrears in Dispute which Form needs to be filled by the applicant?

Ans. The applicant who desires to avail the benefits under the Settlement Act needs to submit a duly filled application in Form-1 appended to the Trade Circular No. 10T of 2016 issued on 3rd May 2016.

7. Where is the Application in Form-1 to be filed?

Ans. The Application in Form-1 for the Settlement of Arrears in Dispute must be submitted to the Nodal Officer to whom said case is assigned. For details please refer Para-3 (Page-2) of the Trade Circular 10T of 2016 dated 3rd May 2016.

8. What are the documents that needs to be enclosed with the Application seeking benefits under the Settlement Act?

Ans. The application in respect of Settlement of Arrears in Dispute shall be accompanied by,-

- (1) Photocopy of the Statutory Order against which waiver is sought,

(2) Proof of,-

- (a) stay given by the Appellate Authority and is effective at least till the date of appeal withdrawal order;
- (b) Withdrawal of appeal;
- (c) Payment of the requisite amount paid towards disputed dues and undisputed dues.

9. Whether it is necessary to prefer an appeal so as to avail the benefits under the Settlement Act?

Ans. Yes. As per the provisions of sub-section (2) of section 2 of the Settlement Act the arrears so as to qualify for the waiver it is mandatory to file the appeal against statutory order and obtain stay. In other words the arrears under any Act are not eligible for waiver unless the appeal is filed with appropriate appellate authority and for recovery of arrears stay is obtained.

10. Whether for the period ending on or before 31st March 2010, an appeal can be preferred against the order passed levying interest under section 30(2) or 30(4) of the MVAT Act? If yes, whether the benefits in respect of such orders is available under Settlement Act?

Ans. Yes. As per the provisions of the MVAT Act in respect of periods ending on or before 31st March 2010 an appeal may be preferred in respect of any statutory order passed levying interest under section 30(2) or 30(4) of the MVAT Act. For aforesaid periods the benefits under the Settlement Act in respect of the interest levied as per section 30(2) or 30(4) will be available subject to the fulfillment of other conditions regarding stay and withdrawal of appeal etc.

11. Whether for the period starting on or after 1st April 2010 an appeal can be preferred against the order passed levying interest under section 30(2) or 30(4) of the MVAT Act? Whether the benefits in respect of such orders is available under Settlement Act?

12. **Ans.** No. Section 85 of the MVAT Act is amended and the order levying interest under section 30(2) or 30(4) of the MVAT Act is made non-appealable with effect from 1st May 2010. **Hence no appeal can be**

preferred against such orders whether such orders are separate or composite. Therefore, these orders would not be eligible for availing the benefits under the Settlement Act.

13. Whether it is necessary to enclose in original the proof of withdrawal of appeal or will it be sufficient if only the request letter (duly acknowledged by appellate authority) for withdrawal of appeal submitted to appellate authority is enough?

Ans. It is necessary to enclose in original the proof of withdrawal of appeal. The acknowledgement given towards the receipt of a request letter by the appellate authority for withdrawal of appeal **will not be enough to claim the benefits under the Settlement Act.**

14. What are the mandatory requirements so as to avail the benefits under the Settlement Act?

Ans. The benefits under the Settlement Act are available in respect of,-

- (a) statutory order that pertains to the period ending on or before 31st March 2012;
- (b) against such order an appeal is filed;
- (c) the stay for the recovery is obtained either in full or part and the stay so granted is effective at least till the date of appeal withdrawal order;
- (d) the payment of requisite amount computed as per the provisions of section 6(1) and 6(2) of the Settlement Act is paid on or before 30th September 2016.
- (e) the applicant shall file correct and complete application in Form-1 appended to the Trade Circular with the enclosures mentioned in the said Form-1.

without requisite enclosures the application cannot be considered as correct and complete application.

15. Whether waiver of the penalty in respect of cases where penalty proceedings are deferred is possible?

Ans. The benefits under the Settlement Act are available only against the statutory orders where demand/dues are raised. Therefore, in

respect of the proceedings where penalty is deferred and no actual order of the penalty is passed or the demand is raised in all such cases **the dealer will not be eligible to avail the benefits under the Settlement Act.**

16. Para 4(b) of Trade Circular 10T of 2016 dated 3rd May, 2016 mentions that "*Applicant*" can be any person who desires to settle disputes as Financial Institutions, Banks, Official Assignee etc. Kindly clarify as to how can the other persons apply in the Settlement Act and what status should they mention in point no. 4 of Form-1?

Ans. As per the provisions of Settlement Act any person may participate in the Settlement process. This includes person such as Financial Institutions, Banks, Official Assignee who may have financial interest and hence may take part in the Settlement process. Such persons require to file appeal, obtain stay, make the payment of requisite amount on behalf of dealer and qualifies other related conditions as prescribed in the Settlement Act. On fulfilment of these requirements it becomes eligible to filed application in Form-1.

17. In para 5(D)(iv and v) of Trade Circular 10T of 2016, it is stated that the application shall be accompanied by - "*challans showing payment of the requisite amount*" and "*challans showing payment of undisputed arrears*". Kindly clarify that credit will be given where such payments are made by an applicant in a single challan or in separate challans.

Ans. Payment of requisite amount and payment of undisputed dues preferably be made by two separate chalans. However, if the dealer has made consolidated payment by a single challan under such circumstances also credit of the requisite amount and undisputed arrears will be available to the applicant subject to the verification of same.

18. Section 6(3) of the Maharashtra Settlement of Arrears in Dispute Act, 2016 read with para 6(B)(b) of Trade Circular 10T of 2016 dated 3rd

May 2016 specifies that payments are to be made vide Challan MTR-6, if applicant has TIN and by others in Challan prescribed under the relevant Act. In this regard, kindly guide how to make such payments in the following situations:

- (A) When RC no. of the dealer has been surrendered / cancelled;
- (B) Payments in respect of periods prior to 01.04.2005 and payments to be made under repealed laws such as BST Act, WCT Act, Lease Act, etc., as the experience is that banks do not accept payments for period prior to 01.04.2005.

In this regard, it is urged to kindly provide challans online so that it can be downloaded and paid thereafter. Alternatively, kindly instruct banks / nodal officers to follow liberal approach and accept payments even for periods prior to 01.04.2005. Payments in the form of Demand draft or banker's cheque should also be accepted.

Ans. In respect of the periods on or before 31st March 2005 under the relevant Act(s) if Registration Certificate is cancelled or surrendered then the payment of the requisite amount shall be made in the challan prescribed under the respective Act strictly in the bank by quoting the registration number granted to the dealer under the relevant Act(s).

In case of a registered dealer who holds TIN under the MVAT Act or CST Act then such dealer is required to pay electronically the requisite amount in MTR-6 by quoting the TIN number irrespective of whether the TIN is subsequently cancelled or is live.

If the Banks refuses to accept the manual payment in respect of repealed Act(s) or,

where the relevant Act(s) which are in force but do not provide facility for electronic mode of payment then under these circumstances the issues may be brought to the notice of the concerned Nodal Joint Commissioner who will intervene in the matter and instruct the Banks accordingly. Nevertheless, necessary instruction in this behalf will be given to the Banks.

19. Section 5 read with Section 4(3) of the Settlement Act prescribes that the applicant shall withdraw the Appeal pending before the Appellate authority or Tribunal or Courts and shall produce the proof of withdrawal of appeal. Further, para 5(D)(iii) of Trade Circular 10T of 2016 dated 3rd May 2016, mentions that an application shall be accompanied by "*order of withdrawal of the appeal or any proceeding pending before the Tribunal or Court*". Please clarify.

Ans. The person who desires to avail the benefits under the Settlement Act is required to file an application in Form-1. This application should accompany the proof of,-

- (a) stay which is effective at least till the date of submission of application in Form-1;
- (b) withdrawal of appeal i.e. the order of withdrawal of appeal passed by the appellate authority;
- (c) payment of requisite amount. etc.

in the absence of aforesaid enclosures the benefits under Settlement Act will remain unavailable unless these defects are not removed.

20. TDS liability is also a tax liability, which can be considered for Settlement. Please clarify same.

Ans. Yes, if the demand as result of any Statutory order arises due to failure to take credit of TDS made by employer or an employer has failed to deduct the TDS or TDS deducted is late paid then under such circumstances any statutory order is made which raises the Demand then the benefits under Settlement Act are available subject to other conditions related to Appeal and Stay or fulfilled.

21. Faster processing of pending assessments / rectifications including appeal for the periods up to F.Y. 2011-12, should be undertaken and hearings should be expedited, so that dealers can avail maximum benefit of the Settlement Scheme.

Ans. Instructions are given to the assessing/appellate officers to expedite the assessment, rectification or appeal proceedings so that the

large number of dealers can avail maximum benefit of the settlement scheme.

- 22.** As per the Scheme the penalty waiver is 100%. Tax is payable fully & Interest payable at NIL or 25%, as the case may be. However, in some cases the penalty is deferred. In fact such deferred penalty shall be treated like post assessment interest / penalty, which shall be covered by this scheme. How such a case will be taken care of and that in such a case the deferred penalty shall never be invoked in future but be waived under this scheme.

Ans: The benefits of waiver under the Settlement Act are only available against the demand raised by the Statutory Order. However, in the case where penalty is deferred, suitable instructions are given to the officials to expedite the process and pass the respective penalty orders so that the dealer can avail benefit under the Settlement Act.

- 23.** Once dealer opts for the Settlement of arrears in dispute whether immunity will be given from the prosecution vis-à-vis offences that may have committed under the relevant Act?

Ans: Yes. Immunity will be available vis-à-vis offences that may have been committed under the Relevant Act(s).

No. VAT/MMB-2015/47/2016-17/ADM-8

dated 30th June 2016.

Trade Circular No. 19 of 2016.

(D.M. Thorat)

**Joint Commissioner of Sales Tax,
(HQ)-1, Maharashtra State, Mumbai.**

Copy to,-

The Joint Commissioner of Sales Tax (Mahavikas) with a request to upload this Circular on Departments Web-site.