

Office of the
Commissioner of State Tax,
(GST), Maharashtra State,
8th Floor, GST Bhavan,
Mazgaon, Mumbai-400010.

TRADE CIRCULAR

To,

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No. DC (A&R)3/VAT/MMB-2023/1/ADM-8

dated the 26th June, 2023

Trade Circular No. 11 T of 2023

Subject : Settlement of Arrears of Tax, Interest, Penalty or Late fee under various Acts administered by the Maharashtra Goods and Services Tax Department.

Ref. : The Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2023 (Mah. Act No. XVIII of 2023 dated 6th April 2023).

Gentlemen/Sir/Madam,

1. Introduction:

- 1.1. The Goods and Services Tax Act (GST) has come into force in India with effect from the 1st July 2017. This new taxation system has now been stabilized. The VAT (other than 6 goods on which VAT is levied presently), Entry Tax, and Luxury Tax etc. that were existing as on 30th June 2017 are subsumed under the GST.
- 1.2. In view of the aforesaid developments, it has become vital to reduce the pending litigations and unlock the outstanding dues under the erstwhile Maharashtra Value Added Tax Act, Central Sales Tax Act, 1956 including other laws that were existing as on 30th June 2017 and are subsumed under the GST, the Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2023 (hereinafter referred to as the “the Settlement Act”) has been enacted. Salient features of the Settlement Act and its procedural aspects are explained below:-

2. Scope of the Settlement Act, 2023:

- 2.1. This Settlement Act shall be applicable for the settlement of arrears of tax, interest, penalty and late fee under the various Acts administered by the Department. Arrears of tax, interest, penalty or late fee under the following

Acts and that pertains to the periods ending up to 30th June 2017 are eligible for settlement.

2.2. The Relevant Act(s) referred in section 2(1)(k) under the Settlement Act are as under:-

- (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 Employment 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, and
- (k) the Maharashtra Value Added Tax Act, 2002.

3. Arrears eligible for settlement under the Settlement Act

3.1. The section 2(1)(d) of the Settlement Act provides for the definition of “arrears” which are outstanding dues under the Relevant Acts. It is defined as under-

“arrears” means the outstanding amount of tax, interest, penalty or late fee, as the case may be,-

- (i) payable by an assessee as per any statutory order under the Relevant Act; or*
- (ii) admitted in the return or, as the case may be, the revised return filed under the Relevant Act and which has not been paid either wholly or partly; or*
- (iii) determined and recommended to be payable by the auditor, in the audit report submitted as per section 61 of the Value Added Tax Act, whether the notice under section 32 or 32A of the Value Added Tax Act has been issued or not,*
and such arrears of tax, interest, penalty or late fee, pertains to specified period and it also includes the interest payable on the admitted tax under the Relevant Act for the specified period.

3.2. Thus, arrears mean outstanding dues on account of tax, interest, penalty and late fee. Tax includes turnover tax, surcharge, additional tax, resale sales tax or by whatever name tax is referred in the Relevant Act.

3.3. It may be seen from the above definition that arrears eligible for settlement shall be for the period ending upto 30th June 2017 and are,-

(1) as per statutory orders that are passed at any time on or before the 30th April 2023, or the statutory orders that are passed during the operative period of the Settlement Act i.e. from 1st May 2023 till the 31st October 2023.

(2) as per the returns or the revised returns that are filed before the commencement of the Settlement Act or during the operative period of the Settlement Act i.e. from 1st May 2023 till the 31st October 2023 and where the tax or the interest has remained unpaid.

(3) determined and recommended to be payable by the auditor, in the audit report submitted as per section 61 of the Value Added Tax Act, whether the notice under section 32 or 32A of the Value Added Tax Act has been issued or not

3.4. All arrears as per statutory order stated above are eligible for settlement, irrespective of the fact that whether such arrears are disputed in appeal or not. In other words, the filing of appeal is not a pre-condition for availing the benefits under the Settlement Act.

3.5. Needless to say, that arrears as per any statutory order containing any period on or after 1st July 2017 shall not be eligible for settlement under this Act.

3.6. Statutory order means any order passed under the Relevant Act, raising the demand of tax, interest, penalty or late fee payable by the applicant. Such statutory order may be an order of assessment, re-assessment, rectification, revision, review or appeal.

3.7. Settlement of Arrears when Assessment Orders, interest orders and Penalty Orders are passed separately:-

(1) Where the assessment order, interest order or, as the case may be, the penalty orders are passed separately, the applicant shall not be eligible to opt to settle only interest or the only penalty amount as per the respective order(s) charging the interest or imposing the penalty.

It is necessary to state that the penalty is associated with levy of tax or disallowance of certain claims whereas, the interest is associated with the late payment of the tax.

(2) In such cases, the applicant would mandatorily be required to opt for settlement and determine the requisite amount considering the arrears as per assessment order, interest order and penalty orders so passed.

(3) However, where a penalty is not associated with levy of tax or disallowance of various claims, the applicant may opt for such stand-alone penalty order.

For example, penalty levied for non-furnishing or late or incomplete filing of audit report under section 61 of the MVAT Act.

3.8. This Settlement Act mainly aims for settlement of arrears as per statutory orders. In case any review order, rectification order including an appeal order is passed during the operative period of Settlement Act and such order results into modification in the demand of tax, interest, penalty or late fee then in such scenario, the applicant is eligible to avail the benefits of settlement of arrears as per said modified order provided that the said order is passed till 31st October 2023.

3.9. Settlement of Return Dues:

(1) The section 2(1)(m) of the Settlement Act defines the “return dues” which means the amount of tax, interest or late fee, admitted in the return or the revised return filed under the Relevant Act in respect of the period ending upto 30th June 2017 which has remained un-paid either wholly or partly on or before the 31st October 2023.

(2) Therefore, the returns or the revised returns that are filed on or before the 30th April 2023 and where tax, interest or late fee are outstanding as on 1st May 2023 shall be eligible to opt for the settlement.

(3) Also, where the returns or the revised returns are filed during the operative period of Settlement Act i.e. from 1st May 2023 to the 31st October 2023 then under this circumstances the dealer may opt for the settlement of the arrears i.e. tax, interest or late fee so shown payable.

- (4) It may be kept in the mind that the tax payable as per return being admitted tax, same classifies as an 'un-disputed tax' and is therefore, to be paid in full. Therefore, as regards to return dues, settlement is available only in respect of the interest and late fee payable.
- (5) In order to opt for settlement of these dues, the applicant shall be required to calculate the interest payable from the due date of submission of the return to the date of payment. The requisite amount to be paid on account of interest shall be determined in terms of Annexure A or Annexure B appended to the Settlement Act. The total requisite amount in this case shall be the tax that has been remained unpaid as on 1st May 2023 or, as the case may be, as on 31st October 2023 and the requisite amount so determined towards interest or late fee, as the case may be. **It needs to be borne in mind that the lump sum option would not be available to settle return dues.**

3.10. Settlement of Arrears as per any recommendation by the auditor:

- (1) The section 61 of the MVAT Act provides the Audit of the books of account by the Chartered Accountant or, the Cost Accountant. After Audit, the Audit Report in FORM-704 is required to be prepared by the Auditor. The Auditor, in the Audit Report may determine and recommend the amount of tax, interest or the Late fee payable by the dealer. The dealer may accept the said recommendations either fully or partially or may not accept the said recommendations.
- (2) Thus, the amount of tax, interest and late fee determined and recommended to be payable by the dealer and that pertains to the period upto 30th June 2017 is also eligible for the settlement.
- (3) Needless to say, that arrears as per the recommendation of the auditor in the Audit Report for any period starting on or after 1st July 2017 shall not be eligible for settlement under this Act.
- (4) The tax recommended to be paid in the audit report and accepted by the dealer is to be treated as un-disputed tax. Therefore, the dealer shall be required to first ascertain whether the tax payable as per the Audit Report is un-disputed or disputed. Also, it shall be kept in mind that in case the additional tax liability determined and recommended

to be payable is on account of any of the contingencies described in the definition of “un-disputed tax”, then the said tax irrespective of the fact whether it is accepted by the dealer, in the Audit Report in FORM-704, or not shall be treated as “un-disputed tax”.

- (5) Except as stated in the preceding sub-para, in case the amount of tax determined and recommended to be payable, by the Auditor and the dealer has not accepted the same then under such contingency the said tax would be treated as ‘disputed tax’.
- (6) Therefore, the Nodal Officer shall ascertain the afore discussed aspects and upon such ascertainment classify the said tax as “un-disputed tax” or the “disputed tax” accordingly. In this case also, interest is to be calculated from the due date prescribed for payment of such tax to the actual date of payment of the said tax. To settle the arrears as per the recommendations made by the auditor, the requisite amount shall be determined in terms of Annexure-A.
- (7) Where the amount recommended by the auditor and accepted by the dealer is converted into dues as per a statutory order then the arrears of tax as per that statutory order to the extent of the tax amount recommended and accepted by the dealer shall be treated as un-disputed tax alongwith other un-disputed tax, if any. **It may please be noted that the lump sum option would not be available to settle dues as per recommendation of the auditor.**

4. Adjustment of any payment made under Relevant Act and settlement of arrears of tax, interest, penalty or late fee, if any. [See section-6]:

- 4.1. As per this section, any amount of tax, interest, penalty or late fee payable as per statutory order pertaining to the period ending on or before the 30th June 2017 and if any payment in that respect is made after the date of the said statutory order but on or before the 30th April 2023, then such payment shall first be adjusted against the un-disputed tax and then towards the disputed tax and thereafter towards the interest and the balance amount remaining un-adjusted shall then be adjusted towards the penalty and late fee, sequentially. Even where the dealer has made the payment post statutory order and shown said amount paid as tax or

interest or penalty or late fee, it shall be adjusted in the above sequence only.

For example, if the dealer in pursuance to statutory order has paid the amount through FORM-MTR-06, and shown the said amount in the column of “interest” then such payment on account of “interest” shall be first adjusted towards un-disputed tax, then towards the disputed tax and balance, if any, shall be adjusted towards interest, penalty and late fee, sequentially.

- 4.2. The above sequence of adjustment shall be applicable for return dues as well as to the arrears as per recommendation of the auditor in the audit report. **Needless to say, any amount paid on or before the 30th April 2023 shall not be considered as a payment made towards requisite amount.**

5. Cases litigated by the State - eligible for settlement:

- 5.1. Where the Department has filed reference, application or, as the case may be the appeals before the Hon’ble Maharashtra Sales Tax Tribunal or the Hon. Courts, the demands disputed by the Department are eligible for the settlement of arrears then the applicant may opt to settle the arrears of the tax, interest, penalty or late fee disputed by the Department even though there are no outstanding dues as per any statutory order made by the Tribunal or the Hon’ble Court for such demand disputed by the Department.
- 5.2. The applicant, himself, shall with respect to the appeal order that is challenged before the Hon’ble Tribunal or the Hon’ble Court wherein tax, interest or the penalty is under challenge. The applicant shall accordingly, determine and pay the requisite amount as per *Annexure A* or *Annexure B*, as the case may be. Once the amount as above is settled, there shall be no refund or adjustment of the amount paid towards settlement under this Act nor would there be any recovery in respect of the waiver granted under this Act.

6. Persons eligible to settle dues under the Relevant Acts:

- 6.1. An applicant [section 2(1)(c)] has been defined under the Act as a person who is liable to pay the arrears under the Relevant Act or any other person including financial institution who desires to avail the benefit of

settlement by complying with the conditions, under the Act. Under this Act, the scope of an eligible person has been enlarged to include a financial institution and any other person who desires to settle the arrears.

6.2. Any person whether or not registered, including a person whose registration is cancelled, under the Relevant Act is eligible to apply for settlement of arrears. In case of unregistered person, if there is a liability to pay tax under the Relevant Act for the past periods but the liability to pay tax is not continued then there is no necessity to obtain registration under the Relevant Act.

6.3. However, where the liability to pay tax is continued, such unregistered person would be required to obtain the registration under the Relevant Act. For example an unregistered dealer dealing in the six commodities i.e., petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption under the MVAT Act (where such business is continued on or after the 1st July 2017) and who desires to settle the arrears in respect of any period ending as on 30th June 2017 then he would be required to obtain registration under the MVAT Act. In the same way, a person who is liable to pay tax under the Profession Tax Act would be required to get himself registered under Profession Tax Act.

6.4. Except in the circumstances explained in succeeding Para-6.5, the persons who have already availed the benefits under any of the Amnesty Scheme or the Settlement Schemes declared by the Government under the Relevant Act are also eligible to settle their arrears under this Settlement Act. In cases where partial benefits have been availed under any of the earlier schemes (except as stated in succeeding paragraph) for any period, the dealer can avail the benefits under this Settlement Act for the balance outstanding arrears.

6.5. Non-eligibility for settlement of arrears where the applicant has opted for instalment option under Settlement Scheme-2022:

(a) The Settlement Act provides that the applicant who has availed or is availing the benefits in respect of the Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2022 (for brevity “the Settlement Act, 2022”) shall not be eligible to opt for the benefits

under this **Settlement Act, 2023** with respect to the arrears for which application under the Settlement Act, 2022 has already been made and where the due date for payment of requisite amount under the Settlement Act, 2022 has not been over. However, in case the order of settlement under the Settlement Act, 2022 has been passed with or without providing the benefits under that Act, then, the applicant shall be eligible to opt under the Settlement Act, 2023.

- (b) To explain the above, we need to understand that the due date for payment of last Instalment of requisite amount under the instalment option is 30th September 2023 and therefore, there could be cases where the instalments with respect to already filed applications are pending, in those cases, the present Settlement Act prohibits the filing of application to settle the said dues. In other words, the cases where the instalment option is chosen and the payment towards the installment is pending then in respect of such balance dues the applicant shall not be eligible to seek the benefits under the Settlement Act-2023.

7. Write-off of dues up to Rupees Two Lakh:

- 7.1. The section 7(1) of the Settlement Act provides a write-off mechanism in respect of the outstanding arrears as per any statutory order which is rupees two lakh or less per financial year and is outstanding as on 1st May 2023. The arrears as above, which are rupees two lakh or less per financial year, shall be written off. The concerned Joint Commissioner of State Tax shall consider all such entries and pass the necessary orders to write-off the said amount. The concerned designated officer shall send an intimation about the write-off of dues to the dealer.
- 7.2. It may be noted that the dues under different Acts should not be clubbed together for arriving at the limit of rupees Two Lakh. Arrears as per statutory order up to rupees two lakh pertaining to the periods ending on the 30th June 2017 are to be written off by the concerned Nodal Divisions. Further, the post assessment interest or the post assessment penalty in respect of such written off dues shall also stand waived.

8. Waiver of post assessment interest or the post assessment penalty under certain contingencies i.e. where the tax as per statutory order has already been paid:

8.1. Where the order of the post assessment interest or the post assessment penalty has not been passed:

(1) The Settlement Act, 2023 also provides that the post assessment interest or, as the case may be, post assessment penalty, if applicable, shall stand waived in the cases WHERE–

(a) the tax due as per any statutory order has been paid at any time on or before the 30th April 2023

AND

(b) no order levying the post assessment interest or, as the case may be, post assessment penalty has been passed in such cases till the aforesaid date i.e. 30th April 2023.

(2) It is well known that for dues (tax, interest, penalty or late fee) determined to be payable as per the statutory order, a Demand Notice is issued and the due date for the payment of such amount is prescribed. In case the dealer has not made the payment of tax due as per any statutory order within the time period prescribed under the Demand Notice, then the dealer is liable to pay the post assessment interest or, as the case may be, the post assessment penalty. Therefore, there could be cases where the dealer has made the payment of the tax after the prescribed due date and as a result of this delayed payment, interest is attracted. However, the interest orders in such situations may not have been passed till the 30th April 2023, then in all such cases where the interest has become payable but the order in that respect has not been passed, the interest that would have become payable is provided to be waived.

(3) To avail the benefits in respect of aforesaid situation the dealer is not required to make any application for the settlement of arrears on account of non-quantified interest. The Department shall take suo-moto action in this behalf. In other words, the interest as aforesaid shall stand waived.

8.2. Cases where the post assessment interest or the post assessment penalty orders have been passed:

- (1) It is necessary to borne in mind that in case where the tax dues as per any statutory order have been paid on or before the 30th April 2023 and where the order levying the post assessment interest or, the post assessment penalty has been passed before the aforesaid date then, in such cases, the applicant shall determine the requisite amount as per the percentages specified in the Annexure-A and the Annexure-B appended to the Settlement Act, 2023.
- (2) The applicant shall within the stipulated time period make an application for settlement of the said amount along with the payment of the requisite amount.

9. Determination of Requisite amount and extent of waiver -Relevant Act, other than the Tax on Entry Act:

- 9.1. In order to settle the outstanding arrears under the Relevant Act, other than the Tax on Entry Act, an applicant is required to determine and pay an amount defined as “requisite amount” under this Act. The quantum of un-disputed tax, disputed tax, interest, penalty and late fee to be paid as requisite amount and the extent of waiver has been provided in Annexure-A and Annexure-B, as the case may be.
- 9.2. The Settlement Act provides for three payment options:

(1) Lump-sum payment Option:

- (a) In the cases where the outstanding dues on account of tax, interest, penalty and late fee as per any statutory order **are Rupees Fifty lakh or less**, then, an applicant may opt to pay lump-sum at 20 per cent. of the outstanding dues. Upon payment of 20 per cent. of the outstanding dues, the balance 80 per cent. dues shall be waived.
- (b) For this purpose, the arrears as on 1st May 2023 would have to be taken into account. Arrears as on 1st May 2023 shall be calculated as explained in preceding Paragraphs. For example, if dues as per statutory order passed on 31st March 2018 for the period 2013-14 are Rs.55,50,000/- and if the dealer has paid Rs.10,50,000/- in appeal or otherwise, on or before the 30th April 2023, then the

outstanding dues as on 1st May 2023 would be at Rs.45,00,000/-.
These dues of Rs. 45,00,000/- being less than Rupees Fifty lakh, the dealer under such scenario shall be eligible to opt for the lump sum payment option.

(2) One Time payment option: This Act provides for One Time payment option for making payment of the requisite amount to avail the benefit of settlement of arrears.

(3) Instalment Option:

- (a) However, in case the arrears are in **excess of rupees fifty lakh** then the applicant may opt to pay under the Instalment option. If arrears as per any statutory order or as per recommendation of auditor are in excess of rupees fifty lakh then Instalment option is available.
- (b) The instalment option is also available, in case the return dues of one financial year are in excess of fifty lakh and if a single application is preferred for such return dues of multiple periods within the same financial year.

9.3. Where, the dealer desires to settle the arrears under option of One Time Payment or, as the case may be, under Instalment option, then the dealer shall be required to determine the requisite amount to be paid and the extent of the waiver available as provided in the Annexure-A and Annexure-B.

9.4. Annexure-A and Annexure-B appended to the Act provide the extent of un-disputed tax, disputed tax, interest, penalty and late fee to be paid and waiver thereof under the Relevant Act.

Applicability of Annexure-A and Annexure-B is explained as under-

Annexure-A

- (1) Annexure-A appended to the Settlement Act is to be used where the arrears pertain to the periods starting from the 1st April 2005 and ending on or before the 30th June 2017.
- (2) To settle these arrears which may be as per Statutory order, or are returns dues or are the amount determined and recommended to be payable by the Auditor in the Audit Report the applicant is required to determine the payment of requisite amount as per *Annexure-A*.

(3) The quantum of un-disputed tax, disputed tax, interest, penalty and late fee to be paid as requisite amount and the extent of waiver as per Annexure-A is as follows-

Annexure-A					
Sr. No.	Amount	One Time Payment option		Instalment option (for dues above rupees fifty lakh)	
		Amount to be paid	Amount of waiver	Amount to be paid	Amount of waiver
(a)	(b)	(c)	(d)	(e)	(f)
(1)	Un-disputed Tax Amount	100 per cent. of the amount in column (b)	NIL	100 per cent. of the amount in column (b)	NIL
(2)	Disputed Tax Amount	50 per cent. of the amount in column (b)	50 per cent. of the amount in column (b)	56 per cent. of the amount in column (b)	44 per cent. of the amount in column (b)
(3)	Amount of interest payable as per any statutory order or returns or revised returns	15 per cent. of the amount in column (b)	85 per cent. of the amount in column (b)	15 per cent. of the amount in column (b)	85 per cent. of the amount in column (b)
(4)	Outstanding penalty amount as per any statutory order	5 per cent. of the amount in column (b)	95 per cent. of the amount in column (b)	5 per cent. of the amount in column (b)	95 per cent. of the amount in column (b)
(5)	Amount of post assessment interest or penalty or both leviable but not levied upto the date of application under Relevant Act	NIL	100 per cent. of the amount in column (b)	NIL	100 per cent. of the amount in column (b)
(6)	Late fee payable in respect of the returns filed on or before the 31st October 2023	5 per cent. of the amount in column (b)	95 per cent. of the amount in column (b)	5 per cent. of the amount in column (b)	95 per cent. of the amount in column (b)

Annexure-B:

(1) As discussed above, an Annexure-B appended to the Settlement Act is to be used where the arrears pertain to the periods prior to the 1st April 2005. The quantum of un-disputed tax, disputed tax, interest, penalty and late fee to be paid as requisite amount and the extent of waiver as per Annexure-B is as follows-

Annexure-B					
Sr. No.	Amount	One Time Payment Option		Instalment Option (for dues above rupees fifty lakh)	
		Amount to be paid	Amount of waiver	Amount to be paid	Amount of waiver
(a)	(b)	(c)	(d)	(e)	(f)
(1)	Un-disputed Tax Amount	100 per cent. of the amount in column (b)	NIL	100 per cent. of the amount in column (b)	NIL
(2)	Disputed Tax Amount	30 per cent. of the amount in column (b)	70 per cent. of the amount in column (b)	34 per cent. of the amount in column (b)	66 per cent. of the amount in column (b)
(3)	Amount of interest payable as per any statutory order	10 per cent. of the amount in column (b)	90 per cent. of the amount in column (b)	10 per cent. of the amount in column (b)	90 per cent. of the amount in column (b)

Annexure-B					
Sr. No.	Amount	One Time Payment Option		Instalment Option (for dues above rupees fifty lakh)	
		Amount to be paid	Amount of waiver	Amount to be paid	Amount of waiver
(a)	(b)	(c)	(d)	(e)	(f)
	or returns or revised returns.				
(4)	Outstanding penalty amount as per any statutory order	5 per cent. of the amount in column (b)	95 per cent. of the amount in column (b)	5 per cent. of the amount in column (b)	95 per cent. of the amount in column (b)
(5)	Amount of post assessment interest or penalty or both leviable but not levied upto the date of application under Relevant Act.	NIL	100 per cent. of the amount in column (b)	NIL	100 per cent. of the amount in column (b)

(2) As per the Annexure-A and Annexure-B reproduced above, 100 per cent. of the “un-disputed tax” is to be paid. Un-disputed tax has been defined in section 2(1)(q) of the Settlement Act and this includes the following amounts,-

- (a) *the taxes collected separately under the Relevant Act;*
- (b) *the taxes shown payable in the return or the revised return under the Relevant Act;*
- (c) *an amount claimed by the dealer as deductions or allowed by the designated authority as per rule 57 of the Value Added Tax Rules or similar rules under other Relevant Act;*
- (d) *an amount forfeited under the statutory order or excess tax collection shown in the return, revised return or Audit report, as the case may be, submitted under the Relevant Act;*
- (e) *any amount of tax determined and recommended to be payable by the auditor, in the audit report submitted as per section 61 of the Value Added Tax Act, and accepted by the assessee, either wholly or partly;*
- (f) *the tax deducted at source (TDS) by the employer under the Value Added Tax Act;*
- (g) *the tax collection made under section 31A of the Value Added Tax Act;*
- (h) *the tax payable by the enrolment certificate holder under the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975;*
- (i) *the tax deducted by the employer under the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975;*
- (j) *the amount of set-off disallowed under rules 52A or 52B of the Value Added Tax Rules, which is eligible to be claimed in the subsequent period;*

- 9.5. The clauses (a) to (i) above are self-explanatory. As regards to the provision in clause (j), it is clarified that the said provision about set-off applies in special circumstances. Normally, set-off under MVAT Act is available at the time of purchase of the goods and is claimed in the month of purchase of such goods. However, in the contingencies specified for the purposes of rules 52A and 52B, the availability of set-off is linked to the event of the sales i.e. the set-off is available in the month in which the sales takes place and to the extent of the taxes paid under the MVAT Act or, the taxes that are paid or payable under the CST Act. The taxpayer is not entitled to claim the set-off in respect of the goods remained un-sold or goods that are lying in stock. In other words, the set-off that is not claimed at the time of purchases may be claimed in the month in which the sales of those goods take place. This, may not ultimately cause any loss to the dealer. On this background, the set-off is disallowed for the breach of the principles laid down under rules 52A or 52B, which may on fulfillment of conditions become eligible to be claimed in the subsequent period. For these reasons the said dis-allowance of set-off is treated as “un-disputed tax”.
- 9.6. It shall be borne in mind that there is no waiver in respect of the “un-disputed tax” except when the requisite amount is paid under lump-sum option as per section 8(1)(b) of the Settlement Act.
- 9.7. The section 2(1)(g) of the Settlement Act defines the “disputed tax” as the tax other than that is defined under section 2(1)(q) i.e. “Un-disputed tax”. In order to settle the arrears, the Settlement Act provides the extent of disputed tax to be paid and the waiver thereof which is to be determined in accordance with the Annexure-A and Annexure-B. For the periods ending on or before the 31st March 2005, the extent of waiver is higher.
- 9.8. Few examples of the disputed tax would be as under-
- (a) disallowance of set-off.*
 - (b) additional demand on account of non-production of declarations or certificates under the CST Act.*
 - (c) disallowance of claims: for example, disallowance of claims of branch transfer / high-seas sales / tax-free sales / export / deemed export / sale in transit.*

(d) additional demand on account of dispute in rate of tax.

(e) enhancement in sales turnover.

(f) claim of labour charges disallowed in assessment and taxed under the Relevant Act.

(g) tax levied on service tax portion in case of works contract dealer paying tax under composition scheme

9.9. As regards to the dues on account of interest, penalty or, as the case may be, late fee the extent of amount to be paid has been specified in *Annexure-A and Annexure-B*.

9.10. The requisite amount in respect of tax, interest, penalty, or, as the case may be, late fee shall be the aggregate of “un-disputed tax” to be paid in full and such percentage of the disputed tax, interest, penalty and late fee as specified in the *Annexure-A or Annexure-B* appended to the Act. On payment of the requisite amount within the specified time limit, the balance arrears shall be waived.

10. Determination of Requisite amount and extent of waiver in respect of Tax on Entry Act:

10.1. Section 9 of the Settlement Act is applicable for determination of requisite amount in respect of arrears as per statutory order under the Tax on Entry Act. For determination of requisite amount in respect of return dues under the Tax on Entry Act, provisions of section 8 shall apply as explained in the preceding paragraphs of this Trade Circular.

10.2. The determination of the requisite amount and the extent of the waiver in respect of the tax, interest and penalty in case of a dealer having dues as per any statutory order under the Tax on Entry Act shall be as under:-

- (1) The requisite amount in respect of tax dues as per statutory order under the Tax on Entry Act shall be an amount equal to the entry tax payable as per statutory order or the amount of set-off reduced or denied, if any, as provided under rule 53 or 54 of the Value Added Tax Rules or, as the case may be, the Bombay Sales Tax Rules, 1959, **whichever is less**. A statutory order under the Tax on Entry Act is a pre-requisite for applicability of the provisions of section 9 of the Settlement Act.

- (2) However, a corresponding statutory order for the same period under the Value Added Tax Act or the Bombay Sales Tax Act, 1959 is not a mandatory requirement. The requisite amount towards tax is to be determined in the above manner and is required to be paid in full. Needless to say, the lump sum and installment option would not be available for settlement of the dues on account of tax under the Tax on Entry Act. For the settlement under One-Time payment option of the dues on account of interest and penalty, the extent of requisite amount to be paid shall be as specified in *Annexure-A* or *Annexure-B*, as the case may be.
- (3) The requisite amount shall be the aggregate of the tax to be paid, in full, as explained above and such percentage of interest and penalty as specified in respect of One Time Payment option in the *Annexure-A* or *Annexure-B*, as the case may be, appended to the Act. On payment of the requisite amount, the balance arrears under the Tax on Entry Act shall be waived. On settlement of dues, the applicant shall not be entitled to claim set-off under MVAT Act or the BST Act, as the case may be.
- (4) Upon payment of the requisite amount, the post-assessment interest or penalty or both leviable under the Relevant Act but not levied upto the date of application by the dealer shall stand waived in full. There would be no necessity of calculating the post-assessment interest or penalty to claim the benefit. The waiver of post-assessment interest or penalty is automatic when dues are settled under this Settlement Act.

11. Duration of time to apply and pay requisite amount:

11.1. Duration for submission of application:

- (1) An application to avail the benefit under this Act shall be submitted electronically during the period commencing on 1st May 2023 and ending on the 14th November 2023, under both the options i.e., One Time Payment option including lump sum option and Instalment option provided that the payment of requisite amount is made within the stipulated time period.

- (2) In case an applicant has paid the requisite amount within the prescribed time stated above but could not apply within the said prescribed time then the delay upto 30 days i.e., upto 14th December 2023 may be condoned by the designated authority to whom the application is to be made, after recording the reasons for delay.

11.2. Duration for making payment

(1) One-time payment option including lump sum payment option:

- (a) Under One-Time payment option, the requisite amount is to be paid during the period commencing on 1st May 2023 and ending on the 31st October 2023.
- (b) Where the outstanding dues as per any statutory order are Rupees Fifty lakh or less then the applicant may opt for the lump sum option.
- (c) If the lump sum option is preferred, the applicant would have to pay lump sum amount at 20 per cent. of the outstanding dues during the period commencing on 1st May 2023 and ending on the 31st October 2023, without considering the type of arrears whether tax is un-disputed or is disputed etc.

(2) Instalment option:

- (a) Under Instalment option, minimum 25 per cent. of the requisite amount shall be paid during the period commencing on 1st May 2023 and ending on the 31st October 2023. The remaining amount is to be paid in three equal quarterly instalments starting from the date of application.
- (b) If any instalment is paid late, it shall attract interest at the rate of 12 per cent. per annum. However, all instalments are required to be paid within nine months from the date of application. In other words, the last instalment is mandatorily to be paid within nine months from the date of application. Any amount paid after nine months from the date of application shall not be treated as requisite amount.

- 11.3. It is to be noted here that in case the amount so paid is less than the amount determined as requisite amount then proportionate benefit, if any, as prescribed in sections 8 or 9 of the Act shall be granted. The application shall not be rejected merely on the ground that the application FORM chosen is incorrect or, the requisite amount paid is less than the required. In such cases, the proportionate benefits shall be accorded.
- 11.4. Any recovery made through the action of the Nodal Officer or amount paid, on any account, by the dealer during the period from 1st May 2023 to 31st October 2023 shall be treated as requisite amount provided that the dealer applies for settlement of arrears under One Time Payment option.
- 11.5. Under Instalment option, amounts recovered or paid during the period starting from 1st May 2023 and ending within nine months from the date of application shall be treated as requisite amount, if an application for Settlement has been preferred and minimum 25 *per cent.* amount is paid with the application.
- 11.6. It is to be noted that the part payment made while filing an appeal under the Relevant Act during the period from 1st May 2023 to 31st October 2023 shall not be treated as requisite amount for settlement of arrears.

12. Conditions to avail benefit under the Settlement Act:

- 12.1. To avail the benefit under this Settlement Act, it is mandatory to withdraw the appeal, if any, pending before an appellate authority or the Hon'ble Tribunal or the Hon'ble Court. An appeal would include appeal, application, reference, Writ Petition, Special Leave Petition filed by the applicant. Such withdrawal of appeal should be full and un-conditional.
- 12.2. Needless to say, that the partial withdrawal of appeal would not be eligible for settlement. To withdraw the appeal, the applicant is required to make an application in **Form-II** appended to the order issued under section 19 of this Settlement Act.
- 12.3. The applicant may apply for settlement either by withdrawing the appeal fully or by getting his appeal decided within the period from 1st May 2023 to 31st October 2023.

- 12.4. While filing returns, if excess set-off or refund under the MVAT Act is adjusted against liability under the Central Sales Tax Act, 1956 and if such adjustment of set-off or refund is reduced or denied in the assessment under the MVAT Act, same would result in dues under the Central Sales Tax Act, 1956. In normal circumstances, disallowance of set-off would have resulted in dues under the MVAT Act and it would have been treated as disputed tax. But in the facts as above, while filing returns, excess set-off was adjusted against CST dues. During assessment, dis-allowance of set-off under MVAT Act resulted in dues under the CST Act.
- 12.5. Therefore, these dues being on account of dis-allowance of set-off would have to be treated as disputed tax under this Settlement Act. To avail the benefit under the Settlement Act, withdrawal of appeal is a pre-condition. In this situation, if dues under the CST Act are desired to be settled then appeal filed under the MVAT Act, if any, would have to be mandatorily withdrawn, fully and unconditionally, alongwith appeal filed under the CST Act.
- 12.6. In case the appeal under the MVAT Act is not withdrawn it would mean dealer is contesting the dis-allowance of set-off which in fact have been emanated from the MVAT Assessment Order. Therefore, to avail settlement, as above, the withdrawal of appeal under both the Act(s) i.e. MVAT Act and CST Act is mandatory.
- 12.7. The aforesaid scenario shall also apply to the dues under the Tax on the Entry Act.
- 12.8. Appellate authority including Tribunal is required to pass the order allowing the withdrawal of appeal. However, it shall be borne in mind that in respect of any order, where audit objections have been raised and an appeal is preferred against such order, then such appeal shall not be allowed to be withdrawn. The appellate authorities shall dispose-off such appeals expeditiously. The dealers are requested to approach the concerned authorities for early disposal of such cases.

13. Forms to be used for the Settlement:

- 13.1. The section 19(2) of the Settlement Act empowers the Commissioner of State Tax, to specify the Form(s) to be used for the purposes of

settlement of arrears and manner in which the Forms shall be submitted. Accordingly, for this purpose an Order dated 28th April 2023 has been issued and the FORMS so specified are made available on the Departments Web-site i.e. www.mahagst.gov.in in the Notification section.

13.2. The list of Forms to be used under this Settlement Act are given in the Table below:

Table

Sr. No.	Form No.	Purpose of Form
(1)	Form-I	Application for settlement of arrears as per the statutory order
(2)	Form-IA	Application for settlement of arrears other than the Statutory orders like return/revised return dues, dues as per recommendations in audit report.
(3)	Form-II	Application for withdrawal of appeal.
(4)	Form-III	Order of Settlement or Order of rejection.
(5)	Form-IV	Notice for Rectification of Mistakes to be issued by the Officer.
(6)	Form-V	Application for Rectification of Mistakes to be submitted by the applicant.
(7)	Form-VI	Notice for review.
(8)	Form-VII	Furnishing of details of amounts paid by way of instalments under Instalment option
(9)	Form-VIII	Notice for revocation

14. Procedure of submitting application for settlement:

14.1. The application shall be made to the designated authority in **Form I or Form IA**, as the case may be, and is to be submitted electronically on the MGSTD portal www.mahagst.gov.in. To download these FORMS the applicant shall navigate to the following path:

www.Mahagst.Gov.In>Downlaod>Forms>ElectronicForms>Amnesty Scheme 2023 e-Forms

14.2. The list of TIN to desk of Nodal officers is available on the 'What's New' section of the website. The path is as follows:-

www.mahagst.gov.in --> 'What's New' --> **Tin to Desk Mapping as on 18/10/2019**

- 14.3. The application shall get allocated to the Nodal Officer as per the Tin to Desk Mapping as available on the website.
- 14.4. In case of an unregistered dealer who is not allotted to any nodal officer, such application will get assigned to the respective jurisdictional Joint Commissioner who shall further assign the said application to a designated authority for processing thereof.
- 14.5. Un-registered persons shall create a user profile on the basis of the Permanent Account Number (PAN) provided under the Income Tax Act, 1961. With the use of the PAN, a Unique Identification Number (UIN) beginning with 77 will be generated. This UIN shall be used to pay the requisite amount and submit the application for settlement.
- 14.6. Where User Profile is not created as on the date of application, the same would have to be created. The various links with regard to User Profile and password re-set are given below-
- (a) **Link of Manual for Creation of User Profile:**
 - <https://mahagst.gov.in/en/search/node/profile>
 Path:- mahagst.gov.in>>Dealer_services>>Manual_and_Procedure>>search
 - (b) **Link for Temporary Profile creation:-**
<https://mahagst.gov.in/sites/default/files/manuals/USER%20MANUAL%20FOR%20UPLOADING%20ONLINE%20AMNESTY%20APPLICATIONS%20UNDER%20AMNESTY%20SCHEME%202023%20dt%2029.04.23-compressed.pdf>
 Path:- mahagst.gov.in>>Home>> Dealer_services>>Manual_and_Procedure
 - (c) Link for User Manual for profile creation:-
<https://mahagst.gov.in/sites/default/files/manuals/User%20Manual%20Registered%20Dealer%20Profile%20creation%20Mahagstdt%2029.04.23%20%281%29.pdf>
 Path:- mahagst.gov.in>>Home>> Dealer_services>>Manual_and_Procedure
 - (d) Procedure to reset
 “mahagst.gov.in” password:- <https://mahagst.gov.in/en/helpdesk>
 Path:- mahagst.gov.in>>Home>>May I help you>>Helpdesk.
- 14.7. The applicant shall be required to make a separate application for each statutory order or return dues or dues as per recommendation of the auditor. For arrears of return or revised return, the applicant can make a separate application for each return or revised return or a single

application for all the arrears of return or revised return pertaining to a financial year.

- 14.8. Under the Maharashtra Purchase Tax on Sugarcane Act, 1962, “year” means the year starting from the 1st October and ending on 30th September. The software for submission of the application for Settlement is designed considering the “year” as a financial year starting from April and ending in March. Hence, in order to accommodate the applications under the Maharashtra Purchase Tax on Sugarcane Act, 1962, it is instructed to mention the “From date” and “To date” as falling within the same financial year. For example, if the assessee desires to avail the benefits for the sugar year 1st October 2015 to 30th September 2016, he shall mention the “year” as 1st April 2015 to 31st March 2016.
- 14.9. The payment of requisite amount shall be made in the chalan prescribed under the Relevant Act or, as the case may be, in Form-MTR-6 prescribed under the Value Added Tax Rules.
- 14.10. Copy of acknowledgement of application for withdrawal of appeal alongwith the application for Settlement under this Act would be sufficient proof towards withdrawal of appeal.
- 14.11. Every such application shall be accompanied by the proof of payment of the requisite amount as determined under sections 8 or 9. The proof of payment of 100 per cent of the requisite amount in case of One Time Payment option, and minimum 25 per cent of the requisite amount in case of Instalment option, is to be submitted along with the application.
- 14.12. The following documents shall be accompanied with the application for settlement in **Form I** or, as the case may be, **Form IA**. These documents shall be submitted electronically.

Form-I

- (a) Copy of statutory order against which settlement is sought for. In case where an order consists of large number of pages, the scanning of which results in the file size exceeding 2MB then the first and the last page shall be scanned and uploaded. The copy of the order shall be made available by the applicant on demand of the nodal officer.

- (b) Original order allowing withdrawal of Appeal or in case the appeal withdrawal order is not received then the copy of the request letter submitted for withdrawal of the appeal.
- (c) Copies of self-certified chalangans of payment made after the date of order till the 30th April 2023 and for the payment of the requisite amount for the settlement.

Form IA

- (a) Copy of the return/revised return/audit report recommendations against which settlement is sought.
- (b) Copies of self-certified chalangans of payment made towards the aforesaid dues till the 30th April 2023 and payment of the requisite amount.

15. Verification of application and passing of order of settlement

- 15.1. In order to have a uniform procedure in the verification of applications received for settlement, the appropriate instructions are issued to the Departmental authorities under sub-section (1) of section 19 of the Settlement Act.
- 15.2. The designated authority shall verify the particulars furnished in the application and documents submitted with the application, with reference to the records available with the assessing authority or any other authority with whom such record is available.
- 15.3. The authority shall verify and confirm that the application is accompanied with the documents mentioned in the application form.
- 15.4. On verification of the application, in case it is noticed that, the said application is factually incorrect or incomplete or the requisite amount paid is deficient, then, a defect notice may be issued, as far as possible within fifteen days from the date of receipt of the application, and the applicant may be intimated about the defects in the application alongwith the details of the requisite amount to be paid. The defect notice in respect of an application shall be issued only once.
- 15.5. The applicant shall make the payment, if required as per the defect notice, as per the option opted by the applicant, on or before the last day specified for payment of requisite amount. Any payment made thereafter shall not be considered as the requisite amount for

settlement of arrears. Any other defects as pointed in the defect notice shall also be made good within the time limit prescribed for the availment of benefits under the Settlement Act. The compliance to the defects or details of additional payment, if any, is to be submitted to the authority within fifteen days of the receipt of the defect notice.

- 15.6. The compliance made to the defect notice including the payment of requisite amount, if any, shall be considered alongwith the original application filed by the applicant provided that such compliance is made before the last date prescribed for payment of the requisite amount.
- 15.7. After considering the available record, the designated authority shall pass order under section 13 of the Settlement Act. This order is to be passed within three months from the last date specified for payment of requisite amount under One Time Payment option or the date specified for payment of last instalment of the requisite amount under Instalment option.
- 15.8. Where the application for settlement of arrears is not in accordance with the provisions of this Act, then, the designated authority may, by order, in writing, reject the application, after giving an opportunity of being heard to the applicant. On rejection of such application and if the applicant had withdrawn the appeal to apply for settlement then the said original appeal under the Relevant Act shall be reinstated provided that an application is made by the applicant in this behalf.
- 15.9. An application shall not be rejected merely on the ground that the payment made by the applicant during the period as per option opted by the applicant under the Act is less than the requisite amount. In such cases, the designated authority shall not deny the proportionate benefits as may be available to the said applicant considering the option in which the requisite amount is paid.

16. Proportionate benefit:

- 16.1. Where the requisite amount paid by the applicant is less than the requisite amount as determined under sections 8 or 9 then, the designated authority shall compute the proportionate amount of waiver

admissible under the option opted by the applicant in proportion to the requisite amount paid by the applicant.

16.2. While determining the proportionate waiver, the requisite amount paid shall first be adjusted towards the un-disputed tax in full and the remaining amount shall be adjusted proportionately towards disputed tax, interest, penalty and late fee. The order giving the proportionate benefit shall be passed after providing the applicant an opportunity of hearing.

16.3. The balance arrears remaining unsettled after considering the proportionate benefit shall be recovered as an arrears under the Relevant Act.

17. Discharge of liability:

17.1. After passing of the order of settlement, the applicant shall be discharged of his liability under the Relevant Act to the extent of the amount of waiver specified in the order of settlement. The order of settlement passed under this Act shall be conclusive as to the settlement of arrears covered under that order.

17.2. Once the order of settlement is passed, no proceeding in review or revision or any other proceedings in respect of the period covered by the said order shall be initiated except on account of specific observations made by the Comptroller and Auditor General of India.

18. Revocation of order of settlement:

18.1. Where it is noticed that the applicant has obtained the benefit of settlement by suppressing any material information or particulars or by furnishing any incorrect or false information or the same is found in the proceedings related to search and seizure under the Relevant Act, then the designated authority may, for reasons to be recorded in writing and after giving the applicant an opportunity of being heard, within two years from the end of the financial year in which the order of the settlement has been served, revoke the said order.

18.2. If an order of settlement is revoked, the assessment, reassessment, rectification, revision, review or appeal proceedings under the Relevant Act covered by such order of settlement shall stand revived or reinstated immediately upon such revocation. And the arrears as per the original

proceedings which were waived shall be reinstated. The bar on reopening of settled cases under the Relevant Act shall not apply to such revoked cases. Such assessment, reassessment, rectification, revision, review or appeal shall be decided in accordance with the provisions of the Relevant Act, as if no order of settlement has ever been made. Where the period of limitation for reassessment, rectification, revision or review under the Relevant Act is expiring within two years from the date of the order of revocation then notwithstanding anything contained in the Relevant Act, the re-assessment, rectification, revision or review under the Relevant Act shall be made by the respective authorities within two years from the date of the order of such revocation.

18.3. An original appeal under the Relevant Act shall be re-instated on application to the appellate authority within sixty days from the date of communication of the order of revocation.

18.4. In case the order of settlement is revoked or rejected, the amount paid by the applicant under the Act shall be treated to have been paid under the Relevant Act.

19. **No refund under the Act:** The amount paid under the Settlement Act shall not be refunded in any circumstances.

20. Appeal under the Act:

20.1. An appeal against any order passed under the Settlement Act shall be filed within sixty days from the date of receipt of the said order. There is no provision to condone any delay in filing the appeal. The appeal shall lie to the authorities mentioned below-

- (a) the Deputy Commissioner of State Tax (Administration), if the order is passed by the authority sub-ordinate to him.
- (b) the Joint Commissioner of State Tax (Administration), if the order is passed by the Deputy Commissioner of State Tax.
- (c) the Additional Commissioner of State Tax, if the order is passed by the Joint Commissioner of State Tax.

20.2. There is no provision of second appeal under this Act.

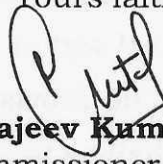
21. Rectification and Review:

21.1. The designated authority may, on his own motion or on application of the applicant, rectify any error apparent from the record within six

months from the date of service of the order. The applicant can make an application for rectification within sixty days from the date of receipt of the order of settlement. An order adversely affecting the applicant shall be passed after giving him a reasonable opportunity of being heard.

- 21.2. The supervisory authority may, on his own motion, after noticing an error in any order passed under this Act, in so far as it is prejudicial to the interest of revenue, pass an order in review, after giving a reasonable opportunity of being heard, within twelve months from the date of service of the said order.
22. In order to achieve the objective of unlocking the amount involved in the outstanding dues and old litigations, the Department will endeavor to complete the pending proceedings and also take coercive actions to recover the outstanding dues during the operation of this Act. Hence, Trade is requested to opt for settlement as early as possible to avoid recovery action.
23. This Circular cannot be made use of for legal interpretation of provisions of law as it is clarificatory in nature. If any member of the Trade has any doubt, he may refer the matter to this office for further clarification.
24. You are requested to bring the contents of this Circular to the notice of the members of your Association.

Yours faithfully,

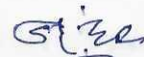

(Rajeev Kumar Mital)
Commissioner of State Tax,
Maharashtra State, Mumbai.

No. DC (A&R)3/VAT/MMB-2023/1/ADM-8

dated the 26th June, 2023

Trade Circular No. 11 T of 2023

Copy forwarded to the Joint Commissioner of State Tax (MAHAVIKAS) with the request to upload this Trade Circular on Department's web-site.


(Appasaheb S. Gorde)
Joint Commissioner of State Tax,
(HQ)-1, Maharashtra State, Mumbai