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TRADE CIRCULAR

To,

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No. Settle./MMB-2019/1/ADM-8

dated the 8th March, 2019

Trade Circular No. 9T of 2019

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 Ordinance, 2019 (Mah. Ord. No. V of 2019 dated 6th March 2019)

Gentlemen/Sir/Madam,

- 1. Introduction:** The Goods and Services Tax Act (GST) has come into force in India with effect from the 1st July 2017. This new taxation system is now stabilizing. 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. To meet the challenges of GST and focus on its implementation, the Department is planning to complete the pending work under the existing laws at earliest. For this, the Government, has taken series of legislative steps like risk based criteria for selection of cases for assessment, criteria for dropping of certain pending assessment proceedings, allowing rectification of the assessment order where set-off is disallowed due to non-confirmation etc.
2. Administrative steps are also taken to provide ease in cross-checking of set-off claim and other assessment and appeal related issues. In furtherance of these legislative and administrative steps the Hon'ble Finance Minister in his Budget Speech delivered on 27th February 2019 has made an announcement for settlement of arrears of tax, interest, penalty or late fee under various Acts administered by the Maharashtra Goods and Services Tax Department (hereinafter referred to as "MGSTD"). In order to give effect to the Budget announcement an Ordinance is promulgated on 6th March, 2019. The said

Ordinance No. V of 2019 has now been published in the Maharashtra Government Gazette, Part-VIII. Extra-ordinary No. 15 dated the 6th March 2019. The Ordinance so promulgated is titled as “the Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Ordinance, 2019 (hereinafter referred to as the “Ordinance”). This Ordinance is effective from the 6th March 2019.

3. Salient features of the Settlement Ordinance and its procedural aspects are explained below:-

3.1. Applicability of Settlement Ordinance:-

- (1) This Ordinance shall be applicable in respect of the arrears of tax, interest, penalty or, as the case may be, late fee under various Acts administered by the MGSTD and the rules made or notifications issued under these Relevant Act.
- (2) In the Ordinance these Acts are referred to as the “Relevant Act” [See *section 2(1)(k)*], these 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 of tax, interest, penalty or late fee may be settled provided that these arrears pertains to the period ending on or before the 30th June 2017 and such arrears are as per any statutory orders, or the return dues or, as per audit report or otherwise, then in that respect the recovery outstanding as on 1st April 2019 shall only be considered as **amount of arrears available for settlement**. In other words, in respect of the aforesaid demand, in case, any amount is paid on or before the 31st March 2019, then the said **amount shall not be considered** as the

requisite amount for the settlement of the arrears as per the provisions of the Ordinance. [See section 5(1)]

- (4) It may also be noted that sub-section (3) of section 5 provides that no arrears of tax, interest, penalty or late fee shall be settled under the Ordinance, in case the statutory orders are passed or the returns or the revised returns are filed after the 15th July 2019.
- (5) It may be noted that no waiver in respect of late fee payable by the assessee shall be available in respect of failure to file the return (for the period ending on or before the 30th June 2017) within the time limit specified in rule 17 of the MVAT Rules except for the returns in respect of the period ending on or before the 30th June 2017 and that are submitted between the period starting from the 1st April 2019 to the 31st July 2019. In other words, the complete waiver of late fee shall be available in respect of the returns for the period ending on or before 30th June 2017 and that are filed during the period starting from 1st April 2019 to and ending on 31st July 2019.

3.2. Time limit for submission of Application for Settlement and payment of the requisite amount: [See section 4]:

- (1) The Ordinance provides for the settlement of arrears of tax, interest, penalty or, late fee in **TWO PHASES**. First Phase will last for THREE MONTHS and the Second Phase for ONE MONTH. The First Phase provides slightly higher waiver in respect of disputed tax, interest and penalty as compared to the waiver available in Second Phase.
- (2) The duration for submission of application and time limit for payment of requisite amount shall be as given in the Table-1 below:

Table-1

Sr. No.	Particulars	First Phase	Second Phase
(1)	Time limit for payment of the requisite amount.	From the 1 st April 2019 to 30 th June 2019.	From the 1 st July 2019 to 31 st July 2019.
(2)	Duration for submission of application.	From the 1 st April 2019 to 30 th June 2019.	From the 1 st July 2019 to 31 st July 2019.

- (3) It may be seen that under First Phase last date for submission of application and for payment of the requisite amount is 30th June 2019. The applicant who desires to avail slightly higher relief in disputed tax, interest or penalty may prefer to file application under the First Phase. It may be noted that to get the benefit under First Phase it shall be mandatory for the applicant to submit application and also need to make payment on or before 30th June 2019. In case the payment is made during the First Phase i.e. before the 30th June 2019 but the application is submitted after 30th June 2019, then such applicant shall be entitled to get benefit available for the Second Phase.
- (4) Accordingly, for Second Phase the applicant shall submit application and make the payment of the requisite amount from 1st July 2019 to 31st July 2019. The last date for submission of application and payment of the requisite amount for Second Phase shall be the 31st July 2019.
- (5) The applicant who desires to settle the arrears of tax, interest, penalty or late fee shall keep the time limit given in Table-1, above in mind and take the advantage of this opportunity, accordingly.

3.3. Arrears of tax, interest, penalty or late fee that may be settled under the Ordinance:

- (1) As discussed above, the provisions of this Ordinance shall be applicable to all the Acts as listed in Para-3.1(2) above. The arrears of tax, interest, penalty and late fee which pertains to the period ending on or before 30th June 2017 shall only be available for the settlement.
- (2) The settlement of arrears of tax, interest, penalty or late fee that pertains to the period ending on or before 30th June 2017 will be available in respect of all the Acts [Please see Para-3.1(2)] and for the following amount of arrears of,-
- (a) the tax, interest, penalty or late fee payable as per any statutory order;
 - (b) the return dues i.e. the tax, interest or late fee admitted to be payable in the return or the revised return and said amount has been short paid or not paid;

- (c) the amount of tax, interest or late fee determined and recommended to be payable by the auditor, in the audit report, submitted and accepted by the dealer but which has remained un-paid;
 - (d) the tax, interest, penalty or late fee for which the Nodal Officer has issued a notice, in relation to any proceedings under the Relevant Act;
 - (e) the tax, interest, penalty or late fee as determined to be payable by the assessee (i.e. as self-assessed) even no notice for initiation of any proceeding is issued by the Departmental authorities.
- (3) It is clarified that the tax for the purposes of this Ordinance, includes the surcharge, turn-over tax, additional tax, tax deducted at source, tax collection at source and by whatever name the tax is called.

3.4. Benefits Available under the Ordinance:

- (1) The settlement benefits under the Ordinance are available for following periods, namely:-
 - (a) For the periods upto 31st March 2010, and
 - (b) For the periods starting on or after 1st April 2010 and ending on or before the 30th June 2017.
- (2) It may be noted that in the Ordinance there is no provision which provides any relief or waiver in respect of un-disputed tax, as defined in clause (q) of the sub-section (1) of section 2.
- (3) As explained above, for the periods upto 31st March 2010 and for the periods starting from 1st April 2010 and ending on or before the 30th June 2017, there are two Phases i.e. First Phase and Second Phase.
- (4) The extent of the payment of the requisite amount on account of un-disputed tax (to be paid in full), disputed tax, interest, penalty, late fee, post assessment interest or post assessment penalty and the waiver therefor, under the First Phase and the Second Phase, is calculated in accordance with the section 10 of the Ordinance read with the Annexure-A and Annexure-B, appended to the Ordinance.
- (5) For better understanding, the details of extent of payment of the requisite amount on account of un-disputed tax, disputed tax, interest, penalty and late fee, and the waiver is given in the Table-2 below:

(a) For the periods upto 31st March 2010. (For more details see **Annexure-A appended to the Ordinance**):

Table-2

Sr. No.	Particulars	First Phase		Second Phase	
		Amount to be paid	Amount to be waived	Amount to be paid	Amount to be waived
(1)	Un-disputed tax.	100%	0%	100%	0%
(2)	Disputed tax.	50%	50%	60%	40%
(3)	Interest payable as per any statutory order or returns or the revised returns.	10%	90%	20%	80%
(4)	Penalty as per any statutory order.	5%	95%	10%	90%
(5)	Post Assessment Interest or Post Assessment Penalty which is leviable but not levied till the date of application.	0%	100%	0%	100%
(6)	Late fee payable in respect of the returns filed during the period 1 st April 2019 to the 31 st July 2019.	0%	100%	0%	100%

(b) For the periods from 1st April 2010 to 30th June 2017. (For more details see **Annexure-B appended to the Ordinance**)

Table-3

Sr. No.	Particulars	First Phase		Second Phase	
		Amount to be paid	Amount to be waived	Amount to be paid	Amount to be waived
(1)	Un-disputed tax.	100%	0%	100%	0%
(2)	Disputed tax.	70%	30%	80%	20%
(3)	Interest payable as per any statutory order or returns or the revised returns.	20%	80%	30%	70%
(4)	Penalty as per any statutory order.	10%	90%	20%	80%
(5)	Post Assessment Interest or Post Assessment Penalty which is leviable but not levied till the date of application.	0%	100%	0%	100%
(6)	Late fee payable in respect of the returns filed during the period 1 st April 2019 to the 31 st July 2019.	0%	100%	0%	100%

(6) The details of the computation of requisite amount, extent of the waiver etc. are explained in the latter part of this Trade Circular.

3.5. Who can take the Benefits under the Ordinance: The following categories of the assessee may prefer to avail the opportunity for settlement of tax, interest, penalty or late fee that is levied, payable, imposed, respectively, under the Relevant Act:-

- (1) the tax payer whose registration is continued after 1st July 2017;
- (2) the tax payer whose registration certificate under the Relevant Act was valid at any time on or before the 30th June 2017.
- (3) the tax payer whose registration certificate is cancelled at any time on or before the date of commencement of this Ordinance.
- (4) the tax payers who were never registered under any of the Relevant Act, but desire to avail the benefits under this Ordinance, shall be eligible to make an application and subject to the conditions may settle the arrears of tax, interest, penalty or late fee payable for the periods ending on or before the 30th June 2017.

3.6. Forms to be used for the Settlement:

- (1) The section 19(2) of the Ordinance 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 7th March 2019 has been issued and same is made available on the Departments Web-site in the Notification section.
- (2) The list of Forms to be used under this Ordinance are given in the Table-4 below:

Table-4

Sr. No.	Form No.	Purpose of Form
(1)	Form-I	Application for settlement of arrears of tax, interest, penalty or late fee payable 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 or self-assessed dues etc.
(3)	Form-II	Application for withdrawal of appeal.
(4)	Form-III	Notice of Defect in respect of application for settlement of arrears.
(5)	Form-IV	Order of Settlement or Order of rejection.
(6)	Form-V	Notice for Rectification of Mistakes to be issued by the Nodal Officer.

Sr. No.	Form No.	Purpose of Form
(7)	Form-VI	Application for Rectification of Mistakes to be submitted by the applicant.
(8)	Form-VII	Notice for review.

3.7. **Authorities to whom the application can be made:-**

- (1) As mentioned above, the Commissioner in exercise of the powers conferred under sub-section (2) of section 19 of the Ordinance, has issued an Order on 7th March 2019 and specified the Form(s) that are to be used for the purposes of settlement of arrears of tax, interest, penalty or late fee and the manner in which the settlement application may be submitted.
- (2) Accordingly, the Commissioner has provided that the application for settlement on account of aforesaid arrears under this Ordinance shall be submitted electronically on the MGSTD portal www.mahagst.gov.in. The detailed procedure for submission of application Form electronically and that of other Forms is being made available by a separate Circular. This Circular will also provide the documents that shall be submitted to the concerned Nodal officer either physically or electronically.
- (3) The applicant who was earlier registered but is either un-registered on the date of application or has never obtained the registration and who is not allotted to any Nodal Officer, in that case a mechanism is being developed on the basis of the Postal Code (PIN CODE), such application will get assigned to the respective Joint Commissioner(s) under whose jurisdiction the said PIN CODE is assigned. The applicant will be provided information in this behalf at the time of submission of application.
- (4) The list of the Nodal Officers and their jurisdiction is available on the MGSTD web-site's What's New section (Web-site: www.mahagst.gov.in).

3.8. **Key terms defined under the Ordinance:-** Certain terms are defined in section 2 of the Ordinance. Some of the key term are as under:

(1) **“Annexures [Sec. 2(1)(a)]:**

- (a) The term “Annexure” means the Annexure appended to the Ordinance. The Annexure-A is applicable to the period's upto 31st March 2010.

Whereas, the Annexure-B covers the period starting on or after 1st April 2010 and ending on or before the 30th June 2017.

(b) The said Annexure-A or the Annexure-B provides the details of the amount to be paid and amount of waiver under the First Phase or under the Second Phase towards the disputed tax, interest, penalty or the late fee.

(2) **“arrears of tax, interest, penalty or late fee” [see section 2(1)(c)]:** This is important term very frequently used in the Ordinance. The assessee may settle the arrears of tax, interest, penalty or late fee by complying with the various conditions provided in section 7 and 8 of the Ordinance. The term **“arrears of tax, interest, penalty or late fee” is explained below:**

(a) **Arrears of tax, interest, penalty or the late fee payable as per Statutory Order-[sub-clause (i)]:**

(i) The applicant may avail the benefits towards any tax, interest, penalty or the late fee payable as per any statutory order which pertains to the period ending on or before the 30th June 2017;

(ii) The statutory order includes the assessment order, rectification order, separate penalty or interest order, appeal order, order passed by the Tribunal or the Court, or review order or revision order or the Reference pending with the Tribunal or the Court, in case such Reference involves a quantifiable arrears of tax, interest and penalty. The statutory order has been defined under section 2(1)(o) of the Ordinance.

(iii) The applicant may settle the demand raised as per any statutory orders that are passed on or after the 1st April 2019 but on or before the 15th July 2019. In other words, the statutory orders that are passed after the 15th July 2019 the benefits under the Ordinance shall **NOT** be available. Therefore, the tax payer should bear this in mind.

(b) **Settlement of Return Dues---[sub-clause (ii)]:**

(i) The term “return dues” is defined in section 2(1)(m) of the Ordinance. Accordingly, the return dues in respect of the period ending on or before the 30th June 2017 and pertaining to any of the Relevant Act means the tax, interest or late fee admitted in the return or the

revised return and which has remained un-paid either wholly or partly. The return dues that are outstanding as on 1st April 2019 may be settled under this Ordinance.

- (ii) The returns or revised returns in respect of the specified period and that are filed after the commencement of this Ordinance i.e. on or after the 6th March 2019 to 15th July 2019, such return dues may be settled depending upon the Phases given in section 4 of the Ordinance and period for which returns/revised returns pertains and will also be subject to the conditions provided in section 7 and 8 of the Ordinance.
- (iii) Needless to state that no waiver shall be available in respect of any tax that is shown payable in the return or the revised return and which has remained unpaid, as the same is covered by the definition of un-disputed tax.
- (iv) On payment of the requisite amount towards the interest, penalty or late fee, determined as per section 10 and Annexure-A and Annexure-B, the balance amount, in this respect would be available for the waiver.

(c) Settlement of amount determined to be payable by the auditor in the audit report-[sub-clause (iii)]:

- (i) The section 61 of the MVAT Act provides that the dealer is required to get his books of account audited by the auditor and the said section also mandates that subject to the threshold fixed for submission of audit report, the dealer is required to submit the audit report. In the audit report the auditor is mandated to certify and make recommendations to the dealer about the amount of tax, interest or late fee to be payable by the dealer. The dealer may accept such recommendations either wholly or partly or may not accept it in totality.
- (ii) It may be noted that where the dealer accepts the said recommendations wholly then NO waiver shall be available in respect of tax, interest or late fee so recommended by the auditor and accepted by the dealer as the said arrears are defined as the un-disputed tax. However, in case the recommendations made by the

auditor in respect of liability to pay tax, interest or late fee and if such recommendations are not accepted by the dealer, then to that extent i.e. non-acceptance, the said arrears may be settled as per the provisions of section 10 of the Ordinance.

(iii) Further, where the statutory order is passed and the amount recommended by the auditor and accepted by the dealer is considered in the said statutory order, in that case also, the arrears of tax, interest or late fee to the extent of the amount recommended and accepted by the dealer shall not be available for the settlement, despite the fact that these dues are as per the statutory order. This is because the tax, interest or late fee recommended and accepted by the dealer is treated as un-disputed tax.

(iv) Needless to mention that in case the amount of tax, interest or late fee as recommended by the auditor if is accepted by the dealer or the notice under section 32A of the MVAT Act is issued, then, the said dealer shall not be liable for any waiver in respect of the said amount of tax, interest or late fee as accepted by the dealer. As the definition of un-disputed tax as given in sub-clause (iv) of clause (q) of sub-section (1) of section 2 includes the amount of tax, interest or late fee that is determined and recommended to be payable and accepted by the dealer to be un-disputed tax.

(v) To the extent of such acceptance of tax, interest or late fee, it is un-disputed tax and therefore, no waiver shall be available in that respect.

(d) Settlement of arrears when the notice of assessment is issued but assessment is pending--[sub-clause (iv)]:

(i) The assessee may avail the benefits under the Ordinance in respect of all such proceedings where the notice for the assessment is served and the amount of risk towards the tax, interest or late fee and in case the penalty determined or proposed on the basis of various parameters such as mis-match, un-match of set-off, tax rate applied is wrong or the set-off is claimed excess etc. is communicated to the assessee or the intimation is issued under section 63(7) of the MVAT Act.

- (ii) In case the assessee accepts the amount of tax, interest, penalty or the amount communicated in relation to any proceeding then he may choose to settle said arrears in respect of which a notice has been issued, under the Relevant Act.
- (e) **Settlement of arrears that is determined by the assessee and where no notice in relation to any proceeding has been issued:**
- (i) The assessee may prefer to settle any arrears for un-assessed period where no notice in relation to any proceeding has been issued. These arrears of tax, interest or late fee may be as self-determined by the assessee.
- (ii) The assessee after following the procedure and complying with the conditions laid down in the Ordinance may opt to settle the dues in respect of one or more period.
- (3) **“applicant”** means a person who is liable to pay arrears of tax, interest, penalty or late fee in respect of the specified period, under the Relevant Act and who desires to avail the benefit of settlement, by complying with the conditions, under the Ordinance.
- (4) **“requisite amount”** is defined in clause (l) of sub-section (1) of section 2. This is also one of the important term used in this Ordinance.
- (a) Requisite amount means an amount required to be paid during the First Phase or the Second Phase as provided in section 4, and determined as per section 10 of the Ordinance, in order to get the waiver in respect of the disputed tax, interest, penalty or late fee.
- (b) The requisite amount shall be the aggregate of the amount that is paid on or after the 1st April 2019 but before 31st July 2019, towards undisputed tax as defined under section 2(1)(q) of the Ordinance, and the disputed tax [as defined under the 2(1)(g)], interest, penalty, late fee, post assessment penalty or the post assessment interest, whether levied or not, determined as per the section 10 of the Ordinance as specified in Annexure-A or Annexure-B.
- (c) In other words, the applicant for settlement of arrears shall be required to pay 100% of undisputed tax and such percentage of the disputed tax, interest (post assessment interest), penalty (post assessment

penalty) as given in Annexure-A and Annexure-B. This aspect is explained in the latter part of this Circular.

(d) It may also be noted that any amount paid as requisite amount and the amount so paid, in case, is less than the requisite amount and the question arises about the appropriation of the said amount, in that case the requisite amount shall be appropriated first towards un-disputed tax in full, disputed tax, interest, penalty and late fee, proportionately.

(5) **“return dues”-[section 2(1)(m)]**: This term is defined under clause to mean amount of tax, interest or late fee, admitted in the return or the revised return filed under the Relevant Act in respect of the specified period but which has remained un-paid either wholly or partly, at any time before the 15th July, 2019.

(6) **“specified period” [section 2(1)(n)]**: For the purposes of settlement of tax, interest, penalty or late fee the specified period shall mean the period ending on or before the 30th June 2017.

(7) **“Statutory order” [section 2(1)(o)]**: Any order passed under the Relevant Act raising the demand of tax, interest, penalty or late fee payable by the applicant.

(8) **“disputed tax”** means the tax other than the un-disputed tax as defined in section 2(1)(g). Few examples of the disputed tax are given below:

(a) Set-off under the Relevant Act to be treated as disputed tax:

- (i) The dealer in order to make the payment of the taxes payable as per return is allowed to adjust the set-off.
- (ii) In case, the tax liability as per return has been discharged with adjustment of set-off and if, in any statutory orders, the demand is raised due to disallowance of the set-off on certain grounds because of the dispute related to the grant of set-off, in such circumstances, the said outstanding demand of the tax as per any statutory order would be treated as the 'disputed tax'.

(b) Additional demand on account of declarations or certificates to be treated as “disputed tax”:

- (i) The concessional or Nil rate is applicable under the Central Sales Tax Act, 1956, in case the inter-State sales are made against 'C', 'F' 'H' 'E-1', 'E-II or 'T' Forms.

(ii) However, in many cases the additional demand is raised due to non-production of said declarations or certificates.

(iii) Arrears of tax on account of such non-production or production of defective declarations or certificates to be treated as disputed tax.

Example: (Considering period 2005-06)

- In case the dealer has made inter-State sales against Form 'C', and has collected taxes @ 4% and subsequently additional demand has arisen due to non-production of 'C' forms either in the assessment or in appeal then 4% tax would be treated as un-disputed tax which the dealer is required to pay fully, and
- additional demand in excess of 4 % due to disallowance or non-production of 'C' forms shall be treated as tax arrears amounting to '*disputed tax*.'

(9) **“un-disputed tax” [section 2(1)(q)]**: This is also an important term which defines the “Un-disputed tax”. The un-disputed tax and its implications are explained in the Para 3.11(8) of this Trade Circular.

3.9. Adjustment of any payment made under Relevant Act and settlement of arrears of tax, interest, penalty or late fee, if any. [See section 5]:

(1) This section begins with a non-obstante clause. 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 and on or before the 31st March 2019, then such payment shall first be adjusted against the tax and thereafter towards the interest and the balance amount remaining un-adjusted shall then be adjusted towards the penalty and late fee, sequentially. This adjustment of the payment is contrary to the provisions of section 40 of the MVAT Act. As per section 40 of the MVAT Act, the payment made after any order except in appeal, is first adjusted towards the interest, penalty and lastly towards the tax.

(2) In order to mitigate the hardship, this sequence of interest, penalty and tax provided under the MVAT is changed to the tax, interest, and penalty, only in cases where the applicant makes an application for the settlement under the Ordinance. Thus any applicant who desires to

settle the arrears as per any statutory order would be required to adjust the amount paid after date of that order till the 31st March 2019 as explained above. In other words, any payment made from the date of the said order to the 31st March 2019 shall not be considered as the payment towards the requisite amount.

[see clause 5(1)(a)].

- (3) After adjustment of the amount paid on or before the 31st March 2019, the amount remaining as on the 1st April 2019 shall be considered as an arrears and the requisite amount for settlement of said outstanding amount shall be determined depending upon the fact as to whether the arrears pertains to the period upto 31st March 2010 or pertains to the period starting from 1st April 2010 and ending on 30th June 2017 and also whether the applicant has submitted the application for settlement and made the payment of the requisite amount before the last date provided for the said payment and submission of application under the First Phase or the Second Phase. *[See 5(1)(b)].*
- (4) Further, the amount of arrears in respect of the specified period towards the return dues or the tax, interest or late fee as recommended to be payable by the dealer, in the audit report, by the auditor and accepted by the dealer wholly or partly, any amount paid towards the arrears on or before the 31st March 2019 shall be subjected to adjustment in the order of tax, interest and late fee. After such adjustment, the amount outstanding as on 1st April 2019 shall be considered as the amount available for the settlement. The requisite amount in this respect shall be determined as discussed supra. *[See section 5(2)].*
- (5) It may be noted that arrears of tax, interest or late fee in respect of the returns or revised returns for the specified period that are filed or arrears of tax, interest, penalty or late fee payable as per statutory orders that are passed after the 15th July 2019 shall not be eligible for the settlement. *[Section 5(3)]*
- (6) These provisions shall also be applicable to the statutory orders including the order passed in appeal or order passed by the Tribunal. In case such orders are passed after 15th July 2019, no settlement shall

be available against the arrears of tax, interest, penalty or, as the case may be, the late fee. *[Section 5(3)]*

- (7) In other words, the settlement of arrears shall not be available in respect of the returns or the revised returns that are filed after 15th July 2019 except for the returns that are filed during the period 1st April 2019 to 31st July 2019. The late fee waiver in respect of the returns for the period ending on or before 30th June 2017, if are filed during the aforesaid period shall be available for the settlement determined as per section 10 read with the Annexure-A or Annexure-B appended to the Ordinance.

3.10. Eligibility for Settlement of arrears of tax, interest, penalty or late fee for the specified period: [See section 6]:

- (1) As explained above subject to the other provisions of this Ordinance, every tax payer who is registered on the date of application or who was registered earlier but is un-registered on the date of application or who has never obtained the registration shall be eligible for the settlement of the arrears pertaining to the specified period. *[See Section-6(1)]*.
- (2) The applicant may prefer to make an application irrespective of the fact whether the appeal under the Relevant Act, is filed or not.
- (3) Further, any applicant who has availed the benefits under the Amnesty Scheme-1995, 1999, 2004 or has taken the benefits under the Maharashtra Settlement of Arrears in Dispute Act, 2016 shall also be eligible to make an application under this Ordinance and settle the said arrears. *[See Sub-section-6(2)]*.

3.11. Conditions for Settlement of arrears: [See Section 7]:

- (1) The application shall be made to the designated authorities as discussed in Para-3.7 above.
- (2) Every such application shall be accompanied by the proof of payment of the requisite amount as determined under section 10 and the documents stated in the application Form. The documents listed in the application Form shall be submitted either electronically or physically as explained in the separate Circular issued in this behalf.
- (3) The applicant who desires to settle the arrears of tax, interest, penalty or late fee, pertaining to the specified period, under each of the Relevant Act shall be required to make separate application on or before the last

date specified under the First Phase or the Second Phase mentioned in section 4 of the Ordinance. Such application shall be submitted electronically.

(4) **Application for settlement in respect of statutory order:** Each statutory order shall be treated as distinct unit and a separate application in **Form-I** shall be made for each of such order under each of the Relevant Act.

(5) **Application for settlement in respect of the Return Dues:**

- (a) A separate application shall be made for settlement of return dues for each of the return or the revised return under each of the Relevant Act.
- (b) The facility to make single application, in case the applicant desires to settle the arrears as per more than one return or the revised return pertaining to a financial year, then, the applicant may make a single application for such returns or revised returns clearly specifying the period(s) of such return or the revised return, in application **Form-1A**.

(6) **Non-eligibility for settlement in case of filing revised return that results into reduction of tax or interest or both over the original return:** *[See 1st and 2nd Proviso to section 7(3)]*:

- (a) Where, any dealer who after commencement of this Ordinance i.e. on or after the 6th March 2019, revises (for one or more time) the original return, and such revision, results into reduction in tax or interest liability due to the adjustment of set-off or for any other reason, then, the applicant shall not be eligible to make application in respect of such revised return.
- (b) However, in case the reduction of the liability in respect of tax or interest or both as per the revised return is due to the payment of the said amount, in cash, during the intervening period of date of submission of the original return to the date of submission of revised return, then the applicant shall be eligible to settle these arrears and make application for settlement.

(7) **Application for settlement in respect of arrears when the case is remanded back to the designated authority-[See section 7(5)]:**

- (a) As per the first proviso to clause (a) of sub-section (5) of section 26 of the MVAT Act, Tribunal is empowered to set aside the assessment

and refer the case back to assessing authority for making the fresh assessment as per the directions given therein. Tribunal in some cases gives the directions for computation of tax liability including the computation of set-off or interest computation etc. In such cases, the order giving effect to the directions of the Tribunal need to be passed on or before the 15th July 2019. Where, such order is not passed on or before the 15th July 2019 then arrears of tax, interest or penalty may be settled, subject to the Para-(c) below.

- (b) Also with effect from 15th April 2017 the 1st appellate authorities under certain circumstances are empowered to remand back the assessment order to the assessing authority for fresh assessments.
- (c) It is further clarified that in aforesaid situation, in case the order is not passed on or before the 15th July 2019, then the dealer need not wait for the remand calculations to be made by the assessing authority. The dealer may make the calculations himself, where feasible, as provided in section 10 read with the Annexure-A or Annexure-B, within the time limit provided in the section 4 of the Ordinance, and settle the arrears of the tax, interest, or penalty as directed by the Tribunal. However, such claim for settlement shall be entirely at the risk of the dealer since the assessing authority would be making such calculations in due course.

(8) No waiver or relief against un-disputed tax:

- (a) Sub-section (6) of section 7 of the Ordinance makes it clear that the applicant shall not be entitled for any waiver in respect of the un-disputed tax as defined under clause (q) of sub-section (1) of section 2.
- (b) The un-disputed tax shall mean,-
 - (i) the taxes that are collected separately; or
 - (ii) the deduction allowed by the authorities in statutory order for the taxes collected separately; or
 - (iii) taxes shown payable in the return or the revised return filed under the Relevant Act; or
 - (iv) an amount claimed by the dealer as deduction or allowed by the designated authority as per rule 57 of the Maharashtra Value Added Tax Rules, 2005 or similar rules made under the other Relevant Act; or

- (v) 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; or
- (vi) any amount of tax, interest or late fee 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; or
- (vii) the tax deducted at source (TDS) by the employer under the Relevant Act; or
- (viii) the tax collection made under section 31A of the Value Added Tax Act.

(c) In view of this the tax payer shall be required to make the payment of 100% amount of un-disputed tax.

(d) It may be noted that the amount of tax, interest or late fee recommended by the auditor in the audit as payable by the dealer and in case the dealer has accepted such amount of tax, interest or late fee to the extent of acceptance of recommendations, such tax, interest or late fee shall be treated as un-disputed tax and to avail the benefits under the Ordinance, such dealer would be required to make 100% payment of tax, interest or late fee so recommended and accepted.

(e) The payment made by the applicant towards the requisite amount shall first be adjusted towards the un-disputed tax and then towards the disputed tax and balance remaining shall then be adjusted towards the interest, penalty and late fee, sequentially.

(f) The payment of requisite amount shall be the aggregate of un-disputed tax amount in full and such percentage of the disputed tax, interest, penalty or late fee as given in Annexure-A or Annexure-B depending of the date of submission of application and date of payment of the requisite amount.

(9) Conditional Settlement in case of taking the VAT or Entry Tax Credit under GST law:

(a) The sub-section (8) of section 7 of the Ordinance provides that, any tax payer who has taken the credit of the VAT or entry tax, into electronic credit ledger maintained under the GST law at the common portal and the said tax payer desires to make an

application for settlement in respect of such input tax credit, then, the application for settlement of the arrears corresponding to said credit be allowed only on the condition that said tax payer reverses the corresponding credit of VAT or entry tax taken into the Electronic credit ledger and for which the application for settlement is filed.

- (b) This sub-section envisages the prevention of undue advantage that may be taken by the applicant. As on one hand the applicant takes the credit that is carried forward in the June-2017 return into the Electronic Credit Ledger GST, and on other hand it desires to settle the arrears with the payment of requisite amount may be to the extent of 70%. To overcome aforesaid situation the sub-section (8) directs the applicant to reverse the amount equivalent to the amount for which the settlement is desired on account of input tax credit that is taken to the Electronic Credit Ledger.
- (c) Needless to state that the aforesaid condition operates to the extent of the credit of VAT or entry tax that, in case is taken to the Electronic Credit Ledger and the same is desired to be settled under this Ordinance. The reversal of the said credit shall be made either by debiting the Electronic Credit Ledger or the Cash Ledger, through **FORM-GST-DRC-03**.

3.12. Withdrawal of appeal: [See section 8]:

- (1) Where the applicant has filed the appeal, reference, Writ Petition, Special Leave Petition, then withdrawal of such appeal, reference, Writ Petition, Special Leave Petition shall be the condition precedent for availing the benefits under the Ordinance. The section 8 of the Ordinance provides that to avail the benefits under the Ordinance, the applicant is required to withdraw the pending appeal, reference, writ petition or the Special Leave petition, un-conditionally, filed before any appellate authority, Tribunal or the Hon'ble Court.
- (2) However, if in respect of any order, audit objections have been raised and an appeal is preferred against that order, then the appeal shall not be allowed to be withdrawn. The appellate authorities shall dispose-off such appeals expeditiously. Similarly proceeding of revision/

reassessment/rectification initiated in pursuance of audit objections shall be completed expeditiously so that dealer can avail the benefit of settlement. The dealers are requested to approach and co-operate with the concerned authorities for early disposal of such cases.

- (3) The process of withdrawal of appeal is made simpler. The applicant who desire to settle the arrears of tax, interest, penalty or the late fee is required to withdraw the appeal pending before any appellate forum including the Tribunal or the Court. For this, the applicant is required to make an application in **Form-II** appended to the Order issued under section 19(2) of the Ordinance and specify as to whether the appeal is desired to be withdrawn partly or fully. The applicant shall take the acknowledgement from the appellate authority, Tribunal or the Court towards the receipt of the said application and submit the said acknowledgement to the designated authority. [See section 8(1)(a)]
- (4) The acknowledgement shall be treated as sufficient proof towards the withdrawal of appeal. However, the acknowledgment alone will not obviate the need of passing the order to allow the withdrawal of the appeal.
- (5) Appellate authority including Tribunal is required to pass the order allowing the withdrawal of appeal either fully or partly as desired by the appellant. This facility is provided so that the maximum cases and arrears is settled under the Ordinance. [See section 8(1)(b)]
- (6) Where, the applicant, desires to withdraw the appeal in respect of certain issues and desires to continue the appeal for certain other issues, then, the said applicant shall specify details in the appeal withdrawal application in **Form-II** about the issues against which the appeal is withdrawn and issues against which the appeal is continued. [see section 8(2)]
- (7) The applicant shall specify, in the said appeal withdrawal application the amount of tax, interest, penalty or the late fee corresponding to tax, interest, penalty or late fee vis-à-vis issues for which the appeal is desired to be withdrawn and for which the settlement application is desired to be filed. Further, the applicant shall also mention in the

settlement application the amount of tax, interest, penalty or late fee for which the settlement is desired.

- (8) It may be noted that the appellate authorities are required to pass an order allowing the withdrawal of the appeal in the Form to be provided for this purpose. Once the order allowing the full or part withdrawal of appeal is passed the copy of the said order shall be provided to the applicant as well as the concerned Nodal Officer.

3.13. Powers of the Commissioner to notify the transactions that may constitute an issue: [See section 9]:

- (1) The section 9(1) empowers the Commissioner to notify the transactions that may constitute an issue. Accordingly, in exercise of the powers conferred under section 9(1) of the Ordinance, the Commissioner has issued the notification bearing No. Sett/MMB-2019/1/ADM-8 on 7th March 2019 published in the Maharashtra Government Gazette, Part-I, Extra-ordinary No.-27 dated the 7th March 2019.
- (2) Vide this notification, the Commissioner has notified the transactions that may constitute an issue. For details please refer the said notification at Departments web-site www.mahagst.gon.in **>Act & Rules>Notifications.**
- (3) It may be worth to state that the tax payer is not allowed to take the benefits against interest, penalty or late fee, alone treating them an issue unless the associated tax together with interest, penalty or the late fee is also considered as an issue.
- (4) The section also provides that the decision of the Commissioner to classify the transactions that may constitute an issue shall be final and the said decision shall be non-appealable. In other words, no appeal shall lie against the said decision of the Commissioner before any appellate forum including the Tribunal of the Court.

3.14. Determination of requisite amount and extent of the waiver: [See section 10, section 4 and Annexure-A and Annexure-B]: The requisite amount and the extent of the waiver will depend upon the period of arrears and Phases in which the application is submitted and the payment of requisite amount is made. The determination of the requisite amount and extent of waiver in the First Phase or the Second Phase is explained below:

(1) Determination of requisite amount and extent of waiver:

- (a) In case the arrears of tax, interest, penalty or late fee pertains to the periods ending on or before the 31st March 2010 or for the period commencing on or after the 1st April 2010 and ending on or before the 30th June 2017 and where the tax is un-disputed or disputed then the extent of the payment in respect of the un-disputed tax (to be paid in full), disputed tax, interest, penalty or late fee and waiver in respect of such disputed tax, interest, penalty or late fee shall be calculated on the basis of the date of payment of the requisite amount and the date of submission of application in the First Phase or in the Second Phase. **[See sub-section (1) of section 10.]**
- (b) The requisite amount and the extent of the waiver shall be calculated on the basis of the Annexure-A or Annexure-B appended to the Ordinance.

(2) Determination of requisite amount and extent of waiver where the assessee is liable to pay entry tax:

- (a) Sub-section (2) of section 10 provides for the determination of the requisite amount and the extent of the waiver in respect of the tax, interest and penalty in case of a tax payer who is liable to pay tax under the Maharashtra Tax on Entry of Goods into Local Areas Act, 2002 (hereinafter referred to as the “Entry Tax Act”). This sub-section is non-obstante, therefore, the provisions of the Ordinance shall have over-riding effect in respect of the provisions of the Entry Tax Act.
- (b) Accordingly, the requisite amount and the extent of waiver of tax, interest, and penalty shall be determined as stated in clauses (a), (b), (c) and (d) of sub-section (2) of section 10.
- (c) For determination of the requisite amount, it is necessary to take into account the value of the goods, rate of tax applicable in respect of goods so imported, amount of entry tax, interest and penalty that is determined in the statutory order and in case no such order is passed then the amount of entry tax or interest that becomes payable as per the provisions of the Entry Tax Act, need to be considered.
- (d) Further, taking into consideration the amount of Entry Tax payable as above, the next step is to consider the provisions of the rule 52,

53 and 54 of the Maharashtra Value Added Tax Rules, 2005 and the similar rules made under the Bombay Sales Tax Rules, 1959, so as to determine the amount of set-off that is admissible, in-admissible or denied under these rules.

- (e) The provision is made so that the requisite amount determined for the purposes of this Ordinance shall be the amount equivalent to the amount of set-off reduced or denied under the rule 53 or 54 read with rule 52 of the MVAT Rules or similar rules made under the Bombay Sales Tax Rules, 1959.
- (f) The clause (b) of said sub-section provides that in case the said applicant has paid the requisite amount as determined under clause (a), on or before the last date specified in section 4, then the such applicant shall be entitled for the waiver of balance amount of tax remaining outstanding, The said clause further provides that the applicant, under aforesaid circumstances, shall not be entitled to claim the set-off under MVAT Rules, or, as the case may be, under the Bombay Sales Tax Rules, 1959.
- (g) Needless to mention that the payment made on any account on or before the 31st March 2019 shall not be considered as a payment towards the requisite amount. In other words, in order to avail the waiver in respect of the tax, interest or, as the case may be, penalty the applicant shall be required to make the payment as determined under clause (a), (b), (c) and clause (d) of sub-section (2), within the time limit given in section 4. Once requisite amount is paid as above, then such applicant shall not be entitled to claim the set-off under the MVAT Rules or, under the Bombay Sales Tax Rules.
- (h) To understand better the above situation is illustrated with the Example given hereunder:

(I) Example-A:

- (i) An importer “X” for the period 2005-06 is assessed and the assessment **order is passed on 15th May 2013**. The entry tax, interest and the penalty determined and the requisite amount and the extent of the waiver is worked as given in the Table-5 below:

(ii) Consider the following parameters:

Table-5

Sr. No.	Factors considered	Particulars
(1)	The period of Assessment.	2005-06
(2)	Value of the goods imported.	Rs. 8,00,000
(3)	Rate of tax under Entry Tax Act.	12.5%
(4)	Tax liability as per AO.	Rs. 1,00,000
(5)	Date of payment of requisite amount.	3 rd May, 2019
(6)	Date of submission of application under Ordinance.	5 th May 2019
(7)	Phase under the Ordinance.	First Phase
(8)	Set-off admissible under MVAT Rules as per rule 52.	Rs. 1,00,000
(9)	*Goods imported are used as a fuel, hence the reduction in set-off u/r 53(1) or 53(1A) 4% of the purchase price of the corresponding goods i.e. of Rs. 8,00,000/-.	Rs. 32,000

(iii) On the basis of the aforesaid parameters the requisite amount and the waiver in that respect is presented in the Table-6 below:

Table-6

Sr. No.	Particulars	Liability as per A.O.	Requisite Amount to be paid		Amount to be waived
			%	Amount	
(1)	Entry Tax @ 12.5%	1,00,000	4*	32,000	68,000
(2)	Interest determined	35,000	10	3,500	31,500
(3)	Penalty imposed	50,000	5	2,500	47,500
(4)	Total	1,85,000		38,000	1,47,000

(II) Example-B:

(i) An importer "Y" imports the Tiles and Marble. For period 2014-15 assessment **order is not** passed. Therefore, as per section 10(2)(a)(ii) of the Ordinance, the entry tax payable and the interest payable is to be determined as per the provisions of the Entry Tax Act. On this basis, the requisite amount and the extent of the waiver is worked as given in the Table-7 below:

(ii) Consider the following parameters:

Table-7

Sr. No.	Parameters considered	Particulars
(1)	The period of Assessment.	2014-15
(2)	Value of the goods imported.	Rs. 16,00,000
(3)	Rate of tax under Entry Tax Act.	12.5%
(4)	Tax liability determined.	Rs. 2,00,000
(5)	Amount paid upto 31st March 2019.	Rs. 1,00,000
(6)	Phase under the Ordinance.	Second Phase
(7)	Date of payment of requisite amount.	15 th July 2019
(8)	Date of submission of application under Ordinance.	30 th July 2019
(9)	Set-off admissible under MVAT Rules as per rule 52.	Rs. 2,00,000
(10)	*Goods imported are used in the erection of immoveable property, hence the set-off is denied as per rule 54 of the MVAT Rules.	Rs. 2,00,000
(11)	Balance set-off available.	NIL

(iii) On the basis of the aforesaid parameters the requisite amount and the waiver in that respect is presented in the Table-8 below:

Table-8

Sr. No.	Particulars	Liability as self-assessed	Requisite Amount to be paid		Amount to be waived
			%	Amount	
(1)	Entry Tax @ 12.5%	2,00,000	*	2,00,000	0
(2)	Interest determined	25,000	20	5,000	20,000
(3)	Total	2,25,000		2,05,000	20,000

(III) Example-C:

(i) An importer “Z” imports the goods that are used as a Raw material. For period 2014-15 assessment **order is passed** and the entry tax, interest and the penalty is determined in the Assessment Order and the assessment order is challenged before the 1st appellate authority. First appellate authority confirmed the order of assessment. The said order is pending before the Tribunal. On the basis of order of the appellate

authority, the requisite amount and the extent of the waiver is worked as given in the Table-9 below:

(ii) Consider the following parameters:

Table-9

Sr. No.	Parameters considered	Particulars
(1)	The period of Assessment.	2014-15
(2)	Value of the goods imported.	Rs. 32,00,000
(3)	Rate of tax under Entry Tax Act.	12.5%
(4)	Tax liability as per AO.	Rs. 4,00,000
(5)	Tax paid upto 31st March 2019.	Rs. 2,00,000
(6)	Phase under the Ordinance.	First Phase
(7)	Date of payment of requisite amount.	15 th June 2019
(8)	Date of submission of application under Ordinance.	20 th June 2019
(9)	*Set-off admissible under MVAT Rules as per rule 52.	Rs. 4,00,000

(iii) On the basis of the aforesaid parameters the requisite amount and the waiver in that respect is presented in the Table-10 below:

Table-10

Sr. No.	Particulars	Liability as per A.O.	Requisite Amount to be paid		Amount to be waived
			%	Amount	
(1)	Entry Tax @ 12.5%	4,00,000	*	0	2,00,000
(2)	Interest determined	60,000	20	12,000	48,000
(3)	Penalty imposed	70,000	10	7,000	63,000
(4)	Total	5,30,000		19,000	3,11,000

(i) The requisite amount in respect of the entry tax, interest or penalty, as the case may be, shall be as given in the aforesaid examples. The tax payer is required to make an application and also payment of the requisite amount on or before the last date specified for the First Phase or the Second Phase. The period for which settlement application is filed shall also be taken into consideration for determination of the requisite amount and the extent of the waiver.

- (j) The attention of the tax payer is invited towards the proviso to clause (b) of sub-section (2) of section 10; this clause specifically provides that the amount paid on any account on or before the 31st March 2019 shall not be considered towards the payment of the requisite amount. In other words, the applicant is required to consider the amount of entry tax, interest and penalty that is outstanding as on 1st April 2019.
- (k) Any amount paid on or before the 31st March 2019 shall first be adjusted towards the tax, then towards the interest and then towards the penalty amount. After such adjustment the amount outstanding as on 1st April 2019 shall only be considered as the amount available for the settlement.
- (l) It may be noted that the liability under the Entry Tax may be settled subject to the condition that the tax under the Bombay Sales Tax Act (BST Act), 1959, Central Sales Tax Act, 1956 or, as the case may be, under MVAT Act is paid fully for the period for which the applicant desires to settle the arrears under the Entry Tax Act. Also to avail benefits under Ordinance, for waiver of Entry Tax, the applicant shall discharge the entire liability under the BST Act, CST Act or the MVAT Act.

(3) Form to be used for Payment of the requisite amount:

- (a) Sub-section (3) of section 10 provides that the payment of the requisite amount under the Ordinance shall be made in the Chalan Form-MTR-6 as provided in rule 45 of the MVAT Rules, or, as the case may be, in the Chalan Form as prescribed under the Relevant Act.
- (b) The payment of the requisite amount shall be made on or before the last date specified for the payment under section 4 and considering the Phase of the settlement and the Annexure-A or Annexure-B appended to the Ordinance.

(4) Determination of the proportionate benefit in case the payment is lesser than the requisite amount so determined: [See section 10(4)]

- (a) This is most crucial aspect of the settlement of arrears. The applicant need to compute the requisite amount carefully and also note that the benefits shall be available as applicable to the First Phase or the Second Phase depending upon the date of payment of the requisite amount, date of submission of application as also the period for which settlement is desired.

- (b) Sub-section (4) of section 10 provides that in case the applicant has made the payment which is less than the requisite amount, the applicant will be eligible for the proportionate benefit of waiver of disputed tax, interest, penalty or the late fee.
- (c) It may be noted that the applicant on any grounds shall not be entitled to any waiver in respect of un-disputed tax and **therefore such un-disputed tax amount need to be paid in full. No proportionate benefit shall be available towards the un-disputed amount.**
- (d) It may also be borne in mind that the requisite amount so paid shall first be adjusted towards the un-disputed tax in full and remaining amount shall thereafter be adjusted towards the disputed tax, interest, penalty or late fee in that order. Therefore, to determine the requisite amount, the applicant, shall consider the amount outstanding, the quantum of un-disputed tax, disputed tax, interest, penalty or the late fee as also the period for which the settlement is sought.
- (e) **Proportionate benefits in case the amount falling short is paid after the 1st July 2019 but before the 31st July 2019:**
- (i) Where, the applicant has submitted the application in the First Phase i.e. on or before the 30th June 2019, but the payment towards the requisite amount is made short, and such short payment is made at any time between 1st July 2019 to 31st July 2019 i.e. after the end of the First Phase but before the end of the Second Phase then, the proportionate benefit should be calculated to the extent of the amount paid in the First Phase and to the extent of the amount paid in the Second Phase, respectively.
- (ii) The Ordinance envisages that the tax payer should not be denied benefit of the waiver if minor or small amount is short paid. The aforesaid circumstances are explained with the help of the example.

Example:

- Say the period of order for settlement is **2011-12** and the dealer has submitted the application on 15th April 2019 and made the payment in the **First Phase** but same falls short of the requisite amount.

- The Defect Notice in **Form-III** would be issued and the applicant would be informed about the short payment or the defects in the application. Considering this the proportionate benefits are to be determined.
- However, in case the applicant fails to make the payment mentioned in the Defect notice before the 30th June 2019 and makes the said payment after the 1st July 2019 but before the 31st July then,-
 - the benefits in respect of the tax, interest, penalty or late fee shall be calculated considering the date of submission of application and date of payment of the requisite amount in terms of section 10.
 - This is explained with the example as given in the Table-11 below:

Table-11

Sr. No.	Particulars	Arrears as on 1st April 2019	Requisite amount to be paid (Annex.-B) First Phase		Amount paid*	Amount short paid
			%	Amount		
(a)	(b)	(c)	(d)	(e)	(f)	(g)
(1)	Amount of un-disputed tax	50000	100	50000	50,000	0
(2)	Payment towards disputed tax	100000	70	70,000	64,815	5,185
(3)	Interest determined	30000	20	6000	5,556	444
(4)	Penalty payable	50000	10	5000	4,630	370
(5)	Total	230000		1,31,000	1,25,000	6,000

****Amount as paid by the applicant is adjusted first towards the un-disputed tax in full and then to the disputed tax, interest and penalty, proportionately.***

(iii) In this example, the applicant has made the payment of Rs.1,25,000/- instead of Rs. 1,31,000/-. Thus, it is seen that the applicant has made the short payment of Rs.6,000/-. However, as explained above out of payment of Rs, 1,25,000/- Rs. 50,000/- which is un-disputed tax shall first be adjusted and after deduction of said amount the balance amount should be

determined. After such adjustment the balance amount remaining comes to Rs. 75,000/-. [Rs.1,25,000-Rs.50,000]=75,000/-.

(iv) Considering this the applicant was required to make the payment of Rs. 81,000/- [i.e. Rs.75,000+Rs. 6,000/-]. Thus there is a short payment of Rs. 6,000/-. As the applicant has made the payment short, therefore, the amount available for the settlement need to be worked out and informed to the applicant well in advance. Say the applicant has made the payment of the amount as informed during the Second Phase i.e. on 6th July 2019, thus, the proportionate amount appropriated in respect of disputed tax, interest, penalty shall be as given in the column No. (f) of the Table-11 above.

(v) As discussed above, considering the actual payment made during the First Phase as compared to the requisite amount paid comes to **92.59% [i.e. 75000X100/81,000]**. Accordingly, by applying the said percentage to the amount in **column (c) of Table-11**, the amount in **column (c) of Table-12** below is derived and on that basis the requisite amount in **column (e) of Table-12** is computed with the proportionate benefits as presented **column (f) in the Table-12** below:

Table-12

Sr. No.	Particulars	Basis for calculation of requisite amount	Requisite amount to be paid (Annex.-B) First Phase		Amt. to be waived	Amt. to be considered in 2 nd Phase
			%	Amount		
(a)	(b)	(c)	(d)	(e)	(f)	(g)
(1)	Amount of un-disputed tax	50,000	0	50,000	0	0
(2)	Payment towards disputed tax	92,593	70	64,815	27,778	7,407
(3)	Interest determined	27,778	20	5,556	22,222	2,222
(4)	Penalty payable (10%)	46,296	10	4,629	41,667	3,704
(5)	Total	2,16,667		1,25,000	91,667	13,333

(vi) On similar lines the benefits in respect of the amount in column (g) that is derived proportionately need to be considered for Second Phase. The payment of the requisite amount in respect of tax, interest and penalty shall, respectively be, Rs. 5,926/-, Rs.667/- and Rs.741/-. Accordingly, to settle these dues of Rs. 13,333/- the applicant would be required to make the total payment of Rs. 7,333/-.

(f) Proportionate benefits in case the application for settlement is filed during the Second Phase and amount falling short is paid after 31st July 2019:

(i) In such situation the applicant is entitled to the proportionate benefit to the extent of the amount paid during the Second Phase and no waiver shall be allowed in respect of the amount paid after the 31st July 2019.

(ii) The balance amount remained after considering the proportionate benefit shall be recovered as an arrears under the Relevant Act.

(5) No rejection of application on account of short payment: As per the provisions of sub-section (5) of section 10, the application made for the settlement shall not be rejected merely on the ground that the applicant has made the short payment of the requisite amount. As explained in the preceding paragraphs the proportionate benefit shall be granted on the basis of the principles explained supra.

3.15. Verification of correctness and completeness of application and issuance of defect notice, if necessary. [See section-11]

(1) This section deals with the verification and correctness of the application of the settlement by the designated authority. The designated authorities in this behalf are State Tax Officer, Assistant Commissioner of State Tax and Deputy Commissioner of State Tax. On receipt of the application the designated authority shall first verify that all the necessary documents and declarations are submitted by the applicant as per the manner prescribed in this behalf. The verification of the application Form and the underlying record available in the office of the Nodal officer or other officer shall be verified thoroughly.

- (2) On verification, in case it is noticed that the application is incorrect or the necessary details such as proof of payment, proof of submission of request letter to the appellate authority or the Tribunal or the Court is not submitted then, the Nodal Officer shall within 15 days from the date of receipt of application issue a Defect Notice in **Form-III**, clearly specifying the defects. In case, the applicant has made the short payment towards the requisite amount, in that case the Nodal Officer shall clearly state the amount short paid. The applicant shall be informed about the amount short paid as also about the proportionate benefit in case such short payment is not made in the First Phase or the Second Phase.
- (3) It may be noted that only one defect notice shall be issued and all the defects shall be brought to the notice of the applicant.
- (4) After receipt of the defect notice the applicants shall within 15 days correct the defect and also make the payment as pointed out in the defect notice. It may be noted that the short payment stated in the defect notice shall be made immediately. In no case such payment shall be made beyond the 31st July 2019 i.e. the last date for the Second Phase.
- (5) In case the payment is made beyond the First Phase then the benefits shall be available in proportion to the payment made in the First Phase and in case the payment is made beyond Second Phase then the waiver shall be restricted towards the amount paid on or before the 31st July 2019.
- (6) The order giving the proportionate benefit shall be passed after providing the applicant an opportunity of hearing, in case the defect pointed out in the defect notice are not corrected.
- (7) It is reiterated that the Nodal Office shall not reject the application for the reasons that the applicant has made the short payment. The **procedure laid down supra shall be followed.**

3.16. Settlement of arrears and passing of order of settlement:

[See section 12]:

(1) Passing of Order of Settlement: [See sub-section (1)]:

- (a) After due verification of the application for the settlement, the necessary documents submitted, the payment of the requisite

amount made and on satisfaction, the Nodal Officer shall, pass an order of the Settlement in **Form-IV**.

(b) The copy of the said order shall also be provided to the applicant.

(c) The applicant shall be deemed to be discharged from liability under the Relevant Act to the extent of the amount of waiver stated in the Order of the Settlement.

(2) Rejection of application for settlement: [See sub-section (2)]

(a) In case after verification of the application submitted for settlement, the Nodal Officer comes to the conclusion that the application for settlement of arrears of tax, interest, penalty or late fee is not in accordance with the provisions of this Ordinance, then, the designated authority is empowered to pass an order and reject the application for settlement.

(b) For this the Nodal Officer shall record the reason for such rejection and shall after giving an opportunity of being heard to the applicant pass the order in **Form-IV** towards rejection of the application of settlement. Only after following the due process as explained hereinabove, the application for settlement shall be rejected.

(3) Rectification of mistake: [See sub-section (3)]

(a) On noticing any error apparent from the record, the Nodal Officer may issue notice in **Form-V** and rectify the error within six months from the date of service of the order of settlement.

(b) Similarly, the applicant may also make an application in **Form-VI** for rectification of the mistakes apparent from the record. Such rectification of the mistake on application shall be done within 6 months from the date of receipt of the order.

(c) The order that is affecting the applicant adversely shall only be passed after giving a reasonable opportunity of hearing.

3.17. Appeals against the order passed under the Ordinance:

[See section 13]:

(1) The appeal against any order passed under the section 12 of the Ordinance shall lie to the following authorities.

- (a) In case the order of settlement is passed by the Sales Tax Officer or the Assistant Commissioner of Sales Tax, then the appeal against such order shall lie to the concerned Deputy Commissioner and
 - (b) In case the order of settlement is passed by the Deputy Commissioner of Sales Tax, then the appeal shall lie to the Joint Commissioner of State Tax, in charge of the concerned division.
- (2) It may be noted that the appeal against the order of the settlement shall not be filed with the Deputy Commissioner or the Joint Commissioner who is holding the charge of the Appeals. The powers to decide appeals is vested with the authorities mention in the Para-(1) above.
- (3) This section also provides that the appeal against any such order shall be filed within 60 days from the service of the Order. And in case there is delay then the appeal shall only be admitted after condonation of delay. The appellate authority shall ensure that delay caused for filing appeal is justifiable and caused due to the situation that is beyond the control of the applicant. In other words, the delay may be condoned on the sufficient and justifiable grounds.

3.18. Powers of the Authorities: [See section 14]:

- (1) The section 14(1) of the Ordinance provides that after application for withdrawal of appeal in **Form-II** is filed and said appeal is allowed to be withdrawn to the extent of one or more issues or all the issues then in that eventuality the appellate authority including Tribunal, shall NOT proceed to decide any such appeal under the Relevant Act relating to the specified period, in respect of and to the extent of one or more issues or all the issues for which an application is made by the applicant under section 7.
- (2) However, the assessing authority, the appellate authority including the Tribunal, revisional authority, reviewing authority, shall have the right to decide the assessment, appeal, revision or review in accordance with the Relevant Act to the extent of the issues for which no application for settlement is filed by applicant. These authorities are also empowered to decide such assessment, appeal, revision or review in case the application for settlement is rejected,

provided that the appeal against said order is not filed as per section 13 of the Ordinance.

3.19. Bar on re-opening of settled cases: [See section 15]:

- (1) This section subject to the provisions of section 16 and 17 provides the protection to the cases where the order of settlement is passed as per section 12(1) of the Ordinance.
- (2) The said order of the settlement shall be conclusive to the extent of the matter covered under that order and it shall not be re-opened in any proceeding or review or revision or any other proceedings under the Relevant Act.

3.20. Revocation of order of Settlement: [See section 16]

- (1) An order of settlement may be revoked where it is noticed that the applicant has obtained benefits of settlement by,-
 - (a) suppressing material information or particulars; or
 - (b) furnishing any incorrect or false information; or
 - (c) suppression of material facts, concealment of any particulars found in the search and seizure proceedings under the Relevant Act.
- (2) In aforesaid circumstances, the designated authority after issuance of the show-cause notice and giving an opportunity of hearing, within two years from the end of the financial year in which the order of the settlement has been served, revoke the said order.
[See sub-section (1)].
- (3) The sub-section (2) of section 16 provides that in case of revocation of the order of settlement, the assessment, revision, or appeal proceedings under the Relevant Act, may be initiated notwithstanding the provision of this Ordinance relating to the withdrawal of appeal and the Bar for re-opening of the proceedings related to the order of settlement.
- (4) Such assessment, appeal, review or revision shall be revived or re-instated and the concerned authorities shall be empowered to decided such assessment, review, revision or appeal. In order to pass appropriate order the applicant shall be given an opportunity of hearing. The time limit provided under the Relevant Act shall not be

applicable and the said order may be completed within two years from the date of revocation of the order of settlement.

3.21. Review:-[See section 17]:

- (1) Section 17 of the Settlement Ordinance provides for the review of any order passed under the Ordinance.
- (2) The Commissioner may call the record on his own motion that is related to the said order of the settlement and in case it is noticed that the order of the settlement is prejudicial to the nature of the revenue, initiate the proceeding for review and pass the order of review where necessary, within twelve months from the date of service of an order of settlement passed under the Ordinance.
- (3) The review shall be under taken after issuance of the notice in **Form-VII** served on the dealer and a review order shall be passed only after providing an opportunity of hearing.

3.22. No refund of the amount paid under the Ordinance: [See section 18]:

- (1) The section 18 of the Ordinance provides that the applicant shall not be entitled to any refund of any amount paid under this Ordinance on any account.
- (2) However, in case the application filed for the settlement is rejected under section 12(2) of the Ordinance, then the amount paid under the Relevant Act shall be considered to have been paid under the Relevant Act.

3.23. The powers of the Commissioner to issue instructions and directions under the Ordinance: [See section 19]:

- (1) Under the Ordinance, the Commissioner is empowered to issue instructions and directions to the designated authorities for carrying out the purposes of this Ordinance. The Commissioner is also empowered to specify the Forms for the purposes of this Ordinance and also the manner in which the Form shall be submitted.
- (2) The order in this behalf specifying the Forms and the manner to **submit the Forms and documents is being issued separately.**

3.24. Power to remove difficulty: [See section 20]: The Government has taken the powers to issue orders and remove difficulties that may occur during the implementation of this Ordinance.

4. 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.
5. You are requested to bring the contents of this circular to the notice of the members of your association.

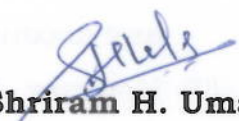

(RAJIV JALOTA)

Commissioner of Sales Tax,
Maharashtra State, Mumbai.

No. Settle./MMB-2019/1/ADM-8 **dated the 8th March, 2019**

Trade Circular No. 9T of 2019

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


(Shriram H. Umale)

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