

TRADE CIRCULAR

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

dated 30th June 2016.

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

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

Gentlemen/Sir/Madam,

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

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

(Rajiv Jalota)

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

FAQ'S
(Dated 30th June 2016)

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

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

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

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

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

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

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

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

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

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

**TABLE-1
UNDISPUTED AMOUNT**

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

**TABLE-2
DISPUTED AMOUNT**

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

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

**TABLE-3
UNDISPUTED AMOUNT**

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

**TABLE-4
DISPUTED AMOUNT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Proof of,-

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

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

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

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

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

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

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

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

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

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

- 13.** What are the mandatory requirements so as to avail the benefits under the Settlement Act?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FAQ'S Settlement Act.

(7th July, 2016)

- 23.** Is it possible to prefer appeal after limitation period specified in the Relevant Act is over? Whether the appellate authority will condone the delay?

Ans. Yes, in normal cases an appeal may be preferred after the limitation provided in the Relevant Act is over. The said Act also provides for the condonation of delay.

The appellate authority will decide the issue of condonation of delay as per the provisions of the law.

24. The appeal is pending before the appellate authority who has fixed the Part Payment to be made on or before the date specified therein. Till such date stay was also given. However, the part payment so fixed is not paid subsequently (till date). In such circumstances, whether dealer can file application for settlement?

Ans. In aforesaid circumstances appellant should file a letter to the appellate authority and request for extension of time period required to make the part payment so fixed. On receipt of such request, appellate authority, may extend the time so specified and provide Ad-interim stay towards the recovery of the disputed amount. The applicant should make the said payment within the extended time period. Thereafter, the other formalities such as request for withdrawal of appeal and submission of application for Settlement in Form-1.

25. If the condonation application is rejected whether the dealer would be eligible for settlement?

Ans. If the condonation application is rejected and thereafter the dealer applies for settlement of arrears under these circumstances the application cannot qualify the conditions for settlement i.e. the admission of appeal, grant of stay etc.

26. What remedy is available to the dealer if the appellate authority under MVAT Act rejects the application for restoration?

Ans. Application for restoration of appeal to the Appellate Authority is an independent proceeding. The dealer may prefer an appeal to Tribunal against the order of rejection of restoration of appeal.

27. Whether the application for settlement can be filed against the disallowance of Input Tax Credit where statutory order does not result into additional demand or if the said order grants the refund.

Ans. No. The application under the Settlement Act can only be made in respect of the statutory order that raises the additional demand and such arrears are pending in the appeal.

28. How the payment made after assessment order but before filing of appeal is appropriated? What treatment is given for the mandatory payment made towards non-production of declarations or certificates under CST Act before filing an Appeal?

Ans. The payment made before filing of appeal shall be appropriated as per the provision of the relevant Act.

- (1) Eg. In case of MVAT Act the payment made after date of assessment order but before submission of appeal will be appropriated as per the provisions of section 40 of the MVAT Act i.e.
 - (a) towards the interest payable *by* him on the date of payment in respect of the said period
 - (b) thereafter towards the amounts due as a penalty, sum forfeited and fine.
 - (c) any amount remaining unadjusted shall then be adjusted towards the tax payable in respect of that period.
- (2) In the assessment order if the tax is levied for non-production of declaration or certificate and if appeal is being filed after two years from the end of the year to which such claim relates, the appellant has to make 100% payment of the tax levied in the assessment order for disallowance of such declarations.
- (3) The payment made as above will be get reduced from the outstanding dues. The balance dues, if any will only qualify for the purpose of benefits under the Settlement Act.
- (4) In the light of the provisions of the MVAT Act the payment made any time after filing of appeal shall be considered as payment made towards the requisite amount computed as per the provisions of section 6 of the Settlement Act.

- 29.** In case of Assessment orders passed under section 23 of [other than sub-section (5)] the MVAT Act where the credit of the amount paid prior to the assessment order is not given in the order so passed. What procedure needs to be adopted so as to consider the payment so made and not considered in the Assessment Order?

Ans. In case of assessment orders are passed under any sub-section of section 23 [other than sub-section (5)] of the MVAT Act and the credit of the amount paid prior to said order has not been given then the appellant may bring these facts to the knowledge of the appellate authority and appellate authority may consider and give credit of the said amount subject to the verification in this behalf.

And any order passed under the Relevant Act whether Ex-parte or otherwise will be a Statutory Order within the meaning of Settlement Act and therefore would be eligible for waiver subject to fulfillment of other conditions under the Settlement Act.

- 30.** Kindly clarify that if an application for settlement is not considered/rejected or an order of settlement is subsequently reviewed /revoked, then the Appeal along with stay would automatically stand restored and credit of amounts paid under Amnesty scheme be considered.

Ans. Rejection, review, revocation etc. as per the provisions of Settlement Act will depend upon the fact of each case. Restoration of appeal is an independent proceeding and the appellate authority will processes it as per the merit and provisions of the Relevant Act.

- 31.** Statutory Order or Assessment order received after 1 Apr 2016 for which appeal is filed before Sept 2016 and subsequently withdrawn before Sept 2016 with an intention of availing benefit of Settlement Act. Whether against such order benefits under Settlement Act is available?

Ans. The assessment order or Statutory Order in respect of any period ending on 31st March 2012 if passed on or before 30th Sept. 2016 and where the application so submitted accompany the proof of,-

- (A) stay either in part or full to be effective at least till the date of withdrawal of appeal;
 - (B) withdrawal of appeal;
 - (C) the payment of requisite amount calculated as per the provisions of section 6 of the Settlement Act;
 - (D) payment made during the pendency of appeal, if any;
- subject to the fulfillment of aforesaid conditions the benefits under the Settlement Act are available.

32. In case of builders and developers, a Special Leave Petition is pending before Hon'ble Supreme Court. In such a case the levy of tax itself is in dispute. Kindly clarify whether interest u/s 30(2) and 30(4) in such a case would be considered as undisputed arrears?

Ans. Interest under section 30(2) and 30(4) of the MVAT Act is made non-appealable with effect from 1st May 2010. Thus the orders in respect of the periods starting on or after 1st April 2010 being non-appealable the benefits of the waiver under Settlement Act will not be available as this interest will be undisputed arrears.

For more details refer Q. No. 10 and 11 above.

33. Para 7(B) requires to file vat audit report to apply for Settlement of penalty u/s 61(2) under the Scheme. We draw your kind attention to the fact that by now certain periods have become time barred for assessment. Mentioning of TIN of Buyer in a sales Tax Invoice u/s 86 of MVAT Act was made mandatory from 1 May 2010 so till then no such data was available in systems of dealer for putting in annex J1 / J2 of vat audit report. Further, prior to FY 2008-09 filing of report was in physical form & in different format as compared to e-704 form so not possible to file vat audit report for such periods. Thus in such a case, not advisable to insist for filing vat audit report and to put an end to such old pending litigations vide this scheme. Pls clarify.

Ans. The audit report in respect of periods stated in aforesaid query can be filed either in the old format or, as the case may be, existing format depending upon the convenience and ease. The said submission of

Audit Report shall be treated as good compliance. Thus on fulfilment of other conditions given in Settlement Act this may qualify for the benefits.

34. In cases where Department has filed appeal, can dealer be considered as applicant under this Scheme? How to withdraw the appeal in such a case. What would be the procedure to do so if the dealer wants to avail the benefit of the Act?

35. Ans. The cases where the department has filed appeal and the appeal order is not yet finalized, in such cases the dues position as per the order which is the subject matter of challenge by the department is an undisputed dues in the point of view of the dealer. As the appeal is not withdrawn such cases will not qualify for the benefits under the Settlement Act.

36. Instructions to be given to Appellate authority to grant stay without emphasis on payment, when dealer approaches for withdrawal of Appeal under Settlement Act. Also to issue the appeal withdrawal order soon to the applicant in response to his application.

Ans. After filing of an appeal the appellate officer immediately grant ad-interim stay for certain period such ad-interim stay can be considered as stay for the purpose of settlement. But the application for settlement should made along with the requisite proof/documents before expiry of the period as mentioned in ad-interim stay.

37. In case of Appeals,-

- i. Appellate officers be given necessary instructions to accept
 - A. Appeal filed after the due date i.e. belated appeals.
 - B. Restoration of Appeal and provide stay thereon, soon.
 - C. The benefits of Settlement Act be extended to first/ second appeal

Ans. The appellate officers will accept the appeals or application for restoration of appeals. The application for condonation of delay will be decided as per merit of the case. In such cases ad-interim stay granted

by the Appellate Authority shall be considered as stay for settlement under the Settlement Act.

38. In terms of Sec. 6(5) of Settlement Act read with Para 8(vii) of Trade Circular, extent of waiver shall be granted in proportion of the payment made of Requisite amount. Kindly explain the same by way of an example.

Ans. If the applicant has made short payment of requisite amount for settlement, in such cases, the proportionate benefit will be given in proportion with the tax payment out of total requisite amount paid under the Settlement Act.

No. VAT/MMB-2015/47/2016-17/ADM-8
Trade Circular No. 197 of 2016.

dated 7th July 2016.

(D.M. Thorat)
Joint Commissioner of Sales Tax,
(HQ)-1, Maharashtra State.

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