

**TRADE CIRCULAR**

No.VAT/MMB-2015/47/ADM-8/B-/20 Mumbai, Dt. 3<sup>rd</sup> May, 2016  
Trade Cir. No./0T of 2016

**Sub.:** Settlement of Arrears in Dispute under the various Acts administered by the Sales Tax Department.

**Ref.:** The Maharashtra Settlement of Arrears in Disputes Act, 2016

Hon'ble Finance Minister in his Budget Speech delivered on 18<sup>th</sup> March 2016 has announced a scheme so as to unlock the arrears pending at the appellate forum under various Acts administered by the Maharashtra Sales Tax Department (hereinafter referred to as "MSTD"). The Act No. XVI of 2016 has now been published in the Maharashtra Government Gazette dated 26<sup>th</sup> of April, 2016. The Act so passed is titled as "the Maharashtra Settlement of Arrears in Disputes Acts, 2016 (hereinafter referred to as "the Settlement Act"). The Settlement Act is passed with a view to provide the settlement of arrears in dispute under various Acts administered by MSTD.

**Salient features of the Settlement Act and its procedural aspects are explained below:-**

**1. Applicability of Settlement Act:-** This Act's is applicable in respect of the arrears in dispute under the following Act administered by the MSTD:-

- (i) the Central Sales Tax Act, 1956;
- (ii) the Bombay Sales of Motor Spirit Taxation Act, 1958 ;
- (iii) the Bombay Sales Tax Act, 1959;
- (iv) the Maharashtra Purchase Tax on Sugarcane Act, 1962 ;
- (v) the Maharashtra State Tax on Professions, Trades, Callings and Employment Act, 1975;
- (vi) the Maharashtra Sales Tax on the Transfer of the Right to use any Goods for any Purpose Act, 1985;
- (vii) the Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987;
- (viii) the Maharashtra Tax on Luxuries Act, 1987 ;

- (ix) the Maharashtra Sales Tax on the Transfer of Property in Goods involved in the Execution of Works Contract (Re-enacted) Act, 1989;
- (x) the Maharashtra Tax on Entry of Goods into Local Areas Act, 2002;
- (xi) the Maharashtra Value Added Tax Act, 2002.

**2. Time limit to make application-** The applicant who desires to settle the arrears in dispute in respect of the statutory orders passed for any period ending on or before 31<sup>st</sup> March 2012 shall submit correct and complete application on or before 30<sup>th</sup> September 2016, in Form-I, as specified in the order dated by the Commissioner u/s 12(2) of the Settlement Act.

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

- (A) The application along with the relevant documents shall be submitted to the concerned Nodal officer.
- (B) If any case is not allotted to a Nodal Officer, then the application shall be made to,-
  - (a) the Nodal Joint Commissioner of Sales Tax in Mumbai & Pune,
  - (b) the Joint Commissioner of Sales Tax (VAT Adm) where the office of such Joint Commissioner of Sales Tax (VAT Adm) is situated,
  - (c) In other cases to the administrative head of the respective location.
- (C) The applicant who desires to avail the settlement under this Act for arrears under the Profession Tax Act, 1975, shall apply to the concerned Professions Tax Officer.
- (D) The list of the Nodal Officers and their jurisdiction is available on the MSTD web-site's What's New section (Web-site: [www.mahavat.gov.in](http://www.mahavat.gov.in)).

**4. Key definitions used in the Act:-**

Some of the key definitions in Section 2 under this Act are explained below:

- (a) *Arrears in Dispute* [Sec.2(2)]: Arrears in dispute includes tax, interest and penalty in respect of any statutory order that pertains to period ending on or before 31<sup>st</sup> March 2012 and

where an appeal is filed with the appellate authority and stay has been granted either in full or part by the appellate authority, Tribunal or Court.

It is clarified that the following proceedings shall be considered as "Appeals":-

- (i) 1<sup>st</sup> Appeal
  - (ii) 2<sup>nd</sup> Appeal
  - (iii) Revision under the Bombay Sales of Motor Spirit Taxation Act, 1958, the Maharashtra Purchase Tax on Sugarcane Act, 1962 and the Maharashtra State Tax on Professions, Trades, Callings and Employment Act, 1975.
  - (iv) Any proceeding before the Tribunal, High Court or Supreme Court.
- (b) *Applicant* [Sec.2(3)]: "Applicant" means a person who desires to settle the arrears in dispute and also includes any other desiring person complying with the conditions. Thus even the Financial Institutions, Banks, Official Assignee etc. can make application for settlement of arrears in dispute.
- (c) *Order of Settlement* [Sec.2(4)]: "Order of Settlement" means an order issued to settle the arrears in disputes.
- (d) *Designated Authority* [Sec.2(6)]: The authorities specified under sub-section (2) of section 10 of the Maharashtra Value Added Tax Act, 2002 shall be the Designated Authorities for the purposes of Settlement Act.
- (e) *Requisite Amount* [Sec.2(8)]: "Requisite amount" means an amount required to be paid as specified under Section 6 of this Act.
- (f) *Statutory Order* [Sec.2(9)]: "Statutory order" means any order passed under the relevant Act raising dues of tax, interest or penalty payable by applicant.

**5. Conditions for Settlement of Arrears in disputes :-**

- (A) An application shall be made on or before the 30<sup>th</sup> September 2016.

- (B) Application for settlement can be made for any period ending on or before 31st March 2012.
- (C) The applicant who desires to avail the benefit under the Settlement Act, shall first withdraw the appeal, or any proceeding pending before the appellate authority, Tribunal or Court.
- (D) The application shall be accompanied by:
- (i) copy of the concerned statutory order,
  - (ii) stay order granted by the Appellate Authority, Tribunal or Court,
  - (iii) order of withdrawal of the appeal or any proceeding pending before the Tribunal or Court,
  - (iv) challans showing payment of the requisite amount as stated in the section 6(1) or 6(2) of the Settlement Act,
  - (v) challans showing payment of the amount of undisputed arrears in respect of the concerned statutory order, as per section 4(4).

**6. Clarification regarding certain issues:-**

(A) Appeal etc. issues:-

- (i) *Type of stay* : It is clarified that stay order under the relevant Act includes ad-interim, interim and final stay order.
- (ii) *Withdrawal of appeal*: The applicant may withdraw the appeal fully or partly. In other words, the applicant may withdraw some issues raised in appeal and may pursue the appeal for the remaining issues. In case of partial withdrawal of appeal, the applicant shall specify the details of such issues in the application.

(B) Payments required to be made :-

- (a) The applicant shall be required to make payment of requisite amount as determined under section 6(1) and 6(2) of this Act. In addition to requisite amount the applicant shall also make payment of undisputed arrears of tax and interest, if any, under the relevant Act as provided in Section 4(4) of this Act.
- (b) The applicant shall pay the requisite amount and the amount of undisputed arrears on or before 30<sup>th</sup> September 2016. Such payment shall be made in Chalan MTR-6, if the applicant has

been granted TIN. Where the applicant has not been granted TIN then the payment shall be made in the Chalan prescribed under the relevant Act.

- (c) Undisputed arrears in relation to interest covers,-
- (i) amount of interest payable by the applicant pertaining to any period starting on or after 1st May 2010 and ending on 31st March 2012,-
    - (a) u/s 30(2) and 30(4) of the MVAT Act, 2002,
    - (b) u/s 6(1) of the Maharashtra Tax on Entry of Goods into Local Areas Act, 2002,*[read with section 30(2) and 30(4) of MVAT Act, 2002]* and
    - (c) u/s 9(2) of the CST Act, 1956,*[read with section 30(2) and 30(4) of MVAT Act, 2002]*.
  - (ii) The amount of interest payable by the applicant under the Maharashtra Purchase Tax on Sugarcane Act, 1962, the Maharashtra State Tax on Professions, Trades, Callings and Employment Act, 1975, the Maharashtra Tax on Luxuries Act, 1987 and the Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987 shall not be considered as undisputed arrears for statutory orders pertaining to any period ending on or before 31<sup>st</sup> March 2012.

(C) Payment of requisite amount:-

The requisite amount to be paid will depend upon the fact whether the applicant desires to withdraw the appeal in full or desires the partial withdrawal of appeal i.e. only in respect of certain issues and would like to contest other issues.

- (a) In case of full withdrawal of appeal ,-
- (i) the applicant shall pay entire amount of the tax out of arrears in dispute.
  - (ii) If arrears of interest in dispute pertains to,-
    - (1) any assessment period ending on or before 31<sup>st</sup> March 2005 then, no interest is required to be paid.
    - (2) any assessment period starting on or after 1<sup>st</sup> April 2005, and ending on 31<sup>st</sup> March 2012, then

applicant shall pay 25% of the outstanding interest other than undisputed amount of interest as mentioned in para 6(c) above. For this the applicant shall determine the amount of interest so payable on his own and pay the same.

(b) In case of partial withdrawal of appeal:-

(i) The applicant shall determine and pay the entire amount of the tax relating to issues for which appeal is withdrawn.

(ii) if arrears of interest in disputes pertains to,-

(1) the assessment period ending on or before 31<sup>st</sup> March 2005 then, no interest pertaining to issues withdrawn in appeal is required to be paid.

(2) the assessment period starting on or after 1<sup>st</sup> April 2005 and ending on 31<sup>st</sup> March 2012 then applicant shall pay 25% of the outstanding interest other than undisputed amount of interest as mentioned in para 6(c) above, related to the issues withdrawn in appeal. For this the applicant shall determine the amount of interest so payable on his own and pay the same.

(D) Credit of the required amount:-

The amounts required to be paid to avail the benefit of the Settlement Act are the requisite amount and the amount of undisputed arrears.

The credit of the payment of following amounts may be claimed by the applicant for the purpose of determining the requisite amount in the manner as stated below:

(i) Part payment made in appeal and such part payment shall be apportioned first towards tax, then towards interest and towards penalty as provided in the Settlement Act.

(ii) Payment made after the passing of the statutory order but before filing of appeal, the credit of such payment shall be given after apportionment as per the relevant Act.

(iii) In case of partial withdrawal of appeal, the credit of payment shall be given in the manner provided in clause (a) and (b) above in proportion to the issues withdrawn from appeal.

(E) No refund under the Act:-

Under no circumstances, the applicant shall be entitled to refund of any amount of arrears in disputes paid prior to the date of commencement of this Act and the amount paid under this Act.

**7. Benefits of the Settlement Act to the applicant:-**

(A) Interest and penalty: If an applicant has preferred an appeal challenging the imposition of penalty or payability of interest only under the relevant Act, then he can make application with respect to such individual appeal.

(B) Penalty orders under section 61(2) of MVAT Act: If penalty has been imposed by a separate order u/s 61(2) under MVAT Act, 2002 for any period upto 2011-12 and the dealer has filed the audit report in Form e-704 and also preferred an appeal against the said penalty order, even then he may apply for settlement under the Act.

However, if any dealer has not filed e-704 so far may file it and take benefit of settlement, after complying with other condition, of this Act such as filing of appeal and obtaining stay etc.

(C) Extent of waiver:-

(a) Where the appeal is withdrawn in full:-

(i) in respect of the statutory order which pertains to period ending on or before 31<sup>st</sup> March 2005 is withdrawn in full and the applicant has made the payment as determined as per sub-section(1) and (2) of section 6 then the applicant is eligible for waiver to the extent of,-

(1) total amount of interest and penalty out of arrears in dispute.

(2) total amount of post assessment interest or, as the case may be, the penalty, whether such order under the relevant Act has been passed or not.

(ii) in respect of the statutory order which pertains to period starting on or after 1<sup>st</sup> April 2005 and ending on 31<sup>st</sup> March 2012 is withdrawn in full and the applicant has made the payment as determined as per sub-section(1) and (2) of section 6 then the applicant is eligible for waiver to the extent of,-

(1) balance amount of interest arrived at, after payment of requisite amount of interest or as the case may be undisputed arrears of interest.

(2) total amount of penalty out of arrears in dispute.

(3) total amount of post assessment interest or, as the case may be, the penalty, whether such order under the relevant Act has been passed or not.

(b) Where the appeal is withdrawn with respect to partial issues:-

(i) in respect of the assessment order which pertains to period ending on or before 31<sup>st</sup> March 2005 is withdrawn with respect to some of the issues (in part) and the applicant has made the payment as determined as per sub-section(1) and (2) of section 6 then the applicant is eligible for waiver to the extent of,-

(1) corresponding amount of interest with respect to issues withdrawn.

(2) corresponding amount of penalty with respect to issues withdrawn.

(3) corresponding amount of post assessment interest or, as the case may be penalty with respect to issues withdrawn, whether such order under the relevant Act has been passed or not.

(ii) in respect of the assessment order which pertains to period starting on or after 1<sup>st</sup> April 2005 and ending on 31<sup>st</sup> March 2012 is withdrawn with respect to some of the issues and the applicant has made the payment as determined as per sub-section (1) and (2) of section



6 then the applicant is eligible for waiver to the extent of,-

- (1) balance amount of corresponding interest arrived at, after payment of requisite amount of interest or as the case may be undisputed arrears of interest with respect to issues withdrawn.
- (2) total amount of penalty with respect to issues withdrawn.
- (3) total amount of post assessment interest or, as the case may be, the penalty, whether such order under the relevant Act has been passed or not.

**8. Procedural aspects to be followed under the Settlement Act:-**

- (i) The applicant shall file application in the Form-I, as specified in the order by the Commissioner u/s 12(2) of the Settlement Act.
- (ii) On receipt of the application the designated officer shall verify the contents of the said application as well as requisite proofs as stated in clause (D) of para 5 above.
- (iii) If the application is defective i.e. incomplete or incorrect or insufficient amount, the Nodal Officer may within seven days from the receipt of application issue a defect notice in Form-II as specified in the order by the Commissioner u/s 12(2) of the Settlement Act.
- (iv) The applicant may, within fifteen days, from the receipt of the defect notice complies with the defect notice and makes the payment if any, as advised by the Nodal officer.
- (v) If the applicant complies with the defect notice then the Nodal officer shall pass the settlement order within thirty days from the date of compliance of the defects.
- (vi) If the applicant fails to comply with the defects then the Nodal Officer, after providing the opportunity of hearing, may pass the rejection order u/s 7(1) of this Act within thirty days from the last date provided for compliance of the defects.

(vii) If the defect is related to short payment of requisite amount and the applicant fails to comply with the same, then the benefit of settlement shall be given on proportionate basis and accordingly the Nodal Officer shall pass the order of settlement within thirty days from the last date provided for compliance of defects.

**9. Order of Settlement:-**

- (i) The Nodal Officer, on being satisfied about the correctness of application and fulfillment of conditions for waiver provided in the Settlement Act, shall pass an order of settlement within thirty days from the date of receipt of application. The order of settlement shall be in Form-IV, as specified in the order by the Commissioner u/s 12(2) of the Settlement Act.
- (ii) The settlement order shall clearly specify the payment of amount of the tax or interest if any, and the amount of waiver granted towards the interest and penalty.
- (iii) A separate order under the relevant Act shall be passed in respect of each application filed for the settlement of arrears in dispute.

**10. Rectification of mistakes:-**

In case of any error apparent on the face of the record of an order passed under Section 7(2) of the Settlement Act, the Nodal Officer, on his own motion or on an application in Form-VI by the applicant, may rectify such error. The Nodal Officer shall pass rectification order within thirty days from the date of receipt of the order of settlement. No rectification order shall be passed without serving a notice in Form-V on the applicant and without giving an opportunity of being heard in case the applicant is likely to be affected adversely.

**11. Appeal against the order of rejection:-**

- (i) Section 8 of the Settlement Act provides for appeal against an order passed under Section 7(1) of the Settlement Act. The said appeal shall lie before,-
  - (i) the Deputy Commissioner of Sales Tax if the order of the Settlement is passed by the Sales Tax Officer or the Assistant Commissioner of Sales Tax.

- (ii) the Additional Commissioner of Sales Tax, if the order of the Settlement is passed by the Deputy Commissioner of Sales Tax or as the case may be Joint Commissioner of Sales Tax.
- (ii) Appeal against an order passed under section 7(1) of the Settlement Act shall be filed under Section 8(1) within sixty days from the date of receipt of the said order in Form-III. The appellate authority shall pass the order within sixty days from the receipt of application of appeal.
- (iii) As per Section 8(3) of the Settlement Act, an appeal can be filed only against the rejection order under Section 7(1) of the Act.
- (iv) No appeal shall lie against the order of settlement passed under Section 7(2) of the Settlement Act.

**12. Revocation of settlement order :-**

An order of settlement may be revoked where an applicant has obtained benefits of settlement,-

- (a) by suppressing material information or particulars, or,  
(b) by furnishing any incorrect or false information or,  
(c) by suppression of material facts, concealment of any particulars found in the search and seizure proceedings under the relevant Act.

**13. Review:-**

Section 11 of the Settlement Act provides for the review of any order passed under the Settlement Act. The record of an order may be called within twelve months from the date of service of an order passed under the Act by the reviewing authority and after notice of error in such order a notice in Form-VIII shall be served on the dealer and a review order shall be passed. The review order shall be passed only in case the error is prejudicial to the interests of revenue.

**14. Instructions and forms under the Act: -**

The Commissioner may issue instructions and directions to the designated authorities and also specify forms under Section 12 of the Settlement Act.

15. If any member of the trade has any doubt, he may refer the matter to the office of respective joint commissioner or to the administrative head of respective location from where the application is submitted for further clarification.



**(RAJIV JALOTA)**

Commissioner of Sales Tax,  
Maharashtra State, Mumbai.

No.VAT/MMB-2015/47/ADM-8/B- 120 Mumbai, Dt. 3<sup>rd</sup> May, 2016.

Trade Cir. No. 10 T of 2016.

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



**(D. M. THORAT)**

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