

# PRESENTATION ON MAHARASHTRA SETTLEMENT OF ARREARS IN DISPUTE ACT, 2016

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# BASICS UNDERSTANDING OF THE SCHEME

## STATUTORY DEVELOPMENTS

**March 18, 2016**

Budget Speech- Announcement by Shri Sudhir Mungantiwar- Hon'ble Finance minister of Maharashtra

**April 26, 2016**

Maharashtra Settlement of Arrears in Disputes Act, 2016

**May 3, 2016**

Trade Circular No. 10T of 2016 & Annexures

**June 30, 2016**

1<sup>st</sup> set of FAQ's (Point no 1- 22)

**July 7, 2016**

2<sup>nd</sup> Set of FAQ's (Point no 23- 38)

**July 19, 2016**

3<sup>rd</sup> Set of FAQ's (Point no 38- 41)

# HIGHLIGHTS OF THE SCHEME

## Who can apply

- Any person liable to tax (also Financial Institutions, Banks, Official Assignee having financial interest)
- Who has preferred appeal against statutory order &
- Should have obtained Stay

## Application to whom?

- Concerned Nodal Officer
- In case Nodal officer not allotted, then Nodal Joint Commissioner or Joint Commissioner of Sales Tax (ADM) or Administrative head of respective location

## By when can be applied?

- By September 30, 2016

## Benefits

### 2005-06 to 2011-12:

- 100% Tax Amount & 25% of Interest to be paid
- 75% of Interest & 100% Penalty to be waived
- Immunity from Prosecution

### Prior to 2005-06

- 100% Tax Amount to be paid
- 100% Interest & Penalty to be waived
- Immunity from prosecution

## COVERAGE

### State Laws

#### **The Central Sales Tax Act, 1956**

The Bombay Sales of Motor Spirit Taxation Act, 1958

The Bombay Sales Tax Act, 1959

The Maharashtra Purchase Tax on Sugarcane Act, 1962

The Maharashtra State Tax on Professions, Trades, Callings and Employment Act, 1975

The Maharashtra Sales Tax on the Transfer of the Right to use any Goods for any Purpose Act, 1985

### No.

### State Laws

8 The Maharashtra Tax on Entry of Motor Vehicle Local Areas Act, 1987

9 The Maharashtra Tax on Luxuries Act, 1987

10 The Maharashtra Sales Tax on the Transfer of Property in Goods involved in the Execution of Contract (Re-enacted) Act, 1989

11 The Maharashtra Tax on Entry of Goods into Areas Act, 2002

**12 The Maharashtra Value Added Tax Act, 2002**

## STEPS INVOLVED

1. Obtaining Statutory Order



2. Filing of Appeal



3. Obtaining Stay



6. Applying to Nodal Officer and obtaining Settlement Order



5. Making requisite payments



4. Withdrawing Appeal

# PAYMENTS

## ARREARS IN DISPUTE [Section 2(2)]

TAX  
(100%)

- VAT/ CST payable under the respective Act
- TDS deductible and payable in terms of Section 31 of MVAT Act (Point 20 of FAQ)
- TCS collectable and payable in terms of Section 31A of the MVAT Act

INTEREST  
(25%)

- S. 30(1)- Failure for Registration
- S. 30(2)- Failure to pay tax (upto 09-10)
- S. 30(3)- Differential dues
- S. 30(4)- 25% of additional tax (upto 09-10)

PENALTY

- S. 29(2A)- Failure for registration
- S. 29 (3)- Concealment (not <25%)
- S. 29(4)- False Particulars (100%)
- S.61(2)- Non Filing of F.704 (0.10%)



## UNDISPUTED ARREARS (100%)

INTEREST

As per Point 6(C) & point 11 of FAQ, Undisputed arrears are as under:

- Interest u/s 30(2) & u/s 30(4) from 2010-11

Reason- Interest u/s 30(2) & 30(4) are non appealable as per Section 85 of MVAT Act w.e.f. May 1, 2010.

## Apportionment of Payment

**Payment made in Appeal**

1. Tax
2. Interest
3. Penalty

**Payment made after Order but before appeal**

- To be apportioned as per Relevant Act.  
Relevant Section 40-
1. Interest
  2. Penalty
  3. Tax

**Excess paid**

No refund of excess amount of arrears in disputes prior to commencement of the Act

# BENEFITS

## BEFORE 2005

Scenarios	Payment	Waiver
Disputed Arrears- Tax	100%	NIL
Disputed Arrears- Interest	NIL	100%
Disputed Arrears- Penalty	NIL	100%
Undisputed Arrears	100%	NIL

## 2005 - 06 TO 2011 - 12

Scenarios	Payment	Waiver
Disputed Arrears- Tax	100%	NIL
Disputed Arrears- Interest	25%	75%
Disputed Arrears- Penalty	NIL	100%
Undisputed Arrears	100%	NIL

# IMPORTANT POINTS

## SOME EXAMPLES WHERE SCHEME MAY BE PREFERRED

- ➔ Set-off denied on account of reasons of purchase from non- genuine dealer, RC cancelled dealer and where the dealer does not wish to litigate the matter;
- ➔ Declaration Forms which are not be received
- ➔ Declaration Forms which are defective and where dealer does not wish to litigate the matter
- ➔ For penalty for late filing of audit report (100% waiver) after filing of aud report.

# ISSUES...

# FILING OF APPEAL

## 1. What are Appeals

- What is the meaning of appeal. Whether appeals pending at High Court level/ Supreme Court level also covered?

## 2. Appeal filed after April 26, 2016

- Time limit of filing of Amnesty Application is September 30, 2016, however time limit of filing of appeal is not specified.
- The Act was introduced on 26<sup>th</sup> April. Would appeal filed after April 26<sup>th</sup> be eligible for Amnesty?

## 3. Delay in Filing of Appeal

- Time limit for filing of appeal is 60 days from receipt of Assessment Order
- Whether amnesty would be available if there is delay in filing of appeal, say appeal is filed after 90 days.

## 4. Appeal by department

- Appeal is preferred by department. However, dealer wants to buy peace by settling the matter. In such case, whether dealer will be regarded as applicant and accordingly avail the benefit of Amnesty?

# OBTAINING OF STAY

## 1. What are type of Stay covered

- Ad-interim Stay- Granted as extension for few days normally 10-15 days.
- Interim Stay- Permanent stay granted subject to payment of tax.
- Final Stay- Permanent Stay for recovery

## 2. Ad-Interim Stay expired.

- Ad-interim stay granted till 15 September. The following situations may arise
  - I- Appeal withdrawn on 10<sup>th</sup> September and amnesty application filed on 13<sup>th</sup> September
  - II- Appeal withdrawn on 12<sup>th</sup> September and amnesty application filed on 20<sup>th</sup> September
  - III- Appeal withdrawn on 17<sup>th</sup> September

## 3. Non Compliance of Stay Order

- Interim stay granted till 15<sup>th</sup> September but payment not made by 15<sup>th</sup> September.
- Whether treated as valid stay?



# WITHDRAWAL OF APPEAL

## 1. Part Withdrawal of Appeal

- What are part issues? For E.g.-
  1. Appeal filed for mismatch of ITC (10 vendors) (short filer, non filer, Hawala, etc)
  2. Appeal filed for 10 pending declaration forms (6 received and 2 defective and 2 pending)
  3. Appeal filed combined of above

## 2. Part Payment Credit in case of Part Withdrawal

- Suppose in e.g. 1 above, PP is done towards 100% Hawala Payment. Credit of PP?
- Suppose in e.g. 2 above, PP is done towards 2 pending Forms. Credit of PP?

## 3. Whether withdrawn Appeal can be restored automatically

- In case Settlement Application is rejected, will the appeal and stay be restored?
- Would appeal be required to be preferred again?
- Will appeal be admitted again?

# Interest

## 1. Interest u/s 30(2) & 30(4) wef F.Y. 2010-11

- Part of Undisputed arrears as per clause 6C of Circular & FAQ No. 10 & 11
- Reason- Interest u/s 30(2) & 30(4) are non appealable as per Section 85 of MVAT Act w.e.f. May 1, 2010.
- The Settlement Act does not provide for above so. Circular binding

## 2. Interest in case of Builders

- Supreme Court vide SLP 17709 of 2012 have stayed the recovery of interest in case of tax demand in case of Builder/ Developer.
- In such cases, will the Circular prevail.
- FAQ No.32- Benefit not available

# CREDIT OF PAYMENTS MADE

## 1. Payment by single challan

- Circular requires payment of disputed arrears and undisputed arrears vide separate challan
- The dealer is ignorant and has made entire payment vide single challan. Whether Amnesty would be rejected?

## 2. Payment prior to appeal

- Suppose if 100% tax payment & 25% Interest in case of Hawala purchase is made prior to filing of appeal and then opted for Settlement Scheme.
- Whether credit of payment will be apportioned towards interest & Penalty first?

## 3. Refund as per Assessment Order

- Suppose assessment order results in following :
- Tax Refund- INR 10 Lakhs | Interest- INR 2 Lakhs | Penalty – INR 2 Lakh
- Net Refund granted- 6 Lakhs
- Whether Amnesty Preferable?

# PENALTY FOR LATE FILING OF AUDIT REPORT

## 1. Penalty for late filing of audit report

- Order passed for Late filing of audit report of 2011-12 (Rs. 50 Lakhs)
- Audit Report filed subsequently
- Appeal filed against Order
- Part Payment fixed at 5 Lakhs?

## 2. Audit report not filed

- Order passed for Non filing of audit report of 2011-12 (Rs. 50 Lakhs)
- Considerable time will be spent in finalizing the audit.
- Whether Amnesty benefit would not be available in absence of filing of audit report

## 3. Two separate orders for same F.Y.

- 1 order passed for F.Y. 2009-10 raising tax, interest & penalty
- Separate order passed for F.Y. 2009-10 for penalty on non filing of audit report?
- Whether Amnesty can be preferable for Second order without payment of dues for first year

# THANK YOU