

TRADE CIRCULAR

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No. DC (A&R)3/VAT/MMB-2022/2/ADM-8

dated the 20/04/ 2022

Trade Circular No. 01-T of 2022

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

Ref. - The Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2022 (Mah. Act XXIX of 2022)

The Goods and Services Tax Act has come into force with effect from 1st July, 2017. In order to reduce the pending litigations and unlock the outstanding dues under the erstwhile Maharashtra Value Added Tax Act [MVAT ACT], Central Sales Tax Act, 1956 [CST Act], Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 and other repealed Acts, the Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2022 (hereinafter referred to as the “Settlement Act, 2022”) has been enacted. The salient features of this Settlement Act have been explained in this Circular.

02. Scope of the Settlement Act, 2022

This Settlement Act shall be applicable for the settlement of arrears of tax, interest, penalty and late fee under the various Acts administered by the Department. Arrears of tax, interest, penalty or late fee for the periods ending upto 30th June 2017 under the following Acts [referred as “Relevant Act’ in section 2(1)(k)] are eligible for settlement under this Act -

- (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 Employments Act, 1975;*
- (vi) *the Maharashtra Sales Tax on the Transfer of 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 the Entry of Goods into Local Areas Act, 2002; and*
- (xi) *the Maharashtra Value Added Tax Act, 2002;*

03. Arrears eligible for settlement under the Settlement Act

The outstanding dues under the Relevant Acts have been defined as “arrears” [section 2(1)(d)] in the Act. It is defined as under-

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

- (i) payable by an assessee as per any statutory order under the Relevant Act; or*
- (ii) admitted in the return or, as the case may be, the revised return filed under the Relevant Act and which has not been paid either wholly or partly; or*
- (iii) determined and recommended to be payable by the auditor, in the audit report submitted as per section 61 of the Value Added Tax Act, whether the notice under section 32 or 32A of the Value Added Tax Act has been issued or not.*

and such arrears of tax, interest, penalty or late fee, pertains to specified period and it also includes the interest payable on the admitted tax under the Relevant Act for the specified period;

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

3.1 Arrears outstanding as on 1st April 2022 as per any statutory order for the periods ending on 30th June 2017 or arrears as per any statutory order passed during the period from 1st April 2022 to 30th September 2022 for the periods ending on 30th June 2017 shall be eligible for settlement. **[SEE EXAMPLE 1]**

Arrears as per any statutory order containing any period after 30th June 2017 shall not be eligible for settlement under this Act.

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

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

3.3 Where the assessment and penalty orders are passed separately, the applicant shall not be eligible to opt to settle only the penalty amount as per the order imposing penalty as penalty is associated with levy of tax or disallowance of certain claims. In such cases, the applicant would mandatorily be required to opt for settlement of both arrears as per assessment order and penalty order. The above shall also apply to stand alone interest orders passed under the Relevant Act. However, where a penalty is not associated with levy of tax or disallowance of various claims, the applicant may opt for such stand-alone penalty order. For example, penalty levied for non-furnishing or late or incomplete filing of audit report under section 61 of the MVAT Act.

3.4 This settlement Act mainly aims for settling arrears as per statutory orders. Hence, in case any proceedings of assessment, re-assessment, rectification, revision, review or appeal are pending then the Trade is requested to approach the concerned authorities and get their orders passed expeditiously so that they can opt for settlement of any demand raised, if any, by such orders. It is also clarified that in case any order including an appeal order is passed during the intervening period of implementation of Settlement Act and such order results into modification in the demand of tax, interest, penalty or late fee, in that scenario, the applicant may opt for settlement of arrears as per said modified order.

3.5 Return dues outstanding as on 1st April 2022 for the periods ending on 30th June 2017 shall be eligible for settlement. These return dues include the tax, interest or late fee, admitted in the return or the revised return filed before 1st April 2022 and outstanding as on 1st April 2022. Tax payable as per return being admitted tax, the same classifies as an 'un-disputed tax' and is therefore, to be paid in full. As regards return dues, settlement is available only in respect of the interest payable. As settlement is applicable only for the returns filed upto 31st March 2022, interest payable on any return or revised return filed on or after 1st April 2022 shall not be eligible for settlement. The tax admitted in the return is to be treated as un-disputed tax. In order to opt for settlement of these dues, the applicant would have to calculate the interest payable from the due date of the return to the date of payment. The requisite amount to be paid on account of interest as per *Annexure A* or *Annexure B* shall be determined on the basis of the interest calculated as above. The total requisite amount in this case shall be the tax outstanding as on 1st April 2022 alongwith the requisite amount so determined towards interest or late fee, as the case may be. It needs to be borne in mind that the lump sum option would not be available to settle return dues. **[SEE EXAMPLE 3]**

3.6 Under the Value Added Tax Act, section 61 provides for audit of accounts of specified dealers and furnishing of the audit report. Arrears outstanding as per any recommendation by the auditor in the audit report for the periods ending on 30th June 2017 shall be eligible for settlement. The Settlement Act provides for settlement of arrears for the periods ending on 30th June 2017. The arrears as per any recommendation by the auditor in the audit report containing any period after 30th June 2017 shall not be eligible for settlement under this Act. The tax recommended to be paid in the audit report and accepted by the dealer is to be treated as un-disputed tax. As for the balance amount of tax which is not accepted by the dealer, the applicant would have to first ascertain the nature of the said tax to classify it as an un-disputed or disputed tax under the Settlement Act. In case the balance additional tax liability as recommended by the auditor and not accepted by the dealer is on account of any of the contingencies described in the definition of 'un-disputed tax', the same would have to be treated as 'un-disputed tax'. If the balance additional tax liability is on account of any other contingencies i.e. not covered under the definition of "un-disputed tax", then, it would have to be treated as 'disputed tax'. The designated authority to verify the correctness of the classification. In this case also, interest is to be calculated from the due date of payment of tax to the date of payment of the said tax. To settle the arrears as per the recommendation by the auditor, the requisite amount would be the full amount of un-disputed tax and

amounts payable towards disputed tax and interest as per *Annexure A*. It is also clarified that where the amount recommended by the auditor and accepted by the dealer is converted into dues as per a statutory order then the arrears of tax as per that statutory order to the extent of the tax amount recommended and accepted by the dealer shall be treated as un-disputed tax alongwith other un-disputed tax, if any. Here again, it may please be noted that the lump sum option would not be available to settle dues as per recommendation of the auditor. [SEE EXAMPLE 4]

3.7 While determining outstanding arrears for settlement, any payment made in respect of any statutory order on or before 31st March 2022 shall be first adjusted towards the amount of undisputed tax and then towards disputed tax and thereafter towards the interest and the balance amount remaining shall be adjusted towards the penalty and the late fee, sequentially. Even where the dealer has shown amount paid as tax or interest or penalty or late fee, it would be adjusted in the above sequence only. For example if the dealer has paid interest as per statutory order and if tax dues are pending, such payment on account of interest would be first adjusted towards un-disputed tax, then disputed tax and balance, if any, would be adjusted towards interest, penalty and late fee, sequentially. The above sequence of adjustment shall be applicable for return dues as well as to the arrears as per recommendation of the auditor in the audit report. Needless to say that any amount paid on or before the 31st March 2022 shall not be considered as a payment made towards requisite amount.

04. Cases litigated by the State - eligible for settlement

Where the Department has filed reference / appeals before the Hon. Maharashtra Sales Tax Tribunal or the Hon. Courts, the demands disputed by the Department are eligible for the settlement of arrears. The applicant can apply for the settlement of the tax, interest, penalty or late fee disputed by the Department even though there are no outstanding dues as per any statutory order made by the Tribunal or the Hon'ble Court for such demand disputed by the Department. The applicant, himself, shall determine the tax liability on account of the disputed issues and interest payable thereon and pay the requisite amount as per *Annexure A* or *Annexure B*, as the case may be. Once the amount disputed by the Department is settled, there shall be no refund or adjustment of the amount paid towards settlement under this Act nor would there be any recovery in respect of the waiver granted under this Act.

05. Persons eligible to settle dues under the Relevant Acts

5.1 An applicant [section 2(1)(c)] has been defined under the Act as a person who is liable to pay the arrears under the Relevant Act or any other person including financial institution who desires to avail the benefit of settlement by complying with the conditions, under the Act. Under this Act, the scope of an eligible person has been enlarged to include a financial institution and any other person who desires to settle the arrears.

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

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

5.4 The persons who have already availed the benefits under any of the Amnesty / Settlement schemes declared so far by the Government for the Relevant Act are also eligible to settle their arrears under this Settlement Act. In cases where partial benefits have been availed under any of the earlier schemes for any period, the dealer can avail the benefits under this Settlement Act for the balance outstanding arrears.

06. Write-off of dues upto Rupees Ten Thousand

This Settlement Act has brought a provision to write off outstanding arrears as per any statutory order. If arrears as per any statutory order which are outstanding as on 1st April 2022 are rupees ten thousand or less per financial year then such arrears are written off. Dues under different Acts should not be clubbed together for arriving the limit of rupees ten thousand. Arrears as per statutory order upto rupees ten thousand pertaining to the periods ending on the 30th June 2017 are written off by this provision. The post assessment interest on such written off dues is also waived. To get the benefit of this provision, dealer is not required to make application for waiver of these amounts. The Department shall suo-motu write off these amounts. The concerned Joint Commissioner of State Tax to pass the necessary orders of write off. The intimation about write-off of dues would be sent to the dealer by 30th June 2022 by the concerned designated officer.

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

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

7.2 In case where the outstanding dues on account of tax, interest, penalty and late fee as per any statutory order are Rupees Ten lakh or less, the applicant may opt to pay lump sum 20 per cent. of the outstanding dues. Upon payment of 20 per cent. of the outstanding dues, the balance 80 per cent. outstanding dues shall be waived. For this purpose, the arrears as on 01st April 2022 would have to be taken into account. Arrears as on 01st April 2022 shall be calculated as explained in para 3.7. For example, if dues as per statutory order passed on 31/03/2017 in respect of the period 2013-14 are Rs.1350000/- and if the dealer has paid Rs.500000/- in appeal, on or before 31st March 2022, then the outstanding dues as on 01st April 2022 are Rs.850000/-. These dues of Rs.850000/- being less than Rupees Ten lakh, the dealer is eligible for opting for the lump sum option.

7.3 This Act provides for One Time payment option for making payment of the requisite amount to avail the benefit of settlement of arrears.

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

[SEE EXAMPLE 2]

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

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

Annexure-A

Annexure-A is for the arrears in respect of the periods starting from the 1st April 2005 and ending on or before the 30th June 2017. These arrears can be settled by making the payment of requisite amount as per *Annexure-A*. The quantum of undisputed tax, disputed tax, interest, penalty and late fee to be paid as requisite amount and the extent of waiver is as follows-

<i>Annexure-A</i>					
Sr. No.	Amount	One time Payment option		Instalment option (for dues above rupees fifty lakhs)	
		Amount to be paid	Amount of waiver	Amount to be paid	Amount of waiver
(a)	(b)	(c)	(d)	(e)	(f)
(1)	Un-disputed Tax Amount	100 per cent. of the amount in column (b)	NIL	100 per cent. of the amount in column (b)	NIL
(2)	Disputed Tax Amount	50 per cent. of the amount in column (b)	50 per cent. of the amount in column (b)	56 per cent. of the amount in column (b)	44 per cent. of the amount in column (b)
(3)	Amount of interest payable as per any statutory order or returns or revised returns	15 per cent. of the amount in column (b)	85 per cent. of the amount in column (b)	15 per cent. of the amount in column (b)	85 per cent. of the amount in column (b)
(4)	Outstanding penalty amount as per any statutory order	5 per cent. of the amount in column (b)	95 per cent. of the amount in column (b)	5 per cent. of the amount in column (b)	95 per cent. of the amount in column (b)
(5)	Amount of post assessment interest or penalty or both leviable but not levied upto the date of application under Relevant Act	0 per cent. of the amount in column (b)	100 per cent. of the amount in column (b)	0 per cent. of the amount in column (b)	100 per cent. of the amount in column (b)
(6)	Late fee payable in respect of returns	5 per cent. of the amount in column (b)	95 per cent. of the amount in column (b)	5 per cent. of the amount in column (b)	95 per cent. of the amount in column (b)

Annexure-B

Annexure-B is for the arrears in respect of the periods ending on or before the 31st March 2005. These arrears can be settled by making the payment of requisite amount as per Annexure-B. The quantum of undisputed tax, disputed tax, interest and penalty to be paid as requisite amount and the extent of waiver is as follows-

Annexure-B					
Sr. No.	Amount	One Time Payment Option		Instalment Option (for dues above rupees fifty lakhs)	
		Amount to be paid	Amount of waiver	Amount to be paid	Amount of waiver
(a)	(b)	(c)	(d)	(e)	(f)
(1)	Un-disputed Tax Amount	100 per cent. of the amount in column (b)	NIL	100 per cent. of the amount in column (b)	NIL
(2)	Disputed Tax Amount	30 per cent. of the amount in column (b)	70 per cent. of the amount in column (b)	34 per cent. of the amount in column (b)	66 per cent. of the amount in column (b)
(3)	Amount of interest payable as per any statutory order or returns or revised returns.	10 per cent. of the amount in column (b)	90 per cent. of the amount in column (b)	10 per cent. of the amount in column (b)	90 per cent. of the amount in column (b)
(4)	Outstanding penalty amount as per any statutory order	5 per cent. of the amount in column (b)	95 per cent. of the amount in column (b)	5 per cent. of the amount in column (b)	95 per cent. of the amount in column (b)
(5)	Amount of post assessment interest or penalty or both leviable but not levied upto the date of application under Relevant Act.	0 per cent. of the amount in column (b)	100 per cent. of the amount in column (b)	0 per cent. of the amount in column (b)	100 per cent. of the amount in column (b)

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

- (i) the taxes collected separately under the Relevant Act;
- (ii) the taxes shown payable in the return or the revised return under the Relevant Act;
- (iii) an amount claimed by the dealer as deductions as per rule 57 of the Value Added Tax Rules or similar rules under other Relevant Act;
- (iv) 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;
- (v) any amount of tax determined and recommended to be payable by the auditor, in the audit report submitted as per section 61 of the Value Added Tax Act, and accepted by the assessee, either wholly or partly;
- (vi) the tax deducted at source (TDS) by the employer under the Value Added Tax Act;
- (vii) the tax collection made under section 31A of the Value Added Tax Act;
- (viii) the tax payable by the enrolment certificate holder under the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975;
- (ix) the tax deducted by the employer under the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975;
- (x) the amount of disallowed set-off under rules 52A or 52B of the Value Added Tax Rules, which is eligible to be claimed in the subsequent period;

The clauses (i) to (ix) above are self-explanatory. As regards the provision in clause (x), it is clarified that the said provision about set-off applies in special circumstances. Normally, set-off under

MVAT Act is available at the time of purchase of the goods. However, in the set of contingencies specified for the purposes of rules 52A and 52B, the set-off is available in the month in which the goods are resold. If the set-off is disallowed due to goods not being resold or goods lying in stock, then the set-off disallowed in respect of such goods is eligible to be claimed in the month in which the goods are actually resold. Thus, there is no permanent loss on account of any disallowance of set-off under these rules. Hence, set-off disallowed under rules 52A or 52B which is eligible to be claimed in the subsequent period is treated as un-disputed tax.

7.7 It must be borne in mind that there is no waiver in respect of the un-disputed tax except when the requisite amount is paid under lump sum option as per section 8(1)(b) of the Settlement Act.

7.8 The balance tax other than un-disputed tax is defined as disputed tax at section 2(1)(g) of the Act. In order to settle the arrears, the Government has provided the extent of disputed tax to be paid and the waiver thereof in *Annexure-A and Annexure-B*. For the periods ending on or before the 31st March 2005, the extent of waiver is higher.

Few examples of the disputed tax would be as under-

- (i) *disallowance of set-off*
- (ii) *additional demand on account of non-production of declarations / forms*
- (iii) *disallowance of claims for example disallowance of claims of branch transfer / high-seas sales / tax-free sales / export / deemed export / sale in transit*
- (iv) *additional demand on account of dispute in rate of tax*
- (v) *enhancement in sales turnover*
- (vi) *claim of labour charges disallowed in assessment and taxed under the Relevant Act*
- (vii) *tax levied on service tax portion in case of works contract dealer paying tax under composition scheme*

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

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

8 Determination of Requisite amount and extent of waiver - Tax on Entry Act

8.1 Section 9 of the Settlement Act is applicable for determination of requisite amount in respect of arrears as per statutory order under the Tax on Entry Act. For determination of requisite amount in respect of return dues under the Tax on Entry Act, provisions of section 8 shall apply as explained in para 7 of this Circular.

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

The requisite amount in respect of tax dues as per statutory order under the Tax on Entry Act shall be an amount equal to the entry tax payable as per statutory order or the amount of set-off reduced or denied, if any, as provided under rule 53 or 54 of the Value Added Tax Rules or, as the case may be, the Bombay Sales Tax Rules, 1959, whichever is less. A statutory order under the Tax on Entry Act is a pre-requisite for applicability of the provisions of section 9 of the Settlement Act. However, a corresponding statutory order for the same period under the Value Added Tax Act or the Bombay Sales Tax Act, 1959 is not a mandatory requirement. The requisite amount towards tax is to be determined in the above manner and is required to be paid in full. Needless to say, the lump sum and instalment option would not be available for settlement of the dues on account of tax under the Tax on Entry Act. For the dues on account of interest and penalty, the extent of requisite amount to be paid would be as specified in *Annexure-A* or *Annexure-B*, as the case may be, in respect of One Time Payment option.

8.3 The requisite amount shall be the aggregate of the tax to be paid, in full, as explained above and such percentage of interest and penalty as specified in respect of One Time Payment option in the *Annexure-A* or *Annexure-B*, as the case may be, appended to the Act. On payment of the requisite amount, the balance arrears under the Tax on Entry Act shall be waived. On settlement of dues, the applicant shall not be entitled to claim set-off under MVAT Act or the BST Act, as the case may be.

8.4 Upon payment of the requisite amount, the post-assessment interest or penalty or both leviable under the Relevant Act but not levied upto the date of application by the dealer shall stand waived in full. There would be no necessity of calculating the post-assessment interest or penalty to claim the benefit. The waiver of post-assessment interest or penalty is automatic when dues are settled under this Settlement Act. [SEE EXAMPLE 5]

09. Duration of time to apply and pay requisite amount

9.1 Duration for submission of application

An application to avail the benefit under this Act shall be submitted electronically during the period commencing on 1st April 2022 and ending on the 14th October 2022, under both the options i.e., One Time Payment option including lump sum option and Instalment option provided that the payment of requisite amount is made within the stipulated time period. In case an applicant has paid the requisite amount within the prescribed time but could not apply within the said prescribed time then the delay upto 30 days i.e., upto 13th November 2022 may be condoned by the designated authority to whom the application is to be made, after recording the reasons for delay.

9.2 Duration for making payment

9.2 (A) One time payment option

Under One Time payment option, the requisite amount is to be paid during the period commencing on 1st April 2022 and ending on the 30th September 2022. Where the outstanding dues as per any statutory order are Rupees Ten lakh or less then the applicant may opt for the lump sum option. If the lump sum option is preferred, the applicant would have to pay lump

sum 20 per cent. of the outstanding dues during the period commencing on 1st April 2022 and ending on the 30th September 2022.

9.2 (B) Instalment option

Under Instalment option, minimum 25 per cent. of the requisite amount is to be paid during the period commencing on 1st April 2022 and ending on the 30th September 2022. The remaining amount is to be paid in three equal quarterly instalments starting from the date of application. If any instalment is paid late, it shall attract interest at the rate of 12 per cent. per annum. However, all instalments are required to be paid within nine months from the date of application. In other words, the last instalment is mandatorily to be paid within nine months from the date of application. Any amount paid after nine months from the date of application shall not be treated as requisite amount. Only the amount paid during the period commencing on 1st April 2022 and ending on the 30th September 2022 alongwith the amounts paid within nine months from the date of application shall be treated as requisite amount.

9.3 If the amount so paid is less than the amount determined as requisite amount then proportionate benefit, if any, as prescribed in sections 8 or 9 of the Act shall be granted.

9.4 Any recovery made through the action of the nodal officer or amount paid, on any account, by the dealer during the period from 1st April 2022 to 30th September 2022 shall be treated as requisite amount provided that the dealer applies for settlement of arrears under One Time Payment option. Under Instalment option, amounts recovered or paid during the period starting from 1st April 2022 and ending within nine months from the date of application shall be treated as requisite amount, if an application for Settlement has been preferred. However, part payment made while filing an appeal under the Relevant Act during the period from 1st April 2022 to 30th September 2022 shall not be treated as requisite amount for settlement of arrears as the part payment made under the Relevant Act is for the purpose of filing an appeal and not as a requisite amount for the settlement of dues. The amount so paid would be first adjusted towards un-disputed tax, then disputed tax and balance, if any, would be adjusted towards interest, penalty and late fee, sequentially.

10. Conditions to avail benefit under the Settlement Act

10.1 To avail the benefit under this Settlement Act, it is mandatory to withdraw the appeal, if any, pending before an appellate authority or the Hon. Tribunal or the Hon. Court. An appeal would include appeal, reference, Writ Petition, Special Leave Petition filed by the applicant. Such withdrawal of appeal should be full and unconditional. Needless to say that partial withdrawal of appeal would not be eligible for settlement. To withdraw the appeal, the applicant is required to make an application in Form II appended to the order issued under section 19 of this Settlement Act.

10.2 The applicant can apply for settlement either by withdrawing the appeal fully or by getting his appeal decided within the period from 1st April 2022 to 30th September 2022.

10.3 While filing returns, if excess set-off or refund under the MVAT Act is adjusted against liability under the Central Sales Tax Act, 1956 and if such adjustment of set-off or refund is reduced or denied in the assessment under the MVAT Act, the same would result in dues under the Central Sales Tax Act, 1956. In normal circumstances, disallowance of set-off would have resulted in dues under the MVAT Act and it would have been treated as disputed tax. But in the facts as above, while filing returns, excess set-off was adjusted against CST dues. During assessment, dis-allowance of set-off under MVAT Act resulted in dues under the CST Act. Therefore, these dues being on account of reduction of set-off would have to be treated as disputed tax under this Settlement Act. To avail the benefit under the Settlement Act, withdrawal of appeal is a pre-condition. In this situation, if dues under the CST Act are to be settled then appeal filed under the MVAT Act, if any, would have to be mandatorily withdrawn, fully and unconditionally, alongwith appeal filed under the CST Act. If the appeal under the MVAT Act is not withdrawn it means dealer is contesting the dis-allowance of set-off. To avail settlement, withdrawal of appeal is mandatory. As appeal under the MVAT Act is not withdrawn, dues under the CST Act would be treated as un-disputed tax as those are on account of tax collection under the CST Act. **[SEE EXAMPLE 6]**

This would also apply to the dues under the Tax on the Entry Act.

10.4 Appellate authority including Tribunal is required to pass the order allowing the withdrawal of appeal. However, if in respect of any order, audit objections have been raised and an appeal is preferred against such order, then such appeal shall not be allowed to be withdrawn. The appellate authorities shall dispose-off such appeals expeditiously. The dealers are requested to approach the concerned authorities for early disposal of such cases.

11. Forms to be used for the Settlement

The Commissioner of State Tax has prescribed the following Forms for the purpose of this Act:

- (i) Form I - Application for settlement of arrears as per the statutory order
- (ii) Form IA - Application for settlement of arrears other than the statutory orders like return/revised return dues, dues as per recommendations in audit report etc.
- (iii) Form II - Application for withdrawal of appeal.
- (iv) Form III - Order of Settlement or Order of rejection
- (v) Form IV - Notice for Rectification of Mistakes
- (vi) Form V - Application for Rectification of Mistakes
- (vii) Form VI - Notice for review
- (viii) Form VII - Furnishing of details of amounts paid by way of instalments under Instalment option
- (ix) Form VIII - Notice for revocation

12. Procedure of submitting application for settlement

12.1 The application shall be made to the designated authority in Form I or Form IA, as the case may be, and is to be submitted electronically on the MGSTD portal www.mahagst.gov.in. The list of TIN to desk of Nodal officers is available on the 'What's New' section of the website. The path is as follows:-

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

The application shall get allocated to the nodal officer as per the Tin to Desk Mapping as available on the website.

In case of an unregistered dealer who is not allotted to any nodal officer, such application will get assigned to the respective jurisdictional Joint Commissioner who shall further assign the said application to a designated authority for processing thereof.

12.2 Un-registered persons shall create an user profile on the basis of the Permanent Account Number (PAN) provided under the Income Tax Act, 1961. With the use of the PAN, a Unique Identification Number (UIN) beginning with 77 will be generated. This UIN shall be used to pay the requisite amount and submit the application for settlement.

12.3 Where User Profile is not created as on the date of application, the same would have to be created. The various links with regard to User Profile and password re-set are given below-

- Link of Manual for Creation of User Profile and e-payment :-
www.mahagst.gov.in--> Dealer services --> Manuals and Procedures --> Page no 1 ---Settlement Scheme- 2022
- Link for Temporary Profile creation:-
<https://www.mahagst.gov.in/cn/create-profile-new-system>
- Link for User Manual for profile creation :-
User manual for profile creation for active and Inactive TIN; OR
<https://mahagst.gov.in/sites/default/files/manuals/Registered%20Dealer%20Profile%20creationMahagst.docx>
- Procedure to reset "mahagst.gov.in" password
www.mahagst.gov.in -> may I help you -> service request; or
<https://www.mahagst.gov.in/cn/helpdesk>; or
https://www.mahagst.gov.in/sites/default/files/Updated%20Password%20Reset%20Procedure.final.pdf_L.pdf

12.4 The applicant shall be required to make a separate application for each statutory order or return dues or dues as per recommendation of the auditor. For arrears of return or revised return, the applicant can make a separate application for each return or revised return or a single application for all the arrears of return or revised return pertaining to a financial year.

12.5 Under the Maharashtra Purchase Tax on Sugarcane Act, 1962, 'year' means the year starting from the 1st October and ending on 30th September. The software for submission of the application for Settlement is designed considering the 'year' as a financial year starting from April and ending in March. Hence, in order to accommodate the applications under the Maharashtra Purchase Tax on Sugarcane Act, 1962, it is instructed to mention the "From date" and "To date" as falling within the same financial year. For example, if the assessee desires to avail the benefits for the sugar year 1st

October 2015 to 30th September 2016, he shall mention the 'year' as 1st April 2015 to 31st March 2016.

12.6 The payment of requisite amount shall be made in the Chalan prescribed under the Relevant Act or, as the case may be, in Form-MTR-6 prescribed under the Value Added Tax Rules.

12.7 Copy of acknowledgement of application for withdrawal of appeal alongwith the application for Settlement under this Act would be sufficient proof towards withdrawal of appeal.

12.8 Every such application shall be accompanied by the proof of payment of the requisite amount as determined under sections 8 or 9. The proof of payment of 100 per cent of the requisite amount in case of One Time Payment option, and minimum 25 per cent of the requisite amount in case of Instalment option, is to be submitted alongwith the application.

12.9 The following documents shall be accompanied with the application for settlement in Form I or, as the case may be, Form IA. These documents shall be submitted electronically.

FORM I

- (i) Copy of statutory order against which settlement is sought for. In case where an order consists of large number of pages, the scanning of which results in the file size exceeding 2MB then the first and the last page shall be scanned and uploaded. The copy of the order shall be made available by the applicant on demand of the nodal officer.
- (ii) Original order allowing withdrawal of Appeal or in case the appeal withdrawal order is not received then the copy of the request letter submitted for withdrawal of the appeal.
- (iii) Copies of self-certified challans of payment made after the date of order till the 31st March 2022 and for the payment of the requisite amount for the settlement.

FORM IA

- (i) Copy of the return/revised return/audit report recommendations against which settlement is sought.
- (ii) Copies of self-certified challans of payment made towards the aforesaid dues till the 31st March 2022 and payment of the requisite amount.

13. Verification of application and passing of order of settlement

13.1 In order to have an uniform procedure in the verification of applications received for settlement, instructions have been separately issued to the Departmental authorities under sub-section (1) of section 19 of the Settlement Act.

- (i) The designated authority shall verify the particulars furnished in the application and documents submitted with the application, with reference to the records available with the assessing authority or any other authority with whom such record is available.
- (ii) The authority shall verify and confirm that the application is accompanied with the documents mentioned in the application form.
- (iii) On verification of the application, in case it is noticed that, the said application is factually incorrect or incomplete or the requisite amount paid is deficient, then, a defect notice may be issued, as far as

possible within fifteen days from the date of receipt of the application, and the applicant may be intimated about the defects in the application alongwith the details of the requisite amount to be paid. The defect notice in respect of an application shall be issued only once.

- (iv) The applicant shall make the payment, if required as per the defect notice, as per the option opted by the applicant, on or before the last day specified for payment of requisite amount. Any payment made thereafter shall not be considered as the requisite amount for settlement of arrears. Any other defects as pointed in the defect notice shall also be made good. The compliance to the defects or details of additional payment, if any, is to be submitted to the authority within fifteen days of the receipt of the defect notice.
- (v) The compliance made to the defect notice including the payment of requisite amount, if any, shall be considered alongwith the original application filed by the applicant.

13.2 After considering the available record, the designated authority shall pass order under section 13 of the Settlement Act. This order is to be passed within three months from the last date specified for payment of requisite amount under One Time Payment option or the date specified for payment of last instalment of the requisite amount under Instalment option.

13.3 Where the application for settlement of arrears is not in accordance with the provisions of this Act, then, the designated authority may, by order, in writing, reject the application, after giving an opportunity of being heard to the applicant. On rejection of such application and if the applicant had withdrawn the appeal to apply for settlement then the said original appeal under the Relevant Act shall be reinstated on the applicant making an application for reinstating the appeal.

13.4 An application shall not be rejected merely on the ground that the payment made by the applicant during the period as per option opted by the applicant under the Act is less than the requisite amount. In such cases, the designated authority shall not deny the proportionate benefits as may be available to the said applicant considering the option in which the requisite amount is paid.

14. Proportionate benefit

Where the requisite amount paid by the applicant is less than the requisite amount as determined under sections 8 or 9 then, the designated authority shall compute the proportionate amount of waiver admissible under the option opted by the applicant in proportion to the requisite amount paid by the applicant. While determining the proportionate waiver, the requisite amount paid shall first be adjusted towards the undisputed tax in full and the remaining amount shall be adjusted proportionately towards disputed tax, interest, penalty and late fee. The order giving the proportionate benefit shall be passed after providing the applicant an opportunity of hearing. The balance arrears remaining unsettled after considering the proportionate benefit shall be recovered as an arrears under the Relevant Act. [SEE EXAMPLE 1]

15. Discharge of liability

After passing of the order of settlement, the applicant shall be discharged of his liability under the Relevant Act to the extent of the amount of waiver specified in the order of settlement. The order of

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

16. Revocation of order of settlement

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

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

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

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

17. No refund under the Act

The amount paid under the Settlement Act shall not be refunded in any circumstances.

18. Appeal under the Act

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

- (i) *the Deputy Commissioner of State Tax (Administration), if the order is passed by the authority sub-ordinate to him.*
- (ii) *the Joint Commissioner of State Tax (Administration), if the order is passed by the Deputy Commissioner of State Tax.*
- (iii) *the Additional Commissioner of State Tax, if the order is passed by the Joint Commissioner of State Tax.*

There is no provision of second appeal under this Act.

19. Rectification and Review

The designated authority may, on his own motion or on application of the applicant, rectify any error apparent from the record within six months from the date of service of the order. The applicant can make an application for rectification within sixty days from the date of receipt of the order of settlement. An order adversely affecting the applicant shall be passed after giving him a reasonable opportunity of being heard.


The supervisory authority may, on his own motion, after noticing an error in any order passed under this Act, in so far as it is prejudicial to the interest of revenue, pass an order in review, after giving a reasonable opportunity of being heard, within twelve months from the date of service of the said order.

20. A few examples for better understanding of the provisions of this Settlement Act are annexed to this Circular.

21. This Settlement Act has been enacted in order to unlock the amount involved in the outstanding dues and reduce the old pending litigations. In order to achieve this objective, the Department will endeavour to complete the pending proceedings and also take coercive actions to recover the outstanding dues during the operation of this Act. Hence, Trade is requested to opt for settlement as early as possible to avoid recovery action.

22. 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.

23. You are requested to bring the contents of this Circular to the notice of the members of your Association.


(RAJEEV KUMAR MITAL)
Commissioner of State Tax,
Maharashtra State, Mumbai.

EXAMPLES

EXAMPLE 1

This example explains the options available to settle the arrears as per statutory order such as **One time payment option** and **Lump sum payment option**. It also explains the **proportionate benefits** available in case the requisite amount is short paid.

1.a Statutory order in the case of M/s. ABC for the period 2015-16 has been passed on dt.31/03/2020 resulting in dues as under-

Sr. No.	Particulars	Head wise amount	Total Amount
1	Tax		4,50,000
	Un-disputed tax	2,00,000	
	Disputed tax	2,50,000	
2	Interest		3,60,000
	Interest u/s 30(2)	35,000	
	Interest u/s 30(3)	3,25,000	
3	Penalty		75,000
	Total		8,85,000

M/s. ABC has paid Rs.1,50,000/- after the assessment order is passed but before the 31st March 2022. As per section 6 of the Settlement Act, this amount would be adjusted first against un-disputed tax. As there is no balance remaining, there would be no adjustment towards the disputed tax, interest or penalty.

The dues eligible for settlement would be Rs.7,35,000/- as shown below. -

Particulars	Total	Adjustment of amount paid upto 31st March 2022	Balance dues
Un-disputed tax	2,00,000	1,50,000	50,000
Disputed tax	2,50,000	Nil	2,50,000
Interest u/s 30(2)	35,000	Nil	35,000
Interest u/s 30(3)	3,25,000	Nil	3,25,000
Penalty	75,000	Nil	75,000
Total	8,85,000	1,50,000	7,35,000

1.b As dues in this case as on 1st April 2022 are less than rupees ten lakhs, **lump sum option** is available to the dealer. If the dealer opts for lump sum payment under clause (b) of sub-section (1) of section 8, he would have to pay 20 per cent. of the outstanding dues as requisite amount. On payment of Rs.1,47,000/- (20 per cent. of Rs.7,35,000/-), the balance dues of Rs.5,88,000/- would be waived.

1.c The calculation of requisite amount would be as follows-

Particulars	Balance dues	Percentage	Requisite amount	Amount of waiver
Un-disputed tax	50,000	100%	50,000	NIL
Disputed tax	2,50,000	50%	1,25,000	1,25,000
Interest u/s 30(2)	35,000	15%	5,250	29,750
Interest u/s 30(3)	3,25,000	15%	48,750	2,76,250
Penalty	75,000	5%	3,750	71,250
Total	7,35,000		2,32,750	5,02,250

Since the dues are less than rupees fifty lakhs, the installment option would not be allowable to the dealer. In this case as per **One Time payment option** under clause (a) of sub-section (1) of section 8, dealer would have to pay requisite amount of Rs.2,32,750/- to get waiver of Rs.5,02,250/-.

To settle the above dues, M/s. ABC would have to opt for One Time Payment option and pay the requisite amount during the period from 1st April 2022 to 30th September 2022. Application for settlement would have to be submitted on or before 14th October 2022.

1.d In case the dealer pays an amount less than the requisite amount, then he would be eligible to get **proportionate benefit**. Suppose he pays Rs.2,00,000/- then the payment made shall first be adjusted towards the undisputed tax and the remaining amount shall then be adjusted towards the disputed tax, interest and penalty proportionately. In this example, the requisite amount is Rs.2,32,750/- whereas the dealer has paid Rs.2,00,000/- which is short payment. Out of the requisite amount of Rs.2,32,750/-, the amount of un-disputed tax is Rs. 50,000/-. Hence, Rs. 50,000/- would be adjusted against un-disputed tax first. The balance requisite amount would be Rs.1,82,750/- [232750 – 50000] which includes requisite amount in respect of disputed tax, interest and penalty. The remaining balance payment of Rs.1,50,000/ [200000 – 50000] would be adjusted against disputed tax, interest and penalty in proportion to the balance requisite amount i.e Rs.1,82,750/-. In view of this, the amount to be adjusted against the requisite amount of disputed tax of Rs.1,25,000/- would be $125000/182750*150000$ which comes to Rs.1,02,599/-. This amount of Rs.1,02,599/- would be considered to calculate the amount of waiver. In respect of disputed tax, the requisite amount to be paid is 50 per cent. and waiver is 50 per cent as per the Annexure A. Hence, the amount of waiver would be $102509/50*50$ which comes to Rs.1,02,599/-.

In respect of interest of Rs.35,000/-, the requisite amount to be paid is Rs.5,250/-. The amount to be adjusted against the requisite amount of interest of Rs.5,250/- would be $5250/182750*150000$ which comes to Rs.4,309/-. This amount of Rs.4,309/- would be considered to calculate the amount of waiver. Being a 2015-16 period, for waiver of 85 per cent., 15 per cent. is to be paid as per Annexure A. Hence, the amount of waiver would be $4309/15*85$ which comes to Rs.24,418/-.

In similar method, the other remaining components of the requisite amount would be proportionately adjusted and eligible waiver would be calculated as shown below.

The proportionate adjustment of the payment made towards requisite amount and waiver in this case would be as under-

Particulars	Balance dues	Apportionment of amount paid towards requisite amount	Percentage	Amount of waiver	Balance dues
Un-disputed tax	50,000	50,000	100%	NIL	0
Disputed tax	2,50,000	[125000/182750*150000] 1,02,599	50%	[102509/50*50] 1,02,599	44,802
Interest u/s 30(2)	35,000	[5250/182750*150000] 4,309	15%	[4309/15*85] 24,418	6,273
Interest u/s 30(3)	3,25,000	[48750/182750*150000] 40,014	15%	[40014/15*85] 2,26,746	58,240
Penalty	75,000	[3750/182750*150000] 3,078	5%	[3018/5*95] 58,482	13,440
Total	7,35,000	2,00,000		4,12,245	1,22,755

From the above Table, it can be seen that upon short payment of the requisite amount, the dealer is eligible for waiver of Rs.4,12,245/- only. After considering the payment of Rs.2,00,000/- and the waiver of Rs.4,12,245/-, the balance dues remain at Rs.1,22,755/- which shall be recovered from the dealer as per the provisions of the Relevant Act.

EXAMPLE 2

This example explains the options of **One time payment** and **Installment payment** available to settle the arrears if the arrears are more than rupees fifty lakhs.

Statutory order in the case of M/s. PQR for the period 2015-16 has been passed on dt.31/03/2020 resulting in dues as under-

Sr. No.	Particulars	Head wise amount	Total Amount
1	Tax		4500000
	Un-disputed tax	1200000	
	Disputed tax	3300000	
2	Interest		3250000
3	Penalty		800000
	Total		8550000

2.a Under **One Time payment option**, the calculation of requisite amount would be as under.

Particulars	Dues	Percentage of requisite amount to be paid	Requisite amount	Amount of waiver
Un-disputed tax	1200000	100%	1200000	NIL
Disputed tax	3300000	50%	1650000	1650000
Interest	3250000	15%	487500	2762500
Penalty	800000	5%	40000	760000
Total	8550000		3377500	5172500

To settle the above dues under One Time Payment option, M/s. PQR would have to pay the requisite amount during the period from 1st April 2022 to 30th September 2022. Application for settlement would have to be submitted on or before 14th October 2022.

2.b As outstanding dues as on 1st April 2022 in this case are above Rupees Fifty lakhs, the dealer can also opt for **Instalment option**. Under Instalment option, the requisite amount would be as follows-

Particulars	Dues	Percentage of requisite amount to be paid	Requisite amount	Amount of waiver
Un-disputed tax	1200000	100%	1200000	NIL
Disputed tax	3300000	56%	1848000	1452000
Interest	3250000	15%	487500	2762500
Penalty	800000	5%	40000	760000
Total	8550000		3575500	4974500

To settle the above dues under Instalment option, M/s. PQR would have to pay minimum 25 per cent. of the requisite amount which comes to Rs.8,93,875/- during the period from 1st April 2022 to 30th September 2022. And application for settlement would have to be submitted on or before 14th October 2022. The balance requisite amount of Rs.26,81,625/- would have to be paid in three equal quarterly instalments starting from the date of application. If any instalment is paid late, it shall attract interest at the rate of 12 per cent. per annum. However, all instalments are required to be paid within nine months from the date of application.

EXAMPLE 3

This example explains the calculation of **requisite amount** in respect of **return dues** and **interest payable** on delayed payment.

M/s. LMN has shown outstanding dues in respect of the following returns filed for the year 2015-16:-

Return period	Tax payable as per Return	Interest shown in the Return	Total
Dec. 2015	20000	1800	21800
Jan. 2016	40000		40000
Feb. 2016	60000	3000	63000
Mar. 2016	30000		30000
Total	150000	4800	154800

3.a In order to avail the benefit of the Settlement Act, M/s. LMN would have to calculate the arrears as on 01st April 2022 after considering the payments made upto 31st March 2022. In this example, it is presumed that no payment towards the return dues has been made upto 31st March 2022. In such circumstances, the admitted tax of Rs.150000/- being un-disputed tax, the same would have to be paid in full. Benefit of interest is available under the Settlement Act. For this purpose, M/s. LMN would have to calculate the interest payable from the due date of the return to the date of actual payment of the tax dues, ignoring the interest shown payable in the return. The requisite amount towards interest shall be determined on the basis of the interest so calculated as shown in the following Table-

Return period	Tax payable as per Return	Interest shown in the Return	Total as per Return	Due date of the return	Date of payment of Tax to settle the return dues	Actual Interest payable
Dec. 2015	20000	1800	21800	21/01/2016	21/05/2022	30050
Jan. 2016	40000		40000	21/02/2016	21/05/2022	59300
Feb. 2016	60000	3000	63000	21/03/2016	21/05/2022	87750
Mar. 2016	30000		30000	21/04/2016	21/05/2022	43275
Total	150000	4800	154800			220375

3.b In the above example, if it is presumed that the dealer has paid the tax dues of Rs.1,50,000/- on dt.21/05/2022 then the actual interest upto the date of payment of tax comes to Rs.220375/-. The requisite amount towards interest would have to be calculated on Rs.220375/-. As per Annexure A, the requisite amount is to be paid at 15 per cent. of Rs.220375/- which is Rs.33056/-. In order to settle the outstanding return dues, M/s. LMN would have to pay Rs.183056/- [150000 + 33056].

EXAMPLE 4

This example explains the calculation of requisite amount in respect of **arrears as per recommendation of auditor.**

M/s. NOP has been recommended to pay the following amounts by their auditor in respect of the year 2015-16:-

Sr. No.	Particulars	Amount recommended by the Auditor	Amount accepted by the Dealer
1	Pay additional Tax	250000	150000
2	Pay Interest	40000	25000
	Total	290000	175000

4.a In order to avail the benefit of the Settlement Act, M/s. NOP would have to calculate the arrears as on 01st April 2022 after considering the payments made upto 31st March 2022. In the above example, the dealer has accepted the additional tax liability to the extent of Rs.150000/-. As per the definition of 'un-disputed tax', the amount recommended by the auditor and accepted by the dealer is to be treated as 'undisputed tax' only. Therefore, M/s. NOP would have to pay Rs.150000/ of the accepted tax in full.

4.b The payment of the balance tax amount of Rs.100000/- would depend on the contingency based upon which the additional tax liability is recommended. If the additional tax liability is on account of any of the contingencies specified in the definition of 'un-disputed tax', the same would have to be treated as 'undisputed tax' and would have to be discharged in full. Otherwise the additional tax liability would be treated as 'disputed tax' and would have to be discharged as per the proportions mentioned in *Annexure A*.

4.c To avail the settlement in respect of interest, the dealer would have to calculate interest on the total Tax amount recommended by the auditor from the due date of the amount to be paid till the date of actual payment of the tax amount. The requisite amount towards interest shall be determined on the basis of the interest so calculated.

4.d In the above example, out of Rs.2,50,000/-, the dealer has accepted the tax recommendation of Rs.150000/-. Hence, the same would have to be paid in full.

Out of the balance Rs.100000, if it is presumed that Rs.40000/- is on account of contingencies specified in the definition of 'un-disputed tax', the dealer would have to pay this amount in full.

The balance Rs.60,000/- [100000 - 40000] being disputed tax, then the dealer would have to pay 50 per cent. of the same as per Annexure A.

The requisite amount on account of tax would be Rs.2,20,000/- [150000 + 40000 + 30000] and requisite amount towards interest would be as shown below-

Sr. No.	Particulars	Amount recommended by the Auditor	Amount accepted by the Dealer	Balance Tax	Un-disputed tax out of Balance Tax	Total Undisputed tax	Total Disputed Tax	Actual interest payable*	Requisite amount
1	Additional Tax	250000	150000	100000	40000	190000	60000	NA	220000
2	Interest	40000	25000	NA	NA	NA	NA	395000	59250
	Total	290000	175000	100000	40000	190000	60000	395000	279250

[* As per proviso to sub-section (2) of section 30, interest is calculated from the 1st October of the year, to which the annual revised return relates (revised return as per audit findings). It is presumed that dealer has paid the tax amount on dt.01/06/2022.]

Interest calculated upto the date of payment of tax on the recommended tax amount of Rs.250000/- comes to Rs.395000/-. The requisite amount towards interest would have to be paid at 15 per cent. of Rs.395000 which is Rs.59250/-.

In order to settle the outstanding dues recommended by the auditor, M/s. NOP would have to pay Rs.279250/- [220000 + 59250].

EXAMPLE 5

This example explains the calculation of requisite amount in respect of **outstanding dues as per statutory order under the Tax on Entry Act.**

M/s.DEF imported natural gas into the State of Maharashtra during the period 2015-16, to be used as fuel in the manufacture of goods. Order under Tax on Entry Act is passed levying Entry Tax on the same. The details are as under-

Sr. No.	Particulars	Amount
1	Value of imported natural gas	500000
2	Rate of Entry Tax	12.5%
3	Entry Tax assessed	62500
4	Interest	50000
5	Dues outstanding as per assessment order	112500

5.a Under the MVAT rules, if natural gas is used as fuel, set-off in excess of 3% is available. This means 3% of the Entry Tax is denied or reduced by way of retention. In order to settle the dues assessed under the Tax on Entry Act, the requisite amount shall be the amount of Entry Tax or the amount reduced or denied by the amount of set-off of Entry Tax, whichever is less. In this example, the retention / denial of set-off of natural gas would be Rs.15000/- and Entry Tax assessed is Rs.62500/-. Hence, Rs.15000/- being the lesser of the two amounts, to settle the tax dues under the Tax on Entry Act, dealer would have to pay Rs.15000/- as the requisite amount on account of tax.

5.b As regards interest levied, the requisite amount would be 15 per cent. of the interest levied in the assessment order which is Rs.7500/-. The requisite amount to settle the total dues of Rs.112500/-, the dealer would have to pay Rs.22500/-. However, the dealer won't be allowed to claim set-off under the MVAT Act of the amount of Entry Tax.

5.c Dealer won't be eligible to opt for the lump sum and instalment option for settlement of the dues on account of tax under the Tax on Entry Act.

EXAMPLE 6

This example explains a case where **excess refund / set-off under MVAT Act is adjusted against tax payable under the CST Act** while filing returns. However, while assessing the dealer the said refund / set-off is reduced which results in dues in the assessment under the CST Act.

M/s. XYZ has filed returns under the MVAT and CST Acts for the year 2015-16 wherein excess refund / set-off under the MVAT Act was adjusted against dues under the CST Act. In assessment, the set-off under the MVAT Act was reduced. Therefore, the adjustment of excess set-off under the MVAT Act towards the dues under the CST Act was reduced resulting in dues under the CST Act. Dealer wants to settle the CST dues under this Settlement Act.

6.a In the facts as above, whether the dues under the CST Act are to be treated as un-disputed or disputed and what are the conditions for availing the benefit of settlement.

6.b This query has been explained in detail in point 3 of para 10. The same can be illustrated with an example as under-

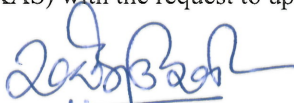
Sr. no.	Particulars	As per CST Returns	As per CST Assessment order
1	Tax collection	500000	500000
2	Tax payable	500000	500000
3	Excess MVAT set-off / refund adjusted	300000	100000
4	Paid	200000	200000
5	Balance payable	NIL	200000
6	Interest	NA	140000
7	Penalty	NA	50000
8	Dues as per Assessment	NA	390000

6.c In the above illustration, the extra demand under the CST Act is due to disallowance of set-off under the MVAT Act. Disallowance of set-off doesn't fall under the contingencies specified for 'un-disputed tax' under this Settlement Act. Hence, it is to be treated as disputed tax. To settle this demand which is on account of disallowance of set-off, the dealer can avail the benefit available for disputed tax, subject to withdrawal of appeal, if filed. Considering these facts, if the dealer wants to settle the dues then appeal filed under the MVAT Act would have to be withdrawn alongwith appeal filed under the CST Act and in which case the tax dues of Rs.2,00,000/- under the CST Act would be treated as disputed tax. If the appeal under the MVAT Act is not withdrawn it would mean that the dealer is contesting the dis-allowance of set-off. Under such circumstances, the tax dues of Rs.2,00,000/- under the CST Act would be treated as un-disputed tax as those are on account of tax collection under the CST Act.

No. DC (A&R)3/VAT/MMB-2022/2/ADM-8
Trade Circular No. 57-T of 2022

dated the 20/04/2022

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


(Rajendra D. Adsul)
Joint Commissioner of State Tax (HQ)1,
Maharashtra State, Mumbai.