

WIRC of ICAI

Mah. Settlement Scheme 2016
under MVAT & Allied Laws

by CA Deepak Thakkar

28 June 2016

Settlement Scheme 2016 for arrears in dispute, pending in appeal

1. Maharashtra Settlement of Arrears in Disputes, by
Mah. Act # 16 of 2016 dt 26 Apr 2016
passing L.A. Bill # 19 dt 5 Apr 2016
say **Settlement / Amnesty Scheme 2016** for MVAT & Allied Laws
2. **Trade Circular # 10T dt 3 May 2016 (General)**
Trade Circular # 12T dt 6 May 2016 (PT EC)
Interpretation Strict / Liberal? **FAQ expected shortly**
3. Earlier Amnesty Scheme of 1999 & 2004

**Maharashtra Settlement of Arrears in Disputes Act, 2016 dt 26 Apr 2016
say Amnesty Scheme L.A. Bill # 19 dt 5 Apr 2016 effective till 30 Sept 2016**

1. **Mah. Act # 16 dt 26 Apr 2016 passing L.A. Bill # 19 dt 5 Apr 2016** introduced in Assembly on 7 Apr 2016
2. Maharashtra Settlement of **Arrears in Disputes Act, 2016** (say **Amnesty Scheme 2016** under Mah. State Tax Laws)
3. **Tax Acts covered:**
 1. Mah. VAT Act, 2002
 2. CST Act, 1956
 3. Profession Tax Act, 1975
 4. Mah. Entry Tax on Motor Vehicles Act, 1987
 5. Mah. Entry Tax on Other Notified Goods Act, 2002
 6. Mah. Tax on Luxuries Act, 1987
 7. Mah. Purchase Tax on Sugarcane Act, 1962
 8. Bombay Sales of Motor Spirit Taxation Act, 1958 (Repealed)
 9. Bombay Sales Tax Act, 1959 (Repealed)
 10. Mah. Transfer of Right to Use any Goods Act, 1985 (Repealed)
 11. Mah. Works Contract Act, 1989 (Repealed)

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Settlement Scheme ... Requisite Payable Amt & Waiver Amt...

4. **Determination of 'Requisite Amt' to pay & 'Waiver Amt' for Arrears in Dispute for Assessment Period upto 31 Mar 2005 (Sec. 6(1)) :**

Nature of Arrears	Requisite Amt payable as per Scheme	Extent of Waiver as per Scheme
Tax	100% (after reducing Part Payment made in appeal)	NIL
Interest	NIL	100%
Penalty	NIL	100%
Post Assessment Interest / Penalty	NIL	100%

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Settlement Scheme ... Requisite Payable Amt & Waiver Amt

5. **Determination of Requisite Amt to pay & Waiver Amt for Arrears in Dispute for Assessment Period from 1 Apr 2005 till 31 Mar 2012 (Sec. 6(2)) :**

Nature of Arrears	Requisite Amt payable as per Scheme	Extent of Waiver as per Scheme
Tax	100% (after reducing Part Payment made in appeal)	NIL
Interest	25% (of Outstanding Int out of arrears in dispute)	75%
Penalty	NIL	100%
Post Assessment Interest / Penalty	NIL	100%

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Settlement Scheme... Effective dates & Procedure

6. **Effective from** the date of publication in the *Official Gazette* (Sec. 1(3))
7. **Designated Authority (DA)** for Implementation of Scheme (Sec. 3) :
 - **Commissioner of Sales Tax** & his Subordinate Officers
 - Commr has powers to **prescribe forms, issue instructions & directions** to DA to carry out purpose of this Act (Sec. 12)
8. **Conditions for Settlement** (Sec. 4) :
1. Submit **correct & complete Application** to Designated Authority i.e. concerned "Nodal Officer" (www.mahavat.gov.in) / Nodal JC for Mumbai & Pune / JC VAT ADM / ADM Head of other respective locations / For PT Act to the concerned PTO, **upto 30 Sept 2016** in **prescribed Form-I** & manner (*Para 2 & 3 of Cir # dt 3 May 2016*) ('Applicant' can be other desiring person like Banks, Financial Institutions, Official Assignee, etc...(*Para 4(b) of Circular dt 3 May 16*) Transferee of Business.....defaulter / beneficiary of Setoff?)
 2. Submit **Separate Application for each Statutory Order** under each Law covered **alongwith** Statutory Order, stay order, appeal withdrawal order, challan of Requisite Amt paid & Challan of Undisputed arrears paid (*Para 5(D) of Circular dt 3 May 16*)

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Settlement Scheme... Effective dates & Procedure

9. **Conditions for Settlement** (Sec. 4) cont'd.... :
- 'Statutory Order' (Sec.2(9)) Order raising dues of tax, interest or penalty payable by applicant (*Para 4(f) of Circular dt 3 May 2016*)
- 'Stay Order' granted i.e. ad-interim/ interim/ final stay order (**Admission-cum-stay order in Form 312 u/r 33 r/w Sec. 26 of MVAT or**) under relevant law (*Para 5(D)(V) & Para 6(A)(i) of Circular dt 3 May 2016*)
3. **Submit proof of payment of Requisite Amount** against **Disputed Arrears** (**In Chalan MTR-6 if applicant has TIN & by others in Challan under relevant Act** (Sec. 6(3)) (*Para 6(B)(b) of Circular dt 3 May 2016*)
4. Submit **proof of payment of Undisputed Arrears fully** (Tax+Int+Penalty) in respect of relevant Statutory Order for which waiver is sought;
Undisputed Arrears covers Interest payable pertaining to any period from 1 May 2010 to 31 Mar 2012 u/s. 30(2) & (4) of MVAT Act, 9(2) of CST Act and 6(1) of Goods Entry Tax Act (Interest levy made non-appealable u/s. 85 of MVAT Act wef 1 May 2010; **Interest payable under other laws are disputed dues** .. (*Para 6(B)(c) of Circular dt 3 May 2016*). ;
5. Submit **proof of withdrawal of Appeal, if any ('if any' words not in marathi version of Bill/ Act?)**
i.e. Order of withdrawal of appeal (*Para 5(D)(iii) of Circular dt 3 May 2016*)

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Settlement Scheme... Withdrawal of Appeal

10. **Withdrawal of Appeal** (Sec. 5) : Appeals pending before **Appellate Authority or Tribunal or Court** shall be withdrawn on or **before 30 Sept 2016**
- Where the applicant desires **to opt for settlement of arrears** in dispute for **some of the issues** ('tax issues' **sec.6**) raised in appeal then he shall **withdraw** the appeal in respect of **such issues**.
 - For **other issues** the **appeal may continue** (Vat, S/O, Forms, T/O)
 - **Where the appeal is withdrawn for some of the issues**, then the applicant shall **pay whole amount of tax relating to such issues withdrawn in appeal** and **credit of part payment will be given in proportion to tax involved in the issues withdrawn in appeal** [Sec.6(1) (ii) & Sec.6(2) (ii)]
- (A) **Part Payment made in appeal will be adjusted against Tax, then Interest & then Penalty** [Sec. 6(4)]
- (B) **Any amt paid after the dt of Statutory Order but before the dt of filing appeal shall be apportioned as per provisions under relevant Act....**
(*Para 6(D)(ii) of Circular dt 3 May 2016*)
- E.g. **Sec. 40 of MVAT Act: Any payment made** towards any amt due as per any order shall **first be adjusted** [except stayed u/s 26(6)], **against interest payable, then against penalty due, forfeited sum, fine, then balance against tax payable.**

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Procedure for Disposal of Application (Sec.7 & 8)...

1. Designated Authority (DA) **may, issue a defect notice** for the incomplete or incorrect application
2. Applicant shall **within 15 days** from receipt of defect notice, **correct the defects**, make the payment, if any, and submit to DA
3. If Applicant **fails to respond to defect notice** then DA, after hearing the Applicant, may reject application by passing '**Rejection Order**' recording reasons for **same (Sec. 7(1))**
4. **Sec.8: Appeal** shall be filed within 60 days of receipt of 'Rejection Order' passed u/s 7(1), before:
 1. DC if Order is passed by AC/STO
 2. Addl. Commr if Order is passed by JC/DC

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... Procedure for Disposal of Application (Sec.7 & 8)

5. DA shall pass **Settlement Order for each application**, on being satisfied that all conditions of waiver are fulfilled. (**Sec. 7(2)**)
6. No appeal lies against 'Settlement Order' passed u/s 7(2) [Sec.8]
7. **Applicant shall be discharged from his liability of such arrears** in dispute under the relevant Act for which the Order of Settlement has been passed.
8. **DA may**, on his own motion or on application of the applicant, **within 30 days** from the date of receipt of Settlement Order by Applicant, **rectify any error apparent** on the face of the record
9. DA shall give **hearing opportunity to applicant** before passing any adverse Rectification Order

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Which Order / Dues eligible for Settlement Scheme 2016

1. “Arrears in dispute (Sec. 2(2)) includes,—
 - (i) *tax*, by whatever name called, under the relevant Act;
 - (ii) *interest* payable by an applicant under the relevant Act;
 - (iii) *penalty* imposed upon the applicant under relevant Act,in respect of any **Statutory Order** pertaining to any period ending on or before the 31st March 2012, against which appeal is filed and Stay in full or part has been granted by the appellate authority under the relevant Act or, as the case may be, by the Tribunal or Court, not later than 30th Sept 2016”

(Statement of Objects & Reasons)

(Whether DDQ Order is statutory order?)

Issues & Imp Points in Settlement Scheme ...

Q.1: Tax = Composition Sum? Forfeiture amt? VAT TDS?

[SAIL vs State of Orissa [2000] 118 STC 297 (SC); Harsha Constructions vs. CTO. [2007] 10 VST 216 (SC); DKI Apparel Pvt. Ltd. VAT S.A.No.137,138 of 2010 dt.28 Jul 2010 MSTT]

Q.2: Interest u/s 30(1)? u/s 30(2)? u/s 30(3)? u/s 30(4)?

Q.3: Penalty u/s 29? u/s 61(2)? Penalty accrued? Penalty levy Deferred? (Para 7(C) of Circular dt 3 May 2016)

Q.4: Return dues unpaid, Notice in Form 213 u/s 20 recd, is arrears in dispute? or a Statutory Order?

Q.5: Assessment dues, appeal not filed, Recovery notice recd, whether is arrears in dispute?

Issues & Imp Points in Settlement Scheme ...

Q.6: Non-appealable orders u/s 85 are Statutory Orders?

Q.7: **Appeal: Not filed?** (Arrears in dispute = ...and where appeal is filed... or Revision application under PT Act,...Any proceeding before Tribunal / HC/ SC .. *Para 4 of Circular dt 3 May 2016*)

Filed but late? Delay condoned? Appeal disposed off? Appeal by Dept? Restoration application pending? MISC Application hearing pending? Reference pending? Rectification pending? Writ?

Q.8: **Stay:** Application made but no hearing yet? Ad-interim? Interim? Final stay? PP not made? Stay not granted? Stay lapsed or over? Stay qua amt or qua days?

2. **Extent of waiver** shall be granted **in proportion of the payment made** of Requisite Amt (Sec. 6(5)); (*Para 8(vii) of Circular dt 3 May 2016*) **Immunity from prosecution?**
3. **No refund** of any amt paid (of arrears in dispute) before commencement of this Act or **under this Act** (Sec. 9)

...Other Points in Settlement Scheme

4. **Revocation of Settlement Order issued:** where it appears to DA that **applicant** has obtained the benefit of settlement, by **suppressing any material information** or particulars or by furnishing any incorrect or false information or, if any suppression of material facts, **concealment of any particulars is found in the proceedings related to search and seizure** under the relevant Act, then the DA may, **for reasons to be recorded** in writing and after giving the applicant a **reasonable opportunity of being heard**, may **revoke the order of settlement** issued. (Sec.10)
What time limit for revocation?
5. **Review of Settlement Order issued:** Commissioner may, on his own motion **within 12 months** from the date of service of order, call for the record of such order and **after notice of error in such order, in so far as it is prejudicial to the interest of revenue**, may serve on the dealer a notice and pass an order to the best of his judgement, where necessary. (Sec.11)
6. **State Govt** has powers to **issue Rules** under this Act & publish it. (Sec. 13)
7. Any Doubt, refer to respective JC / ADM Head of respective location of applicant (*Para 15 of Circular dt 3 May 2016*)

Example 1: Period upto FY 2004-05; Appeal Withdrawn Fully

Nature of Arrears	Dues as per Last Order	Disputed amt in Appeal	Requisite amt payable	Waiver amt
Tax	1,00,000	1,00,000	70,000	NIL
Interest	40,000	40,000	NIL	40,000
Penalty	60,000	60,000	NIL	60,000
Total Amt	2,00,000	2,00,000	70,000	1,00,000
Part Payment made in appeal		30,000		
Bal. Dues		1,70,000	70,000	1,00,000
Note: PAI/PAP			NIL	Fully

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Example 2: Period upto FY 2004-05; Appeal Withdrawn Fully

Nature of Arrears	Dues as per Last Order	Disputed amt in Appeal	Requisite amt payable	Waiver amt
Tax	1,00,000	1,00,000	NIL	NIL
Interest	40,000	40,000	NIL	20,000
Penalty	60,000	60,000	NIL	60,000
Total Amt	2,00,000	2,00,000	NIL	80,000
Part Payment made in appeal		1,20,000		
Bal. Dues		80,000	NIL	80,000
Note: PAI/PAP			NIL	Fully

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Example 3: Period FY 2005-06 to FY 2009-10; Appeal Withdrawn Fully

Nature of Arrears	Dues as per Last Order	Disputed amt in Appeal	Requisite amt payable	Waiver amt
Tax	1,00,000	1,00,000	70,000	NIL
Int u/s 30(2)	10,000	10,000	2,500	7,500
Int u/s 30(3)	30,000	30,000	7,500	22,500
Penalty	60,000	60,000	NIL	60,000
Total Amt	2,00,000	2,00,000	80,000	90,000
Part Payment made in appeal		30,000		
Bal. Dues		1,70,000	80,000	90,000
Note: PAI/PAP			NIL	Fully

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Example 4: Period FY 2005-06 to FY 2009-10; Appeal Withdrawn Fully

Nature of Arrears	Dues as per Last Order	Disputed amt in Appeal	Requisite amt payable	Waiver amt
Tax	1,00,000	1,00,000	NIL	NIL
Int u/s 30(2)	10,000	10,000	NIL	NIL
Int u/s 30(3)	30,000	30,000	5,000 or NIL?	15,000 or 20,000?
Penalty	60,000	60,000	NIL	60,000
Total Amt	2,00,000	2,00,000	5,000 or NIL?	75,000 or 80,000?
Part Payment made in appeal		1,20,000		
Bal. Dues		80,000	5,000 or NIL?	75,000 or 80,000?
Note: PAI/PAP			NIL	Fully

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Example 5: Period FY 2005-06 to FY 2009-10; Appeal Withdrawn Fully

Nature of Arrears	Dues as per Last Order	Disputed amt in Appeal	Requisite amt payable	Waiver amt
Tax	1,00,000	1,00,000	NIL	NIL
Int u/s 30(2)	10,000	10,000	NIL	NIL
Int u/s 30(3)	30,000	30,000	NIL	NIL
Penalty	60,000	60,000	NIL	50,000
Total Amt	2,00,000	2,00,000	NIL	50,000
Part Payment made in appeal		1,50,000		
Bal. Dues		50,000	NIL	50,000
Note: PAI/PAP			NIL	Fully

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Example 6: Period FY 2010-11 to FY 2011-12; Appeal Withdrawn Fully

Nature of Arrears	Dues as per Last Order	Disputed amt in Appeal	Requisite amt payable	Waiver amt
Tax	1,00,000	1,00,000	70,000	NIL
Int u/s 30(2)	10,000	10,000	10,000	NIL
Int u/s 30(3)	30,000	30,000	7,500	22,500
Penalty	60,000	60,000	NIL	60,000
Total Amt	2,00,000	2,00,000	87,500	82,500
Part Payment made in appeal		30,000		
Bal. Dues		1,70,000	87,500	82,500
Note: PAI/PAP			NIL	Fully

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Example 7: Period FY 2010-11 to FY 2011-12; Appeal Withdrawn Fully

Nature of Arrears	Dues as per Last Order	Disputed amt in Appeal	Requisite amt payable	Waiver amt
Tax	1,00,000	1,00,000	NIL	NIL
Int u/s 30(2)	10,000	10,000	10,000 or 5,000	NIL
Int u/s 30(3)	30,000	30,000	2,500 or 3750	27,500 or 31,250
Penalty	60,000	60,000	NIL	60,000
Total Amt	2,00,000	2,00,000	12,500 or 8,750	67,500 or 71,250
Part Payment made in appeal		1,20,000		
Bal. Dues		80,000	12,500 or 8,750	67,500 or 71,250
Note: PAI/PAP			NIL	Fully

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Example 8: Period FY 2010-11 to FY 2011-12; Appeal Withdrawn Fully

Nature of Arrears	Dues as per Last Order	Disputed amt in Appeal	Requisite amt payable	Waiver amt
Tax	1,00,000	1,00,000	NIL or 1,00,000?	1,00,000 or NIL?
Int u/s 30(3)	1,00,000	1,00,000	25,000 or NIL	75,000 or NIL?
Penalty	1,00,000	1,00,000	NIL	1,00,000
Total Amt	3,00,000	3,00,000	25,000 or 1,00,000?	1,75,000 or 1,00,000
Payment made after assessment but before filing appeal (Slide # 8)		1,00,000		
Bal. Dues		2,00,000	25,000 or 1,00,000?	1,75,000 or 1,00,000
Note: PAI/PAP		NIL	Fully	Note: PAP

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Example 9: Period FY 2009-10; Appeal Withdrawn Partly @ Tax @ 60%

Nature of Arrears	Dues as per Last Order	Disputed amt in Appeal	Tax Issues Pending in Appeal @40%	Requisite amt payable	Waiver amt
Tax	1,00,000	1,00,000	40,000	$(1L-50K) \times 60\% = 30,000$	NIL
Int u/s 30(2)	10,000	10,000	4,000	$(6K \times 25\%) = 1,500$	4,500
Int u/s 30(3)	30,000	30,000	12,000	$(18K \times 25\%) = 4,500$	13,500
Penalty	60,000	60,000	24,000	NIL	36,000
Total Amt	2,00,000	2,00,000	80,000	36,000	54,000
Part Payment made in appeal		50,000	20,000		
Bal. Dues		1,50,000	60,000	36,000	54,000
Note: PAI/PAP			???	NIL	Partly

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Example 10: Period FY 2011-12; Appeal Withdrawn Partly @ Tax @ 40%

Nature of Arrears	Dues as per Last Order	Disputed amt in Appeal	Tax Issues Pending in Appeal @60%	Requisite amt payable	Waiver amt
Tax	1,00,000	1,00,000	60,000	$(1L-50K) \times 40\% = 20,000$	NIL
Int u/s 30(2)	10,000	10,000	NIL	10,000	NIL
Int u/s 30(3)	30,000	30,000	18,000	$(12K \times 25\%) = 3,000$	9,000
Penalty	60,000	60,000	36,000	NIL	24,000
Total Amt	2,00,000	2,00,000	1,14,000	33,000	33,000
Part Payment made in appeal		50,000	30,000		
Bal. Dues		1,50,000	84,000	33,000	33,000
Note: PAI/PAP			???	NIL	Partly

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Thank you

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