

# Maharashtra Amnesty Scheme 2019

BY CA JANAK VAGHANI

# Amnesty Scheme-Relevant Notifications

- The Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Ordinance, 2019- Notified by Maharashtra Ordinance No. V OF 2019 dated 6th March 2019 Published in Official Gazette Part VIII.
- Order No. MMB-2019/1/ADM-8 dated 07/03/2019 for specifying forms and manner of submission of forms.
- Notification No. Sett/MMB-2019/1/ADM-8.dated the 7th March 2019 for notifying transactions that may constitute an Issues.
- Trade Circular No.9T of 2019 dated 08/03/2019.

# Duration of Scheme

- Duration of Scheme is in two phases
- Phase I 01/04/2019 to 30/06/2019
- Phase II 01/07/2019 to 31/07/2019
- Payment and applications both to be made during these periods.
- The specified period is divided in two parts periods up to 31/03/2010 and periods thereafter up to 30<sup>th</sup> June 2017.

# Applicable Acts

- The scheme is applicable to arrears of tax, interest , penalty and late fees payable under following Acts; -
- Bombay Sales Tax Act,1959
- Central Sales Tax Act,1956
- Maharashtra Value Added Tax Act,2002
- Maharashtra Tax on Entry of Goods into Local Area Act,2002

# Applicable Acts

- Maharashtra Tax on Entry of Motor Vehicle into Local Area Act, 1987 ,
- Maharashtra Tax on Luxuries Act, 1987,
- Maharashtra State Tax on Sugarcane Act, 1962,
- Bombay Sales of Motor Spirit Taxation Act, 1958,

# Applicable Acts

- Maharashtra Sales tax on Transfer of Right to use any Goods for any Purpose Act, 1985,
- Maharashtra Sales tax on Transfer of property in Goods involved in Execution of Works Contract Act, 1989 and
- Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975

# Specified Period

- Scheme Applies to arrears of tax payable under the relevant act for specified periods means
- Any period ending on 30<sup>th</sup> June 2017
- That is the date up to which vat was applicable and from 01/07/2017 GST was brought in to force.

# Specified Period

- However certain acts like Profession Tax and Vat act to specified goods like petrol and liquor etc. is still applicable
- But the scheme is not made applicable for dues payable for any periods after 30<sup>th</sup> June 2017.
- Requires to represent.



# Eligible Sum

- Arrears of tax, interest, penalty and late fees payable as per;-
- Any notice issued quantifying tax, interest and penalty payable by dealer,
- determined to be payable by the assessee where no notice in relation to any proceeding under the Relevant Act is issued,
- Returns filed or to be filed in amnesty,
- Amount payable as per any order.

# Eligible Sum

- Eligible sum is further divided in three parts
- Disputed tax,
- Undisputed Tax and
- Interest, penalty and Late Fees
- No amnesty for Undisputed Tax.
- The Amnesty is available for Disputed Tax , Interest, penalty and late fees. Late fees only for returns to be filed in amnesty periods.

# Disputed and Undisputed tax

- Disputed Tax is defined to be other than undisputed Tax.
- Undisputed tax is defined in section 2(q) of the Ordinance as under; -
  - Taxes Collected separately,
  - Deduction of tax collected allowed in any statutory order,
  - Taxes shown payable in any returns or revised returns in other words return dues,

# Disputed and Undisputed tax

- The deduction claimed or allowed for tax under rule 57 of the VAT Act or similar rules under other acts. That is of tax element in case of inclusive of sales price,
- Amount of forfeited in any order or excess collection of tax shown in any return , revised return or audit report etc.,

# Disputed and Undisputed tax

- Any amount of tax, interest or late fee recommended by vat auditor in his audit report and accepted by the dealer.
- Amount of tax deducted at source by the employer and
- Amount of tax collected at source.

# Disputed and Undisputed tax

- In other words any dues payable other than as per returns and advised by and auditor which forms part of undisputed tax.
- This could be as per statutory order of assessment, appeal, revision, rectification or as per order of High Court or SC.
- Due to ;-

# Disputed and Undisputed tax

- Dispute in rate of tax or composition,
- Disallowance of set off for any reasons like non eligibility , wrong claim in return, non payment of tax by vendor, mismatch or un-match of J1 or j2 etc. or refund claimed in return,
- Increase in taxable turnover for any reason including disallowance of tax free sales, goods return, forms etc. But to see if deduction of tax is granted then it forms part of undisputed tax and no amnesty for it but amnesty for interest and penalty can be availed.

# Disputed and Undisputed tax

- Disallowance of pending forms under VAT form 406 to 409 for subcontract and CST Act like C, E-1 or E-II, F, H, I or J,.
- In appeal most of dealers have made payment for pending forms so practically not useful to avail amnesty in tax for any pending forms . One can avail amnesty only for interest and penalty amount or for orders passed and appeal is pending one can avail the amnesty in tax , interest and penalty for pending forms
- Suppression of sales in returns and assessed in order,
- Tax payable on purchase from unregistered purchases in specified cases ,
- For any other reason.



# Amnesty for Partial Issue

- Amnesty can be availed for certain issues involved in any appeal filed against the order.
- It is not necessary to avail amnesty for full amount of tax payable as per order .
- However, when tax and interest and penalty is payable then amnesty can not be availed only for interest and penalty amount.

# Amnesty for Partial Issue

- The Commissioner by Notification, dated 07/03/2019 has notified following issue for partial amnesty;-
  - Tax payable for pending forms like C,F, H, E-I or E-II or I which are defective, partly received or not received,
  - Disallowance of set off due to purchases made from non genuine dealers, non filing of returns by vendor, purchase of goods from composition dealer, mis-match of set off, mistake in calculation of setoff, denial of set off , retention of set off ,

# Amnesty for Partial Issue

- Tax payable for disallowance of any claim or application of wrong rate of tax, or certain income treated as taxable.
- The applicant dealer will have to state the issue for which he is applying for amnesty and issues for which he is continuing appeal in application for withdrawal of appeal in form IA .

# Amnesty for Partial Issue

- It seems from the notification for any issue than notified, the amnesty can not be applied partially like suppression of sales etc.
- The notification should cover residuary clause any other reason.
- No provision is made to allocate any payment made in appeal for issues continued on the line of earlier amnesty to allocate it proportionately and also to determine sum eligible for amnesty and waiver thereof.

# Amount payable and Quantum of Amnesty

- The requisite amount payable is divided in two specified periods and for two phases of amnesty periods as under; -

# Amount payable and Quantum of Amnesty

For periods up to 31/03/2010	First Phase Amount payable	Amount waived	Second Phase Amount payable	Amount waived
Undisputed tax	100	0	100	0
Disputed Tax	50	50	60	40
Interest	10	90	20	80
penalty	5	95	10	90

# Amount payable and Quantum of Amnesty

For Periods from 01/04/2010 to 30/06/2017	First Phase Amount payable	Amount waived	Second Phase Amount payable	Amount waived
Undisputed tax	100	0	100	0
Disputed tax	70	30	80	20
Interest	20	80	30	70
Penalty	10	90	20	80

# Amount payable and Quantum of Amnesty

- Entry tax is eligible for set off under the MVAT Act. As such it is specifically provided to pay amount of entry tax payable after reducing amount of eligible set off if any under the MVAT Act.
- To the extent of amount not eligible for set off or any amount of set off retained is payable and along with interest and penalty as calculated above.
- For late fees amnesty is available only if returns are filed for amnesty periods i.e. April 2019 to June 2019.
- Any amount paid before 31/03/2019 is to be first adjusted towards undisputed tax, disputed tax, interest and penalty.



# Conditions

- 1) A separate application shall be made for each class of arrears.
- 2) The application shall be made online to designated authority in the prescribed form 1 for amnesty as per order and IA for others along with prescribed documents. The procedure is to be notified by separate circular to be issued by Commissioner of sales tax.
- 3) Where an applicant desires to settle the arrears of return in respect of a specified period, a separate application shall be made for each such return or revised return.

# Conditions

- 4) Provided where an application to settle dues under any return pertains to a single financial year then he can make one single application
- 5) No application shall be made for a Revised return made after 6th March 2019 which results in a reduction of tax or interest of both admitted, including due to adjustment of set-off.
- 6) However, this condition does not apply if the reduction is due to the payment of tax or interest by cash and the same was declared under revised return.

# Conditions

- 7) Every application shall be accompanied by the proof of payment of the requisite amount to be paid online in MTR 6 Challan.
- 8) There will be no waiver in respect of the undisputed tax but amnesty can be availed for interest including 30(2) and penalty.
- 9) No application shall be made who has taken credit of set-off in the electronic credit ledger unless the credit equivalent to the amount for which the settlement application is made is reversed by debiting the electronic ledger on or before the date of submission of an application for settlement.

# Conditions

- 10) Any appeal pending before the appellate, or the tribunal or the Court shall be withdrawn unconditionally by the applicant in Form II. Said Application for withdrawal of appeal should be submitted to the appellate authorities and proof thereof to be attached with application.
- 11) To make payment as per application or any defect notice within period of amnesty as well as to make application .
- 12) If payment is made in first phase and application is made in second phase then it will be considered to be made in second phase and to make short fall in payment as per second phase within second phase.

# Other Issues

- In no case amnesty shall be rejected. The applicant is eligible for proportionate amnesty to the extent of payment made.
- The provisions is made for rejection of application, issue of defect notice and opportunity to make payment in amnesty periods.
- Also provision is made to file appeal against any rejection order.

# Other Issues

- Even unregistered person can avail amnesty but need to provide clarity for filing of returns and payment by them.
- For profession tax applicable to self employed need to clarify the procedure for amnesty as it may be considered as disputed as there is no provision to file return by them.
- Need to issue instructions to issue notice in all eligible cases so the maximum number of persons can avail benefit.

# Other Issues

- In case of builders and developers for old periods up to 31/03/2010 the case is pending in SC and stay is granted from payment of interest. Many builders have given undertaking to refund the tax to flat buyers.
- They should be allowed to pay tax and avail amnesty for interest and continue the appeal for tax subject to refund tax in appeal.
- No refund of any amount paid in amnesty but any mistake in payment should be refunded.

# Other Issues

- They need to clarify whether each transaction for disallowance of set off is considered as an issue or parameter wise. Like set off disallowed for mismatch is an issue for any particular dealer or set off disallowed for all listed dealers is an issue.
- Now section 24 of the MVAT Act is amended to allow to make application for rectification of mistake for receipt of on line ledger confirmations after passing of the assessment order. The availability of such ledger confirmations may be considered for the purpose of decision to apply amnesty.



# Other Issues


- They should allow restoration of appeal withdrawn when application for amnesty is rejected for any reason. We have decision of tribunal in this respect.
- There should be separate policy and procedure for companies under NCLT as they can not make payment of dues to avail amnesty.
- They should provide procedure for applying by legal heir or companies struck off.

# Other Issues

- The dealer should be allowed to adjust any pending refund amount of subsequent period or earlier period against requisite amount payable under amnesty for any other periods.
- They should clarify elaborately procedure for availing amnesty for late fees for filing of returns as without payment of late fees returns can not be filed.

# Other Issues

- They should reconsider the definition of undisputed tax to include interest and late fee payable as per advise of vat auditor and accepted by dealer and thereby denying amnesty from interest and late fees.

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  - BE A PARTNER IN BUILDING A STRONG NATION