

PRESENTATION ON MAHARASHTRA SETTLEMENT OF ARREARS IN DISPUTE ACT, 2016

Period: April 2005 - March 2012

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PRESENTATION FLOW

- *BASIC UNDERSTANDING*
- *DETAILED INSIGHTS*
- *PROCEDURAL ASPECTS*
- *ISSUES*

What is Amnesty?

Dictionary Meaning-

“an official pardon for people who have been convicted of offences.”

Whether current scheme really Amnesty?

GOVT'S PROMISE-VDIS SCHEME (1997)

1. *Voluntary Disclosure of Income Scheme (1997)- Announcement by then Finance Minister- P. Chidambaram in order to harness black money for productive use.*
2. *Tax payable at the rate of 35% for Companies & 30% for Others on declared amount*
3. *Interest and penalty to be waived under the Scheme. Further Immunity from any action under the Income Tax, Wealth Tax and the Foreign Exchange Regulation Acts.*
4. *PIL by a private citizen in the Supreme Court that such schemes discourage honest tax payers and are unfair to them*
5. *In response to PIL filed, Affidavit had to be filed by the previous Government stating that there won't be another amnesty scheme like the VDIS.*

BASICS UNDERSTANDING OF THE SCHEME

STATUTORY DEVELOPMENTS



March 18, 2016

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



April 26, 2016

Maharashtra Settlement of Arrears in Disputes Act, 2016



May 3, 2016

Trade Circular No. 10T of 2016 & Annexures



June 30, 2016

1st set of FAQ's (Point no 1- 22)



July 7, 2016

2nd Set of FAQ's (Point no 23- 38)

HIGHLIGHTS OF THE SCHEME

Who can apply

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

Application to whom?

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

By when can be applied?

- By September 30, 2016

Benefits

(only for F.Y. 05-06 to 11-12)

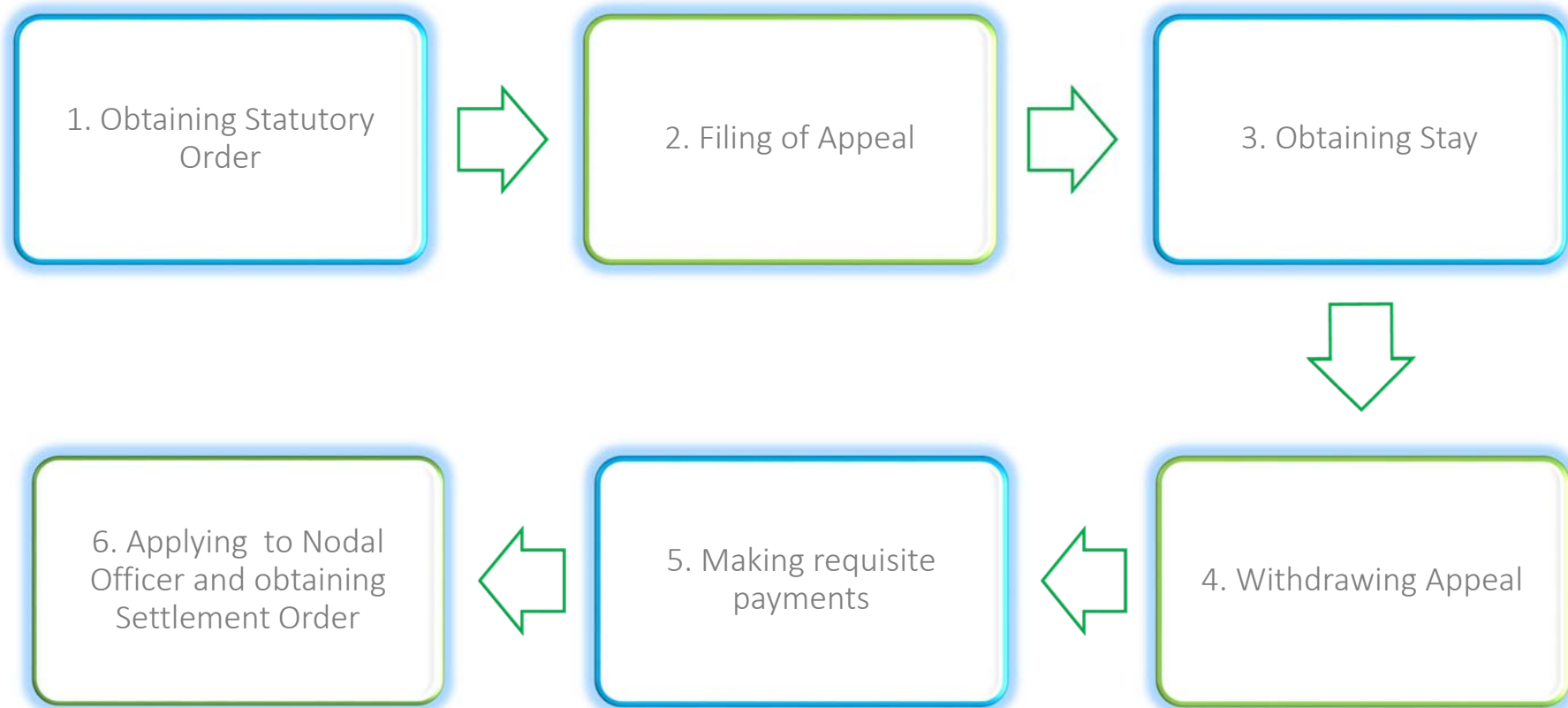
- 100% Tax Amount & 25% of Interest to be paid
- 75% of Interest & 100% Penalty to be waived
- Immunity from Prosecution

COVERAGE

No	State Laws
1	The Central Sales Tax Act, 1956
2	The Bombay Sales of Motor Spirit Taxation Act, 1958
3	The Bombay Sales Tax Act, 1959
4	The Maharashtra Purchase Tax on Sugarcane Act, 1962
5	The Maharashtra State Tax on Professions, Trades, Callings and Employment Act, 1975
6	The Maharashtra Sales Tax on the Transfer of the Right to use any Goods for any Purpose Act, 1985

No.	State Laws
8	The Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987
9	The Maharashtra Tax on Luxuries Act, 1987
10	The Maharashtra Sales Tax on the Transfer of Property in Goods involved in the Execution of Works Contract (Re-enacted) Act, 1989
11	The Maharashtra Tax on Entry of Goods into Local Areas Act, 2002
12	The Maharashtra Value Added Tax Act, 2002

STEPS INVOLVED



STEP 1- STATUTORY ORDERS

WHAT ARE STATUTORY ORDERS

“Section 2(9) “statutory order” means any order passed under the relevant Act, raising tax, interest or penalty payable by the applicant.”

Section	Type of Assessment
Section 23(1)	Ex-parte Assessment/ Bet Judgement
Section 23(2)/(3)	Full Assessment in case of returns filed in time or belated
Section 23(4)	Assessment of Unregistered dealer
Section 23(5)	Issue Based Assessment
Section 23(6)	Assessment of undisclosed transaction or wrong claim
Section 23(12)	Fresh assessment after cancellation
Section 61(2)	Penalty Order for non filing of audit report
Rule 9A of CST Act	CST Assessment
Section 26(5)	Order of 1 st & 2 nd Appeal

STEP 2- FILING OF APPEAL

FILING OF APPEAL- ISSUES

Scenarios	Clarifications	Remarks
What are appeals	Clarified	1 st Appeal, 2 nd Appeal, Revision application, proceeding before Tribunal, HC or SC
Due date for filing of new appeal	Indirectly Clarified	May be filed till September 30, 2016
Delay in filing of appeal	Clarified	If delay is condoned- Eligible If delay is not condoned- Not Eligible

STEP 3- OBTAINING STAY

OBTAINING STAY- ISSUES

Issue	Clarifications	Remarks
What are type of Stays	Clarified	<ul style="list-style-type: none"> • Ad-interim, • Interim & • Final Stay <i>(Clause 6A of Circular dated 03/05/2016)</i>
Ad-interim Stay expired	Clarified	<ul style="list-style-type: none"> • Stay should be effective at least till the time of withdrawal order <i>(Point 14 of FAQ dt 30/06/16)</i>
Non compliance of Stay Order for e.g. Amounts not paid as per Interim Stay Order	Clarified	<ul style="list-style-type: none"> • In case stay order is not complied i.e. amounts not paid as directed under Interim Stay, then interim stay becomes ineffective and accordingly condition would not be satisfied

STEP 4- WITHDRAWAL OF APPEAL

WITHDRAWAL OF APPEAL- ISSUES

Scenarios	Clarifications	Remarks
Format of withdrawal	Clarified	No format prescribed for withdrawal order. Acknowledgement given against receipt of application for withdrawal will not be counted
Part withdrawal- 'Issues' (Mismatch, Declaration Forms, etc.)	No clarification	Awaited
Credit of Part Payment in case of part withdrawal	Clarified	In proportion to the issues withdrawn
Withdrawn appeal can be restored?	Clarified	Independent proceeding

STEP 5- PAYMENTS

ARREARS IN DISPUTE [Section 2(2)]

TAX (100%)

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

INTEREST (25%)

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

PENALTY

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

UNDISPUTED ARREARS (100%)

INTEREST

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

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

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

The Settlement Act does not provide for above so. Circular binding?

Apportionment of Payment

Payment made in Appeal

1. Tax
2. Interest
3. Penalty

Payment made after
Order but before appeal

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

Excess paid

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

STEP 6- APPLICATION TO NODAL OFFICERS

APPLICATION TO NODAL OFFICER

- Application to be made before the 30th September 2016.
- Appeal to be withdrawn first and then to be applied
- The application shall be accompanied by:
 - (i) Form I
 - (ii) copy of the concerned statutory order,
 - (iii) stay order granted by the Appellate Authority, Tribunal or Court,
 - (iv) order of withdrawal of the appeal
 - (v) challans showing payment of the requisite amount
 - (vi) Challans showing payment of undisputed arrears

POST APPLICATION PROCESS

- Verification of contents and proofs of the application;
- Order of Settlement in Form IV to be passed within 30 days;
- Communication in Form II within 7 days in case of any discrepancies;
- Compliance of defects within 15 days;
- If defect is correctly complied, Settlement Order in Form IV to be passed within 30 days
- If defect is not correctly complied, application to be rejected post providing opportunity of being heard.
- If defect is regarding short payment, then benefit to be given proportionately

REMEDY POST ORDER

- Rectification of mistake apparent on record;
- Appeal against the order of rejection within 60 days
- Revocation of Settlement Order;
- Review of Settlement Order (within 12 months)

FORMS

FORMS

- Form I- Application for Settlement of Arrears in Dispute;
- Form II- Form of Defect Notice;
- Form III- Appeal against Rejection order;
- Form IV- Order of Settlement;
- Form V- Notice for Rectification of Mistakes;
- Form VI- Application for Rectification of Mistakes;
- Form VII- Order of Revocation
- Form VIII- Notice for Review

IMPORTANT POINTS

SOME EXAMPLES WHERE SCHEME MAY BE PREFERRED

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

ISSUES...

ISSUES (Appeals)...

1. Appeal filed after April 26, 2016

- Time limit prescribed for filing of Settlement Application- 30th September 2016
- FAQ No. 31- Should be accompanied by documents

2. Delay in Filing of Appeal

- Will the delay be condoned and admitted?
- FAQ NO. 23 & 25- If yes, Settlement may be preferred

3. Appeal by department

- Will the dealer be regarded as applicant?
- FAQ No. 34- Dues are undisputed by applicant and therefore Settlement scheme not available

...ISSUES (Interest)...

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

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

5. Interest in case of Builders

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

...ISSUES (Payments)...

6. Payment by single challan

- Payment of disputed arrears & undisputed arrears paid by single challan
- FAQ No. 16- Credit would be given subject to verification

7. Payment prior to appeal

- Suppose if 100% tax payment & 25% Interest in case of Hawala purchase is made prior to filing of appeal and then opted for Settlement Scheme.
- Whether credit of payment will be apportioned towards interest & Penalty first?
- Clause 6D and FAQ No. 28

8. Refund as per Assessment Order

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

...ISSUES (Audit Report & Restoration)...

9. Penalty u/s 61(2)- Non Filing of Audit Report

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

10. Restoration of Appeal in case of rejection

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

FAQ No. 30

...ISSUES (Part withdrawal)

11. Part Withdrawal of Appeal

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

12. Part Payment Credit in case of Part Withdrawal

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

THANK YOU