

PRESENTATION ON MAHARASHTRA SETTLEMENT OF ARREARS IN DISPUTE ACT, 2016

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BASICS UNDERSTANDING OF THE SCHEME

STATUTORY DEVELOPMENTS



March 18, 2016

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



April 26, 2016

Maharashtra Settlement of Arrears in Disputes Act, 2016



May 3, 2016

Trade Circular No. 10T of 2016 & Annexures



June 30, 2016

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



July 7, 2016

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



July 19, 2016

3rd Set of FAQ's (Point no 38- 41)

HIGHLIGHTS OF THE SCHEME

Who can apply

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

Application to whom?

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

By when can be applied?

- By September 30, 2016

Benefits

2005-06 to 2011-12:

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

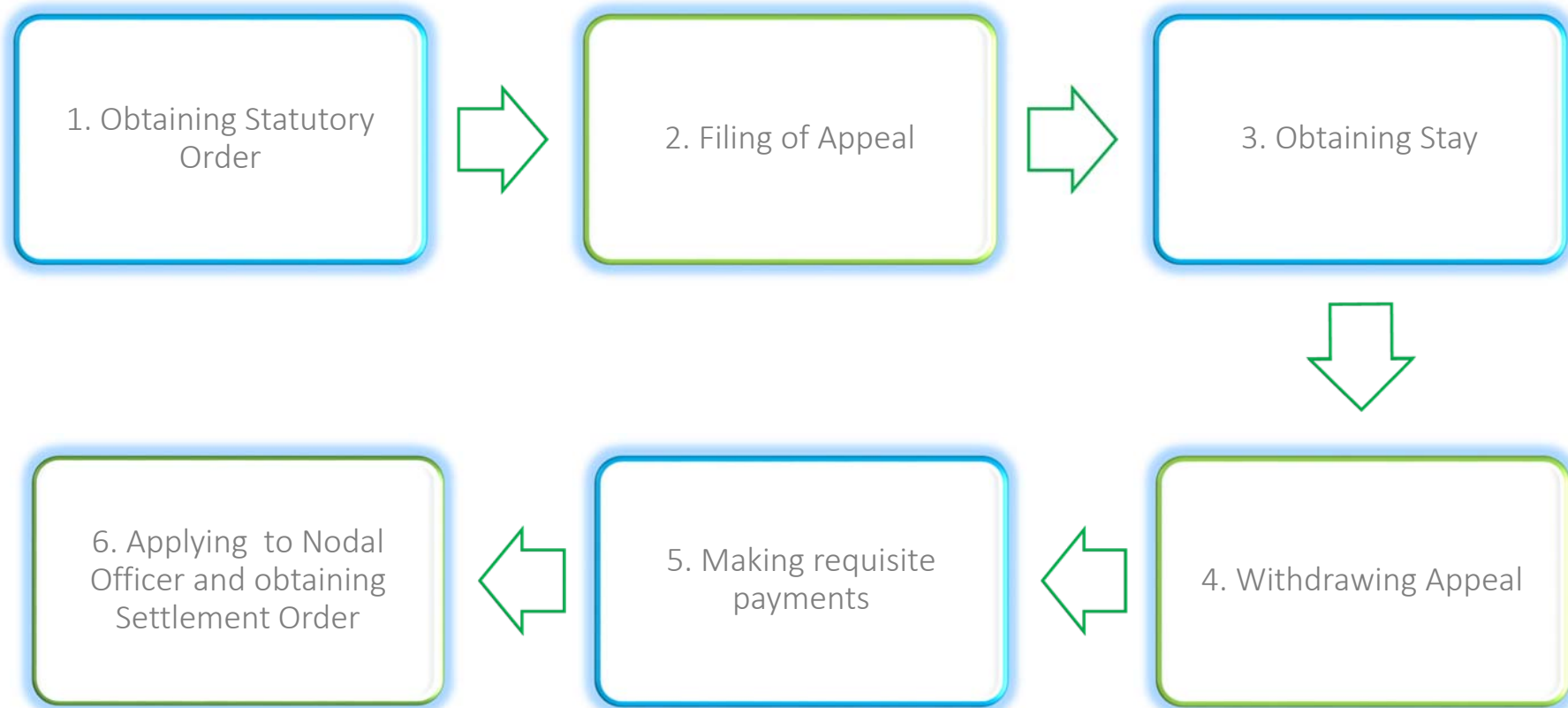
Prior to 2005-06

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

COVERAGE

No	State Laws	No.	State Laws
1	The Central Sales Tax Act, 1956	8	The Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987
2	The Bombay Sales of Motor Spirit Taxation Act, 1958	9	The Maharashtra Tax on Luxuries Act, 1987
3	The Bombay Sales Tax Act, 1959	10	The Maharashtra Sales Tax on the Transfer of Property in Goods involved in the Execution of Works Contract (Re-enacted) Act, 1989
4	The Maharashtra Purchase Tax on Sugarcane Act, 1962	11	The Maharashtra Tax on Entry of Goods into Local Areas Act, 2002
5	The Maharashtra State Tax on Professions, Trades, Callings and Employment Act, 1975	12	The Maharashtra Value Added Tax Act, 2002
6	The Maharashtra Sales Tax on the Transfer of the Right to use any Goods for any Purpose Act, 1985		

STEPS INVOLVED



PAYMENTS

ARREARS IN DISPUTE [Section 2(2)]

TAX (100%)

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

INTEREST (25%)

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

PENALTY

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

UNDISPUTED ARREARS (100%)

INTEREST

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

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

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

Apportionment of Payment

Payment made in Appeal

1. Tax
2. Interest
3. Penalty

Payment made after
Order but before appeal

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

Excess paid

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

BENEFITS

BEFORE 2005

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

2005 - 06 TO 2011 - 12

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

IMPORTANT POINTS

SOME EXAMPLES WHERE SCHEME MAY BE PREFERRED

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

ISSUES...

FILING OF APPEAL

1. What are Appeals

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

2. Appeal filed after April 26, 2016

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

3. Delay in Filing of Appeal

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

4. Appeal by department

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

OBTAINING OF STAY

1. What are type of Stay covered

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

2. Ad-Interim Stay expired.

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

3. Non Compliance of Stay Order

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

WITHDRAWAL OF APPEAL

1. Part Withdrawal of Appeal

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

2. Part Payment Credit in case of Part Withdrawal

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

3. Whether withdrawn Appeal can be restored automatically

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

Interest

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

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

2. Interest in case of Builders

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

CREDIT OF PAYMENTS MADE

1. Payment by single challan

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

2. Payment prior to appeal

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

3. Refund as per Assessment Order

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

PENALTY FOR LATE FILING OF AUDIT REPORT

1. Penalty for late filing of audit report

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

2. Audit report not filed

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

3. Two separate orders for same F.Y.

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

THANK YOU