

# **THE MAHARASHTRA SETTLEMENT OF ARREARS IN DISPUTE**

**Presentation By CA. Shailendra Jain**

**M/s. Shah Baheti Chandak & Co.**

a) Announced by Finance Minister in his budget speech on 18/03/2016.

b) With a view to unlock the arrears pending at the appellate forum.

c) Act No. XVI of 2016 has been published in Maharashtra Government Gazette dated 26th April 2016 and is titled as 'The Maharashtra Settlement of arrears in Disputes Act 2016'

d) **Applicability:-** Acts covered by the Settlement Act.

i) The Central Sales Tax Act, 1956

ii) The Bombay Sales Tax on Motors Spirit 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 Employment Act,1975

vi)Maharashtra Sales Tax on Transfer of  
Property 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 Tax on the Transfer of property in goods involved in the execution of Works Contract (Re-enacted) Act, 1989.

x)The Maharashtra Tax on Entry of Goods into Local Areas Act, 2002.

xi)The Maharashtra Value Added Tax Act, 2002.

## **Important terms defined as below:-**

(a) Arrears in Dispute:- Arrears in dispute includes tax, interest and penalty in respect of any statutory order that pertains to the period ending on or before 31<sup>st</sup> March, 2012 and where an appeal is filed with the appellate authority and stay has been granted either in full or part by the Appellate Authority Tribunal or court.

It is classified that following proceedings --- be considered as “appeals”.

(i) 1<sup>st</sup> appeal

(ii) 2<sup>nd</sup> appeal

(iii) Revision under the Bombay Sales of Motor Spirit Taxation Act. 1958, The Maharashtra Purchase Tax on Sugarcane Act. 1942 and The Maharashtra State Tax on Professions, Trades Ceiling and Employment Act, 1975.

(iv) Any proceedings before the Tribunal, High Court or Supreme Court.

(v) **Applicant** : “Applicant” means a person who desires to settle the arrears in dispute and also includes any other desiring person complying with the conditions. Thus, even the Financial Institutions, Banks , Official Assignees etc. can make application for settlement of arrears etc. can make application for settlement of arrears in dispute.



## **Designated Authority:-**

The authorities specified under sub-section (2) of section 10 of the MVAT Act shall be the designated authority for the purpose of Settlement Act.

## **Requisite Amount:-**

Means an amount required to be paid as specified under section 6 of the Act.

## **Statutory Order:-**

Means any order passed under the relevant Act raising dues of tax, interest or penalty payable by the applicant.

## **Conditions & Settlement:-**

- A) Application should be made on or before 30<sup>th</sup> September 2016.
- B) Application can be made for any period ending on or before 31<sup>st</sup> March, 2012.
- C) Application should be accompanied by

- i) Copy of Concerned Statutory Order.
- ii) Stay order granted by the Appellate Authority, Tribunal or Court
- iii) Order of withdrawal of the appeal or any proceedings pending before the Appellate Authority, Tribunal or Court
- iv) Challans showing payment of requisite amount.
- v) Challans showing payment of the amount of Undisputed Arrears

## **Clarifications issued by the department**

### **(A) Appeal etc. issues:-**

- i) Type of stay:- It includes ad-interim, interim and final stay order.
- ii) Withdrawal of appeal:- Appeal can be withdrawn fully or partly. In case of partial withdrawal, applicant to specify the details of issues in application.

### **(B) Payment to be made:-**

- (a) Make payment of requisite amount.

(b) Make payment of undisputed arrears of tax & interest.

(c) Undisputed arrears in relation to interest covers.

i) Amount of interest payable by the applicant pertaining to a period starting on or after 1<sup>st</sup> May, 2010 & ending on 31<sup>st</sup> March 2012.

a) U/s 30(2)& 30(4) of the MVAT Act 2002

b)U/s 6(1) of The Maharashtra Tax on Entry of Goods into Local Areas Act, 2002 [ r/w section 30(2) & 30(4) of MVAT Act, 2002] and

c)U/s 9(2) of the CST Act, 1956[r/w section 30(2) & 30(4) of the MVAT Act., 2002]

ii) Amount of interest payable under the Purchase Tax on Sugarcane Act, 1962, Profession Tax Act, 1975 ,Tax on Luxury

Act, 1987 Tax on Entry of Motor Vehicles Act., 1987 **will not be considered** as undisputed arrears.

- The application for Amnesty Scheme is to be made In form I in duplicate (2 copies)
- The following documents are to be attached to the application.
  - i) Copy of Statutory order against which settlement is sought for .
  - ii) Copy of the Stay Order.

iii) Original order of withdrawal of appeal.

iv) Copies of challans of payment of requisite amount and part payment.

- Challan to be used for payment of requisite amount Amount of disputed arrears is form MTR – 6, where the applicant has been granted TIN, where the applicant has not been granted TIN. Then in challan prescribed under the relevant Act.



- Proportionate benefit is available
- **Period for which benefit can be claimed:-**  
Benefit can be claimed for any statutory order passed the period up to 31/03/2012. It is not necessary that the order should be passed before 31/03/2012. The Statutory order can be passed any time i.e. upto 30/09/2016.
- **Time limit to make application:-**  
The application should be made on or before 30/09/2016.

## **Payment of requisite amount:-**

### **(a) In case of full withdrawal of appeal :**

- i) Entire amount of Tax out of arrears in dispute
- ii) If arrears of interest in dispute pertains to , -
  - Any assessment period upto 31<sup>st</sup> March 2005, no interest is to be paid
  - Assessment period starting after 1<sup>st</sup> April 2005 and ending with 31<sup>st</sup> March 2012 then applicant shall pay 25 percent of outstanding interest other than undisputed amount of interest.

## **(b)In case of partial withdrawal of appeal**

i) Entire amount of Tax relating to issues for which appeal is withdrawn.

ii) If arrears of interest in dispute pertains to:

- Any assessment period upto 31<sup>st</sup> March 2005, no interest is to be paid
- Assessment period starting after 1<sup>st</sup> April 2005 and ending with 31<sup>st</sup> March 2012 then pay 25 percent of outstanding interest other than undisputed amount of interest related to the issues withdrawn

## **Authority to whom applications is to be made:-**

- Where the case is allotted to a nodal officer - Application to be made to the nodal officer
- Where case is not allocated to nodal officer -
  - i) The Nodal JCST in Mumbai & Pune.
  - ii) Where office of JCST (VAT Adm.) to the JCST (VAT Adm).

## **Authority to whom applications is to be made:-**

- Where case is not allocated to nodal officer
  - i) The Nodal JCST in Mumbai & Pune.
  - ii) Where office of JCST (VAT Adm.) is situated to the JCST (VAT Adm).
  - iii) In other places, to the administrative head of the respective location.

However, for availing settlement of arrears under the Profession Tax Act, The application is to be submitted to the concerned Profession Tax Officer.

- **Benefits of the Settlement Act. To the applicant:-**

**(A)Interest and Penalty:** - If an applicant has preferred an appeal challenging only interest or penalty then he can make application with respect to such individual appeal.

(B)Penalty orders under section 61(2) of MVAT Act: If penalty has been imposed by separate order u/s 61(2) for any period up to 2011-12 and the dealer has filed form e 704 and also preferred appeal against the penalty order he may apply for settlement.

However, if any dealer has not filed e 704 so far he may file it and take benefit of settlement after complying with other conditions.

## **(C)Extent of waiver :-**

**(a)If the appeal is withdrawn in full :-**

➤ In respect of orders pertaining to period ending up to 31.03.2005 is withdrawn in full and requisite payment has been made then waiver would be.

(i) Total interest and penalty out of arrears in dispute

(ii)Total post assessment interest or the penalty whether such order has been passed or not .



➤ In respect of statutory order pertaining to period on or after 01.04.2005 and ending on 31.03.2012 is withdrawn in full and the applicant has paid requisite amount then the waiver would be

(i) Balance amount of interest arrived at, after payment of requisite amount of interest or undisputed arrears of interest.

(ii) Total amount of penalty out of arrears in dispute

(iii) Total post assessment interest or the penalty whether such order has been passed or not .

(b) Where the appeal is withdrawn with respect  
patrial issues

➤ In respect of assessment order pertaining  
to the period up to 31.03.2005 is  
withdrawn with respect to some of the  
issues and payment of requisite amount is  
made then waiver would be

(i) Corresponding amount of interest with  
respect to issues withdrawn

(ii) Corresponding amount of penalty with  
respect to issues withdrawn

(iii) Corresponding post assessment interest or the penalty with respect to issues withdrawn whether such order has been passed or not.

- In respect of assessment order pertaining to period starting on or after 01.04.2005 and ending on 31.03.2012 is withdrawn with respect to some of the issues and the applicant has made the payment of the requisite amount then the waiver would be

- (i) Balance amount of corresponding amount of interest arrived at after payment requisite amount of interest or undisputed arrears of interest with respect to issues withdrawn
- (ii) Total penalty with respect to issues withdrawn
- (iii) Total post assessment interest or the penalty with respect to issues withdrawn whether such order has been passed or not .

## **Procedure to be followed**

- An application in form I to be filed for settlement
- The designated officer shall verify the contents of the application as well as requisite proof attached
- If the application is incomplete or incorrect or the amount paid is insufficient the nodal officer will issue defect notice in form II within seven days from the date of receipt of application

- The applicant may, within 15 days from the receipt of defect notice should comply with and make the payment if any as advice by the nodal officer
- If the applicant complies with the defect notice, then the nodal office should pass settlement orders within 30 days from the date of compliance

- If applicant fails to comply with defects then the nodal officer after providing opportunity of hearing may pass rejection order within 30 days from the last date provided for the compliance.
- If the defect relates to short payment of requisite amount and the applicant fails to comply with the same then the benefit of settlement shall be given on proportionate and the nodal officer shall pass the order of settlement within 30 days from the last date provided for settlement.

## **Order of settlement**

- The nodal officer on satisfaction about the correctness of the application and fulfillment of condition shall pass an order of settlement within 30 days from the date of receipt of application in form IV the order shall specify the payment of tax or interest and the amount of waiver granted towards interest and penalty. Separate order under the relevant has to be filed in respect of each application.



## **Rectification of Mistake:-**

- In case of error apparent on face of records of on settlement order passed, the nodal officer on his own motion or on an application in form VI may rectify such error. The nodal officer shall pass rectification order within 30 days from the date of receipt of order of settlement rectification made offer issue of nation form 302 offer on opportunity of being heard.

- **11. Appeal against order of rejection:-**

- (1) Against order of rejection appeal can be filed on Form III

- **Order Passed by**

- **Appeal to be made to**

(A)(i) Sales Tax Officer

DCST

(ii) ACST

(B)(i)DCST

(ii)JCST

Additional CST

- (2) To be filed within 60 days from the date of receipt of rejection order.
- (3) No appeal lies against the order of settlement.

- **Revocation of Settlement Order:-**

- (i) Suppression of material information or particulars.
- (ii) By furnishing incorrect or false information
- (iii) By suppression of material facts, concealment of any particulars found in the Search and seizure
-

- **Revocation of Settlement Order:-**

- (i) Suppression of material information or particulars.
- (ii) By furnishing incorrect or false information
- (iii) By suppression of material facts, concealment of any particulars found in the Search and seizure
-

- **Review**

- Order passed under the Settlement Act can be received within 12 months from the date of order passed by the reviewing authority on noting an error prejudicial to the interest of the revenue after serving a notice in Form VIII.

-

## PRACTICAL QUESTIONS

Que 1: Assessment order under the BST Act is passed year entering 31.03.2004 on 25.03.2009 demand as per Assessment order is as follows:-

Tax Rs.	4,00,000/-
Interest Rs.	4,00,000/-
Penalty	<u>2,00,000/-</u>
<b>Total Rs.</b>	<b>10,00,000/-</b>
	=====

- Appeal is preferred and part payment of Rs. 3,00,000/- was ordered and paid. How much more amount to be paid to avail the benefit of settlement and the amount of waiver.

**Reply:-** Tax Rs. 4,00,000(-) part payment made Rs. 3,00,000/- Balance Rs. 1,00,000/- to be paid to avail the benefit of settlement. The entire amount of interest Rs. 4,00,000/- and penalty Rs. Rs. 1,00,000/- will be waived under amnesty along with past assessment penalty / interest.

Que 2: An assessment order under the BST Act is passed for the year ending 31.03.2004 on 25.03.2009. Demand as per assessment order is as follow:-

Tax	Rs. 4,00,000/-
Interest	Rs. 4,00,000/-
Penalty	Rs. <u>2,00,000/-</u>
Total	Rs. <u><u>10,00,000/-</u></u>



Appeal is preferred and part payment of Rs.4,00,000/- is was ordered and paid. How much more amount is to be paid to avail the settlement.

**Reply:-** Tax Rs. 4,00,000/- (-) part payment Rs.4,00,000/- nothing should be paid. The benefit available will be interest Rs. 4,00,000/- partly Ts. 2,00,000/- along with past assessment penalty and interest.

Que 3: An assessment order is passed under the BST Act, 1959 for the year ended 31.03.2004 on 25.03.2009 with dues position as under:-

Tax Payable	Rs. 4,00,000/-
Interest Payable	Rs. 4,00,000/-
Penalty	Rs. <u>2,00,000/-</u>
Total	Rs. <u><u>10,00,000/-</u></u>

- Appeal is preferred and part payment of Rs. 5,00,000/- was ordered and paid. How much amount to be paid to avail the benefit of settlement and the amount of waiver ?

**Reply :-** Tax payable Rs. 4,00,000/- (-) part payment Rs. 4,00,000/- = Balance Tax Nil, so nothing to be paid.

**Waiver interest:-** Rs.4,00,000/- (-) Balance of Part payment (5,00,000 – 4,00,000) 1,00,000/- =3,00,000/-

**Waiver Penalty :-** Rs.2,00,000/-

An assessment is order is passed under the BST Act, 1959 for the year ended 31.03.2004, on 25.03.2009 with dues position as under :-

## **Dues position :**

- Tax Rs. 4, 00,000/- The tax dues pertain to short grant of set off for two reasons, one
- Tax Rs. 4,00,000/- Due to reduction of set off for job work Rs. 20,00,000/- and Rs. 2,00,000/-.
- Tax Rs. 2,00,000/- Due to non payment of tax by the vender. Determine the amount payable and the waiver assuming the dealer wishes to contact appeal for reduction for job work. Part payment.

## Reply:-

Particulars	Tax	Part payment	Balance	Interest	Penalty
1) Amount to be paid for issues withdrawn	2,00,000/-	50,000/-	1,50,000/-	2,00,000/-	1,00,000/-
2) Tax for issues the withdrawn	2,00,000/-	50,000/-	1,50,000/-	2,00,000/-	1,00,000/-

**Balance to be paid Rs. 1,50,000/- and waiver would be of interest Rs. 2,00,000/- penalty Rs.1,00,000/-.**

Que 4: An assessment order has been passed for the year ending 31.03.2003 with dues as below:-

Tax forfeited                      Rs. 2,000/-

Sales Tax Payable    Rs. 2,000/-

Interest u/s 36(3)(b) Rs. 2000/-

Penalty u/s 37 (1)     Rs. 2000/-

-----

Rs. 8000/-

Part payment paid Rs.2,000/-

\* The appellant decides to withdrawn appeal related to forfeiture of excess collection, How much amount he should pay to avail the settlement and what will be waiver

## Reply:-

Particulars	Tax	Interest	Penalty	Part Payment	Balance to Pay
Issues withdrawn	2000/-	-	2000/-	2000/-	1000/-
Issues not withdrawn	2000/-	2000/-	-	1000/-	-

- Only Rs. 1,000/- will be payable of waiver still be Rs. 3,000/-. Please note that the entire interest pertains to Sales Tax and the forfeiture as per MSTT decision in the case of M/s. Industrial Oxygen Co. Ltd. (SA No. 1639 and 1994 or 25.02.1997 interest u/s 36(3)(3) is not taxable as soon forfeited is not covered by the definition of tax:
- Since penalty - u/s 37(1) is charges for excess collection of Tax, in solely pertain to the issue withdrawn.

**Que: 5** Assessment order pertain to 2004-05 total demand as below :-

Interest Rs. 1,00,000/-

Penalty Rs. 20,000/-

Total Rs. 1,20,000/-

\_\_\_ Part Payment Rs.30,000/-

**Reply :-** No amount is required to paid, waiver Rs. 90,000/-



Que 6: Assessment order pertain to 2005-06 total demand as below

Interest Rs. 1,00,000/-

Penalty Rs. 20,000/-

Total Rs. 1,20,000/-

Part Payment Rs.30,000/-

**Reply :-** No amount is required to paid, waiver Rs. 90,000/-

If Part Payment in above case would have been Rs. 20,000/-

Then amount to be paid Rs. 5000/-

Waiver Rs. 95000/-

Que 7: Assessment order passed for the year ending 31.03.2006 is passes with dues as below:-

Tax	Rs. 4,00,000/-	: Amount of part payment made Rs.3,00,000/-.
Interest	Rs. 4,00,000/-	: How much amount should be paid to avail the benefit.
Penalty	Rs. <u>2,00,000/-</u>	: The settlement of the amount of waiver.
	Rs. <u><u>10,00,000/-</u></u>	

**Reply:-**

Tax	Rs.4,00,000/- (-) part payment Rs.3,00,000/-	= Rs.1,00,000/-
Add: Interest @25%		Rs. <u>1,00,000/-</u>
To Pay		Rs. <u><u>2,00,000/-</u></u>
Waiver		Rs.5,00,000/-
		-----

**Reply:-**

Tax Rs.4,00,000/- (-) part payment Rs.3,00,000/-	= Rs.1,00,000/-
Add: Interest @25%	Rs. <u>1,00,000/-</u>
To Pay	Rs. <u>2,00,000/-</u>
Waiver	Rs.5,00,000/-
	=====

Que 8: Assessment order passed for the year ending 31.03.2006  
with below mentioned dues:-

Tax Rs.4,00,000/-

Interest Rs.4,00,000/-

Penalty Rs.2,00,000/-

Amount of part payment Make Rs. 4,00,000/-

How much amount should be paid to avail the benefit of settlement  
and the amount of waiver.

**Reply:-**

Tax Rs.4,00,000/- (-) part payment Rs.4,00,000/- = Nil

25% of interest Rs.1,00,000/-, to be paid to available benefit

Rs.5,00,000/- will be the amount to be waived.

- Order is passed on 31.03.2014 under CST Act with dues as below for the period ending
- 31.03.2011

- 

- Tax due to non submission of declaration in Form 'C' Rs. 4,00,000/-
- Interest U/s 30(2) of the MVAT Act Rs. 1,00,000/-
- Interest U/s 30(3) of the MVAT Act Rs. 3,00,000/-
- Penalty U/s 29(3) of the MVAT Act Rs.2,00,000/-

- 

-----

- To pay Rs.10,00,000/-

- 

=====

- **Reply :-**

- Tax due to non submission of declaration in Form 'C' Rs. 4,00,000/-
- Interest U/s 30(2) of the MVAT Act Rs. 1,00,000/-
- Interest U/s 30(3) of the MVAT Act Rs. 75,000/-
- Penalty U/s 29(3) of the MVAT Act Nil

- 

-----

- To pay Rs.5,75,000/-

- 

=====

- Waiver Rs. 4,25,000/-

- Que 9: Order is passed on 31.03.2014 under CST Act with dues as below for the period ending 31.03.2011

Tax due to non submission of declaration in Form 'C'	Rs. 4,00,000/-
Interest U/s 30(2) of the MVAT Act	Rs. 1,00,000/-
Interest U/s 30(3) of the MVAT Act	Rs. 3,00,000/-
Penalty U/s 29(3) of the MVAT Act	Rs. 2,00,000/-
	-----
To pay	Rs.10,00,000/-

The dealer has preferred an appeal. However only Ad-Interim-Stay has not been granted so far.

- How much amount should be paid by the dealer to avail benefit of amounts.

Reply:

Tax	Rs.4,00,000/-
Interest U.s 30(2)	Rs.1,00,000/-
Interest U/s 30(3)	Rs. 75,000/-
Penalty	Rs. Nil
To Pay	Total Rs.5,75,000/-

Que 10: What if in the above case Part Payment is fixed at Rs.5,00,000/- how much amount the dealer has to pay for settlement

• Tax	Rs.4,00,000/-
• Interest U/s 30(3)	Rs.1,00,000/-
•	-----
• Total	Rs.5,00,000/-
•	=====
• Interest U/s 30(2)	Rs.1,00,000/-
• Interest U/s 30(3)	Rs. 25,000/-
•	-----
• Pay	Rs.1,25,000/-

THANK YOU!

