



कर सल्लागार असोसिएशन रत्नागिरी जिल्हा

(TAX PRACTITIONER'S ASSOCIATION OF RATNAGIRI DISTRICT)

Soc. Reg. No : Maharashtra/5799/Ratnagiri dt 5-1-2017

BPT Regn No : F/5761/Ratnagiri dt 11-4-2017

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Date – 30th July 2019

To

The Dy Commissioner

State GST

Ratnagiri

Sub: Issues / Difficulties under the Settlement (Amnesty) Scheme 2019

Respected Sir,

The Ordinance regarding the Settlement of Arrears of tax, interest, penalty and late fee which were levied, payable or imposed respectively under various Acts administered by the Goods & Services Tax Department (Earlier known as Sales Tax Department) was issued on 07.03.2019.

Recently, on 09.07.2019 the said ordinance was converted into the Maharashtra Act No. XV of 2019 which was called as "The Maharashtra Settlement of Arrears of tax, interest, penalty and late fee Act, 2019" with suitable modifications in order to give effect to proposed amendments in the Budget.

According to the said Act the first phase is going to end on 31.07.2019. However, there are number of practical issues faced by the tax payers as well as tax practitioners' fraternity while dealing with the determination of disputed, un-disputed taxes and determination of requisite amount. The fact that a Circular is required to be issued as late as on 20th July 2019 requiring to clarify certain basic issues speaks volumes for difficulties faced or the clarity required on the subject.

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Some of the issues still lingering clarifications or as the case may be, requiring revisiting the FAQs issued earlier or the 'Technical issues' on the portal are narrated below-

1. There was no drop down provided in Form I & Form IA for tax under both the Entry Tax Acts. Due to the same, the dealers willing to pay requisite amount and apply for settlement scheme cannot avail the benefits under the scheme, though they are willing to apply for the same. This may deprived such dealers from the waiver under the settlement scheme.
2. In respect of the year 2016-17, the Department has issued notices for Issue Based Audit/Assessments in Form 603/302 to the dealers. In case of un-match, mis-match report, set-off is proposed to be disallowed in such notices. In order to comply with such notices, the dealer needs to obtain online ledger confirmations from the suppliers. However, no such utility for uploading online ledger confirmations is provided on MAHAGST site up till now. In absence of the same, it is not possible for the dealers to determine the portion of the differential tax payable in the matter of issue based proceedings. There is lot of time require to upload revised returns for the F.Y. 2016-17. In case of In such cases also the dealers are not able to apply for settlement scheme.
3. The main object of the settlement scheme is to reduce the huge number of appeals and to recover the major amount out of the stayed amount in appeals but due to lack of clarity in case of adjustment of part payment. In such cases, there is a grey area in adjustment of part payment made in appeals. There are certain issues in respect of the method of adjustment of the part payment against the disputed amount in appeals. There are specific issues in respect of FAQ No. 30 with Trade Circular No. 20T of 2019 dated 15.05.2019.
4. It may be noted that the Scheme provide for the working out the amount outstanding as on 1.4.2019 and then bifurcate such amount outstanding between 'disputed and undisputed' amount. This requires the dealer to reduce the amount paid as 'part payment' under section 26 [as amended by insertions of Sections 26(6) and Sec 26(6A)] at the time of filling appeal. Thus, the

objective of the Scheme is to find out the outstanding dues and not to work out/ compute the reasons/issues for which the dues are the still outstanding. It is observed that the Q 30 of 20T/ 2019 attempts to workout issue-wise part payment made. Pl. note that the amount paid in appeal is only part -payment made against THE ENTIRE amount [tax, interest and penalty] which is outstanding from the dealer and not qua the issue. The mechanism or the method of computation of the part-payment for grant of stay does not determine the issue-based dues outstanding. Thus, the approach taken in the said Circular appears to be far from the Scheme of Settlement Act or the objective of the Scheme.

5. Moreover, it would not be out of place to submit that in a case where appeal is continued and the dealer is in position of furnishing some of the pending declarations, the reworked liability would allow credit for the amount of taxes paid in totality and not qua the issue. Thus, the payment made as part-payment is purely a sum paid against the demand and not qua any issue although the method of computation could be whatever it is.
6. Similar issues are there in case of part withdrawal of appeals. It is not clear from the FAQ No. 31 given in the said Trade Circular whether the part payment should be adjusted on proportionate basis between appeal withdrawal and appeal to be continued or entire part payment amount to be considered. While uploading the Form I, entire part payment gets adjusted against the appeal to be continued, however, FAQ No. 31 says it should be pro-rata. In absence of Clarification in this regard, how it is possible to calculate the exact amount of requisite payment under settlement scheme?
7. Also, there is no clarity regarding the post assessment penalty/interest, whether to calculate the same or not to calculate the same. In FAQs different views are expressed in this respect. It led to confusion amongst the dealers. Also, there is no space provided for mentioning of the post assessment penalty/interest in Form I. The Scheme envisages no payment or computation or working out of PAI at all. Since the entire amount is sought to be waived under the Scheme, no useful purpose is served by computing the same and claiming waiver. The clarification in this respect is awaited.

8. In respect of dealers who are registered under old repealed Acts or whose TIN was cancelled prior to 31.03.2016, and who are willing to apply for amnesty are not able to create their profile on new MAHAGST system. Under BST era many Companies have different Registration Certificate numbers for their units at different locations, as the same was the requirement for packaged scheme of incentives. Now, they cannot obtain more than one TIN on single PAN. Because the system issues one TIN, Profile qua each PAN. Under the circumstances the dealers holding more than one registration certificates are not able to create profile on the system and therefore, right now they are deprived of obtaining waiver under the settlement scheme. In such cases a redressal is required to be provided by way of providing a solution for online application or in such cases instructions may please be issued to accept the applications in physical Form by the nodal officers. Till that time the doors of settlement should not be closed for such dealers.
9. In case of amalgamation of companies or companies which are merged with other companies, the PAN of the amalgamated companies have been cancelled as such companies ceased to exist. Such companies are also facing the above problem of profile creation.
10. In many cases the periodicity of URD period is not reflected on new MAHAGST web-site. Therefore, such dealers are not able to file returns for the URD period though they are willing to go for the settlement scheme.
11. It may also be noted that all the industries are already facing a severe working capital insufficiency due to awaited business process re-engineering under the light of GST regime and general economic slowdown. Many of dealers who are willing to pay the dues under the settlement scheme are trying to arrange for liquidity by way of sale of assets particularly real estate assets or availing of loans against properties held. These processes take a lot of time for execution and therefore, require important days to arrange the funds.
12. The assessment dues under Profession Act (PTRC) may please be treated as disputed dues. Specifically in cases where the tax is not deducted from the

salary of the employees and where the dues are not accepted in returns, the dues arise mainly due to the reason of interpretation of provisions under the PT Act and due to change of slab specified under the PT Act. For instance, in case if any employer has paid tax @ R.175/- per months and at the time of assessment assessing officer has included money paid to employee by way of reimbursement of expenses incurred by him in the salary and raises profession tax liability at higher rate i.e.Rs.200 per month, in such cases as per provisions of Settlement Act, the dues must be treated as disputed tax.

13. From last one month, there was heavy rain fall in entire konkan region. So here lot of problems faced by the peoples. Due to heavy rain, internal roads and highways are blocked and due to which peoples are not able to move from one place to another. Also there is electricity / internet shut down in many places and hence the dealers are not able to contact there consultant as well as not in position to make online application for settlement scheme. As far as Chiplun and Khed taluka is concern, peoples are under fear of flood water every day. Most of the shops and establishments of the dealer are under flood water.

14. In consideration of the above issues, we earnestly request that -

- 1) *The due dates of Phase I and Phase II of the said Act be further extended by a reasonable time;and*
- 2) *Suitable instructions and clarifications be issued and changes to the MahaGST portal be made after due consultation with the stakeholders.*

We hope that our suggestions shall be taken in the right spirit to help achieve the success of the Settlement Scheme in its true spirit.

For Tax Practitioners Association of Ratnagiri District

CA Mandar Gadgil
President

Adv Abhijeet Berde
Representation Committee Head

CC To:

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GST Bhavan, Mazgaon,
Mumbai – 400 010.

2) Mr. Babasaheb Gore, Dy. Commissioner of State Tax

GST Bhavan, Mazgaon,
Mumbai – 400 010

3) Addl. Comm. of State GST , Kolhapur

4) Deputy Commissioner of State GST, Ratnagiri