

OFFICE OF THE TRANSPORT COMMISSIONER-CUM- CHAIRMAN,
STATE TRANSPORT AUTHORITY, ODISHA, CUTTACK

CIRCULAR NO. 03 OF 2022

Hon'ble High Court of Orissa in the case of Sujit Kumar Dhir Vrs. RTO, Keonjhar, reported in 2014 (II) OLR 1070 held that where statutory remedy is available regarding imposition of penalty, same should be followed and penalty cannot be imposed without following procedure laid down under Section 13 (2) of OMVT Act, 1975.

After disposal of above case by Hon'ble High Court, number of cases are being filed before Hon'ble High Court challenging demand of penalty made by Taxing Officers on the ground that penalty was imposed without giving the party a reasonable opportunity of hearing. While disposing of the writ petitions of similar nature, Hon'ble High Court passes common order directing concerned Taxing Officer to act as per the judgment reported in 2014 (II) OLR 1070 (*supra*).

Government in Commerce and Transport (Transport) Department vide letter No.3178 dated 21.04.2022 instructed all Regional Transport Officers to give an opportunity of hearing / issue show cause notice to the defaulters before imposing penalty.

While adjudicating appeal / revision under OMVT Act, 1975 it is noticed that the Taxing Officers are not following due procedure before levy of penalty.

It is noticed that Tax Recovery Cases are instituted by Tax Recovery Officers to recover outstanding tax and penalty. In such cases amount of penalty included in mechanical manner by Tax Recovery Officers without following mandatory procedure before levy of penalty provided under Section 13 (2) of OMVT Act, 1975.

Excerpts of Section 13 (2) of OMVT Act, 1975 excerpts of which are reproduced below.

"13. Penalty for failure to pay- xx xx xx (2) The penalty imposed under subsection (1) shall be without prejudice to the liability, if any, that may be incurred under any of the other provisions of this Act or the rules made thereunder but no such penalty shall be imposed without giving the party concerned a reasonable opportunity of being heard."

Henceforth, following procedure may be followed before levy of penalty for non-payment of tax due within stipulated date and before institution of Tax Recovery Cases.

(a) Whenever tax due in respect of a motor vehicle is not paid within the due date i.e. on or before 15th of a month by the registered owner or the person having possession or control of a motor vehicle, within a week commencing from 16th of that month, a penalty proceeding case record will be opened by the Taxing Officer in respect of each defaulting vehicle containing case number and year. Date wise order sheet shall be maintained by the Taxing Officer.

(b) After opening of penalty proceeding case record, a show cause notice be issued to the defaulter by Speed Post asking him / her to file show cause as to why penalty shall not be levied upon him / her for non-payment of tax within due date as per table prescribed under Rule 9 (2) of OMVT Rules, 1976. Merely sending show cause notice to the defaulter will not suffice on the part of the Taxing Officer to proceed further for levy of penalty. It should be ensured that notice to show cause has been duly served upon the defaulter after verifying online delivery details from Speed Post Tracking or from concerned post office.

(c) In case the notice could not be served upon the defaulter through Speed Post, said notice be published in the news paper in form of an indicative advertisement under order 5, rule 20 of Civil Procedure Code. Detailed notice will be published in the

website. Cost of news paper publication and other expenses incurred shall be recovered from the defaulter by initiating Tax Recovery Proceeding under Schedule II of OMVT Act, 1975.

(d) After following above procedure to make service of notice to show cause sufficient, the Taxing Officer should proceed further by issuing another notice to the defaulter following similar process mentioned in clause (b) and (c) above directing the defaulter to appear before him for hearing.

(e) After providing adequate opportunity being heard to the defaulter, the Taxing Officer may proceed for levy of penalty and pass reasoned order in the penalty proceeding case record.

(f) After levy of penalty, the **Tax Recovery Officer** may initiate a Tax Recovery (TR) Case record to recover penalty and expenses following procedure laid down under Schedule – II of OMVT Act, 1975.

It is to be ensured that no penalty shall be imposed without following procedure laid down under Section 13 (2) of OMVT Act, 1975, law laid down by Hon'ble High Court of Orissa and above instruction to avoid further litigation regarding levy of penalty.


Transport Commissioner
Odisha

Memo No. 7037

dated 26/5/22

Copy forwarded to all Sr. Officers at Head Quarters / All D.C.Ts. / All RTOs for information and necessary action.

Copy to Computer Cell to host in the website / copy to Guard file.


Transport Commissioner
Odisha