

OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES: ODISHA,  
CUTTACK

No. 19539 /CT  
III (I) 38/09

Dt. 19 / 09 / 2013

**CIRCULAR**

Sub: Collection of taxes at the Check gates.

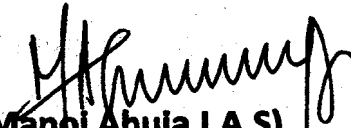
It has come to the notice of the undersigned that the officers in charge of Check gates are collecting taxes from registered dealers. The purpose of the check gates is to prevent or check avoidance or evasion of tax. The officers posted in the check gates are required to verify the goods brought in the vehicles passing through the check gates and see that the goods are covered by the relevant documents and waybills.

Sub-section (2) (a) of section 74 of the OVAT Act mandates that the driver or person-in-charge of every vehicle or carrier of goods in transit shall carry with him the records of the goods including challan and bilties, bills of sale or dispatch memos and prescribed declaration from or waybill duly filled in and signed by the consignor of goods. In sub-section (5) of the said section further provides that if the person-in-charge of the goods has violated clause (a) of sub-section (2) or submits false or forged documents or waybills, either covering the entire goods or a part of the goods, a penalty equal to five times of the tax livable on such goods or 20% of the value of the goods whichever is higher will be levied after giving a reasonable opportunity of being heard. Sub-section (7) further states that the goods may be released to the owner of the

goods or to any person duly authorized by such owner on payment of the penalty imposed under sub-section (5) in addition to tax payable thereon.

Therefore, if there is violation of clause (a) of sub-section (2) of section 74 OVAT Act or due to submission of false or forged documents or waybill, the course of action is collection of penalty in addition to tax. There can be no occasion where tax is collected but there is no collection of penalty. The earlier practice of collection of optional taxes at check gate and other places, leaving aside the penalty under OST Act was legally possible because the language of second provision of sub-section (3) of Section 16(A) of the OST Act authorized collection of tax and levy of penalty, which was regulated under another provision in section 16(C) of the said Act. But, under OVAT Act, once there is violation of clause (a) of sub-section (2) of section 74 or there is submission of false or forged document or waybill, there will be levy of penalty under sub-section (5) in addition to tax under sub-section (7) of the said section.

Hence, the check gate officers are required to keep in mind the cited provision under OVAT Act, 2004 and instructed herewith that ordinarily there will be no collection of VAT from registered dealers except in accordance with the provision of section 74 of the OVAT Act.

  
(Manoj Ahuja, I.A.S)  
Commissioner of Sales Tax  
Odisha