

## Building and Other Construction Workers' Welfare Cess Act 1996

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A] The Building and Other Construction Workers' Welfare Cess Act 1996 (the Act, popularly known as labour cess) was enacted with the aim of augmenting the resources of the Building and Other Construction Workers' Welfare Board constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996 (the Main Act). The Act was enacted on 19<sup>th</sup> of August 1996 but was given effect from the date of the ordinance that is third day of November 1995. This Act, however, has been amalgamated into Section 100-103 of the Code on Social Security 2020.

B] The function of the board as enumerated under section 22 of the Main Act in respect of the beneficiary (a registered building worker) are:

- a) providing immediate assistance in case of accident;
- b) making payment of pensions;
- c) sanctioning loans and advances;
- d) paying group insurance premium;
- e) assisting the education of children financially;
- f) making medical expenses for treatment of major ailments;
- g) making payment for maternity benefit;
- h) ensuring provision and improvement of other welfare measures.

C] Section 24 of the Main Act seeks to create a welfare fund wherein the grants and loans made by the central government, contributions by the beneficiaries and the cess received by the board shall be credited. The amount of the fund shall be applied towards discharging the functions under section 22 of the Main Act as well as remuneration and administrative expenses of the board. The remuneration and administrative expenses shall, however, not exceed 5% of the total expenses during a financial year.

### *Charging section*

D] Section 3 of the Act is the charging section which says that there shall be levied and collected a cess for the purpose of the Main Act at such a rate not exceeding 2% but not less than 1% of the cost of construction incurred by an employer. Government of India vide Notification No.S-61011/9/95-RW (S.O.2899) dated 26 Sep 1996 has determined the rate of cess as 1% of the cost of construction incurred by an employer.

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E] Employer has been defined in section 2(i) of the Main Act to mean owner of a residential establishment where the total cost of the construction exceeds Rs. 10 lakh; and includes the head of the department or the chief executive officer or the contractor in case of other establishment wherein the construction work is being carried on by the government, local authority and contractor respectively.

*Liability of employer or contractor*

F] It is not specified that whether the cess is to be paid by the owner or the contractor with respect to an establishment. Such a query has been partially addressed by the Courts in Builders Association of India v. UOI [(139) 2007 DLT 578] and New India Construction Company v. State of Haryana [Unreported but cited in (2011) ILLJ 307 P&H 3] by observing that under the scheme of the Act, the intention was not to confine the applicability of the Acts to the owner or the contractor but to cover both. The cess should be collected from either the owner or the contractor. The Court has also suggested that if the cess is not collected from the contractor then the same may be collected from the owner.

*Cost of construction*

G] Rule 3 of the Building and Other Construction Workers' Welfare Cess Rules 1998 (the Rule) clarifies cost of construction to include all expenditure incurred by an employer in connection with the building or other construction work but shall not include cost of land or any compensation paid under Workmen's Compensation Act 1923.

*Payment of cess*

H] The cess shall be paid by the employer to the cess collector within 30 days of completion of the construction project or final assessment of the cess payable [Rule 4(1)]. If the duration of the project or construction work exceeds one year then the cess shall be paid within 30 days of the completion of one year from the date of commencement of work and every year thereafter [Rule 4(2)]. The cess collector shall pay the amount so collected to the Board within 30 days of its collection [Rule 5(1) and 5(3)].

*Deduction at source*

I] The Act allows withholding of tax or advance collection of cess. Cess may be withheld by the government or public sector undertaking in their building or other construction work from the payment being made to the contractor [Sec 3(2) of the Act and Rule 4(3)]. The government or the public sector undertaking is allowed to deduct the cost of collection of such cess up to 1% of the amount collected [Sec

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3(3) of the Act and Rule 5(2)]. Cess so collected shall be deposited within 30 days of its collection [Rule 5(3)].

*Advance collection*

J] The local authority while approving the building or other construction work may make advance collection from the employer through a crossed demand draft in favour of the Board [Sec 3(2) of the Act and Rule 4(4)]. Since the amount collected by the local authority is in the form of a demand draft in favour of the Board, the local authority may have to claim the cost of collection up to 1% of the amount collected from the board [Sec 3(3) of the Act and Rule 5(3) though a doubt remains as to such claim for Rule 5(3) makes no mention of the local authority].

*Payment in advance*

K] An employer may also pay in advance to the Board the cess calculated on the basis of the estimated cost of construction along with the notice of commencement of work under section 46 of the Main Act [Rule 4(5)].

*Exemption*

L] The central government may exempt an employer or a class of employers in a state from the payment of cess if such cess is already levied and able under any corresponding law in force in that state [Sec 6 of the Act]. An employer or a class of employers may seek exemption by making an application to the Director-General of Labour Welfare, Ministry of Labour, Government of India, stating the details of works undertaken name of the Act or corresponding law in force in that state under which is liable to basis of the welfare of the construction workers and the amount of cess actually read along with the date of such payment and proof thereof [Rule 9(1)].

*Return*

M] Every employer within 30 days of commencement of his work or payment of cess, as the case may be, furnished to the assessing officer information in Form I. Any change or modification in the information furnished shall also be communicated to the assessing officer within 30 days of such change or modification. [Section 5 of the Building and Other Construction Workers Welfare Cess Act 1996 and Rule 6 of the Building and Other Construction Workers Welfare Cess Rules 1998]

*Assessment*

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N] On receipt of information in Form I from an employer, the assessing officer shall make a scrutiny of such information and on his satisfaction about the correctness of the particulars so furnished shall make an order of assessment within a period of six months from the date of receipt of such information indicating the amount of cess payable by the employer. Such order shall be endorsed and dispatched to the employer, board and to the cess collector within five days of the date of order. [Section 5(1) and Rule 7(1)]

O] Order of assessment shall specify the amount of cess due, cess already paid by the employer or deducted at source and the balance amount payable and the date within which the cess shall be paid by the employer [Section 5(3) and Rule 7(2)].

*Assessment on scrutiny*

P] If on scrutiny of information furnished the assessing officer finds that employer has under calculated the cost of construction and cess thereon then he shall issue notice to that employer for assessment of the cess. The employer on getting such notice shall furnish the reply within 15 days and furnish such other documents substantiating his reply. A personal hearing may also be provided by the assessing officer if requested by the employer. And if the employer fails to furnish the reply within the specified period then the assessing officer shall proceed to make that assessment on the basis of available records and other information. [Rule 7(4) & 7(5)]

*Assessment without return*

Q] If any person carrying on the building or other construction work liable to basis fails to furnish the return than the assessing officer shall give notice requiring such person to furnish the return before the date is specified in the notice [Section 4(2)]. And even after the notice if the person carrying on the building or other construction work does not submit the return then the assessing officer after making an enquiry assess the amount of cess payable and serve the order specifying the date in which the cess shall be paid by the employer [Section 5(2)].

*Revised assessment*

R] Where the assessing officer has passed an order of assessment and the employer decides to withdraw from or for a close the works or modify the plan of construction thereby reducing the cost of construction undertaken or has forced by other circumstances to all of the completion of the work undertaken, he may seek revision of the assessment order by making an information in Form II to the assessing officer giving details of such reduction or stoppage of work [Rule 8(1)]. Such revision shall be made by the assessing officer within 30 days of receipt of

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information [Rule 8(2)]; and endorse such revised order to the board the cess collector for making the refund of excess cess paid by the employer [Rule 8(3)]. The board shall within 30 days of the receipt of the endorsement from the assessing officer refund the amount to the employer [Rule 8(4)]. Where the applicability has modified the order of assessment reducing the amount of cess the refund shall be made within such time as may be specified in that order [Rule 8(5)].

*Interest*

S] If the cess is not paid by the employer within the specified time then such implied shall be liable to pay interest on the amount to be paid at the rate of 2% for every month or part of comprised in the period from the date on which such payment is due till such amount actually paid [Section 8].

*Penalty*

T] If any amount of cess payable by an employer is not paid within the data specified then it shall be deemed to be in areas and the penalty may be imposed after an enquiry by the assessing officer. However, not penalty shall be imposed if the default was for any good and sufficient reason [Section 9 and Rule 12].

*Recovery*

U] Any amount due under this Act (including any interests are penalty) from an employer may be recovered as an arrear of land revenue. For the purpose of recovery of cess, interest, or penalty the assessing officer shall prepare the certificate under his signature specifying the amount due and send it to the collector of the district concerned shall proceed to recover from the set employer the amount specified thereunder as if it were an arrear of land revenue. [Section 10 and Rule 13]

*Appeal*

V] Any employer aggrieved by any order of assessment or penalty may appeal to the appellate authority within three months of the receipt of such order and the appeal shall be accompanied with [Section 11 (1 & 2) and Rule 14 (1 & 2)]:

- a) the order appeal against;
- b) a certificate from the cess collected to the effect that the amount of cess or penalty relating to such appeal has been deposited;
- c) a fee equivalent to 1% of the amount dispute or penalty under such appeal;

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d) a statement of facts in dispute;

e) documentary evidence relied upon.

W] On receipt of any appeal the appellate authority may call from the assessing officer necessary statements forming the basis of his assessment order appealed against. And after giving the appellant an opportunity of being heard in the matter dispose of the appeal as expeditiously as possible [Section 11(3) and Rule 14(3&4)].

X] After being satisfying himself the appellate authority may either confirm the order of the assessing officer or modify it or remand back to the assessing officer to rectify the wrong. [Rule 14(5)]. Remanded back order shall be disposed of by the assessing officer within one month in view of the observations made by the appellate authority [Rule 14(6)]. The appeal shall be disposed of by making a speaking order and a copy of such order shall be sent to each of the appellant, the assessing officer and the board within five days of the date on which such order is made [Rule 14(9)]. An order in appeal reducing the amount of cess shall also asked the board to refund the excess cess [Rule 14(10)]. An order in appeal reducing, enhancing or confirming the orders of penalty shall also specify the date by which the amount of penalty should be paid / refunded [Rule 14(11)]. Order passed in appeal shall be final and shall not be called in question in any court of law [Section 11(4) and Rule 14(7)].

*Prosecution*

Y] Whoever being under an obligation to furnish a return furnishes a false return knowingly or being under an obligation to pay cess evades it shall be punishable with imprisonment or with fine or with both; however, the court shall take cognisance only on a complaint made by the authority of the central government [Section 12].

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