

**OFFICE OF THE COMMISSIONER OF LABOUR, A.P.
HYDERABAD**

Memo. No. C.Cell/799/2010

Dt. 05-03-2011.

Sub: The Building and Other Construction Workers (RE&CS) Act, 1996 and the Building and Other Construction Workers Welfare Cess Act, 1996 & Central Rules, 1998 – Levy and collection of Cess from The building and other construction works – Guidelines for Cess Assessing Officers – Issued - Reg.

Ref: 1. Orders of Hon'ble High Court of A.P. in W.P.No 4587/2008 and batch Dated 15-07-2008.

2. G.O.Ms.No. 3 of LET & F (Lab-II) Dept, dated 20-01-2009.

3. G.O.Ms.No. 4 of LET & F (Lab-II) Dept, dated 20-01-2009

4. G.O.Ms.No. 84 of LET & F (Lab-II) Dept, dated 16-09-2009.

5. G.O.Ms.No. 111 of LET & F (Lab-II) Dept, dated 15-12-2009.

6. G.O.Ms.No. 112 of LET & F (Lab-II) Dept, dated 15-12-2009.

7. G.O.Ms.No.75 of LET&F (Lab-IV) Dept, dated 24-8-2010.

8. Orders of Hon'ble Supreme Court of India in W.P.No.(Civil) 318/2006, dated 18-01-2010.

9. Observations made by the CAG of India, on the audit held during the period from 29-09-2010 to 27-10-2010.

10. Alert Note Nos. 94, 134 & 56 of Vigilance & Enforcement Department circulated through the Memo No. R1/5175/2009 of COL, dated 18-11-2009.

The attention of all the JCLs, DCLs and ACLs in the state is invited to the references cited. The Government of India have enacted progressive legislations (1) The Building and Other Construction Workers (RE&CS) Act, 1996 and (2) The Building and Other Construction Workers Welfare Cess Act, 1996, for regulating Safety and Health and conditions of service of construction workers and also to provide various benefits to them and a notification dated 26-09-1996 of MOL, GOI, has been issued to levy and collect 1% Cess on the cost of construction.

In this regard the Hon'ble Supreme Court of India in W.P. Civil No. 318/2006, dated 18-01-2010, interalia, has directed all the State Government Departments to levy and collect Cess continuously from all the Government and Private establishments and to utilize the fund for the benefit of registered construction workers.

The Hon'ble High Court of A.P. through the reference 1st cited, interalia, has directed all Government departments to levy and collect cess from the establishment's

w.e.f. 26-06-2007. In pursuance of the orders of the Hon'ble High Court, the Government have issued orders in G.O. Ms. No. 84 of LET & F (Lab-II) Department, dated 16-09-2009, constituting "District Coordination Committees" for levy and collection of Cess and to submit a monthly report in the matter. In spite of the said instructions most of the DCLs have not convened District Coordination Committee meetings and none of the DCLs have taken up follow up action and submitted reports.

Through the reference 2nd cited, the Government have issued orders appointing the officers of Labour Department i.e., JCLs, DCLs and ACLs as **Cess Assessing Officers**, under the provisions of the B&OCWW Cess Act, 1996 and Central Rules, 1998, for levy of Cess and issue of assessment orders on the cost of construction. Through the reference 3rd cited, the Government have also issued orders appointing Appellate authorities i.e., Commissioner of Labour, JCLs and DCLs to hear appeals on assessments made by the Assessing Officers under the Building and Other Construction workers' Welfare Cess Act, 1996 and Rules.

Through the references 5th & 6th cited, the Government have issued orders to all Government departments and Local Bodies for levy and collection of Cess / and deduction of Cess at source from the gross bills of the principal employers / contractors in respect of the construction works / projects undertaken from time to time by the Government departments / organisations and for collection of Cess by Local Bodies while approving plans in respect of private constructions.

The Vigilance and Enforcement Department has also inspected certain construction projects in the State during the year 2009 and 2010 and found that the Cess was not assessed and collected by the officers of the Labour Department that resulted in substantial amount of Cess evaded by the principal employers / contractors and in this regard the Vigilance & Enforcement authorities have communicated Alert Note Nos. 94, 134 & 56. These Alert Notes were also communicated to all Assessing Officers in the State vide reference 10th cited and their compliance is also awaited. The same has also been pointed out by the CAG during the course of recent audit. The Vigilance and Enforcement Department is persistently reminding this office on compliance of the **Alert Notes** communicated by them.

The Comptroller and Auditor General audited the accounts of the A.P. Building and other Construction Workers Welfare Board, during the period from 29-09-2010 to 27-10-2010 for the years 2007-08 to 2009-2010 and communicated Audit Reports for the said years and required immediate compliance. It has been interalia pointed out the following by CAG on collection of Cess for immediate compliance:

- 1. The Assessing Officers were merely accepting the payment of Cess by the employers without the requisite return in Form-I.**
- 2. In cases of submission of Form-I on the cost of the construction employers, the same are accepted without verifying the information so furnished by the employer.**
- 3. The returns filed by the employers were not supported by the documentary evidence to substantiate the cost of construction arrived by them.**
- 4. Although the Rule 7 (6) of the B&OCW Cess Rules 1998, enable the Assessing Officers to authorize the designated officer to make enquiries at the work site or from the documentary evidence, no such efforts were made by the Assessing Officers.**
- 5. Most of the notices issued by the Assessing Officers did not contain the due date for payment of the Cess.**
- 6. Certain Assessing Officers have in-correctly assessed Cess amounts.**
- 7. Certain Assessing officers have not recovered the Cess in accordance with the reports of the Vigilance & Enforcement Department.**
- 8. The collection of Cess is very poor despite hectic construction activities undertaken in various Districts.**

Keeping in view the above, it is considered expedient to issue necessary guidelines to all the **Assessing officers and Appellate Officers** for levy and collection of Cess in compliance of the provisions of the Act and on the directions of the Hon'ble Supreme Court of India in W.P. (Civil) No.318/2006, dated 18-01-2010 and High court of A.P. in W.P.No.4587/2008 and batch and also observations of Comptroller and Auditor General of India-thereon, so as to utilize the fund collected towards the benefit of the registered construction workers.

The performance of the Assessing Officers and Appellate Officers would be reviewed by the Commissioner of Labour who is the notified Chief Inspector under the B&OCW Act, 1996, during the course of monthly review meetings.

The Joint Commissioners of Labour at the Zonal Level shall also review the performance of the DCLs and ACLs working under their control and ensure that the directions herein are scrupulously followed and Cess is collected in time and remitted to A.P. Building and Other Construction Workers Welfare Fund.

In order to timely levy and collection of Cess and to comply with the provisions of the Building and Other Construction Workers Welfare Cess Act, 1996 and Rules, 1998, made thereon, **the guidelines to the Assessing Officers and Appellate Officers are hereby enclosed along with connected material papers for strict compliance and to maintain the Cess assessment records.**

The Cess Assessing Officers and Appellate Officers are informed that any deviation of the guidelines and provisions of the B&OCWW Cess Act and Rules would be viewed seriously.

Encls: Guidelines.

**Sd/- Dr. H.K.Nagu,
Commissioner of Labour (FAC)**

To
All the Joint Commissioners of Labour in the State
All the Deputy Commissioners of Labour in the State
All the Assistant Commissioners of Labour in the State

// F B O //

Asst. Commissioner of Labour &
Administrative Manager
A.P.B&OCWW Board

GUIDELINES ON LEVY AND COLLECTION OF 1% CESS FROM THE ESTABLISHMENTS OF THE CONSTRUCTION PROJECTS UNDER THE PROVISIONS OF THE BUILDING AND OTHER CONSTRUCTION WORKERS WELFARE CESS ACT, 1996 AND CENTRAL RULES, 1998.

1. INTRODUCTION OF RULES, NOTICES AND FORMAT OF RETURNS.
2. MANNER OF COLLECTION OF CESS FROM GOVERNMENT PROJECTS INCLUDING SOURCE OF CESS
3. MANNER OF COLLECTION OF CESS FROM PRIVATE ESTABLISHMENTS INCLUDING SOURCE OF CESS
4. STEPS TO BE TAKEN BY THE CESS ASSESSING OFFICERS.

INTRODUCTION ON RULES, NOTICES AND FORMAT OF RETURNS

A BRIEF NOTE ON THE PROVISIONS OF THE B&OCW ACT, 1996 AND THE B&OCWW CESS ACT, 1996.

1. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (Main Act) and the Building and Other Construction Workers' Welfare Cess Act, 1996 (Cess Act) and the Cess Rules, 1998 are enacted by the Central Government with an objective to collect Cess from the employers who were undertaking construction activity and to implement welfare measures to the construction workers who were registered as beneficiaries with the Building and Other Construction Workers' Welfare Boards constituted by the State Governments. Besides, there are provisions for enforcement of regulatory conditions for safety, health and welfare of the workers working in the construction activity. The State Rules have been framed under the main Act and the Andhra Pradesh Building and Other Construction Workers' Welfare Board, has been constituted by the Government during the year, 2007.
2. The following are the important provisions of the Main Act and the Cess Act:
 - (a) "Building or Other Construction Work" has been defined as.... "the construction, alteration, repairs, maintenance or demolition, of or, in relation to buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, water courses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other works as may be specified in this behalf by the appropriate Government by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948 or the Mines Act, 1952 apply;
 - (b) The Act applies to every Establishment - which employs, or had employed on any day of the preceding 12 months, ten (10) or more building workers in any building or other construction work. The term "Establishment" means any establishment belonging to or under the control of, **Government, any body corporate or firm, an individual or association or other body of individuals which or who employs building workers in** any building or other construction work; and includes an establishment belonging to a contractor, but **does not include an individual who employs such workers in any building or construction work in relation to his own residence the total cost of such construction not being more than rupees ten lakhs.**

- (c) Under the Acts, Central Government is the Enforcement Authority for Establishments for which the Central Government is the Appropriate Government; whereas the State Government is the enforcement Authority for Establishments for which the State Government is the Appropriate Government. However, the Cess is to be collected under the Cess Act from the Central Government Establishments also and shall be credited to the A.P. Building & Other Construction Workers Welfare Fund which was created under section 24 of the B&OCW Act, 1996 and the same has to be administered by the A.P. Building and Other Construction Workers Welfare Board, Hyderabad, for providing benefits under various welfare schemes to the construction workers who are registered as beneficiaries to the Board.
- (d) **The Cess shall be collected by the Cess Assessing Officers from all the Establishments including the establishments of the Central Government Departments / organizations which undertake “the building or other construction activity” in Andhra Pradesh and to be credited to the A.P. Building and Other Construction Workers Welfare Fund which was created under the Main Act, for providing welfare benefits to the construction workers.**

(3) Levy and Collection of Cess:

Sec. 3 of the Building and Other Construction Workers Cess Act, 1996, stipulates as follows.

(1) “There shall be levied and collected a Cess for the purposes of the Building and Other Construction Workers (RE&CS) Act, 1996, at such rate not exceeding two per cent, but not less than one per cent, of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time specify.

(2) The Cess levied under sub-section (1) shall be collected from every employer in such manner and at such time, including deduction at source in relation to a building or other construction work of a Government or of a Public sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required, as may be prescribed.

(3) The proceeds of the Cess collected under sub-section (2) shall be paid by the local authority or the State Government collecting the Cess to the Board after deducting the cost of collection of such Cess not exceeding one per cent, of the amount collected.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Cess leviable under this Act including payment of such Cess in advance may, subject to final assessment to be made, be collected at a uniform rate or rates as may be prescribed on the basis of the quantum of the building or other construction work involved.

Rule 4 of the Building and Other Construction Workers Welfare Cess Rules, 1998, stipulates as follows:

(1) The Cess levied under sub-section (1) of Section 3 of the Act shall be paid by an employer, within thirty days of completion of the construction project or within thirty days of the date on which assessment of Cess payable is finalized, whichever, is earlier, to the Cess collector.

(2) Notwithstanding the provisions of sub-rule (1), where the duration of the project or construction work exceeds one year, Cess shall be paid within thirty days of completion of one year from the date of commencement of work and every year thereafter at the notified rates on the cost of construction incurred during the relevant period.

(3) Notwithstanding the provisions of sub-rule (1) and sub-rule (2), where the levy of Cess pertains to building and other construction work of a Government or of a Public Sector Undertaking, such Government or the Public Sector Undertaking shall deduct or cause to be deducted the Cess payable at the notified rates from the bills paid for such works.

(4) Notwithstanding the provisions of sub-rule (1) and sub-rule (2) where the approval of a construction work by a local authority is required, every application for such approval shall be accompanied by a crossed demand draft in favour of the Board and payable at the station at which the Board is located for an amount of Cess payable at the notified rates on the estimated cost of construction.

Provided that if the duration of the project is likely to exceed one year, the demand draft may be for the amount of Cess payable on cost of construction estimated to be incurred during one year from the date of commencement and further payments of Cess due shall be made as per the provisions of sub-rule (2).

(5) An employer may pay in advance an amount of Cess calculated on the basis of the estimated cost of construction along with the notice of commencement of work under Sec. 46 of the Main Act by a crossed demand draft in favour of the Board and payable at the station at which the Board is located.

Provided that if the duration of the project is likely to exceed one year, the demand draft may be for the amount of Cess payable on cost of construction estimated to be incurred during one year from the date of such commencement and further payment of Cess due shall be made as per the provisions of sub-rule (2).

(6) Advance Cess paid under sub-rules (3), (4) and (5) shall be adjusted in the final assessment made by the Assessing Officer.

(4) Furnishing of Returns:

Sec. 4 of the Building and Other Construction Workers Welfare Cess Act, 1996 stipulates as follows:

(1) Every employer shall furnish such return to such officer or authority, in such manner and at such time as may be prescribed.

(2) If any person carrying on the building or other construction work, liable to pay the Cess under Section 3, fails to furnish any return under sub-section (1), the officer or the authority shall give a notice requiring such person to furnish such return before such date as may be specified in the notice.

(5) Assessment of Cess:

Sec. 5 of the Building and Other Construction Workers Welfare Cess Act, 1996 stipulates as follows:

(1) The officer or authority to whom or to which the return has been furnished under Section 4 shall, after making or causing to be made such inquiry as he or it thinks fit and after satisfying himself or itself that the particulars stated in the return are correct, by order, assess the amount of Cess payable by the employer.

(2) If the return has not been furnished to the officer or authority under sub-section (2) of Section 4, he or it shall, after making or causing to be made such inquiry as he or it thinks fit, by order, assess the amount of Cess payable by the employer.

(3) An order of assessment made under sub-section (1) or sub-section (2) shall specify the date within which the Cess shall be paid by the employer.

(6) Information to be furnished by the employer:

Rule 6 of the Building and Other Construction Workers Welfare Cess Rules, 1998 stipulates as follows:

(1) Every employer, within thirty days of commencement of his work of payment of Cess, as the case may be, furnish to the Assessing Officer, information in Form-I.

(2) Any change or modification in the information furnished under sub-rule (1) shall be communicated to the Assessing Officer immediately but not later than thirty days from the date of affecting the modification or change.

(7) Powers of Assessing Officers and other officers:

Rule 10 of the Building and Other Construction Workers Welfare Cess Rules, 1998 stipulates as follows:

An Assessing Officer, or an officer authorized under sub-rule 6 of Rule 8, if empowered by the State Government under Sec. 7 of the Act, may –

- (a)** enter any establishment where building and other construction work is going on;
- (b)** make an inventory of materials, machinery or other articles laying at the work place;
- (c)** enquire about the number of workers engaged in various activities;
- (d)** require the production of any prescribed register or any other documents relevant to the assessment of cost of construction or numbers of workers employed;
- (e)** seize or take copies of any such records;
- (f)** make general assessment of the stage of the construction work having been completed;
- (g)** direct the employer or any other person in charge of the place that no material or machinery shall be removed or disturbed for so long as is necessary for the purpose of any examination;
- (h)** take measurement, notes or photographs;
- (i)** Exercise such other powers considered absolutely necessary for reasonable assessment of cost of construction.

Note: Model Notice for Principal employers / contractors of private and the contractors of Govt. Establishments

GOVERNMENT OF ANDHRA PRADESH
LABOUR DEPARTMENT
o/o JCL / DCL / ACL _____ District

NOTICE-I

No. C.Cell B&OCWAct / /2011.

Dated: -01-2011.

From

To

.....
.....

Andhra Pradesh,
Hyderabad.

Sir,

Sub: Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (Central Act 27 of 1996) (Main Act), the Building and Other Construction Workers' Welfare Cess Act, 1996 (Central Act 28 of 1996) (Cess Act) and Building and Other Construction Workers' Welfare Cess Rules, 1998 – Compliance with the statutory provisions and Payment of Cess – Reg.

Ref: Brief Note on provisions of the B&OCW Act, 1996 and the B&OCW Cess Act, 1996.

I invite your attention to the reference cited, wherein the important provisions of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (Central Act 27 of 1996) (Main Act), the Building and Other Construction Workers' Welfare Cess Act, 1996 (Central Act 28 of 1996) (Cess Act) have been explained with a request to you to pay 1% Cess on the estimated cost of construction by deducting from the Bills paid to the Contractors (for Government Department / Government organization or Public sector undertakings).

In this connection, I would like to invite your attention once again to the definition of the “building or other construction work” (Section 2 (d) of the Main Act) wherein it was categorically mentioned that construction, alteration, maintenance, repairs and demolition of Building or construction work is covered. Your organization is involved in all / some of the above activities and is under the Main Act and Cess Act required to pay Cess. The Cess Act has come into force from the year 1998 by a notification of Central Government specifying 1% Cess, but in Andhra Pradesh, the Cess is being collected from 26-06-2007 onwards as the amended A.P.

Rules issued by the Government vide G.O.Ms.No.57 came into force w.e.f. 26-06-2007. Hence notice is hereby issued for the payment of Cess @ 1% on the estimated cost of construction (.....private establishments / Govt. establishments) / bills paid by you to the Contractors (in case of Government Organizations / Departments / public sector undertakings) from 26-06-2007 onwards immediately to the “Andhra Pradesh Building and Other Construction Workers Welfare Fund” Savings Bank Account No.142210011805015 of the Andhra Bank, Labour Commissioner Office Branch, Hyderabad (Code No. 1422).

You are also requested to apply for Registration of your Establishment under Section 7 of the B&OCW (RE&CS) Act, 1996, in Form-I of the A.P. Building and Other Construction Workers Rules, 1999 (Form enclosed). The following are the details of the Government Head to remit the registration fee in Treasury.

“0230 – Labour and Employment
MH 101 – Receipts under Labour Laws
SH (01) – Receipts under Labour Laws
(01) – Other Receipts

The amount along with Form-I shall be submitted to the under signed Cess Assessing Officer under the Act on or before.....failing which further action as stipulated under the Act and Rules shall be initiated .

Encls: 1. Brief Note on Acts.

2. Cess remittance challan form

3. Form-1 under B&OCW Cess Rules, 1998

Registering Officer &
Cess Assessing Officer

Note: Model Notice for Principal employers of Government Establishments

GOVERNMENT OF ANDHRA PRADESH
LABOUR DEPARTMENT
O/o JCL / DCL / ACL District

NOTICE-II

No. C.Cell B&OCWCAct / /2011. Dated: - -2011.

From	To
Cess Assessing Officer &	Sri
JCL / DCL / ACL	

Sir,

Sub: Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (Central Act 27 of 1996) (Main Act), the Building and Other Construction Workers Welfare Cess Act, 1996 (Central Act 28 of 1996) (Cess Act) and the A.P. Building and Other Construction Workers' Welfare Cess Rules, 1998 – Compliance with the statutory provisions and Payment of Cess – Reg.

Ref: Brief Note on provisions of the B&OCW Act, 1996 and the B&OCW Cess Act, 1996.

* * * * *

In the reference cited, while informing the important provisions of the Acts, you have been requested to pay Cess @ 1% on the cost of construction immediately and also to furnish information in Form-I of the Cess Rules and to deduct 1% Cess on the bills paid by you to the Contractors for building and other construction work from 26-06-2007 onwards and remit the same to the Andhra Pradesh Building & Other Construction Workers Welfare Fund and also submit particulars in Form-I (copy enclosed) of the Cess Rules.

In this regard, I invite your attention to the judgment of the Hon'ble High Court of AP in WP No.4587 of 2008, dated 15-07-2008 wherein orders were issued to the Government departments for levy and collection of 1% Cess on the cost of the construction. Further, the Hon'ble Supreme Court of India W.A.(Civil) No.318 of 2006 dated 18-01-2010 has directed all State Governments to collect the Cess continuously and also to implement the welfare schemes for the benefit of construction workers.

In the Light of the above, I request you to collect 1% Cess on all the bills paid to the contractors in respect of “Building and other Construction Works” from 26-06-2007 on wards and remit the amount to the A.P. Building and Other Construction Workers Welfare Fund along with the Form-I of the Cess Rules in respect of each construction work undertaken by you.

Encls: 1. Brief Note on Acts.
2. Cess remittance challan form
3. Form-1 under B&OCW Cess Rules, 1998

Cess Assessing Officer &
JCL / DCL / ACL

THE MANNER OF LEVY AND COLLECTION OF CESS UNDER THE PROVISIONS OF THE BUILDING & OTHER CONSTRUCTION WORKERS' WELFARE CESS ACT, 1996 AND CENTRAL RULES, 1998.

Appropriate Government.

1) Registration of Establishments: As per the provisions of the B&OCW (Central) Rules, 1998, the Regional Labour Commissioner (Central) shall register the establishment under the Act as defined under Sec. 2(a) which reads as follows:

(a) In relation to an establishment (which employs building workers either directly or through a contractor) in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government.

(b) In relation to any such establishment, being a public sector undertaking, as the Central Government may by a notification specify which employs building workers either directly or through a contractor, the Central Government.

(2) As per the provisions of the Industrial Disputes (Amendment) Act, 2010, all Central Government establishments shall be registered by the Central Government only.

(3) The notified officers of Central Government are registering the establishments under Sec. 7 of the B&OCW Act, 1996 and forwarding copies of registration certificate to the A.P.B&OCWW Board, Hyderabad for necessary action, and the same will be transmitted to the concerned Assessing Officers of the State Government.

(4) The notified Registering Officers in the State Government in respect of the establishment which falls under the jurisdiction of State Government shall register them under Sec. 7 of the B&OCWW Act and also to advise the principal employer / contractor to remit the registration fee to the following head of Account as per the provisions of G.O.Rt.No.674 of LET&F (Lab-II) Dept, dated 29-03-2008.

“0230 – Labour and Employment
MH 101 – Receipts under Labour Laws
SH (01) – Receipts under Labour Laws
(01) – Other Receipts

(5) However, the GOI, MOL, Vide Lr. No. Z-20011/04/ 2008 – BL, dated 23-07-2008 has informed the A.P.B&OCWW Board, Hyderabad, that instructions were issued by GOI, MOL&E, to the concerned departments and Central Public Sector undertakings to pay the Cess in accordance with the provisions of the B&OCW Cess Act, 1996. As per the instructions issued by GOI, MOL&E in Lr.No.Z-20011/4/2008-BL, dated 11-07-2008, all Ministries / Departments of Government of India were directed to levy and pay 1% Cess on the cost of the construction.

(6) Levy and Collection of 1% Cess: In Andhra Pradesh the B&OCW (RE&CS) Act, 1996 and A.P. Rules, 1999, were brought into force w.e.f. 26-06-2007 and therefore 1% levy of Cess shall be imposed on the cost of the construction of the “**building or other construction work**” as defined under Sec. 2(d) of the said Act as specified by GOI, MOL&E, and in notification No. S-61011/9/95-RW, dated 26-09-1996.

(7) Appointment of Assessing Officers in the State:

(a) The Government of A.P., as per clause G of Rule 2 of the Building and Other Construction Workers Welfare Cess Rules, 1998, has appointed ACLs / DCLs / JCLs as Assessing Officers vide G.O.Ms.No.3 of LET&F (Lab-II) Department, dated 20-01-2009.

(b) As per the norms laid down in G.O. Ms. No.3, dated 20-01-2009, the pecuniary jurisdiction of the Assessing Officers on the basis of the cost of building or other construction work was fixed as follows:

Assistant Commissioners of Labour	-	up to ₹ 1Cr.
Deputy Commissioners of Labour	-	above ₹ 1 Cr and upto 5cr.
Joint Commissioners of Labour	-	above ₹ 5 Cr.
Addl. Commissioner of Labour	-	above ₹ 5 Cr.
Commissioner of Labour	-	above ₹ 5 Cr.

(8) Co-ordination Committee on Cess Collection:

(a) The Government of Andhra Pradesh has issued orders in G.O.Ms.No.84 of LET& F (Lab-II) Department, dated 16-09-2009, constituting a Co-ordination Committee at district level for the purpose of collection of Cess under rule 4 of the Cess Rules, 1998 and its remittance to the A.P.Building and Other Construction Workers Welfare Fund Account with the following members:-

- i) Collector and District Magistrate - Chairman.
- ii) DCL - Member convener.
- iii) JCL of the Zone.
- iv) Asst. Director ,Town and Country Planning Department.
- v) Dy. Chief Inspector of Factories.
- vi) General Manager District Industries Centre,
- vii) Asst. Director of Mines and Geology.
- viii) Municipal commissioner
- ix) District Panchayat Officer.
- x) District Treasury Officer/Pay and Accounts Officers.
- xi) SE, EE of Works Departments of both Central and State Govt.
- x) Chief Executive Officer, Zilla Parishads /Project Director, DWAMA /Project Director, DRDA / CPO/AD marketing.
- xi) Asst. Labour Commissioner (Central) or his representative.

- (b) (i) The Deputy Commissioner of Labour, who is the member convener of the Committee, shall obtain the details of plans approved, from Government authorities for Government projects and for private establishments from Municipal and Urban Development authorities, Gram Panchayats etc., and to take necessary steps for registration of establishments under Sec. 7 of B&OCW Act, 1996 and assessment of Cess under Cess Act and Rules.
- (ii) The Deputy Commissioner of Labour shall address a letter to all the members of the committee to furnish the details of works undertaken by the respective Government Departments / local bodies requesting them to deduct Cess and remit the same to the A.P. Building and Other Construction Workers Welfare Fund before convening the district level coordination committee meeting and place the list of defaulters before the Chairman of District committee.
- (c) The Deputy Commissioners of Labour of the district concerned shall have to obtain the details of establishments registered by the Central Government and shall take necessary steps to process the Assessment files as per the norms of G.O.Ms.No.3 of LET & F(Lab-II) Department, dated 20-01-2009. He shall hand over the files as per the Assessment value basing on the cost of the building / construction work to the ACL and JCLs concerned and to submit details to A.P.B&OCWW Board.
- (d) The Dy. Commissioner of Labour shall also obtain the list of Contractors who paid VAT under the Building and Construction Activity and take follow up action under Cess Act and Cess Rules and place before the Committee.
- (e) Member convener and DCL shall send the progress report to the Government through the COL every month which shall be received by the Government on 10th of every succeeding month.
- (f) The JCL/DCL shall bring various issues of Cess Collection to the notice of the Chairman and District Collector during the course of monthly meeting.
- (g) The DCL and member convener shall record the minutes of the meeting and communicate a copy of the same to the Board with the approval of the Chairman.
- (h) The DCL and member convener shall take follow up action on the minutes of the meeting.
- (i) Any major defaulter of Cess in respect of Government / Public sector may also be called to the District Coordination Committee meeting to issue oral instructions of the Collector and Chairman of the committee. Executives of the local bodies not taking action for collection of Cess may also be called to the committee meeting.
- (j) Factories and Mines are not covered by the definition of “establishment” under the B&OCW (RE&CS) Act, 1996. But Factories and Mines under construction constitute building and other construction work and therefore are covered by the definition of “establishment” and hence attract the provisions of the B&OCW Act as well as Cess Act. Action for registration of establishment and collection of Cess shall be taken up as clarified in the memo issued by the Commissioner of Labour vide memo No. E/7822/2009, dated 16-06-2009.

(9) Orders of the GOI

In pursuance of the orders issued by the Government of Andhra Pradesh in G.O.Ms.No.84 of LET& F (Lab-II) Department, dated 16-09-2009, the RJCL, MOL & E, GOI, Hyderabad has also appointed the officers to represent in coordination committee at District Level vide Lr.No.95/5/2010-C4, dated: 17-06-2010. Therefore, the DCL concerned shall take the coordination from the officers of Central Government for levy and collection of Cess.

(10) Establishments under the purview of State Government:

- (A) As per Sec. 2 (a) (iii) of the B&OCW Act, 1996 the jurisdiction of State Government is defined as follows: “ In relation to any other establishment which employs building workers either directly or through a contractor, the Government of the State in which that other establishment is situated”
- (B) The guidelines for issue of notices for registration of establishments and levy and collection of Cess were already issued (copies enclosed). To give more clarity in the manner of levy and collection of Cess, the 2nd Expert Committee under the B&OCW Act, 1996 discussed the issues during the meeting held on 26-08-2008 and recommended ways and means for issuing instructions in the matter.
- (C) The Government in LET & F Department have issued orders in GO.Ms.No.111, dt: 15-12-2009 issued by the Chief Secretary, Govt. of A.P for compliance of statutory provisions by all Government Departments, local bodies and public sector undertakings as follows:-
 - i. To deduct 1% Cess from the Bills payable to the Contractors/executing Agencies w.e.f 26.6.2007 in respect of all the works covered under the definition of the Act which includes all expenditure incurred by an employer in connection with the Building or other construction work excluding the cost of land and any compensation payable to worker or his kin under the Workmen's Compensation Act, 1923.
 - ii. To remit Cess amount deducted by them /collected by them on the next working day of deduction / collection invariably by way of challan into the Andhra Bank.
 - iii. PAOs /APAOs shall remit Cess once in a month before 10th of succeeding month.
 - iv. All the Departments shall submit annual returns to the A.P.Building and other Construction Workers Welfare Board regarding “Building and other Construction Works” for every financial year, so as to receive before 15th May, of the succeeding year for consolidation.
 - v. All the drawing and disbursing officers of the State and all the Government Agencies shall collect 1% Cess on the cost of construction as per section 3 of the Cess Act and Rule 3 of the Cess Rules.

(D) Govt. in G.O.Ms. No.112, dt. 15-12-2009 of L.E.T&F Department with the approval of the Chief Secretary also issued the following orders:

(i) The Govt. Departments / local bodies / authorities collecting Cess at the time of plan approval if covered by the definition of “Building and other Construction Work” should also submit an Annual Return as per the Annexure-5 to the Secretary, A.P. Building and construction Workers Welfare Board so as to reach the Board before 15th of May of the succeeding year.

(ii) On receipt of return, the Board shall reimburse the actual expenses incurred in collection of Cess not exceeding 1% of the Cess collection to the Plan approval authority within 30 days from the date of receipt of Annual Statement.

(iii) The Director of Works, and Director of Treasuries were also requested not to admit the bills pertaining to works covered by the definition of Building and other Construction Activity unless deduction is made towards Cess. Instructions of the Chairman of District Coordination Committee and Collector may be issued to the Treasury and Works Officers for collection of Cess and registration of establishments.

(iv) The DCLs / JCLs shall take follow up action on the above orders and bring to the notice of the District Collector and Magistrate who is Chairman of the District Coordination Committee on collection of Cess regarding “building and other Works undertaken by various Departments in the District and Cess due from them thereon during the course of the monthly meeting. The District Collector and Chairman will review with the concerned departments.

The Deputy Commissioner of Labour shall ensure that the Government Departments, Local Bodies and Public Sector Companies submit information on collection of Cess in the formats annexed to the said G.Os 111 and 112.

(E) For collection of Cess from the private establishments the Government in LET & F Department in G.O.Ms.No.75, dated 24-08-2010 issued instructions for collection of Cess from the private establishments by following the recommendations of 2nd Expert Committee held on 26-08-2008.

(F) Observations of CAG:

As pointed out by the CAG, the DCL shall also obtain the list of Contractors who paid VAT under Building and Other Construction Activity and take necessary steps for registration of Establishments and collection of Cess under the relevant Acts.

(G) Monitoring of Cess Collection:

Steps to be taken by the Cess Collectors/Cess Assessing Officers to co-ordinate with other connected Departments:

1. Shall issue letters periodically to the concerned departments at the District level
2. Convene meetings with the Builders Associations and Departments of Central and State Governments.
3. Periodical visits to the organizations / Departments / plan approval authorities to collect information and for persuasion.
4. Bring the violations under the Act and Rules to the notice of the Chairman and District Collector during the Course of meetings of District level Co-ordination Committee and also to the Commissioner of Labour and the Secretary to the A.P. Building and other Construction Workers Welfare Board about the Cess Collected, due and other issues, if any, on collection of Cess.

(H) Source of Cess with in the jurisdiction of the Assessing Officers, Cess Collectors:

- (i) Construction Projects of all Government departments i.e, R&B, Irrigation, CAD Works, National Highways, Flyovers, Bridges, overhead tanks, pipelines etc.
- (ii) Construction of projects under Special Economic Zones,
- (iii) Construction of projects under EPZs.
- (iv) Construction of Metro Rail projects
- (v) Construction of projects relating to railways
- (vi) Construction projects of A.P. Transco
- (vii) Construction projects of A.P.GENCO
- (viii) Construction projects of APIIC
- (ix) Construction projects of APICC
- (x) Construction projects of all units of Housing Board, i.e., Rajiv Gruhakalpa, A.P. Housing Board, A.P. Housing Corporation, Police Housing Corporation etc.
- (xi) Construction projects of agricultural marketing committees
- (xii) Construction projects and civil works of Urban Development authorities, Municipal corporations, Municipalities and Gram Panchayats, Zilla Parishads and Mandal Praja Parishads.
- (xiii) Construction projects under SERP
- (xiv) Projects relating to construction, alteration, repairs, maintenance and demolition
- (xv) Construction projects under the Airport authorities
- (xvi) Construction projects under the Navy, Air force and Army
- (xvii) Construction projects under Oil and Natural Gas installations
- (xviii) Construction projects under Telecommunications
- (xix) Construction projects under endowment departments including Tirumala Tirupathi Devasthanam and other temple committees.
- (xx) All other construction projects covered under definition 2 (d) of the B&OCW Act, 1996.

(I) Alert Notes of the Vigilance & Enforcement Department:

The Vigilance & Enforcement Department (GAD) has communicated **Alert Note Nos. 94, 134 & 56** to the Commissioner of Labour which contained the details of evasion of Cess by Private and Government employers including contractors and it is required to immediately take steps for recovery of Cess in respect of the said establishments and also report compliance to the Government.

The instructions issued by the COL vide memo No. R1/5175/2009, dated 18-11-2009, shall be scrupulously followed and the collection of Cess in all the cases shall be made as per the guidelines issued.

THE MANNER OF LEVY AND COLLECTION OF CESS UNDER THE PROVISIONS OF THE BUILDING & OTHER CONSTRUCTION WORKERS' WELFARE CESS ACT, 1996 AND CENTRAL RULES, 1998, FROM PRIVATE ESTABLISHMENTS.

- a) The Assessing Officers as per the instructions issued in G.O.Ms.No.111 & 112 shall have to issue notices to the principal employers of the establishment.
- b) If principal employer submits an agreement relating to awarding of work to contractors, the notices shall be issued accordingly.
- c) However, if the contractor fails to pay the Cess, the responsibility lies with principal employer under Rules 3, 6, 7, 12 & 13 of the B&OCWW Cess Rules, 1998.
- d) Since 26.06.2007, the rates of land issued by the Inspector General, Stamps and Registration Department, shall be obtained from the respective District Registrars. The land rates issued by the Department from time to time shall have to be obtained to verify the details of purchase of Land.
- e) The Second Expert committee recommends for considering the project cost of a building and construction work which was submitted to Banks and plan approval authorities.
- f) The cost of the construction shall be arrived by deducting cost of the land and compensation paid to the workers and dependents of the deceased under W.C. Act, 1923, as defined under Rule 3 of the B&OCWW Cess Rules, 1998.
- g) The Assessing officer shall also consider the Tax receipts issued by the Municipal Authorities / Village Panchayats to determine the completion of the building or other construction projects / works.
- h) The Assessing Officer shall also obtain the list of Contractors from the Commercial Taxes Department who paid VAT and take follow up action under relevant Cess Act and Rules.

(i) Sources of Cess with in the jurisdictions of the Assessing Officers:

- (i) Construction projects under taken by the builders / contractors and all construction companies.
- (ii) Construction projects of apartments, commercial projects including shopping malls, mega structures
- (iii) Construction projects under BOT (BUILD, OPERATE & TRANSFER) norms.
- (iv) All residential / buildings - over and above cost of ₹10 lakh.
- (v) All infrastructure development projects i.e., Tourism, Recreation, Gardens, Resorts etc.
- (vi) All other construction projects covered under definition 2 (d) of the B&OCW Act, 1996.

**STEPS TO BE TAKEN BY THE CESS ASSESSING OFFICER BEFORE
ISSUE OF ASSESSMENT ORDER UNDER THE PROVISIONS OF
B&OCWW CESS ACT, 1996 AND CENTRAL RULES, 1998.**

- 1. Registration of Establishment:** The Assessing Officer shall verify the Registration of establishments under Sec. 7 of the B&OCW (RE&CS) Act, 1996 and A.P. Rules, 1999.
- 2. Pecuniary Limit of assessing officers on the cost of Building or Other Construction work.**

(A) As per the norms of G.O.Ms.No.3 of LET&F (Lab-II) Department, dated 20-01-2009, the Assessing Officer has to verify the jurisdiction where the construction is taking place as per the limit of Assessment value prescribed in the schedule.

(B) The Assessing Officers concerned shall have to open Cess Assessment files separately as classified below:

- (1) Construction projects / works of the State Government
- (2) Construction projects / works of the Central Government
- (3) Construction works of public sector undertakings
- (4) Private construction works

(3) Computation of Cost of the Construction:

- (a) The computation of the cost of construction (Buildings / construction projects etc, as per Sec. 2 (d) of the B&OCW Act, 1996) shall be made basing on the estimates projected at the site for Central and State Government projects.
- (b) As far as private establishments are concerned the “**cost of the construction**” shall be assessed basing on the proposals of Bank loans, agreements with Governments and sub-contracts.
- (c) If Bank loan is a part of component of total project, the Assessment officer shall have to verify the total cost of the construction by considering plinth area approved by plan approval authorities concerned i.e., Municipal and Urban Development authorities and Panchayat Raj Department etc.

(d) Government Projects:

- (i) For Government projects the technical reports and project estimates done by Engineering departments / Engineer-in-chief(works) like., Irrigation, CAD, R&B, Public Health, Municipal Administration and Urban Development Department, Panchayat Raj Depts., Military, Railways, Ports etc, shall be collected.
- (ii) For the infrastructural development projects such as., all kinds of SEZ, Which fall under the definition of 2 (d) of B&OCW Act, 1996, the project costs estimated by the Government shall be accepted.
- (iii) In case of sub-contracts and back to back contracts, the Assessment Officer shall have to verify the details with original contract awarded by the respective Government Department.

(e) Private Establishment:

i) To assess the cost of the Building or construction work of the private establishments, the Assessing officer shall take the assistance of certified engineers or certified Valuers as stipulated under Rule 7 (6) of B&OCWW Cess Rules, 1998, to enquire and estimate the cost of construction. In this regard the Cess Assessing Officer shall take the prior approval of the Chief Inspector under the B&OCW Cess Act, 1996, till orders of the Government for appointment of Civil Engineers / Assessing Officers etc., on outsource basis are received in this issue.

(4) SELF ASSESSMENT

i) Self assessment should be permitted in respect of all the establishments, in accordance with G.O. Ms.No.75 of LET & F (Lab-IV) Dept, dated 24-08-2010.

ii) Along with the Self Assessment Return, the assessee should submit (a) project report and statement submitted to the Banks or other Financial Institutions for the construction activity (b) plan approved by the local authority and other competent authority.

(iii) Estimation of cost of construction should be on the basis of estimates submitted for Bank loan / agreements between the builder / contractor and the owner or any other documentary evidence available with the employer. In the absence of the above information estimation of cost of construction of a building can be made on the basis of the norms notified by the registration department applicable to all types of constructions and in case of other construction activity, the unit cost prescribed by the concerned Department may be taken into account.

(5) Time schedule of projects and details of construction:

(a) The time schedule of project shall be noted by obtaining the details from the principal employers concerned as per Form-I prescribed under Rule 7 of the B&OCWW Cess Rules, 1998.

(b) The Assessing Officer shall identify the phases of the construction and its cost.

(6) Obtaining details under Form-I (under Rule 7 of the B&OCWW Cess Rules, 1998) from principal employer:

(a) The Assessing Officer shall review the information provided by the principal employer as per Sec 4 of the Cess Act and Rule 6 of the B&OCWW Cess Rules, 1998.

(b) If any employer fails to furnish information in Form-I, then the Assessing Officer shall issue notice to the employer requiring to furnish the information in Form-I. In case the employer fails to submit information in Form-I even after receiving notice, the Assessing Officer shall proceed for assessing the Cess amount on the basis of enquiry report and evidence in accordance with Sec. 5 (2) of the Cess Act.

(c) On receipt of information in Form-I, the Assessing Officer shall make a scrutiny of such information furnished and if he is satisfied about the

correctness of the particulars so furnished, he shall make an order of assessment within six months indicating the amount of Cess payable by the employer and furnish copies to the Board, employer and to Cess Collector.

(d) The Assessment order 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 consistent with the provisions of Rule 4, by which the Cess shall be paid to the Cess Collector.

(e) If the Assessment Officer finds that employer has under-calculated or miscalculated the cost of construction or has calculated less amount of Cess payable, he shall issue notice to the employer for assessment of the Cess.

(f) On receipt of such notice the employer shall furnish to the Assessing Officer a reply together with copies of documentary or other evidence in support of his claim, within 15 days of the receipt of the notice.

(g) If the employer failed to furnish the reply within the specified period under sub-rule (4) of rule (7) or where an employer fails to furnish information in Form-I, the Assessing Officer shall proceed to make the assessment on the basis of available records and other information incidental thereto.

(h) The Assessing officer may, at any time while the work is in progress, authorize such officer to make such enquiry at the work site or from documentary evidence in any other manner as he may think fit for the purpose of estimating the cost of construction as accurately as possible.

(7) Cost of the construction:

(a) **Levy of Cess:** For the purpose of levy of Cess under Sub-sec (1) of Sec.3 of the Act, cost of construction shall include all expenditure incurred by an employer in connection with the building or other construction work but shall not include –

- cost of land;
- Any compensation paid or payable to a worker or his kin under the Workmen's Compensation Act, 1923.

(b) The Hon'ble High Court of A.P. in W.P. No.4587 of 2008 and batch (388 cases) interalia directed the Government departments to arrive the cost of the building or construction work after excluding the cost of land of a building establishment or construction project and the compensation payable to worker or to the dependents of the deceased worker.

(c) The above details shall be noted in the assessment order.

(8) Scrutiny of Assessment Order:

(a) The Hon'ble High Court of A.P. in W.P. No.4587 of 2008, in its judgment dated 15-07-2008, has ordered for levy and collection of 1% Cess from the cost of the building or construction work w.e.f. 26-06-2007.

(b) The Assessing Officer shall have to issue notices to the principal employer and contractors for the construction works taken up by them from 26-06-2007. The Assessment notices shall be issued by explaining all obligations under the B&OCW (RE&CS) Act, 1996 and A.P. Rules, 1999 and the B&OCWW Cess Act, 1996 and Central Rules, 1998 by making the principal employer and the contractors liable to comply with the provisions jointly and severally.

(c) In case contractors contend that they are not liable to pay Cess on whatever grounds that may include the explicit terms and conditions of contract, the Assessing Officer if convinced may attribute the liability only to the principal employer since the definition of 'employer' under Sec. 2 of the B&OCW Act 1996 specifies that the employer is principal employer in the first place and incase the work is executed through a contractor, the definition of employer includes contractor also but will not exclude the principal employer from the definition. In all other cases of construction works undertaken by a contractor, the assessment order shall be passed against both principal employer as well as the contractor fixing the liability of payment of Cess jointly and severally. If sub-contractors are also involved, the liability would be joint and several of the principal employer, contractor and their sub-contractors.

(9) Remittance of Cess to the A.P.B&OCWW Fund:

The Assessing Officer shall order for collection of Cess and its remittance to A.P.B&OCWW Fund in SB Account No. **142210011805015** and also directing the Cess Collector for Cess collection, under copy extended to the A.P.B&OCWW Board.

(10) Interest payable on delay in payment of Cess.

If the Cess is not paid within the Specified period of time as indicated in the Assessment order, such employer shall be liable to pay interest on the amount to be paid at the rate of two per cent for every month or part of a month comprised in the period from the date on which such payment is due till such amount is actually paid under section 8 of the Cess Act, 1996.

(11) Penalties:

If the Cess is not paid within the stipulated time, an interest @ Rs.2% per month and penalty not exceeding the Cess amount as per section 8 and 9 of the Cess Act shall be collected, besides penalties provided under section 12 for failure to submit return and intentional evasion of Cess of the said Act.

Proceedings for imposing penalty shall be separate and should usually follow default of the principal employer / contractor to comply with the orders of the Assessing Officer before the specified date.

(12) Prosecution for violations under the Cess Act and Rules:

Prosecution for furnishing false information on Cess amounts and for willful evasion of payment of Cess etc., may be initiated against the erring employers under Sec. 12 & 13 of the B&OCWW Cess Act, 1996 and Rules, 1998. In this regard a complaint for prosecution shall have to be submitted by the Assessing Officer or any Inspector under the main Act, or a Trade Union to the A.P.B&OCWW Board under Rule 15 of the Cess Rules, 1998. The Board on receiving such complaint shall examine the complaint and if it so decides may refer such complaint to the Central Government for taking legal action against the offender.

Therefore a proposal for prosecution shall be submitted to the construction Board under copy to Chief Inspector (COL) under the B&OCW Act, 1996 along with all supportive documents for examination and transmission to Central Government for approval.

Sd/- Dr.H.K.Nagu
Commissioner of Labour (FAC)

ACL & Administrative Manager
A.P.B&OCWW Board

**OFFICE OF THE COMMISSIONER OF LABOUR, A.P.
VIJAYAWADA**

Sub: The Building and Other Construction Workers (RE&CS) Act, 1996 and the Building and Other Construction Workers Welfare Cess Act, 1996 & Central Rules, 1998 – Levy and collection of Cess from The building and other construction works – Guidelines for Cess Assessing Officers – Issued - Reg.

- Ref: 1. Orders of Hon'ble High Court of A.P. in W.P.No 4587/2008 and batch Dated 15-07-2008.
2. G.O.Ms.No. 3 of LET & F (Lab-II) Dept, dated 20-01-2009.
 3. G.O.Ms.No. 4 of LET & F (Lab-II) Dept, dated 20-01-2009
 4. G.O.Ms.No. 84 of LET & F (Lab-II) Dept, dated 16-09-2009.
 5. G.O.Ms.No. 111 of LET & F (Lab-II) Dept, dated 15-12-2009.
 6. G.O.Ms.No. 112 of LET & F (Lab-II) Dept, dated 15-12-2009.
 7. G.O.Ms.No.75 of LET&F (Lab-IV) Dept, dated 24-8-2010.
 8. Orders of Hon'ble Supreme Court of India in W.P.No.(Civil) 318/2006, dated 18-01-2010.
 9. Observations made by the CAG of India, on the audit held during the period from 29-09-2010 to 27-10-2010.
 10. Alert Note Nos. 94, 134 & 56 of Vigilance & Enforcement Department circulated through the Memo No. R1/5175/2009 of COL, dated 18-11-2009.

The attention of all the JCLs, DCLs and ACLs in the state is invited to the references cited. The Government of India have enacted progressive legislations (1) The Building and Other Construction Workers (RE&CS) Act, 1996 and (2) The Building and Other Construction Workers Welfare Cess Act, 1996, for regulating Safety and Health and conditions of service of construction workers and also to provide various benefits to them and a notification dated 26-09-1996 of MOL, GOI, has been issued to levy and collect 1% Cess on the cost of construction.

In this regard the Hon'ble Supreme Court of India in W.P. Civil No. 318/2006, dated 18-01-2010, interalia, has directed all the State Government Departments to levy and collect Cess continuously from all the Government and Private establishments and to utilize the fund for the benefit of registered construction workers.

The Hon'ble High Court of A.P. through the reference 1st cited, interalia, has directed all Government departments to levy and collect cess from the establishment's w.e.f. 26-06-2007. In pursuance of the orders of the Hon'ble High Court, the

Government have issued orders in G.O. Ms. No. 84 of LET & F (Lab-II) Department, dated 16-09-2009, constituting “District Coordination Committees” for levy and collection of Cess and to submit a monthly report in the matter. In spite of the said instructions most of the DCLs have not convened District Coordination Committee meetings and none of the DCLs have taken up follow up action and submitted reports.

Through the reference 2nd cited, the Government have issued orders appointing the officers of Labour Department i.e., JCLs, DCLs and ACLs as **Cess Assessing Officers**, under the provisions of the B&OCWW Cess Act, 1996 and Central Rules, 1998, for levy of Cess and issue of assessment orders on the cost of construction. Through the reference 3rd cited, the Government have also issued orders appointing Appellate authorities i.e., Commissioner of Labour, JCLs and DCLs to hear appeals on assessments made by the Assessing Officers under the Building and Other Construction workers’ Welfare Cess Act, 1996 and Rules.

Through the references 5th & 6th cited, the Government have issued orders to all Government departments and Local Bodies for levy and collection of Cess / and deduction of Cess at source from the gross bills of the principal employers / contractors in respect of the construction works / projects undertaken from time to time by the Government departments / organisations and for collection of Cess by Local Bodies while approving plans in respect of private constructions.

The Vigilance and Enforcement Department has also inspected certain construction projects in the State during the year 2009 and 2010 and found that the Cess was not assessed and collected by the officers of the Labour Department that resulted in substantial amount of Cess evaded by the principal employers / contractors and in this regard the Vigilance & Enforcement authorities have communicated Alert Note Nos. 94, 134 & 56. These Alert Notes were also communicated to all Assessing Officers in the State vide reference 10th cited and their compliance is also awaited. The same has also been pointed out by the CAG during the course of recent audit. The Vigilance and Enforcement Department is persistently reminding this office on compliance of the **Alert Notes** communicated by them.

The Comptroller and Auditor General audited the accounts of the A.P. Building and other Construction Workers Welfare Board, during the period from 29-09-2010 to

27-10-2010 for the years 2007-08 to 2009-2010 and communicated Audit Reports for the said years and required immediate compliance. It has been interalia pointed out the following by CAG on collection of Cess for immediate compliance:

- 1. The Assessing Officers were merely accepting the payment of Cess by the employers without the requisite return in Form-I.**
- 2. In cases of submission of Form-I on the cost of the construction employers, the same are accepted without verifying the information so furnished by the employer.**
- 3. The returns filed by the employers were not supported by the documentary evidence to substantiate the cost of construction arrived by them.**
- 4. Although the Rule 7 (6) of the B&OCW Cess Rules 1998, enable the Assessing Officers to authorize the designated officer to make enquiries at the work site or from the documentary evidence, no such efforts were made by the Assessing Officers.**
- 5. Most of the notices issued by the Assessing Officers did not contain the due date for payment of the Cess.**
- 6. Certain Assessing Officers have in-correctly assessed Cess amounts.**
- 7. Certain Assessing officers have not recovered the Cess in accordance with the reports of the Vigilance & Enforcement Department.**
- 8. The collection of Cess is very poor despite hectic construction activities undertaken in various Districts.**

Keeping in view the above, it is considered expedient to issue necessary guidelines to all the **Assessing officers and Appellate Officers** for levy and collection of Cess in compliance of the provisions of the Act and on the directions of the Hon'ble Supreme Court of India in W.P. (Civil) No.318/2006, dated 18-01-2010 and High court of A.P. in W.P.No.4587/2008 and batch and also observations of Comptroller and Auditor General of India-thereon, so as to utilize the fund collected towards the benefit of the registered construction workers.

The performance of the Assessing Officers and Appellate Officers would be reviewed by the Commissioner of Labour who is the notified Chief Inspector under the B&OCW Act, 1996, during the course of monthly review meetings.

The Joint Commissioners of Labour at the Zonal Level shall also review the performance of the DCLs and ACLs working under their control and ensure that the

directions herein are scrupulously followed and Cess is collected in time and remitted to A.P. Building and Other Construction Workers Welfare Fund.

In order to timely levy and collection of Cess and to comply with the provisions of the Building and Other Construction Workers Welfare Cess Act, 1996 and Rules, 1998, made thereon, **the guidelines to the Assessing Officers and Appellate Officers are hereby enclosed along with connected material papers for strict compliance and to maintain the Cess assessment records.**

The Cess Assessing Officers and Appellate Officers are informed that any deviation of the guidelines and provisions of the B&OCWW Cess Act and Rules would be viewed seriously.

Encls: Guidelines.

**Sd/- Dr. H.K.Nagu,
Commissioner of Labour (FAC)**

To
All the Joint Commissioners of Labour in the State
All the Deputy Commissioners of Labour in the State
All the Assistant Commissioners of Labour in the State

// F B O //

Asst. Commissioner of Labour &
Administrative Manager
A.P.B&OCWW Board

Guidelines on collection and assessment of cess:-

What is cess:

- a) Cess is an amount levied on the cost of building or other construction work for the purpose of Building and Other Construction Workers (RE&CS) Act, 1996 (Sec.3 r/w rule 3 of Cess Act).

What is cost of construction:

- a) Cost of construction includes all expenditure incurred by an employer in connection with building or other construction work, excluding cost of land and any compensation paid or payable under Employees Compensation Act. The Hon'ble High Court of Andhra Pradesh while dismissing the 383 W.Ps had ruled that cost of construction includes all expenditure excluding cost of land.
- b) Grossly, cost of construction is all expenditure involved in building or other construction work excluding cost of land.
- c) Cost is not same as value (Ex. If expenditure towards construction of a house is Rs.10 lakh, land value Rs.10 lakh and market value of the house Rs.25 lakh, cess has to be calculated on Rs.10 lakh).
- d) Expenditure involved in building or other construction work includes labour, material, machinery or any other item except land and counts for calculation of cess, in view of clear definition of cost of construction under Rule 3 of Cess Rules. Where there is no ambiguity in respect of any word in a statute, no interpretation shall be made.

Rate of Cess:

Cess shall be levied @ 1% of cost of construction of the "building or other construction work" as notified by the Ministry of Labour & Employment, GOI New Delhi vide Notification No.S-61011/9/95-RW, dated 26.09.1996 (Section 3 r/w rule 3 of Cess Act).

Manner of collection of cess:

1. Deduction at source:

1.A. Deduction of Cess at source in respect of Government, Local Body and Public Sector Works:

- a) Cess shall be collected by deduction from the bills paid to the contractors in respect of building or other construction works undertaken by the Government or Public Sector Undertakings.(Section 3(2) r.w. rule 4(3) of Cess Act).
- b) Cess shall be collected by deduction from the bills paid to the contractors in respect of building or other construction works undertaken by the Local Bodies (Section 3(2) r/w rule 4(4) of Cess Act).

1.B Deduction of Cess at source in respect of Private Works:

Cess shall be collected by the local authorities at the time of approval of a building or other construction work. Every application for approval of a plan for building or other construction work shall be accompanied by a crossed D.D. for the amount of cess payable in respect of such work. In case duration of execution of work is likely to exceed one year, the amount of cess payable at the time of approval of plan may be for the amount of cess payable on cost of construction estimated to be incurred during one year from the date of commencement. In case of cess payable for part of work executed beyond one year, cess shall be paid within 30 days from the date of completion of work if completed within a year /on completion of one year if work continued beyond one year or within 30 days of the date of assessment whichever is earlier (Section 3(2) r/w rule 4(4) of the Cess Act).

2. Levy & collection of cess in respect of works where cess not deducted at source:

2.A. Levy and collection of cess in respect of Government, Local Body and Public Sector Works, for which cess not deducted at source:

- a) Cess shall be paid within (30) days of completion of work or within (30) days of order of assessment whichever is earlier (Rule 4(1)).
- b) Every employer shall furnish details of building or other construction work taken up, in Form I prescribed under the Cess Rules, 1998 to the Assessing Officer within (30) days of the commencement of the building or other construction work (Section 4 r/w rule 6). Every employer is also required under Sec 46 of the BOCW Act to furnish a notice in Form-IV within 30 days of commencement of building or construction work which contains details of such work and employer. Details contained in these forms may be sufficient to pass an assessment order in case of simple routine building works.
- c) If the work exceeds beyond (1) year, cess shall be paid/collected within (30) days of completion of (1) year from the date of commencement of work on the cost of construction incurred during the year (Rule 4 (2)).
- d) In case of Government, Local body or Public Sector works cess not collected at source, cess may be levied simply on the bills paid to the contractors if work is executed through contractors.
- e) In case of Government, Local body or Public Sector works where cess not collected at source and if work is directly executed without involving the contractors, procedure at (a) (b) and (c) above shall be followed.
- f) In case of Govt/local body/PSU works it is enough if the works details of each work executing authority (ex. MDO, Municipal Commissioner, EE R&B) are collected along with details of bills paid in executing each work by maintaining separate registers (Register of Establishments shall be maintained under BOCW Act). Information may also be collected regularly from the P&AOs and AP&AOs of works departments for monitoring collection of cess from every bill paid in respect of every work and the cess collected is remitted to the fund atleast once in a month.

2.B. Levy and collection of cess in respect of private works, for which cess not deducted at source:

Procedure at (a) (b) and (c) under 1.A. above shall be followed.

3. Advance payment of cess:

The employer may also pay advance cess calculated on the estimated cost of construction likely to be incurred, which will be subject to final assessment on completion of the work (Rule 4(5)(6)).

4. Collection of cess in case of Govt./Local Body/Public Sector works undertaken through PPP mode (Private, Public Participation) or BOOT (Build Own Operate Transfer)

Government/Local bodies/Public Sector undertakings have been undertaking certain building or other construction works through PPP mode. In case of such works, the private agency (contractor) invests totally or partially and expenditure towards cost of construction may not reflect by way of bills paid to the contractor. In such cases cess shall be levied and collected following the procedure applicable to private works. If there is some expenditure incurred by the Government/Local Bodies/Public Sector in such building or other construction work, to the extent of such expenditure, cess may be calculated on the bills paid to the contractor (Ex. Hyderabad Metro Rail Project, National High Way Project). If the funding of the Government is direct without involving construction activity and expenditure, total cost of such projects shall be ascertained as in the case of private works.

5. Who is liable to pay cess:

Employer is liable to pay cess.

5 (i) Who is employer:

Section 2(i) of main Act defines "employer".

- a) Owner of the establishment is the employer.
- b) Employer in case of works of Government Departments/Public Sector Undertakings directly undertaking construction works: Head of the Department or specified authority
- c) Employer in case of works of Local Bodies directly undertaking construction work: Chief Executive Officer (Ex. Municipal Commissioner in case of Municipality, Vice-Chairman and Managing Director in case of HUDA, VUDA etc.).
- d) In relation to a building or other construction work carried on through contractors, employer includes in addition to the owner specified at a,b,c, such contractors undertaking the work.
- e) In case of works undertaken through contractors, both owner as well as contractors or jointly and severally liable to pay cess.
- f) In case of any exemption claimed by the contractor on grounds like a Court Order, the liability to pay cess squarely falls on the owner/Head of the Department or Specified Officer/Chief Executive Officer.

5 (ii) What is establishment:

Establishment is defined under Section 2 (j) of the Main Act.

- a) Establishment is an individual or association of individuals or any firm or body corporate or Government Department or organisation employing

directly or through contractors, building workers in any building and other construction work.

- b) When work is undertaken through contractors, both principal employer as well as contractors own the establishment and are independently responsible for registration of establishment and also payment of cess.

5 (iii) What is “building or other construction work”

- a) building or other construction work is defined under Section 2 (d) of Main Act.
- b) “building or other construction work” means – i. Construction. ii. Alteration. iii) Repair. iv) Maintenance. v) Demolition of or in relation to – 1) Buildings 2) Streets 3) Roads 4) Railways 5) Tramways 6) Air-fields 7) Irrigation 8) Embankment and Navigation works 9) Flood control works 10) Generation/transmission/distribution of power/water works 11) Oil and Gas installations 12. Electric Lines 13. Wireless/radio/television/telephone/telegram and overseas communications 14) Dams/canals/reservoirs/water courses /tunnels/bridges/viaducts/aqueducts/pipelines. 15) Towers 16) and such other work as may be specified by the Government by notification.

5(iv) Who should collect Cess:

All ALOs/ACLs/DCLs/JCLs are notified as Cess Collectors vide G.O.Ms.No.3 of LET & F (Lab.II) Department dated 20.01.2009. The ACLs(SSS) are also notified as Cess Collectors vide G.O.Ms.No.35 of LET & F (Lab.II) Department dated 06.03.2012. Inspectors of Factories are also notified as Cess Collectors in respect of factories under construction and expansion vide G.O.Ms.No.56 of LET & F (Lab.IV) Department dated 18.10.2011. All these officers are competent to collect cess.

In respect of Govt/Local Body/Public Sector works, the work executing authorities are vested with the power to collect cess by deduction from the bills paid to the contractors in accordance with Section 3 and Rule 4 of the Cess Act.

All these authorities may be notified as cess collectors to confer specific powers for collection of cess.

In respect of private building or other construction works where approval of plan is required, the Local Authority concerned shall collect the cess by way of Demand Draft.

5(v) Who are Assessing Officers:

All ACLs/ACLs(SSS)DCLs/JCLs/Addl.COL/COL are notified as assessing officers. All Inspectors of Factories are also notified as assessing officers. Any other officer / functionary of any other department / organization to be notified by the Government, would also be competent to assess cess.

5(vi) Collection of cess in respect of Central Govt. Establishments:

All Central Government Departments/Organizations, PSUs of Central Government shall be registered by the Central Labour Department but levy & Collection of cess in

respect of such Central Govt establishments shall be done by the above officers of the State Labour Department and other departments.

5(vi) Transfer of Cess (deducted/collected at source)to the Board:

The Government Departments, Public Sector Units and Local Bodies shall transfer the cess collected at source, to the Board by way of Demand Draft drawn in favour of the Secretary, Andhra Pradesh Building and Other Construction Workers Welfare Board, Hyderabad once in a month and furnish monthly return.

5(vii) Mode of payment of cess by employers:

The Cess payable under Section 3 r/w rule 4 of the Cess Act shall be remitted to the Andhra Pradesh Building & Other Construction Workers Welfare Fund Account No.142210011805015, Andhra Bank, Labour Commissioner Office Branch, Viveknagar, Hyderabad through online or by way of challan in qua-duplicate in any of the branches of Andhra Bank in the State. A copy of the Challan shall be sent to Cess Collector along with Form-I and a copy shall be sent to Board.

5(viii) District Coordination Committee for collection of Cess:

Government vide G.O.Ms.No.84 of LET & F Department dated 16.09.2009 have constituted District Coordination Committee for coordination towards effective collection of cess. The Collector is the Chairman of the Committee and the Deputy Commissioner of Labour is Member-Convenor. Functionaries of work departments and other stakeholders are members. The meeting shall be convened every month and minutes submitted to the Commissioner of Labour. The Committee is constituted to address all issues in collection of cess at source. The Deputy Commissioners of Labour should convene these meetings every month to address the issues of cess.

5(ix) Deduction/collection of cess at source by Government/Local Bodies/PSUs.

Government vide G.O.Ms.No.111 and 112 of LET & F Department dated 15.12.2009 have issued elaborate instructions to all work executing Govt Departments/organisations/PSUs to collect cess at source by deduction from the bills paid to the contractors in respect of the works taken up by them and the local bodies shall collect cess at the time of approval of plans and furnish a monthly return with the details of works executed, bills paid and cess collected and remitted. The easiest way to ensure payment of total cess in respect of all the building or other construction works, Government or private is to ensure by persuasion, collection/deduction of cess at source. If cess is not collected at source elaborate process of assessment has to take place which involves effort many times more than what is required for persuasion for collection of cess at source.

6. Assessment of Cess:

6.A. Assessment of Cess in case of works of Government,Local Bodies and PSUs:

a) Cess shall be collected by deduction from the bills paid to the contractors in respect of building or other construction works undertaken by the Government, Local Body or Public Sector Undertakings.Government also issued orders vide GO.Ms.No.111 & GO.Ms.No.112 of LET&F(Lab.II) Dept.dt.15.12.2009. to that extent. If the Government, local body or public sector undertaking failed to deduct cess from the bills paid to the contractor in respect of the building or

construction works taken up by them, cess shall be assessed following the procedure prescribed.

b) The procedure to be followed in case of such works may be simplified by calculating cess on the bills paid to the contractors towards expenditure incurred in respect of building or other construction work. Form-I may also be called.

c) Details of bills paid to the contractors maybe called from the work executing authority of the Government/Local Body/PSU in respect of each work for assessment of cess.

d) On the bills paid to the contractors, cess may be assessed and orders passed by the Assessing Officer.

6.B. Assessment of Cess in respect of private building works:

(a) In respect of private building works, cess may be calculated on the cost of construction, also keeping in view construction rates of structures and buildings notified by the Registration Department. The Assessing Officer should call for Form-I as required under Section 4 r/w rule 6 of Cess Act and the plans approved by the Local Authority to ascertain the built up area in case of building works. He may also call for notice of commencement of work to be furnished under Section 46 of the BOCW Act and the registration certificate under Section 7 of the Act for further details of the establishment and any other relevant document.

(b) In respect of construction works other than building works, cost of construction may be arrived on the information furnished in Form-I and on the information contained in the agreements/proposals submitted to the Banks and other financial institutions for sanction of loans, agreements made between the principal employer & contractor and contractors and sub-contractors. The Assessing Officer may also call for notice of commencement of work to be furnished under Section 46 of the BOCW Act and the registration certificate under Section 7 of the Act for further details of the establishment.

6. C. The Assessing Officer shall pass assessment order within (6) months from the date of receipt of information in Form-I from the employer (Section 5 r/w Rule 7(1)). If the information furnished by the employer is found to be under calculated or mis-calculated the cost of construction or calculated less amount of cess, the Assessing Officer shall issue a notice to the employer for furnishing reply together with copies of documentary or other evidence in support of his claim within (15) days for Assessment of Cess (Rule 7(3)).

The Assessing Officer may provide an opportunity to the employer to be heard to present all his documentary evidence. If the employer fails to furnish the information or appear in person, the Assessing Officer shall proceed to make assessment based on the record and information available.

The Assessing Officer may authorise such officer to make such enquiry at the work-site or to collect relevant documents or enquire in any other manner as he thinks fit for the purposes of estimation of accurate cost of construction (Rule 7(6)). The Assessing Officer may depute his Subordinate Officer for the purpose of the above enquiry and collection of information and documents including photographs and may pass order on such material.

The order of the assessing officer should specify the amount of cess due, cess already paid or deducted at source and the balance amount payable and the date by

which the assessed cess shall be paid. (rule 7 of the Cess Rules).A copy of such order shall be sent to the employer, the board and the cess collector.

6. D. Revision of order of Assessment:

The employer who modifies the plan of construction or withdraws work may seek revision of the assessment order by making information in Form-II to the assessing officer giving details of such reduction or stoppage of work. The assessing officer on receipt of such request along with Form-II shall issue revised order of assessment within 30 days and send a copy of such order to the board and the cess collector for making refund of excess cess as ordered in the revised assessment and the board within 30 days of receipt of the order shall refund the amount to the employer by way of D.D. The Appellate Authority modifying the assessment order of the assessing officer shall follow the same procedure (rule -8).

Powers of assessing Officer:

Assessing Officer has got powers to enter any establishment, make any enquiry, take any details or record, call for any record or document from the employer for the purpose of assessment of cess. The said powers are only statutory powers of an executive like that of an Inspector. The assessing officer is not conferred powers to summon a witness or document in accordance with CPC. If the employer fails to appear or produce any document called, the assessing officer may proceed to pass orders on the available material (Section 7 r/w rule 10 of Cess Rules).

Pecuniary Jurisdiction:

Government issued orders vide G.O.Ms.No.3, of LET&F Department, dated 20.01.2009 fixing pecuniary jurisdiction of the assessing officers on the basis of cost of construction, as follows:

1. ACL : up to Rs. 1 crore
2. DCL : above Rs.1 crore and up to Rs.5 crore
3. JCL / ADDL. COL / COL :above Rs. 5 crore.

Due date for payment of cess:

The cess levied under Section 3(1) of the Cess Act shall be paid by the employer within (30) days of the completion of the work or within (30) days of the date of order of assessment, whichever is earlier. On default of payment of cess by due date, interest may be imposed @ 2% per month for the period from the date due for payment of cess, to the date of actual payment of cess(Section 3(1) Rule 4(1) of Cess Act).

General Guidelines for Assessing Officers:

- Principles of natural justice shall be followed, which requires giving an opportunity of being heard, to the employer.
- Assessing Officer is a quasi-judicial authority. There are no parties with a dispute before him like a petitioner and a respondent but the Assessing Officer will decide the cess in exercise of the legal powers conferred on him and while doing so he shall use his discretion judiciously so that the rights of the employer are not violated while fixing his legal liability as to cess.

- The Assessing Officer can take assistance of his subordinate officer for the purpose of enquiry in the field and collection of documentary evidence from the relevant source in respect of the work for which cess is being assessed.
- The order of the Assessing Officer should contain the details of employer, details of establishment and the details of building or other construction work taken up by the employer as reflected from the material before the assessing officer and calculation of cost of construction and cess, cess paid if any, cess payable as balance or cess refundable if excess paid.
- The Assessing Officer shall issue a Notice to the employer, proposing to assess cess in respect of the building or other construction work taken up by the employer. The Assessing Officer shall have some prima facie material related to the building or other construction work in respect of which he proposes to assess cess, before initiating proceedings for assessment of cess. The material may be Form-I under Cess Rules, Registration Certificate under sec 7 of BOCW Act, notice of commencement of work under Sec 46 of the BOCW Act or a notice given by the inspector under BOCW Act for registration of establishment or calling for notice required to be furnished under sec 46 of BOCW Act or any documentary evidence/information secured from Govt/local body/PSU or an inspection report of the inspector under BOCW Act etc. (Ex. an inspector should have an inspection report before filing prosecution or a claim application under Minimum Wages Act)
- In case of execution of work through contractor or contractors, the Assessing Officer may proceed to assess cess by issuing notices to the principal employer as well as contractor/contractors, as liability in such case is joint and several.
- Assessing officer may issue assessment order in a simple structured format in cases involving no disputed facts. In case of any disputed facts, the assessment order should be a speaking order specifying the disputed facts and resolution of such dispute on the material available with the assessing officer.
- Penalty may be imposed if the employer fails to comply with the assessment order. Separate proceedings shall be initiated proposing to impose penalty.
- In addition to cess due, interest shall also be ordered in the assessment order, payable for the period from the date of completion of 30 days from the date of completion of work or if the work continues beyond one year, on completion of one year.

7. Appeal on Assessment Order:

If aggrieved by the order of assessment made under Rule 7 and penalty under Rule 12, the employer may appeal against such order within (3) months from the date of receipt of the order, to the Appellate Authority along with copy of the order of assessing officer, certificate from the cess collector to the effect that the cess or penalty ordered is deposited and a fee equivalent to 1% of disputed amount, a statement of points in dispute and documentary evidence relied upon.

The appellate authority shall dispose of the appeal on giving an opportunity of being heard and may confirm or modify the order or may remand back the assessment order for rectification of any wrong. The assessing officer shall dispose of such case within one month. In case of modification of the orders by the appellate authority reducing the amount of cess or penalty such reduced amount shall be refunded. In case of

modification of order assessing higher amount, the appellant shall be given by the Appellate Authority, an opportunity of being heard. (Section 11 r/w rule 14)

8. Penalty for non-payment of cess:

(a) If the cess is not paid within the time specified in the Assessment Order or paid less cess, a notice shall be issued to the employer for recovery of cess along with penalty not exceeding the amount of cess specified in the Assessment Order. Penalty imposed may be same amount as cess (Section 9 r/w Rule 12).

b) Interest on delay in payment of cess on assessment order:

If the employer fails to pay cess as specified in the Assessment Order, he is liable to pay interest @ 2% for every month or part of month on the amount of cess from the date on which the payment is due.

c) Complaint for violations under Cess Act:

The assessing officer or inspector or a trade union may make complaint to the board on failure to furnish return, furnishing of false information and willful evasion of payment of cess. The board shall examine the complaint and may refer such complaint to the Central Government. The Central Government on an enquiry may authorize an inspector of the jurisdiction to file a complaint in a court of law. The penalty for such offences may extend to six months imprisonment.

9. Recovery of Cess Due:

For the purpose of recovery of cess due, the Assessing Officer shall prepare a certificate to that effect and send it to the District Collector to recover the due cess as an arrear of land revenue under the Revenue Recovery Act (Section 10 r/w rule 13).

10. Other General Instructions:

SOURCES OF INFORMATION REGARDING THE CONSTRUCTION WORKS:

- Obtain list of new factories under construction and factories under expansion from the Inspector of Factories.
- Obtain the list of Plans approved in respect of building and other construction work from the Municipalities/Corporations/Gram Panchayats/Special Economic Zones (SEZs).
- Obtain the details of works taken up by the Local Bodies, works departments and PSUs.
- Obtain details of bills paid by the Government Departments, local bodies and public sector undertakings, in respect of building and other construction works taken up by them.
- Obtain TAN number from the Income Tax Department to identify the amount of bills paid by the employer/contractor since deduction made at source towards IT.
- Obtain information from the Income Tax Department as the IT returns reflect the amount paid by them in respect of construction works.
- Consider the tax receipts issued by the Municipal Authorities/Village Panchayats to determine the completion of the building or other construction projects.
- Obtain the lists of contractors registered with the Commercial Tax Department and all works departments.

- In case of registered construction companies, details of constructions may also be obtained from the Registrar of Companies situated at Kendriya Sadan, Koti, Hyderabad since the total cost of construction will reflect in annual statements furnished by the Companies.
- Consider the project cost of a building and other construction work which was submitted to Banks and other financial institutions like LIC, HDFC, Co-operative House Building Societies.
- Obtain construction rates of the structures and buildings as notified by the Inspector General, Stamps and Registration Department (District Registrars) from time to time.

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GUIDELINES ON ASSESSMENT AND COLLECTION OF BUILDING AND OTHER CONSTRUCTION WORKERS WELFARE CESS

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Elaborate instructions and guidelines on Assessment and Collection of Cess have been communicated to all officers in the Department from time to time since 2009 and some of the references are listed hereunder:

1. Orders of Hon'ble High Court of A.P. in W.P. No. 4587/2008 and batch Dated: 15-07-2008.
2. G.O.Ms.No. 3 of LET & F (Lab-II) Dept., dated 20-01-2009.
3. G.O.Ms.No. 4 of LET & F (Lab-II) Dept., dated 20-01-2009
4. G.O.Ms.No. 84 of LET & F (Lab-II) Dept., dated 16-09-2009.
5. G.O.Ms.No. 111 of LET & F (Lab-II) Dept., dated 15-12-2009.
6. G.O.Ms.No. 112 of LET & F (Lab-II) Dept., dated 15-12-2009.
7. G.O.Ms.No.75 of LET&F (Lab-IV) Dept., dated 24-8-2010.
8. Orders of Hon'ble Supreme Court of India in W.P.No.(Civil) 318/2006, dated: 18-01-2010.
9. Observations made by the CAG of India, on the audit held during the period from 29-09-2010 to 27-10-2010.
10. Vigilance & Enforcement Alert Notes communicated from time to time.
11. This Office memo no. 794 / 2014, dated: 24-11-2016
12. This Office D.O. Letter no. 794 / 2014. dated: 20-01-2017

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What is cess:

- a) Cess is an amount levied on the cost of building or other construction work for the purpose of Building and Other Construction Workers (RE&CS) Act, 1996 (Sec.3 r/w rule 3 of Cess Act). Cess is the main source of BOC Workers Welfare Fund. Other sources include

contribution by the worker which is a very insignificant amount being Rs. 1/- per month.

What is cost of Construction:

- a) Cost of construction includes all expenditure incurred by an employer in connection with building or other construction work, excluding cost of land and any compensation paid or payable under Employees Compensation. The same legal status was reiterated by the Hon'ble High Court of Andhra Pradesh while dismissing 383 Writ Petitions filed by the employers challenging various aspects of the said Act.
- b) Cost of building or other construction work is not same as value of the building or other construction work. Value includes cost of land, market value of the work over and above the cost of the building or other construction work.
- c) Expenditure involved in building or other construction work includes expenditure towards labour, building material, Cost of hiring construction machinery like Road Roller, Concrete Mixer, Cranes etc. Cost of such machinery should not be included in the cost of construction.
- d) Cost of manufacturing machinery should not be included in the cost of construction in case of a Factory under construction or expansion. Only cost of installation or erection of manufacturing machinery should be included in the cost of construction in case of a Factory.
- e) In case of construction works involved in building Ports, the procedure specified for Factories under construction or expansion should be adopted. Cost of machinery should not be included. Only expenditure incurred in connection with building or other construction work should be included in the cost of construction.

Rate of Cess:

Cess shall be levied @ 1% of cost of construction of the "Building or other construction work" as notified by the Ministry of Labour & Employment, GOI New Delhi vide Notification No.S-61011/9/95-RW, dated 26.09.1996 in

exercise of the powers under Section 3 of the Cess Act r/w rule 3 of Cess Rules.

Manner of collection of cess:

Cess may be received through various methods as follows:

1. Deduction at source:

1.A : Deduction of Cess at source in respect of works undertaken by Government Departments, Government Organizations, Local Bodies and Public Sector Undertakings:

In respect of Building or Other Construction Works undertaken by Government Departments, Government Organizations and Public Sector undertakings, Cess shall be collected by deduction from the bills paid for such works. (Section 3(2) Cess Act r/w rule 4(3) of Cess Rules). Usually, all building or other construction works of the Government Departments / Government Organizations / Public Sector Undertakings are undertaken through Contractors. Cess shall be deducted by the respective Govt. Department / Organization / PSU, from the bills paid to the Contractors and shall be remitted to the AP BOCWW Fund.

Though it is not specified in the Cess Act that Cess shall be deducted at source in respect of works undertaken by the Local Bodies, the above procedure may be followed in case of the works undertaken by the Local Bodies. Such procedure has already been in place in respect of certain municipalities.

1.B : Deduction of Cess at source in respect of Private Building and other Construction Works:

Cess shall be collected by the plan approval authorities (usually Local bodies) at the time of approval of plan of a building or other construction work. Every application for approval of a plan for building or other construction work shall be accompanied by a crossed D.D. for the amount of cess payable on the estimated cost of such work.

In case duration of execution of work is likely to exceed one year, the amount of cess payable at the time of approval of plan may be for the amount of cess payable on cost of construction estimated to be incurred during one year from the date of commencement. In case of cess payable for part of work executed beyond one year, cess shall be paid within 30 days from the date of completion of work if completed within a year /on completion of one year if work continued beyond one year or within 30 days of the date of assessment whichever is earlier(Section 3(2) r/w rule 4(4) of the Cess Act).

Though it is provided in the Cess Act that, in case of approval of a plan for building or other construction work estimated to be executed beyond one year, Cess may be deducted at source on total estimated cost of construction as has been taking place in respect of certain municipalities, in order to simplify collection of Cess. In case of excess payment of Cess, the employer may always claim excess paid cess from the Assessing Officer.

2. Levy & collection of cess in case of building or other construction works in respect of which Cess not deducted at source:

2.A. Levy and collection of cess in case of works undertaken by Government Departments, Government Organizations and Public-Sector Undertakings in respect of which cess not deducted at source:

- a) Cess shall be paid within (30) days of completion of work or within (30) days of order of assessment whichever is earlier (Rule 4(1)).
- b) Every employer shall furnish in Form I prescribed under the Cess Rules, 1998, details of building or other construction work taken up, to the Assessing Officer within (30) days of the commencement of the building or other construction work (Section 4 r/w rule 6).

Every employer is also required under Sec 46 of the BOCW Act to furnish a notice in Form-IV within 30 days of commencement of building or construction work which contains details of such work and the employer. Details contained in these forms may be sufficient to pass an assessment order in case of simple routine building works.

- c) If the work continues beyond (1) year, cess shall be paid/collected within (30) days of completion of (1) year from the date of

commencement of work, on the cost of construction incurred during the year (Rule 4 (2)).

- d) If Cess not deducted at source in case of works undertaken by the Government departments, Government Organizations and Public Sector Undertakings, Cess may be levied simply on the basis of bills paid to the contractors if work is executed through contractors.
- e) In case of works undertaken by the Government departments, Government Organizations and Public Sector Undertakings, in respect of which cess not collected at source and if work is directly executed without involving the contractors, procedure at (a) (b) and (c) above shall be followed.
- f) In case of works undertaken by the Government departments, Government Organizations, Public Sector Undertakings and Local Bodies, Cost of construction may be arrived if the details of each work of each work executing authority (ex. MDO, Municipal Commissioner, EE R&B) are collected along with the details of bills paid in executing each work. Information may also be collected regularly from the P&AOs and AP&AOs of works departments, for monitoring collection of cess from every bill paid in respect of every work and the cess collected is remitted to the fund atleast once in a month.

2.B. Levy and collection of cess in case of private works, in respect of which cess not deducted by work executing authorities at source:

Procedure at (a) (b) and (c) under 2.A. above shall be followed.

3. Advance payment of cess:

The employer may also pay advance cess calculated on the estimated cost of construction likely to be incurred, which will be subject to final assessment on completion of the work (Rule 4(5)(6)).

4. Collection of cess in respect of works undertaken by Government depts. Government organizations, Public sector undertakings and Local bodies in PPP (Public, Private Participation) or BOOT (Build Own Operate Transfer) mode:

Government depts., Government organisations, Public sector undertakings and Local bodies have been undertaking certain building or

other construction works through PPP/BOOT mode. In case of such works, the private agency (contractor) invests totally or partially and expenditure towards cost of construction may not reflect by way of bills paid to the contractor. In such cases Cess shall be levied and collected following the procedure applicable to private works. If there is some expenditure incurred by the Government depts., Government organizations, Public sector undertakings or Local bodies in such building or other construction works, to the extent of such expenditure, cess may be calculated on the bills paid to the contractor, in case part of the work is undertaken by the Government. If the funding of the Government is direct without involving construction activity and expenditure, as in the case of Metro Railway, Hyderabad, total cost of such projects shall be ascertained as in the case of private works. National Highways is one of the illustrations of BOOT mode of construction.

If the works by the above government bodies are undertaken in PPP or BOOT mode, the Government authority undertaking such work is the source of all the information of such PPP/BOOT mode project for the purpose of assessment and collection of cess. The government authority undertaking such works like National Highways Authority in case of national high ways, is the principal employer and shall be responsible for furnishing all the information and also pay the due cess in case of default by the contractor. Government in turn may deduct/collect such cess from the contractor from their grant or any other mode.

5. Who is liable to pay cess:

Employer is liable to pay cess.

5 (i) Who is employer:

Section 2(i) of main Act defines "employer" as follows:

- a)** Owner of the establishment is the employer.
- b)** Employer in case of works of Government Departments/Public Sector Undertakings directly undertaking construction works: Head of the Department or specified authority.
- c)** Employer in case of works of Local Bodies directly undertaking construction work: Chief Executive Officer (Ex.

Municipal Commissioner in case of Municipality, Vice-Chairman and Managing Director in case of VUDA).

- d)** In relation to a building or other construction work carried on through contractors, employer includes in addition to the owner specified at a,b,c such contractors undertaking the work.
- e)** In case of works undertaken through contractors, both owner as well as the contractors or jointly and severally liable to pay cess.
- f)** If the contractor claims exemption from payment of cess on grounds like a Court Order, the liability to pay cess squarely falls on the owner/Head of the Department or the Specified Officer/Chief Executive Officer.
- g)** A contract between the contractor and the principal employer will not provide any exemption to the contractor even in case of such a clause incorporated in the contract, since such clause is null and void in view of the definition of “employer” under the BOCW Act. The Act always prevails over the contract.
- h)** In case of multiple contractors undertaking parts of a work, each contractor is liable for the part of the work he or she is undertaking, while the principal employer shall be responsible for payment of cess in respect of the total work.
- i)** If a work is undertaken by a number of contractors and sub-contractors, the principal contractor as well as the sub-contractors are jointly and severally liable for payment of cess.

5 (ii) What is an“establishment”:

Establishment is defined under Section 2 (j) of the Main Act.

- a) Establishment is an individual or association of individuals or any firm or body corporate or Government Department or organization employing directly or through contractors, building workers in any building and other construction work.
- b) When work is undertaken through contractors, both principal employer as well as contractors own the establishment and are independently responsible for registration of establishment and also payment of cess. They are also responsible for registration of building workers as ordered by the Government vide GO Ms. No.76 of LET&F dept. dt.24.08.2010.
- c) An establishment may undertake only one work like an individual person constructing his own house for his residential purpose or an establishment may be a perennial source of works undertaken continuously or intermittently, like a works department of the government (Ex. EE R&B dept. is an establishment)

5 (iii) What is “building or other construction work”

- a) building or other construction work is defined under Section 2 (d) of Main Act.
- b) “building or other construction work” means – i. Construction. ii. Alteration. iii) Repair. iv) Maintenance. v) Demolition of or in relation to – 1) Buildings 2) Streets 3) Roads 4) Railways 5) Tramways 6) Air-fields 7) Irrigation 8) Embankment and Navigation works 9) Flood control works 10) Generation/transmission/distribution of power/water works 11) Oil and Gas installations 12. Electric Lines 13. Wireless/radio/television/telephone/telegram and overseas communications 14) Dams/canals/reservoirs/water courses /tunnels/bridges/viaducts/ aqua-ducts/pipelines 15) Towers 16) **and**

such other work as may be specified by the Government by notification.

5(iv) Who should collect Cess:

All ALOs/ACLs/DCLs/JCLs are notified as Cess Collectors vide G.O.Ms.No.3 of LET & F (Lab.II) Department dated 20.01.2009. The ACLs(SSS) are also notified as Cess Collectors vide G.O.Ms.No.35 of LET & F (Lab.II) Department dated 06.03.2012. Inspectors of Factories are also notified as Cess Collectors in respect of factories under construction and expansion vide G.O.Ms.No.56 of LET & F (Lab.IV) Department dated 18.10.2011. All these officers are competent to collect cess.

In respect of building or other construction work undertaken by Government depts., Government organisations and Public sector undertakings, the work executing authorities are vested with the power to collect cess by deduction from the bills paid to the contractors, in accordance with Section 3 of Cess Act r.w. Rule 4. Same procedure may be followed in case of works undertaken by the local bodies.

All such authorities may be identified and notified as cess collectors to confer specific statutory powers for collection of cess.

In respect of private building or other construction works which require approval of plan by specified authority, the plan approval Authority concerned shall collect the cess by way of Demand Draft. (Ex. Commissioner, Municipal corporation or Municipality, CEO, ZP, Secretary, Gram Panchayat, MDO, Development Commissioner, SEZ, Director of Factories for factories, CEO, CRDA, VC & MD of urban development authorities like VUDA, KUDA, Gudaetc)

5(v) Who are Cess Assessing Officers:

All ACLs/ACLs(SSS) / DCLs/JCLs/Addl.COL and COL have been notified as cess Assessing Officers. All Inspectors of Factories are also notified as Cess Assessing Officers in respect of factories. Any other officer / functionary of a Government department, Government organization, Public sector undertaking or a Plan approving authority may be notified by the Government as cess Assessing Officers and all such notified officers would also be competent to assess cess.

5(vi) Collection of cess in respect of Central Govt. Establishments:

All Central Government Departments, Central Government Organizations, Central Public Sector Undertakings shall be registered by the Central Labour Department under the BOCW Act, but levy & Collection of cess in respect of building and other construction works undertaken by such Central Govt entities shall be attended by the above officers of the State Government notified as Cess Assessing Officers and Cess Collectors.

5(vi) Transfer of Cess deducted/collected at source, to the A.P.BOCWW Board:

The Government Departments, Public Sector undertakings and Local Bodies deducting cess at source shall transfer such cess deducted at source to the A.P.BOCWW Board by way of Demand Draft drawn in favour of the Secretary, Andhra Pradesh Building and Other Construction Workers Welfare Board, Hyderabad once in a month and furnish monthly return in accordance with the government orders issued vide GO Ms No. 111 and 112 of LET&F dept. dt. 15.12.2009.

5(vii) Mode of payment of cess by employers:

The Cess payable under Section 3 of Cess Act r/w rule 4 shall be remitted to the Andhra Pradesh Building & Other Construction Workers Welfare Fund S.B. A/cNo. 260310100008258 of Andhra Bank, IFSC Code: ANDB0002603, MICR Code:520011046, Mogalrajapuram Branch, Vijayawada-520010 through online or by way of challan in quadruplicate in any of the branches of Andhra Bank in the State. A copy of the Challan shall be sent to Cess Collector along with Form-I and a copy shall be sent to the A.P.BOCWW Board.

5(viii) District Coordination Committee for collection of Cess:

Government vide G.O.Ms.No.84 of LET & F Department dated 16.09.2009 have constituted District Coordination Committee for coordination among various work departments of the government, towards effective collection of cess. The Collector is the Chairman of the Committee and the Deputy Commissioner of Labour is Member-Convenor. The meeting shall be convened every month and minutes submitted to the Commissioner of Labour. The Committee is constituted to address all issues in deduction of cess at source. The Deputy Commissioners of Labour should convene these meetings every month to address the issues of cess collection. It

appears that these meetings have not been convened by the DCLs in the last several years. District Co-ordination Committee meetings should be convened every month to resolve the issues and collect due cess in respect of building and other construction works.

5(ix) Deduction/collection of cess at source by Government depts., Public sector undertakings and Local Bodies:

Government vide G.O.Ms.No.111 and 112 of LET & F Department dated 15.12.2009 have issued elaborate instructions to all work executing Govt Departments, Government organisations and Public Sector undertakings to deduct Cess from the bills paid to the contractors in respect of the works taken up by them and the local bodies shall collect cess at the time of approval of the plans and furnish a monthly return with the details of works executed, bills paid and cess collected and remitted to the Board.

The easiest way to collect total cess in respect of all the building or other construction works, Government or private is to ensure by persuasion, collection/deduction of Cess at source. If cess is not deducted/collected at source, more tedious and elaborate process of assessment has to take place which involves effort many times more than what is required for persuasion for ensuring collection of cess at source.

6. Assessment of Cess:

6.A. Assessment of Cess in respect of works undertaken by Government depts., Government organisations and Public sector undertakings:

a) Cess shall be collected by deduction from the bills paid to the contractors in respect of building or other construction works undertaken by the Government departments, Government organisations, Public sector undertakings and Local bodies. Government also issued orders vide GO.Ms.No.111 & GO.Ms.No.112 of LET&F(Lab.II) Dept.dt.15.12.2009 directing the work executing departments, PSUs and Local bodies to collect cess at source. If cess is not deducted/collected at source, it shall be assessed duly following the procedure provided in the Cess Act and Rules.

b) The procedure to be followed in case of works undertaken by Govt. depts., Govt. organisations, PSUs and Local bodies may be simplified by calculating cess on the bills paid to the contractors towards expenditure incurred in respect of the building or other construction work. Form-I may also be called.

c) Details of bills paid to the contractors may be called from the work executing authority of the Government/Local Body/PSU in respect of each work, for assessment of cess.

d) On the basis of bills paid to the contractors, cess may be assessed and orders passed by the Assessing Officer.

6.B. Assessment of Cess in respect of private building works:

(i) In respect of private building or other construction works, the Assessing Officer should call for Form-I as required under Section 4 of Cess Act r/w rule 6 and the plans approved by the Local Authority in order to ascertain the built up area in case of building works. The assessing officer may also call for notice of commencement of work to be furnished under Section 46 of the BOCW Act and the registration certificate under Section 7 of the said Act for further details of the establishment and any other relevant document.

(ii) In respect of construction works other than building works, cost of construction may be arrived on the information furnished in Form-I and on the information contained in the agreements/proposals submitted to the Banks and other financial institutions for sanction of loans, agreements made between the principal employer & the contractor and the contractors and the sub-contractors. The Assessing Officer may also call for notice of commencement of work to be furnished under Section 46 of the BOCW Act and the registration certificate under Section 7 of the Act for further details of the establishment.

6.C. (i) The Assessing Officer shall pass assessment order within (6) months from the date of receipt of information in Form-I from the employer

(Section 5 of Cess Act r/w Rule 7(1)).If the information furnished by the employer is found to be under calculated or mis-calculated the cost of construction or calculated less amount of cess, the Assessing Officer shall issue a notice to the employer for furnishing reply together with copies of documentary or other evidence in support of his claim within (15) days for Assessment of Cess (Rule 7(3)).

(ii)The Assessing Officer may provide an opportunity to the employer to be heard to present all his documentary evidence. If the employer fails to furnish the information or appear in person, the Assessing Officer shall proceed to make assessment, based on the record and information available.

(iii)The Assessing Officer may authorise such officer to make such enquiry at the work-site or to collect relevant documents or enquire in any other manner as he thinks fit for the purposes of estimation of accurate cost of construction (Rule 7(6) of Cess Rules). The Assessing Officer may depute his Subordinate Officer for the purpose of the above enquiry and collection of information and documents including photographs and may pass assessment order on such material.

(iv) The order of the assessing officer should specify the amount of cess due, cess already paid or deducted at source and the balance amount payable and the date by which the assessed cess shall be paid. (rule 7 of the Cess Rules).A copy of the assessment order shall be sent to the employer, the A.P.BOCWW Board and the cess collector.

NOTE: It is proposed to fix, in consultation with the major works departments like Irrigation dept. and R&B dept. or any professional agency, different slab rates for SFT and these different rates correspond to four or five categories of building constructions like 1. very economical, 2. economical, 3. medium, 4. premium etc and what the assessing officer does is decide the SFT rate corresponding the building. Facilitation of a professional agency or the government dept. specified above may also be provided to the assessing officers towards objectivity and uniformity besides checking the arbitrariness of the assessing officers in fixing the SFT rates.

6. D. Revision of order of Assessment:

The employer who modifies the plan of construction or withdraws work may seek revision of the assessment order by making information in Form-II to the assessing officer giving details of such reduction or stoppage of work. The assessing officer on receipt of such request along with Form-II shall issue revised order of assessment within 30 days and send a copy of such order to the A.P.BOCWW Board and the cess collector for making refund of excess cess as ordered in the revised assessment and the A.P.BOCWW Board within 30 days of receipt of the order shall refund the amount to the employer by way of D.D. The Appellate Authority modifying the assessment order of the assessing officer shall follow the same procedure (rule -8).

6.E. Powers of assessing Officer:

Assessing Officer has got powers to enter any establishment, make any enquiry, take any details or record, call for any record or document from the employer for the purpose of assessment of cess. The said powers are only statutory powers of an executive like that of an Inspector. The assessing officer is not conferred powers to summon a witness or document in accordance with CPC. If the employer fails to appear or produce any document called, the assessing officer may proceed to pass orders on the available material (Section 7 of Cess Act r/w rule 10 of Cess Rules).

6.F. Pecuniary Jurisdiction:

Government issued orders vide G.O.Ms.No.3, of LET&F Department, dated 20.01.2009 fixing pecuniary jurisdiction of the assessing officers on the basis of cost of construction, as follows:

1. ACL : up to Rs. 1 crore
2. DCL : above Rs.1 crore and up to Rs.5 crore
3. JCL / ADDL. COL / COL :above Rs. 5 crore.

6.G. Due date for payment of cess:

The cess levied under Section 3(1) of the Cess Act shall be paid by the employer within (30) days of the completion of the work or within (30) days of the date of order of assessment, whichever is earlier. On default of payment of cess by due date, interest may be imposed @ 2% per month for the period from the date due for payment of cess, to the date of actual payment of cess (Section 3(1) of Cess Act r.w. Rule 4(1) of Cess Rules).

6.H.General Guidelines for Assessing Officers:

- Principles of natural justice shall be followed, which requires giving an opportunity of being heard, to the employer.
- Assessing Officer is a quasi-judicial authority. There are no parties with a dispute before him like a petitioner and a respondent but the Assessing Officer will decide the cess in exercise of the legal powers conferred on him and while doing so he shall use his discretion judiciously so that the rights of the employer are not violated while fixing his legal liability as to cess.
- The Assessing Officer can take assistance of his subordinate officers for the purpose of enquiry in the field and collection of documentary evidence from the relevant source in respect of the work for which cess is being assessed.
- The order of the Assessing Officer should contain the details of employer, details of establishment and the details of building or other construction work taken up by the employer as reflected from the material before the assessing officer and calculation of cost of construction and cess, cess paid if any, cess payable as balance or cess refundable if excess paid.
- The Assessing Officer shall issue a Notice to the employer, proposing to assess cess in respect of the building or other construction work taken up by the employer. The Assessing Officer shall have some prima facie material related to the building or other construction work in respect of which he proposes to assess cess, before initiating proceedings for assessment of cess. The material may be Form-I under Cess Rules, Registration Certificate under sec 7 of BOCW Act, notice of commencement of work under Sec 46 of the BOCW Act or a notice given by the inspector under BOCW Act for registration of establishment or calling for notice required to be furnished under sec 46 of BOCW Act or any documentary evidence/information secured from Govt/local body/PSU or an inspection report of the inspector under BOCW Act etc.(Ex. an inspector should have an inspection report before filing prosecution or a claim application under Minimum Wages Act)

- In case of execution of work through contractor or contractors, the Assessing Officer may proceed to assess cess by issuing notices to the principal employer as well as contractor/contractors, as liability in such case is joint and several.
- Assessing officer may issue assessment order in a simple structured format in cases involving no disputed facts. In case of any disputed facts, the assessing order should pass a speaking order specifying the disputed facts and resolution of such dispute on the material available with the assessing officer.
- Penalty may be imposed if the employer fails to comply with the assessment order. Penalty should not be imposed directly in the assessment order. Separate proceedings shall be initiated proposing to impose penalty and the order imposing penalty should be a separate speaking order.
- In addition to cess due, interest shall also be ordered in the assessment order, payable for the period from the date of completion of 30 days from the date of completion of work or if the work continues beyond one year, on completion of one year.

6.I Technical assistance for assessment of cess:

Simple building works may be assessed on the basis of built up area. In case of complex building or other construction works like Krisnapatnam port, assessing officers may require technical assistance since the officers of the labour department are not technically qualified. Certain projects like Polavaram project, underground cable work and underground pipeline work etc may require assistance of technical professionals to assess cess correctly. Technical assistance may be provided to the assessing officers of the Labour department.

7. Appeal on Assessment Order:

If aggrieved by the order of assessment made under Rule 7 and penalty under Rule 12, the employer may appeal against such order within (3) months from the date of receipt of the order, to the Appellate Authority along with copy of the order of assessing officer, certificate from the cess collector to the effect that the cess or penalty ordered is deposited and a fee equivalent to 1% of disputed amount, a statement of points in dispute and documentary evidence relied upon.

The appellate authority shall dispose of the appeal on giving an opportunity of being heard and may confirm or modify the order or may remand back the assessment order for rectification of any wrong. The assessing officer shall dispose of such case within one month. In case of modification of the orders by the appellate authority reducing the amount of cess or penalty, such reduced amount shall be refunded. In case of modification of order assessing higher amount, the appellant shall be given by the Appellate Authority, an opportunity of being heard. (Section 11 of Cess Act r/w rule 14)

8. Penalty for non-payment of cess:

(a) If the cess is not paid within the time specified in the Assessment Order or paid less cess, a notice shall be issued to the employer for recovery of cess along with penalty not exceeding the amount of cess specified in the Assessment Order. Penalty imposed may be same amount as Cess (Section 9 of Cess Act r/w Rule 12).

b) Interest on delay in payment of cess, on passing assessment order:

If the employer fails to pay cess as specified in the Assessment Order, he is liable to pay interest @ 2% for every month or part of month, on the amount of cess from the date on which the payment is due.

c) Complaint for violations under Cess Act:

The assessing officer or inspector or a trade union may make complaint to the board on failure to furnish return, furnishing of false information and willful evasion of payment of cess. The board shall examine the complaint and may refer such complaint to the Central Government. The Central Government on an enquiry may authorize an inspector of the

jurisdiction to file a complaint in a court of law. The penalty for such offences may extend to six months imprisonment.

9. Recovery of Cess Due:

For the purpose of recovery of cessdue, the Assessing Officer shall prepare a certificate to that effect and send it to the District Collector to recover the due cess as an arrear of land revenue under the Revenue Recovery Act (Section 10 of Cess Act r/w rule 13).

10. Other General Instructions:

SOURCES OF INFORMATION REGARDING THE CONSTRUCTION WORKS:

- A list of new factories under construction and factories under expansion to be furnished by the Inspector of Factories.
- The list of Plans approved in respect of building and other construction worksto be obtained from the Municipalities/Corporations/Gram Panchayats/Special Economic Zones(SEZs) and such other plan approval authorities.
- Details of works taken up by the Local Bodies, works departments and PSUs to be obtained from the respective work authorities.
- Details of bills paid by the Government Departments, local bodies and public sector undertakings, in respect of building and other construction works taken up by them.
- TAN number and IT returnsto be obtained from the Income Tax Department to identify the amount of bills paid by the employer/contractor and for details of deductionof Income Tax at source.
- The tax receipts issued by the Municipal Authorities/Village Panchayats, to determine the completion of the building or other construction projects.
- To obtain the lists of contractors registered with all works departments.
- In case of registered construction companies, details of constructions may also be obtained from the Registrar of Companies, since the total

cost of construction will reflect in annual statements furnished by the Companies.

- Details of the project cost of a building and other construction work which was submitted to Banks and other financial institutions like LIC, HDFC, Co-operative House Building Societies.

11. Online cess monitoring system:

Development of application for monitoring online, deduction/collection of cess at source, mapping of building and other construction establishments, identifying building and other construction works using geotaging, identifying employers and assessment of cess and monitoring collection of cess as ordered by the assessing officers has been in process with NIC and it is expected that the application would be completed by April, 2018. Once developed, the said application is estimated to increase cess collection by 100%.

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VIJAYAWADA
DT.07.03.2018

ORIENTATION ON ASSESSMENT AND COLLECTION OF CESS WITH ALL THE OFFICERS VIZ JOINT COMMISSIONERS OF LABOUR, DEPUTY COMMISSIONERS OF LABOUR, ASST.COMMISSIONERS OF LABOUR INCLUDING ASST. LABOUR OFFICERS FROM 04-11-2019 TO 08.11.2019 IN THE OFFICE OF THE SPECIAL COMMISSIONER OF LABOUR, AP VIJAYAWADA - BRIEF GUIDELINES.

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Sub: -The Building and Other Construction Workers Welfare Cess Act, 1996 and the Building and other Construction Workers Welfare Cess Rules 1998 – Guidelines on Assessment and Collection of Cess – Regarding.

Ref: - 1) G.O.Ms.No.111, LET&F Department (Lab-II) Department, dated 15-12-2009.
2. G.O.Ms.No.112, LET& F Department (Lab-II) Department dated 15-12-2009
3. G.O.Ms.No.75, LET&F Department (Lab-IV) Department, dated 24-08-2010.
4. Orientation Programme conducted of Labour Department Officers on Cess Assessment and Cess collection from 4-11-2019 to 8-11-2019.
5. This Office Circular Memo dated 12-11-2019.

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The attention of all the JCLs, DCLs and ACLs in the state is invited to the references cited. The orientation programme conducted Labour Department Officers regarding Cess Assessment and Cess Collection with the aim to familiarize the provisions of Building and other Construction Workers Welfare Cess Act, 1996 and Rules 1998, cess Assessment and Cess Collection methods in order to enhance the collection of Cess. In view of the requisitions and suggestions made during the above orientation programme, the following guidelines for effective assessment and collection of cess are issued:-

General Guidelines for Assessing Officers:

- a) Principles of natural justice shall be followed, which requires giving an opportunity of being heard, to the employer.
- b) Assessing Officer is a quasi-judicial authority. There are no parties with a dispute before him like a petitioner and a respondent but the Assessing Officer will decide the cess in exercise of the legal powers conferred on him and while doing so he shall use his discretion judiciously so that the rights of the employer are not violated while fixing his legal liability as to cess.

- c)** The Assessing Officer can take assistance of his subordinate officers for the purpose of enquiry in the field and collection of documentary evidence from the relevant source in respect of the work for which cess is being assessed.
- d)** The order of the Assessing Officer should contain the details of employer, details of establishment and the details of building or other construction work taken up by the employer as reflected from the material before the assessing officer and calculation of cost of construction and cess, cess paid if any, cess payable as balance or cess refundable if excess paid.
- e)** The Assessing Officer shall issue a Notice to the employer, proposing to assess cess in respect of the building or other construction work taken up by the employer. The Assessing Officer shall have some prima facie material related to the building or other construction work in respect of which he proposes to assess cess, before initiating proceedings for assessment of cess. The material may be Form-I under Cess Rules, Registration Certificate under sec 7 of BOCW Act, notice of commencement of work under Sec 46 of the BOCW Act or a notice given by the inspector under BOCW Act for registration of establishment or calling for notice required to be furnished under sec 46 of BOCW Act or any documentary evidence/information secured from Govt/local body/PSU or an inspection report of the inspector under BOCW Act etc.(Ex. an inspector should have an inspection report before filing prosecution or a claim application under Minimum Wages Act)
- f)** In case of execution of work through contractor or contractors, the Assessing Officer may proceed to assess cess by issuing notices to the principal employer as well as contractor/contractors, as liability in such case is joint and several.
- g)** Assessing officer may issue assessment order in a simple structured format in cases involving no disputed facts. In case of any disputed facts, the assessing order should pass a speaking order specifying the disputed facts and resolution of such dispute on the material available with the assessing officer.
- h)** Penalty may be imposed if the employer fails to comply with the assessment order. Penalty should not be imposed directly in the assessment order. Separate proceedings shall be initiated proposing to impose penalty and the order imposing penalty should be a separate speaking order.

- i) In addition to cess due, interest shall also be ordered in the assessment order, payable for the period from the date of completion of 30 days from the date of completion of work or if the work continues beyond one year, on completion of one year.

It is submitted that as per G.O.Ms No. 111 & 112 of Labour Employment Training and Factories Department (Lab-II) Department, dated 15-12-2009 to the State Government Departments, Public Undertaking/Local Bodies which undertake construction works and also the Authorises which are competent to approve plans for "Building and Other Construction Work viz (1) Municipal Administration and Urban Development Department (in respect of all Urban Local Bodies 2) Panchayat raj Department to collect 1% Cess at source.

In respect of Building or Other Construction Works undertaken by Government Departments, Government Organizations and Public-Sector undertakings, Cess shall be collected by deduction from the bills paid to the contractors for such works. (*Section 3(2) of Cess Act r/w rule 4(3) of Cess Rules*). Usually, all building or other construction works of the Government Departments / Government Organizations / Public Sector Undertakings are undertaken through Contractors. Cess deducted by the respective Govt. Department / Organization / PSU, from the bills paid to the Contractors shall be remitted within 30 days, to the A.P. Building & Other Construction Workers Welfare Board (*Section 3(3) of Cess Act r/w Rule 5 of Cess Rules*).

(Procedure on Remittance of Cess deducted at source GO Ms. 111 & 112)

The above specified procedure shall be followed in respect of building or other construction works undertaken by the Local Bodies also. Some municipalities are collecting Cess at source. All Municipal Corporations, Municipalities, Urban Development Authorities like VUDA, KUDA, Statutory Bodies like SEZ, EPZ, CRDA, delegated the powers of Local bodies on approval of plans shall also follow the same procedure. Other Local bodies like Zilla Parishads, Mandal Parishads, and Grampanchayaths also need to follow the said procedure.

1.B : Deduction of Cess at source in respect of Private Building and other Construction Works:

Cess shall be collected by the plan approving authorities (usually Local bodies) at the time of approval of plan of a building or other construction work. Every application for approval of a plan for building or other construction work shall be accompanied by a crossed Demand Draft for the amount of Cess payable on the estimated cost of such work.

In case duration of execution of work is likely to exceed one year, the amount of Cess payable at the time of approval of plan may be for the amount of Cess payable on cost of construction estimated to be incurred during one year from the date of commencement. In case of Cess payable for part of work executed beyond one year, Cess shall be paid within 30 days from the date of completion of work if completed within a year on completion of one year if work continued beyond one year or within 30 days of the date of assessment whichever is earlier (*Section 3(2) of Cess Act r/w rule 4(4) of the Cess Rules*).

Though it is provided in the Cess Act that, in case of approval of a plan for building or other construction work estimated to be executed beyond one year, Cess may be deducted at source on total estimated cost of constructions being done by certain municipalities, in order to simplify collection of Cess. In case of excess payment of Cess, the employer may always claim excess paid Cess from the Assessing Officer.

2. Levy & collection of Cess in case of building or other construction works in respect of which Cess not deducted at source:

2.A. Levy and collection of Cess in case of works undertaken by Government Departments, Government Organizations and Public-Sector Undertakings in respect of which Cess not deducted at source:

- a) Cess shall be paid within (30) days of completion of work or within (30) days of order of assessment whichever is earlier (*Rule 4(1) of Cess Rules*).
- b) Every employer shall furnish in Form I prescribed under the Cess Rules, 1998, details of building or other construction work taken up, to the Assessing Officer within (30) days of the commencement of the building or other construction work(*Section 4 of Cess Act r/w rule 6 of Cess Rules*).

Every employer is also required under Sec 46 of the BOCW Act to furnish a notice in Form-IV within 30 days of commencement of building or construction work which contains details of such work and the employer. Details contained in this form may be sufficient to pass an assessment order in case of simple routine building works.

- c) If the work continues beyond (1) year, Cess shall be paid/collected within (30)days of completion of (1) year from the date of commencement of work, on the cost of construction incurred during the year (*Rule 4 (2) of Cess Rules*).
- d) If Cess not deducted at source in case of works undertaken by the Government departments, Government Organizations and Public Sector Undertakings, Cess may be levied simply on the basis of bills paid to the contractors if work is executed through contractors.
- e) In case of works undertaken by the Government departments, Government Organizations and Public-Sector Undertakings, in respect of which Cess not collected at source and if work is directly executed without involving the contractors, procedure at (a) (b) and (c) above shall be followed.
- f) In case of works undertaken by the Government departments, Government Organizations, Public Sector Undertakings and Local Bodies, Cost of construction may be arrived if the details of each work of each work executing authority (ex. Municipal Commissioner, Executive Engineer R&B Dept.) are collected along with the details of bills paid in executing each work. Information may also be collected regularly from the Pay and Accounts Officers and Asst. Pay and Accounts Officers of works departments, for monitoring collection of Cess from every bill paid in respect of every work and the Cess collected is remitted to the fund atleast once in a month.

It is further submitted that through the reference 3rd cited as per G.O.Ms.No.75, Labour, Employment, Training & Factories (Lab-IV) Department, dated 24-08-2010 Assessing Officers for the purpose of Cess collection under the Building and Other Construction Workers Cess Act, 1996 were appointed duly prescribing their jurisdiction of the local limits and the value of Assessment. Government have re-examined the issue in consultation with the Expert Committee and felt that certain procedure needs to be prescribed for the assessment as to accomplish the task assigned to the officers of the Labour Department without causing much hardship[to the establishments.

Accordingly the following procedure for assessment is hereby prescribed:

- (i) Self Assessment should be permitted in respect of all the establishments/assesses.
- (ii) Along with the Self Assessment Return, the Assessee should (a) Project Report and Statements submitted to the Banks or other financial institutions for the construction activity and (b) Plans approved by the Local Authority and other competent authority.
- (iii) The Assessment should be based on the cost of construction as per the norms prescribed by the Registration Department in case of buildings, and in case of other construction activities, the unit cost prescribed by the concerned Government Departments/organizations. The unit cost prescribed shall be latest and directly related to other construction activities covered under the Act, 1996
- (iv) in respect of assessments upto Rs. 1.00 crore no verification need to be made, except on receipt of complaints /petitions /representations with sufficient proof.
- 9v) in respect of remaining establishments/assesses, 5% of the self assessment shall be verified on the basis of random sampling method by the Assessing Officers.

In view of the above a Modal Self Assessment Proforma is prescribed is here under:-

SELF ASSEEMENT PROFORMA

I.....S/W/o....Aged...
years, resident
 of

 Registered under Section 7 of the Building and Other Construction Workers (RE&CS) Act 1996 and A.P.Rules 1999 vide Registration No.....
 datedfor construction work at

 do hereby declare that the details of aforesaid construction work furnished below are true and correct to the best of my knowledge and belief.

1	The Type of Building is	
	a) Residential b) School c)Hospital d) Guest House e) Hotel f) Shopping Mall / Complex g) Factory h) Theatre i) any other, specify	
2	Date of Commencement of construction	
3	Date of completion work	
4	Total constructed covered Area in Sq.Mts.	
	a) Still /Cellar Area	
	b)Ground Floor Area	
	c)First Floor Area	
	d)Second Floor Area	
	e) Third Floor Area	
	f) Fourth Floor Area	
5	Total Contruction cost of Civil Work	Rs
6	Total cost of Civil work in case of Repairs/Alteration/Maintenance	Rs
7	Total cost of Demolition work of old structure	Rs
8	Type of Flooring is.....having total	Rs

	area ofSq meters with cost @ Rs.....per Sq.Mts	
a) Ceramic Tiles b) Vitrified Tiles c) Marble local d) Marble imported e) Granite f) Wooden Tiles g) any other, specify		
9	Total cost of Wood Panelling work is	Rs.
10	Total cost of Wood work other than wood paneling is	Rs
11	Total cost of False Ceiling is	Rs
12	Total cost of Elevation is	Rs
13	Total cost of Central Air Conditioning is	Rs
14	Total cost incurred in installation of Lift is	Rs
15	Total cost incurred on Boundary Wall and Gates Etc is	Rs
16	Total cost of Swimming Pool, if constructed is	Rs
17	Total cost of Electric work along with cost of Fitting & Fixtures is	Rs
18	Total cost of Plumbing work along with cost of Fitting & Fixures is	Rs
19	Cost incurred in installation of Power Plant/Generator is	Rs
20	Total cost of other development works including Sewerge, External Road, Approach Roads, Landscaping, Firefighting etc is	Rs
21	Cost incurred in installation of Plant & Machinery in case of Factory	Rs
22	Any other construction is	Rs.

Employer

Verified at Vijayawada on thisday of
2012 that the contents of the above Self Assessment are true and correct to the best of my
knowledge No part of it is false and nothing material has been concealed there from.

Employer

In this connection it is instructed to all the Cess Assessing Officers and Cess
collectors are hereby instructed to follow these guidelines scrupulously and take
up all steps to enhance the collection of Cess.

A.C.L / J.C.L / SPECIAL COMMISSIONER OF LABOUR

I.....S/W/o....Age
d.....years, resident of
.....
.....

Registered under Section 7 of the Building and Other Construction Workers
(RE&CS) Act 1996 and A.P.Rules 1999 vide Registration
No..... datedfor
construction work at

... do hereby declare that the details of aforesaid construction work furnished below
are true and correct to the best of my knowledge and belief.

1	The Type of Building is	
	a) Residential b) School c)Hospital d) Guest House e) Hotel f) Shopping Mall / Complex g) Factory h) Theatre i) any other, specify	
2	Date of Commencement of construction	
3	Date of completion work	
4	Total constructed covered Area in Sq.Mts.	
	a) Still /Cellar Area	
	b)Ground Floor Area	
	c)First Floor Area	
	d)Second Floor Area	
	e) Third Floor Area	
	f) Fourth Floor Area	
5	Total Construction cost of Civil Work	Rs
6	Total cost of Civil work in case of Repairs/Alteration/Maintenance	Rs
7	Total cost of Demolition work of old structure	Rs
8	Type of Flooring is.....having total area ofSq meters with cost @ Rs.....per Sq.Mts	Rs
	a) Ceramic Tiles b) Vitrified Tiles c) Marble local d) Marble imported e) Granite f) Wooden Tiles g) any other, specify	
9	Total cost of Wood Panelling work is	Rs.
10	Total cost of Wood work other than wood paneling is	Rs
11	Total cost of False Ceiling is	Rs
12	Total cost of Elevation is	Rs
13	Total cost of Central Air Conditioning is	Rs
14	Total cost incurred in installation of Lift is	Rs
15	Total cost incurred on Boundary Wall and Gates Etc is	Rs
16	Total cost of Swimming Pool, if constructed is	Rs
17	Total cost of Electric work along with cost of Fitting & Fixtures is	Rs
18	Total cost of Plumbing work along with cost	Rs

GIST OF JUDGMENT of HON'BLE HIGH COURT

Hon'ble Justice N.V. Ramana's judgment dt: 15-07-2008 in Writ Petition no. 4587 of 2008 and Batch of 383 WPs before the Hon'ble High Court of Andhra Pradesh

- 1. Whether before implementing the provisions of a statute (Cess Act) and issuance of orders in the impugned Memo, which seeks to implement the provisions of the statute, by way of collection of 1% labour cess from the bills of the petitioners, the Government is under an obligation to issue notice to the petitioners, and whether non-issuance of prior notice, violated the principles of natural justice?**

“The policies of the government, which are reflected and encrypted in the Acts, are enacted by the Parliament and the respective State Legislatures, for the well-being and welfare of the people, and in particular for the benefit of whom such Acts, are enacted. Since the said Acts, which reflect the will of the people, are enacted by the Parliament and the respective State Legislatures, after lengthy deliberations governing the subject, no notice whatsoever is required to be issued to any person, much less to the affected parties, for their implementation. No person, much less the petitioners can expect issuance of any notice for implementation of the provisions of a statute, for the Government by seeking to implement the statute, is seeking to implement the will of the people. When the statute does not specifically provide for issuance of notice, the petitioners cannot claim that before implementing the provisions of the Cess Act, they should be put on notice and give opportunity of hearing. Be that as it may, it is for the Parliament and the respective State Legislatures, which have enacted the respective statutes, to fix the dates of their operation or implementation. The statutes would come into operation from the dates so fixed therein or from the date the Government notifies in the official gazette about their operation.

The Workers Act, which is a Central Act, is a piece of welfare legislation, legislated to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto. To realize the objects of the Workers Act, Government of India, simultaneously along with the Workers Act, enacted the Cess Act, which seeks to collect 1% labour cess and remit the same to the Welfare Boards established under Section 18 of the Workers Act. The basic idea of

enacting the Cess Act along with the Workers Act, is to augment the resources of the Welfare Boards constituted under the Workers Act, which are entrusted with the job of providing the nature of assistances to the workers engaged in building and other construction works, as provided under Section 22 of the Workers Act. Though the Workers Act and the Cess Act came into force w.e.f. 01.03.1996 and 03.11.1996 respectively, the fact remains, the provisions of the Cess Act, which sought to levy and collect 1% labour cess, was not implemented in the State of Andhra Pradesh because Welfare Boards as provided under Section 18 of the Workers Act, were not constituted. Now that the State Government had constituted the Welfare Boards as provided under Section 18 of the Workers Act, on 30.04.2007, and having amended the Rules, vide G.O. Ms. No. 57, dated 26.06.2007, issued orders in the impugned Memo, directed the officers concerned to collect 1% labour cess from the bills of the petitioners. Since the impugned Memo has been issued by the Government in implementation of the provisions of a statute, no notice whatsoever is required to be issued to any person, much less the petitioners, and more particularly when they are aware of the existence of and coming into force of the Workers and Cess Act, which as stated above, came into force w.e.f. 01.03.1996 and 03.11.1996 respectively. In that view of the matter, the petitioners cannot complain that the Government before implementing the Cess Act and the Memo issued in implementation thereof, was under an obligation to give prior notice, and in the non-issuance of such prior notices, they have violated the principles of natural justice”.

(No Prior notice is required to implement the BOCW Act and the Cess Act and there is no violation of principles of natural justice.)

2. Whether the Government by issuance of orders in a Memo, is entitled to collect 1% labour cess from the bills of the petitioners w.e.f. 26.06.2007, i.e. a date much prior to its issuance and after constitution of the Welfare Boards as provided under the statute?

As observed in reply to question No.1, Cess Act came into force from 03.11.1995. Though sub-section (1) of Section 3 of the Cess Act, which deals with levy and collection of labour cess, provides that there shall be levy and collection of labour cess at a rate not exceeding two per cent and not less than one per cent of the cost of construction incurred by an employer, as the Central

Government may, by notification in the Official Gazette, from time to time specify, the fact remains, the Central Government, through its Ministry of Labour, in exercise of the powers conferred by sub-section (1) of Section 3 of the Building and Construction Workers' Welfare Cess Act, 1996 and in supersession of the notification of the Government of India in the Ministry of Labour No. S.O. 1767 dated the 17th May, 1996, issued notification on 26.09.1996 specifying a cess for the purpose of the Workers Act, at the rate of 1 per cent, of the cost of construction incurred by an employer. Even though, the State Government, is empowered to levy and collect labour cess at the rate of 1% per cent, as notified by the Centre in the notification from 26.09.1996, the fact remains, the State Government, did not constitute the Welfare Boards as provided under Section 18 of the Workers Act, and they constituted the same only on 30.04.2007. Thereafter, the Government, made amendment to the Rules by issuing G.O. Ms. No. 57, dated 26.06.2007, and sought to collect 1% labour cess from the said date, and accordingly, issued orders in the impugned Memo, directing the officers concerned to collect 1% labour cess from the bills payable to the contractors, from 26.06.2007, and such, direction, in my considered view, cannot be said to be illegal or arbitrary, and more particularly, when the respondents have sought to collect the same only from 26.06.2007, i.e. the date on which they amended the Rules and not from 26.09.1996, the date on which the Central Government issued notification for collection of 1% labour cess from the bills payable to the contractors on the cost of construction incurred by an employer.

- 3. Whether non-mentioning of the levy and collection of 1% labour cess in the agreements/contracts entered into by the petitioners with the respondents, gives the petitioners any legitimate expectation that 1% labour cess in terms of the Cess Act, would not be collected by the respondents from them?**
- 4. Whether absence of the clause relating to levy and collection of 1% labour cess in the agreements/contracts, disentitles the respondents from deducting the said 1% labour cess from the bills of the petitioners, which in fact, is sought to be collected in giving effect to the Cess Act?**
- 5. Whether by allowing the respondents to collect the said 1% labour cess on the basis of the impugned Memo issued by the Government, amounts to permitting the respondents to alter the terms and conditions of the agreements/contracts, entered into by the petitioners with the respondents?**

The respondents do not dispute the fact that in some of the agreements/contracts entered into by them with the petitioners prior to 26.06.2007, there is no clause incorporated for levy and collection of 1% labour cess from the bills payable to them, and that levy and collection of 1% labour cess, was not included in the estimates submitted. However, the absence of such a clause relating to levy and collection of 1% labour cess in the agreements/contracts and non-inclusion of the same in the estimates, by itself do not preclude the respondents from levying and collecting the 1% labour cess, which in fact, is sought to be levied and collected by giving effect to the provisions of a statute, which was in force as on the date of the respondents entering into agreements/contracts with the petitioners. No doubt, in the agreements/contracts entered into by the respondents with the petitioners prior to 26.06.2007, the clause relating to levy and collection of cess is absent, but the fact remains, at the time when the petitioners entered into agreements/contracts with the respondents, the Workers Act and the Cess Act, which came into force on w.e.f. 01.03.1996 and 03.11.1996 respectively, were very much in force, and in fact, the petitioners in Clauses No. 69 of the agreements/contracts entered into by them with the respondents, have agreed to comply with all the labour regulations.

(the absence of a clause in the agreement between the principal employer and the contractor to collect 1% Cess will not absolve the contractor from the liability of payment of 1% Cess, since there is another clause in the agreement that the contractor will implement all laws of the land applicable)

6. Whether the respondents are entitled to collect 1% labour cess only after following the procedure contemplated under the Cess Act, in that after filing of returns by the petitioners, making of assessment by the authority, determination of liability of the petitioners, and after issuance of show cause notice as to collection of such determined liability?

To consider this question, it is appropriate to refer to the provisions of Section 3 of the Cess Act, which deals with levy and collection of cess.

A reading of the above provision, would make it clear that under sub-section (1) of Section 3 of the Cess Act, cess not exceeding 2 per cent and not less than 1 per cent is leviable on the cost of construction incurred by an employer, and under sub-section (2) thereof, such labour cess can be deducted at source or by way of advance collection, while the proceeds of the labour cess so collected, shall under sub-section (3) be paid or remitted

to the Welfare Board, and while sub-section (4) states that notwithstanding anything contained in sub-sections (1) and (2) the labour cess leviable under the Act, including payment of such labour cess in advance may, subject to final assessment to be made, be collected at a uniform rate or rates, as may be prescribed on the basis of the quantum of the building or other construction work involved. A collective reading of the above sub-clauses, would indicate that the respondents are entitled to collect the 1% labour cess at source, which shall be subject to final assessment. The fact, that the labour cess deducted at source is subject to final assessment, is evident from the fact that Section 4 of the Cess Act, requires the employer to file returns, and under Section 5 thereof, the authority shall make assessment and pass an order determining the liability, and any person, aggrieved by the assessment, can prefer an appeal under Section 11 of the Cess Act read with Rule 14 made thereunder. If in the assessment, it is found that the labour cess deducted at source, is in excess of what was to be collected, then the excess so collected, shall be returned to the assessee as per Rule 13 of the Rules, and if it is found that the labour cess collected at source, is less than what was required to be collected, then the same as per Rule 13 of the Rules, would be collected from the assessee. This procedure contemplated under the Cess Act and the Rules, clearly shows that deduction of labour cess or by way of advance at a uniform rate is permissible without a prior assessment, and such collection of labour cess at source, without prior assessment, cannot be said to be illegal and more so when the labour cess so collected, is subject to adjustability upon final assessment and fixation of liability. In that view of the matter, it has to be held that the contention of the petitioners that the respondents are not entitled to collect 1% labour cess unless they follow the procedure contemplated under the Cess Act, namely after filing of returns by the petitioners, followed by assessment by the authority, determination of liability of the petitioners, and calling upon them to show cause as to why the amount determined should not be collected, is bereft of any merit.

(Collection of Cess at source without notice and before assessment without fixing specific liability is permissible under the Cess Act and Rules, since the Act provides for notice and assessment following deduction at source)

- 7. Whether the respondents, while collecting 1% labour cess from the bills of the petitioners in terms of the Cess Act, should collect the same only taking into consideration the cost of the construction, but not the entire value of the work, and whether the element of profit should be excluded while deducting the 1% labour cess?**

Both Section 3 of the Cess Act and Rule 3 of the Rules made thereunder, as also the notification dated 26.09.1996, issued by the Central Government, provide for collection of 1% labour cess on the cost of construction incurred by an employer. Rule 3 of the Rules defines “the cost of construction”.

From the above, definition of “cost of construction”, it is clear that it includes all expenditure incurred by an employer in connection with the building or other construction work, and it excludes the cost of land, and any compensation paid or payable to a worker or his kin under the Workmen’s Compensation Act, 1923. Thus, it is clear that the labour cess sought to be collected is not on the entire value of the work, but only on the cost of construction, which is as provided in Section 3 of the Cess Act and Rule 3 of the Rules made there under, as also the notification dated 26.09.1996, issued by the Central Government. Therefore, it has to be held that the respondents while levying and collecting the labour cess, have to collect the same on the cost of the construction incurred by an employer and not the entire value of the work. Accordingly, this question is answered.

(Cess should be calculated on the cost of construction but not the value of the construction)

With the above observations the Hon’ble High Court dismissed the batch of 383 writ petitions.

Constitutional Validity of the Cess Act (Whether it is “Fee” or “Tax”)

Judgment of the Hon’ble Supreme Court of India, dt: 18-11-2011 in Special Leave to Appeal (Civil) No. 1832 of 2008, between by M/s Dewan Chand Builders & Contractors Vs Union of India & Others.

“The Hon’ble High Court of Delhi held that, The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (for short “the BOCW Act”); The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Central Rules, 1998, (for short the “1998 Central Rules”); The Building and Other Construction Workers Welfare Cess Act, 1996 (for short “the Cess Act”) and The Building and Other Construction Workers Welfare Cess Rules, 1998 (for short “the Cess Rules”) are constitutionally valid and within the competence of the Parliament as the levy under the

impugned enactments is a “fee”, referable to Entry 97 of List-I of the Seventh Schedule of the Constitution of India”.

On appeal against the said order of the Hon’ble High Court of Delhi, The Hon’ble Supreme Court of India dismissed the appeal and held as follows:

“.... the inevitable conclusion is that in the instant case there does exist a reasonable nexus between the payer of the Cess and the services rendered for that industry and therefore, the said levy cannot be assailed on the ground that being in the nature of a ‘tax’, it was beyond the legislative competence of Parliament.

Having reached the conclusion that the levy by the impugned Act is in effect a ‘fee’ and not a ‘tax’, we deem it unnecessary to deal with the second limb of the challenge, viz. the impost is a tax on “lands and buildings”, covered by Entry 49 in List II of the Seventh Schedule.

In view of the afore going discussion, we do not find any infirmity in the conclusions arrived at by the High Court while upholding the validity of the impugned Acts. All the appeals, being bereft of any merit are dismissed with costs, quantified at Rs. 25,000/- in each set of appeals”.

(In the above case the Hon’ble Supreme Court held that Cess is not “tax” but similar to “fee”).

Government of India have enacted progressive legislations (1) The Building and Other Construction Workers (RE&CS) Act, 1996 and (2) The Building and Other Construction Workers Welfare Cess Act, 1996, for regulating Safety and Health and conditions of service of construction workers and also to provide various benefits to them and a notification dated 26-09-1996 of MOL, GOI, has been issued to levy and collect 1% Cess on the cost of construction.

In this regard the Hon’ble Supreme Court of India in W.P. Civil No. 318/2006, dated 18-01-2010, inter alia, has directed all the State Government Departments to levy and collect Cess continuously from all the Government and

Private establishments and to utilize the fund for the benefit of registered construction workers.

The Hon'ble High Court of A.P. through the reference 1st cited, interalia, has directed all Government departments to levy and collect cess from the establishment's w.e.f. 26-06-2007. In pursuance of the orders of the Hon'ble High Court, the Government have issued orders in G.O. Ms. No. 84 of LET & F (Lab-II) Department, dated 16-09-2009, constituting "District Coordination Committees" for levy and collection of Cess and to submit a monthly report in the matter. Inspite of the said instructions most of the DCLs have not convened District Coordination Committee meetings and none of the DCLs have taken up follow up action and submitted reports.

Through the reference 2nd cited, the Government have issued orders appointing the officers of Labour Department i.e., JCLs, DCLs and ACLs as **Cess Assessing**

Officers, under the provisions of the B&OCWW Cess Act, 1996 and Central Rules, 1998, for levy of Cess and issue of assessment orders on the cost of construction. Through the reference 3rd cited, the Government have also issued orders appointing Appellate authorities i.e., Commissioner of Labour, JCLs and DCLs to hear appeals on assessments made by the Assessing Officers under the Building and Other Construction workers' Welfare Cess Act, 1996 and Rules.

Through the references 5th & 6th cited, the Government have issued orders to all Government departments and Local Bodies for levy and collection of Cess / and deduction of Cess at source from the gross bills of the principal employers / contractors in respect of the construction works / projects undertaken from time to time by the Government departments / organisations and for collection of Cess by Local Bodies while approving plans in respect of private constructions.

The Vigilance and Enforcement Department has also inspected certain construction projects in the State during the year 2009 and 2010 and found that the Cess was not assessed and collected by the officers of the Labour Department that resulted in substantial amount of Cess evaded by the principal employers / contractors and in this regard the Vigilance & Enforcement authorities have

communicated Alert Note Nos. 94, 134 & 56. These Alert Notes were also communicated to all Assessing Officers in the State vide reference 10th cited and their compliance is also awaited. The same has also been pointed out by the CAG during the course of recent audit. The Vigilance and Enforcement Department is persistently reminding this office on compliance of the **Alert Notes** communicated by them.

The Comptroller and Auditor General audited the accounts of the A.P. Building and other Construction Workers Welfare Board, during the period from 29-09-2010 to 27-10-2010 for the years 2007-08 to 2009-2010 and communicated Audit Reports for the said years and required immediate compliance. It has been interalia pointed out the following by CAG on collection of Cess for immediate compliance:

- 1. The Assessing Officers were merely accepting the payment of Cess by the employers without the requisite return in Form-I.**
- 2. In cases of submission of Form-I on the cost of the construction employers, the same are accepted without verifying the information so furnished by the employer.**
- 3. The returns filed by the employers were not supported by the documentary evidence to substantiate the cost of construction arrived by them.**
- 4. Although the Rule 7 (6) of the B&OCW Cess Rules 1998, enable the Assessing Officers to authorize the designated officer to make enquiries at the work site or from the documentary evidence, no such efforts were made by the Assessing Officers.**
- 5. Most of the notices issued by the Assessing Officers did not contain the due date for payment of the Cess.**
- 6. Certain Assessing Officers have in-correctly assessed Cess amounts.**
- 7. Certain Assessing officers have not recovered the Cess in accordance with the reports of the Vigilance & Enforcement Department.**

8. The collection of Cess is very poor despite hectic construction activities undertaken in various Districts.

Keeping in view the above, it is considered expedient to issue necessary guidelines to all the **Assessing officers and Appellate Officers** for levy and collection of Cess in compliance of the provisions of the Act and on the directions of the Hon'ble Supreme Court of India in W.P. (Civil) No.318/2006, dated 18-01-2010 and High court of A.P. in W.P.No.4587/2008 and batch and also observations of Comptroller and Auditor General of India-thereon, so as to utilize the fund collected towards the benefit of the registered construction workers.

The performance of the Assessing Officers and Appellate Officers would be reviewed by the Commissioner of Labour who is the notified Chief Inspector under the B&OCW Act, 1996, during the course of monthly review meetings.

The Joint Commissioners of Labour at the Zonal Level shall also review the performance of the DCLs and ACLs working under their control and ensure that the directions herein are scrupulously followed and Cess is collected in time and remitted to A.P. Building and Other Construction Workers Welfare Fund.

In order to timely levy and collection of Cess and to comply with the provisions of the Building and Other Construction Workers Welfare Cess Act, 1996 and Rules, 1998, made thereon, **the guidelines to the Assessing Officers and Appellate Officers are hereby enclosed along with connected material papers for strict compliance and to maintain the Cess assessment records.**

The Cess Assessing Officers and Appellate Officers are informed that any deviation of the guidelines and provisions of the B&OCWW Cess Act and Rules would be viewed seriously.