

THE BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS ACT, 1996 – WHETHER A BOON OR BANE?

By

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I. Introduction

Construction industry is an important industry and plays pivotal role in the structural development of any country. However the fate of the workers engaged in this industry is very pathetic. Centuries over, building and other construction workers are considered to be unorganized and easily available at exploitable remuneration. In fact, the requirement of labour force in the construction industry is increasing day by day to cope of the increasing degree of civilization requiring comfortable and beautifully decorated residential houses and other building accommodation including renovation works of historical constructions and structures. India is not an exception to this general observation.

In India, building and other construction workers are one of the most vulnerable segments of the unorganized labour. It is estimated that about 8.5 million workers in the country are engaged in building and other construction works. These works are characterized with inherent risks to their lives and limbs. The work is also casual in nature, and only *ad hoc* relationship exists between employers and workers¹. This field also witnesses lack of harmony and peace between the employers and workers, uncertain working hours, lack of basic amenities and facilities, inadequacy in security and welfare, in spite of the existence of statutory provisions.

It was felt necessary to provide building and other construction workers statutory protections. Although the provisions of various labour laws *i.e.*, Minimum Wages Act 1948, Contract Labour (Regulation and Abolition) Act 1970 and Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 *etc.*, are applicable to these workers, a need was felt for a comprehensive Central legislation for the protection as well as well being of these growing millions of workers towards the above goal. As a result, the following two Central enactments were brought into force the origin of which was in the pertinent ordinances

1. The Building and Other Construction Worker's (Regulation of Employment and Conditions of Service) Act 1996, (for short "the BOCW Act") and
2. The Building and Other Construction Workers Welfare Cess Act, 1996 (for short "the Cess Act")

The main objectives of the above two enactments are to regulate the employment and conditions of service of the workers engaged in building and other construction work and to provide them safety health and welfare measures and other matters connected therewith or incidental thereto. The latter Act provides for the levy and collection of a cess on the cost of construction incurred by employers with a view to augmenting the resources of Building and Other Construction Worker's Welfare Boards as may be established under the former Act.

1. Statement of Objects and Reasons appended to the Bill preceding the enactment of the Building and other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996.

inhumane. Therefore, it is felt necessary to make a peep into the various provisions of the Cess Act, identify certain drawbacks in the collection of the cess and in making use of the same for the purposes for which the cess is collected. This article is a pious effort in this direction.

II. The Cess Act, 1996

With a view to augmenting the resources of the Welfare Boards constituted under the BOCWA, 1996, the Building and Other Construction Workers' Welfare Cess Act has been enacted in 1996 extending its scope and application to the whole of India as provided in Section 1 of the said Act of the 1996. This Act shall be deemed to have come into force on the third day of November, 1995². The words and expressions used but not defined in this Act shall have the same meaning as assigned to them respectively in the BOCW Act, 1996³. Besides, the Cess Act, the Central Government in exercise of its powers conferred by sub-section (1) of Section 14 of the Cess Act, had made the Welfare Cess Rules 1998 which have come into force *m.e.f.* 26.3.1998, in further enforcement of the Cess Act of 1996.

(i) Meaning of the term 'Cess':

It is interesting to note that neither the BOCW Act nor the Cess Act, nor the Rules made under these enactments define the term "Cess". The General Clauses Act, 1897 also does not define this term. Therefore it is necessary to embark upon other sources to define this term. Before doing so, it may be pertinent to mention that what is emphatically used in the title of the Cess Act is "Welfare Cess", which term is also not defined elsewhere in the said enactments and the

Rules made thereunder. According to Webster's New World Dictionary, "Cess" means, an assessment; tax"⁴.

Applying the principles laid down in its various earlier decisions, the Supreme Court⁵ attempted to define indirectly the term "Cess" in the following manner:

"There is no doubt in our mind that the Statement of Objects and Reasons of the Cess Act, clearly spells out the essential purpose the enactment seeks to achieve *i.e.*, to augment the Welfare Fund under the BOCW Act. The levy of cess on the cost of construction incurred by the employers on the building and other construction works is for ensuring sufficient funds for the Welfare Boards to undertake social security schemes and welfare measures for building and other construction workers. The fund, so collected, is directed to specific ends spelt out in the BOCW Act. Therefore, applying the principle laid down in the aforesaid decisions of this Court, it is clear that the said levy is a "fee" and not "tax". The said fund is set apart and appropriated specifically for the performance of specified purpose; it is not merged in the public revenues for the benefit of the general public and as such the nexus between the cess and the purpose for which it is levied gets established, satisfying the element of *quid pro quo* in the scheme with these features of the Cess Act in view, the subject levy has to be construed as "fee" and not a "tax". Thus, we uphold and affirm the finding of the High Court on the issue".

(ii) *Cess is a 'Fee' and not 'tax'* In the above case⁶, the Supreme Court further held as follows:

2. Sub-section (3) of Section 1 of the Building and other Construction Workers' Welfare Cess Act, 1996.

3. Clause (d) of Section 2 of the Building and other Construction Workers' Welfare Cess Act, 1996.

4. Third College Edition P.230, Simon & Schuster, Inc. 1989.

5. *Dewan Chand Builders & Contractors v. Union of India and others*, (2011) 4 SCC 111 (Para 31).

6. *Ibid*, Para 36.

“Having reached the conclusion that the levy of cess 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 Schedule VII List II Entry 49”.

Welfare Cess:

While making a reference to the definition given to the term “Cess” in the above paragraphs, it may now be safely defined the phrase “Welfare Cess”. Construed accordingly, “Welfare Cess”, means the fee collected under the Act for the well-being of the building and other construction workers, inasmuch as “Welfare” means the measures provided to workers in addition to the Social Security measures, good working conditions besides safety and security at work places.

(iii) *Levy and Collection of Cess under the Cess Act 1996:*

Section 3 of the Cess Act empowers the Central Government by notification in the Official Gazette to levy and collect a cess for the purpose of the BOCW Act of 1996, at such rate not exceeding 2% but not less than 1% of the cost of construction incurred by an employer. This Section requires to be read with Rule 3 of the Central Cess Rules of 1998. As provided in Rule 3 of the Rules of 1998 the cost of construction shall not include the cost of the land and any compensation paid or payable to a worker or his kin under the Workmen’s Compensation Act, 1923 (renamed as the Employee’s Compensation Act, 1923) *w.e.f.* 18.1.2010

(iv) *Time and manner of collection of Cess*

(iii) Rule 4 of the Cess Rules of 1998 provides the time manner of collecting Cess. Accordingly the Cess to be levied under Section 3(1) of the Cess Act, 1996 shall be paid by the employer

to the Cess Collector, within 30 days of the completion of the construction project or within 30 days of the date on which assessment of Cess payable is finalized, whichever is earlier.

Where the duration of the project of construction work exceeds one year Cess shall be paid within 30 days of the completion of one year from the date of commencement of work and every year thereafter at the notified rates, as provided in Rule 4(2).

Where the levy of the Cess pertains to a building and other construction work of a Government or of a Public Sector Undertaking, such Government or Public Sector Undertaking is empowered to deduct or cause to be deducted the Cess payable at notified rates from the bills paid for such works, as provided in Rule 4(3) of the said Rules.

(v) *Advance payment of Cess*

Rule 4(5) of the Cess Rules 1998 enables an employer to pay in advance an amount of Cess calculated on the basis of estimated cost of construction along with the notice of commencement of work under Section 46 of the BOCW Act of 1996 by crossed demand draft, subject to the proviso given under (5) of Rule 4.

The advance Cess so paid, if any, shall be adjusted in the final assessment made by the Assessing Officer.

As provided in Rule 6 of the said Rules, every employer is required to furnish to the Assessing Officer, information as to the payment of the Cess in Form 1 within 30 days of commencement of his work. If there is any change or modification in the furnished information, the same shall be communicated to the Assessing Officer immediately but not later than 30 days from the date or such modification.

(vi) *Assessment of Cess:*

As provided in Rule 7 of the Cess Rules, an Assessing Officer under receipt of information in Form 1 from an employer shall make scrutiny of the same and on his satisfaction shall pass an order of assessment within a period not exceeding 6 months from the date of such receipt, indicating the amount of Cess payable by the employer and send a copy of it to the employer, to the Board and to the Cess Collector within 5 days from the date of such order. On receipt of such notice the employer shall furnish a reply thereto with evidence within 15 days from the date of receiving notice.

(vii) *Date of payment of Cess:*

As per Rule 11 of the Cess Rules, the date of payment of Cess shall be the date on which the amount is deposited with the Cess Collector under sub-rule (1) of the Rule 4, or the date of deduction at source under sub-rule (1) of the Rule 4, or the

date of deduction at source under sub-rule (3) or Rule 4, or the date on which the draft has been deposited; with the local authority under sub-rule (4), as the case may be.

III. Conclusions and Suggestions

The foregoing discussions go to show that the Parliament has done a great lot of activity for the overall development of the building and other construction workers. But because of its unorganized nature, the fruits are not reaching these millions of workers. Even the Hon'ble apex Court expressed dissatisfaction about the effective implementation of the above named two enactments. Because of other pressing priority activities, even the State has no sufficient time to look into the pathetic conditions of this growing number of workers. Unless the Government interferes in the given spirit, the fate of these workers cannot be brought to the stream of workers who are enjoying welfare measures more than what they deserve.

**CONSTRUCTION LABOUR CONSTRUCTING THE NATION
BUT NOT ABLE TO CONSTRUCT THEIR LIFE**

By

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The construction labour position is somewhat different from labour of other fields. Construction activity has become an integral part of the country's infrastructure development and industrial progress. It includes schools, hospitals, offices, houses and other buildings; Urban Infrastructure such as water supply, sewerage and drainage; highways, roads, ports, railways, airport, flyover, power systems; irrigation and agriculture systems; telecommunication *etc.* In short, construction has become basic input

for socio-economic development. Besides, construction generates substantial employment and provides a growth impetus through backward and forward linkages. It is essential therefore, that this vital activity is nurtured for the healthy growth of the economy.

Construction workers are the backbone of the economy as they create the infrastructure necessary for industrial growth. In a globalising economy, it is they, who are constructing the new economic zones,