

# **SECTION - A**

## **REALISATION OF LABOUR CESS**



# **CHAPTER II**

## **REGISTRATION OF ESTABLISHMENTS AND ASSESSMENT OF LABOUR CESS**



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### REGISTRATION OF ESTABLISHMENTS AND ASSESSMENT OF LABOUR CESS

Registration of Establishments was sluggish due to non-delegation of powers for registration of Establishments, inadequate efforts for registration and deficiencies in maintaining database of Cess remitting agencies. Lack of uniformity in estimating the cost of construction of buildings while issuing building permits by Local Bodies adversely impacted the assessment of Cess.

#### 2.1 Introduction

As per BOCW Act, 1996, all Establishments engaging more than 10 workers in the preceding 12 months are to be registered and every Employer shall apply for registration within a period of 60 days from the date of commencement of work to the Director of Industrial Safety and Health (DISH). Registration of Establishments by DISH is a crucial factor for ascertaining the details of construction works for which Cess must be assessed and collected by Local Bodies and other Agencies. Establishments, including the Employers, are registered through online web portal and the process of registration is given in **Appendix 2.1**. The Joint Directors at Chennai and Madurai are delegated with the powers to register Establishments and Employers under the Act.

Establishments are construction sites which come under private companies and contractors as well as Government entities such as Local Bodies, Public Works Department, Highways, Tamil Nadu Water Supply and Drainage Board (TWAD), Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB), Tamil Nadu Police Housing Corporation (TNPHC), Chennai Metro Rail Limited, Tamil Nadu Housing Board, Tamil Nadu Urban Habitat Development Board etc, which execute various construction works.

The assessment, collection and remittance of Labour Cess is made under the provisions of TNMW Act, 1982 and TNMW Rules, 1986.

#### **Construction works for which building permits are issued by Local Body:**

Under TNMW Rule 20A(1), the Labour Cess shall be collected by the Local Body at the prescribed rate while sanctioning the building permit, by means of Demand Draft (DD) drawn in favour of the Manual Workers General Welfare Fund of the TNCWWB, payable at Chennai. The contribution, so collected by the Local Body, shall be remitted to TNCWWB on or before the 15<sup>th</sup> of the month succeeding the month in which it was collected.

**Other construction works:** As per TNMW Rule 20A(2), construction which does not require Local Body's approval under Rule 20A(1), the Labour Cess shall be remitted to the Secretary, TNCWWB, by the person who undertakes or

is in-charge of such construction work, within 30 days from the date of commencement of such construction work.

The contribution under Rule 20A(1) and 20A(2) was revised from 0.3 *per cent* to one *per cent* of the estimated cost of construction with effect from 17 December 2013.

## 2.2 Non-registration of Establishments and Employers

As per the data provided by DISH for the period 2017-22, the number of Establishments/Employers registered was only 8,074.

Audit found that the number of Establishments registered by DISH was very low in view of the following:

During audit of sampled Local Bodies, Audit verified the list of Establishments/Employers (Both Local Bodies and contractors) registered with DISH. Verification revealed that 57 Local Bodies had executed a total of 18,587 works during 2017-22, which were to be registered individually as Establishments and the Local Bodies/contractors were to be registered as Employers. Audit, however, found that only 101 works (one *per cent*) in five Local Bodies were registered with DISH out of 18,587 of the works executed in 57 Local Bodies as detailed in the **Table 2.1**.

**Table 2.1: Sampled Establishments/Employers registered with DISH**

Sl. No.	Local Body (Employer)	Total Number of Local Bodies	Total number of works executed (Establishments)	Number of	
				Local Bodies registered	Establishments registered and Percentage
(1)	(2)	(3)	(4)	(5) = out of (3)	(6) = out of (4)
1	Corporations	7	6,183	4	100 (2)
2	Municipalities	9	3,622	1	1 (0)
3	Town Panchayats	25	2,169	NIL	NIL (0)
4	Blocks	16	6,613	NIL	NIL (0)
	<b>Total</b>	<b>57</b>	<b>18,587</b>	<b>5</b>	<b>101 (1)</b>

(Source: Data provided by the Local Bodies)

During Joint Physical Verification of 21 construction sites, Audit verified the registration details of the Establishment/Employer and noticed that 10 out of the 21 (48 *per cent*), were not registered with DISH.

Audit found that as of 31 March 2023, a total of 18,343 building<sup>5</sup> and other construction works contractors were registered with nine different government agencies as given in **Table 2.2**.

<sup>5</sup> Total number of contractors registered with the nine agencies was 24,054. After a de-duplication exercise of same contractors registered with multiple agencies, the unique number of contractors registered with the nine agencies was 18,343.

Table 2.2: DISH registration of contractors registered with various Government agencies

Sl. No.	Agency with which the contractors are registered	Number of unique contractors registered with the agency	Number registered with DISH	Percentage of contractors registered with DISH
1	Goods and Services Tax Network	11,015	456	4.14
2	e-procurement portal of GoTN	2,851	96	3.37
3	Employees Provident Fund Organisation (EPFO)	2,412	101	4.19
4	Highways Department	707	12	1.70
5	Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB)	405	9	2.22
6	Employees State Insurance Corporation (ESIC)	353	6	1.70
7	Public Works Department (PWD)	353	12	3.40
8	Tamil Nadu Water Supply and Drainage Board (TWAD)	200	18	9.00
9	Greater Chennai Corporation (GCC)	47	2	4.26
<b>Total</b>		<b>18,343</b>	<b>712</b>	<b>3.88</b>

(Source: Database of respective agencies)

As could be seen from **Table 2.2**, out of the 18,343 unique contractors registered with nine different Government agencies, only 712 (3.88 per cent) were registered with DISH.

Thus, Audit observed that the number of Establishments/Employers registered by DISH was very low.

In reply to a specific audit query on registration of Establishments and Employers, DISH stated (October 2022) that despite their best efforts, Government Agencies and Local Bodies did not come forward to register themselves and to facilitate the registration of Establishments/Employers. Reply was not acceptable as penal action under Sections 48, 49 and 50 of the BOCW Act<sup>6</sup> was not carried out by DISH. The reply points out lack of follow up measures in implementing the BOCW Act.

On an analysis of the reasons for the poor registration of Establishments/Employers, Audit found that as per Model Welfare Scheme (MWS)<sup>7</sup> issued by GoI, the authority for registration of Establishments/ Employers must be decentralised to enhance accessibility at the local level. However, DISH had delegated powers only to the Joint Directors for registration of

<sup>6</sup> **Section 48:** Penalty for failure to give notice of the commencement of the construction work; **Section 49:** Penalty for obstruction and **Section 50:** Penalty for other offences.

<sup>7</sup> In pursuance of Hon'ble Supreme Court directions, under Section 60 of BOCW Act 1996, GoI formulated MWS and Action Plan for Strengthening Implementation Machinery.

Establishments/Employers. The Joint Director, Chennai was in charge of registration of Establishments/Employers in 15 districts and the Joint Director, Madurai was in charge of 23 districts.

Thus, Audit observed that the failure to decentralise the registration of Establishments/Employers had resulted in significant shortfalls in registration of Establishments/Employers by DISH, which in turn prevented effective data sharing with TNCWWB for monitoring assessment of Cess in respect of the Establishments/Employers, which could result in Establishments/Employers evading assessment and subsequent remittance of Labour Cess.

GoTN replied (February 2023) that action was being taken to register Employers who are not coming forward to register with DISH, and stated that during 2017-22, 195 show-cause notices were issued, and 272 charge sheets were filed against the Employers and the contractors for executing the construction works without valid Registration Certificate under BOCW Act.

### **2.3 Non-maintenance of database of Establishment and Employers**

As of March 2022, about 13,600 Local Bodies, Government Institutions, etc., in the State are involved in collection of Labour Cess.

- (i) A total of 649 Urban Local Bodies (21 Corporations, 138 Municipalities and 490 Town Panchayats) and 12,913 Rural Local Bodies (388 Blocks and 12,525 Village Panchayats) for issuing building permits.
- (ii) Central/State Government Agencies<sup>8</sup>, State/Central PSUs/Autonomous Bodies<sup>9</sup> for construction works undertaken by them.

Audit found that TNCWWB did not maintain any record/database of Cess assessing, collecting, and remitting Agencies. Further, as discussed in detail in **Chapter III**, the Local Bodies, and other Agencies, which are to collect and remit the Cess amount, did not furnish the mandatory Forms to enable TNCWWB to reconcile whether the Cess assessed and collected were remitted correctly.

Thus, TNCWWB did not have a system to watch the collection and remittance of Labour Cess by these Agencies through periodical reports/data on the details of constructions permitted/carried out by these Agencies.

GoTN replied (February 2023) that the Commissioner of Labour has been instructed (December 2022) to notify the Inspectors to ensure prompt collection and remittance of Labour Cess by Local Bodies to TNCWWB. Audit observed

<sup>8</sup> PWD, CPWD, Highways, National Highways, Kalpakkam Atomic plant etc.

<sup>9</sup> TWAD, CMWSSB, TNHB, TNSCB, DRDAs, TNPHC, NLC, Oil Corporations, Port Trusts, Airport Authority of India, Chennai Metro Rail Limited, Railways, Military establishments, etc.



that without ensuring timely submission of data on the building permits issued by different Local Bodies, it would not be feasible to collect all the dues in time.

#### 2.4 Lack of uniform system for assessment of construction cost

As per Section 8A of TNMW Act, every person who makes an application for building permit for any building work to a Local Body shall be liable to pay a sum at such *per cent* not exceeding one *per cent*, of the total estimated cost of construction of the building to the Local Body concerned. Thus, the estimated cost of the building is the crucial factor.

Audit found that while the works executed by the Local Bodies and other Government Agencies had proper estimates of their works, the estimates prepared for building permits by private individuals/firms were not based on any uniform rates and varied widely. It was noticed that the sampled Local Bodies adopted different methods to assess the value of the construction, which in turn is used to assess the Labour Cess:

- Thirty-two Local Bodies adopted the rate fixed by the registered surveyor,
- Three Local Bodies adopted their own rates, and
- Fourteen Local Bodies adopted Public Works Department (PWD) rough cost estimates.
- Estimated building cost adopted for assessing Cess varied from ₹456 per sq.ft to ₹2,786 per sq.ft during 2017-22.

Audit found that during the same period, the rough cost of construction of buildings was ranging from ₹916 to ₹1,309 per sq.ft. Audit analysis of the Local Bodies which adopted their own rates and the rates fixed by their registered surveyors during 2017-22 revealed that the estimated cost of constructions were:

- less than half of the PWD rough cost estimates in 18 *per cent* of cases,
- less than three-fourth of the PWD rough cost estimates in 34 *per cent* of cases, and
- more than three-fourth of the PWD rough cost estimates in 48 *per cent* of cases.

Under-estimation of cost of construction would ultimately result in under assessment of Cess.

During the Exit conference, the ACS to Government stated that directions would be given to Local Bodies that the estimate amount adopted should not be less than the PWD's Schedule of Rates. Further, GoTN replied (February 2023) that the matter will be examined.

## **2.5 Non-levy of Labour Cess on Auroville Foundation**

Auroville Foundation, Villupuram District, requested (June 2020) Ministry of Labour and Employment, GoI, seeking exemption from payment of Labour Cess to TNCWWB as they claimed that the construction works were carried out by the in-house units of Auroville foundation. To a request (February 2021) from GoI to GoTN to furnish comments on the merits of the case, TNCWWB stated (July 2021) that there was no provision for exemption to any Employer as per the State Act and hence no exemption could be granted from remitting Cess.

Audit noticed that Auroville foundation had constructed buildings costing ₹116 crore during 2018-21. Audit, however, found that the Auroville Foundation did not remit Labour Cess of ₹1.16 crore in respect of these works carried out by them. Despite that, TNCWWB did not initiate any penal action.

GoTN replied (February 2023) that Auroville Foundation has been directed (November 2022 and December 2022) to remit the Cess amount due to TNCWWB. Audit found that the Auroville Foundation did not comply with the direction to remit the dues, but no further action was taken (March 2023).

## **2.6 Conclusion**

TNCWWB did not maintain a database of Cess assessing, collecting, and remitting Agencies and thus lacked a system to ascertain the quantum and timely assessment of Cess. Audit found significant shortcoming in registering Establishments/Employers by DISH, which adversely impacted the scope for data sharing with TNCWWB to ensure assessment of Labour Cess. Audit found significant under-valuation of cost of constructions by applicants of building permits, and the Local Bodies who were to collect the Labour Cess at the time of approving the building permits did not have a system to ensure correctness of the estimated value of the construction.

## **2.7 Recommendations**

- In order to broadbase Labour Cess assessment and collection, Government should ensure that DISH centralises the registration process to ensure 100 *per cent* registration of Establishments. Government should also ensure that TNCWWB maintains an updated database of all Cess remitting institutions and Establishments.

- Government should frame guidelines for estimation of construction cost of buildings for which building permits are approved by Local Bodies, and TNCWWB should ensure adherence to the guidelines.
- Government should amend the TNBOCW Rules, 2006 to make it mandatory that unless the contractor is registered with DISH, they cannot be offered/awarded any work.