

CHAPTER III

**COLLECTION AND
REMITTANCE OF
LABOUR CESS**

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TNCWWB did not have a system to watch the collection and remittance of Labour Cess. Deficiencies in the system and non-reconciliation of collection and remittance of Cess amount had resulted in misappropriation, short-remittance, delayed remittance and wrong remittance of the collected amount. Local Bodies had retained the Labour Cess collected for their own expenditure in violation of Act/Rules.

3.1 System of collection and remittance

As per Rule 20A(1) and (2) of TNMW Rules, the Local Body that accords building permissions is responsible to collect the Labour Cess amount from the building permit applicant. Other Agencies carrying out construction works, which does not require building permission by Local Bodies, are to calculate the amount of Labour Cess and remit the amount to TNCWWB.

During the Audit period, the Local Bodies typically followed three different systems for collection and remittance of Labour Cess.

- Labour Cess amount is collected by the Local Body from the building permit applicant in the form of DD and the DD is sent to TNCWWB.
- The building permit applicant is asked to remit the assessed amount of Labour Cess into the bank account of TNCWWB.
- Labour Cess amount is collected by the Local Body, credited to its own account, and periodically remitted to TNCWWB in lumpsum.

Government departments like PWD, Highways, etc., that carry out construction works, deduct the Labour Cess amount as non-government deductions from the bills payable to the contractors and remit it to the bank account of TNCWWB through Treasury system.

The Cess assessing/collecting/remitting Agencies are to furnish the details of Cess collection to TNCWWB in Form III/IV (**Appendix 3.1**). These Forms contains the details of Cess remittance e.g. estimated value of work, amount of Cess collected, the name of the Agency which assessed/collected/remitted cess, etc. Form III and Form IV would help TNCWWB to check correctness of assessment and collection and would facilitate reconciliation with actual receipt of money in the bank account of TNCWWB. In cases of direct remittance of Labour Cess through various modes *viz.*, ECS, cash remittance into TNCWWB bank branch, NEFT, RTGS and IMPS, the statement furnished by the Bank of TNCWWB does not contain information about the assessor/collector/remitter from whom the Cess is received. There is no other alternate system of

reconciling the bank Cess receipts with the assessed Cess. Therefore, submission of Form III/IV is crucial for reconciliation of Cess receipts with bank without which TNCWWB could not identify the assessor/collector/remitter.

Further, in case of Form III/IV being received from the Local Bodies/Cess collecting Agencies, Audit observed that the available human resources are inadequate for reconciliation due to enormity of cess remittances (about 400 DDs and 1,400 ECS transfers per day). This reconciliation through Form III/IV should be computerised/automated.

Audit attempted to verify whether proper reconciliation mechanism is available with TNCWWB for its Cess collection in its bank and deficiencies noticed are discussed in the succeeding paragraphs.

3.2 Deficiencies in the system of collection and remittance of Labour Cess

As already discussed in the preceding Paragraph, Cess remitting Agencies should attach Form III along with Cess collected for building permit approval and Form IV along with Cess collected for other construction works. During field audit, out of sampled 59 Local Bodies¹⁰, the details of Form III/IV enclosed by the Local Bodies for obtaining acknowledgement from TNCWWB for the payment of Cess amount, are given in the **Table 3.1**.

Table 3.1: Sampled Local Bodies: Furnishing of Form III/Form IV and receipt of acknowledgement from TNCWWB

Details	Total Number of Local Bodies	Furnished	Not furnished	
			Number	Percentage
Furnishing of Form III	59	4	55	93
Furnishing of Form IV	59	2	57	97

(Source: Details furnished by Local Bodies)

Audit noticed that out of 59 sampled Local Bodies, Form III was submitted by four Local Bodies whereas Form IV was submitted by two Local Bodies and as such reconciliation process was incomplete. This indicates that TNCWWB did not attempt to reconcile all its receipts and instead simply accounted for the amount received at its bank as its revenue without reconciliation.

Further, Form III and Form IV contains details like DD Number and date, estimated cost of the building, Labour Cess collected etc. Form III and Form IV are the only way of communication between Cess remitting offices and TNCWWB. Audit noticed several deficiencies in Form III and Form IV, viz:

- (i) The Form is designed in such a way that for each work/building permit approval, separate Form III and Form IV must be attached, which is not viable as Local Bodies undertake several works every month.

¹⁰ Excluding Village Panchayats.

(ii) Cess is remitted through DD and ECS by Cess remitting offices. There is no option in Form III and Form IV for indicating Cess remittance through ECS.

(iii) There is no option in Form III and Form IV for indicating date of receipt of collection and date of commencement of work. In the absence of above details, TNCWWB could not ascertain whether there were any non-remittance/short remittance or any delay in remittance.

Audit observed that the absence of a system to reconcile the collection of Labour Cess by Local Bodies with the actual receipt by TNCWWB had resulted in various issues, as discussed in **Paragraphs 3.3 to 3.8**.

GoTN replied (February 2023) that an Online Cess Collection Module was under implementation. Results of the action taken by the Government is awaited (March 2023).

3.3 Labour Cess remitted by Local Bodies not reflected in TNCWWB records

To check whether the Cess remittances by Local Bodies/Departments were correctly received and reconciled by TNCWWB, Audit collected information on annual Cess remittances details (through DD/ECS) from 39 State/Central Government departments/PSUs and 78 sampled Local Bodies. The differences between Cess remittance stated by the Cess collecting offices and Cess amount actually received by TNCWWB are given in **Appendix 3.2**.

Audit observed that out of 117 Cess remitting Agencies test-checked, remittance of only one¹¹ Agency tallied with the receipts of TNCWWB. In 83 cases, there were shortfalls in receipts reported by TNCWWB and in 33 cases, receipts accounted by TNCWWB were more than the actual remittances by these Agencies, as given in **Table 3.2**.

Table 3.2: Comparison of Cess remittances by Local Bodies/Departments and receipts by TNCWWB

				(₹ in crore)
Sl. No.	Departments/ Local Bodies	Cess remitted as per the records of Departments/ Local Bodies	Cess received as per the accounts of TNCWWB	Difference
Shortfall in TNCWWB receipts				
1	Departments (25 numbers)	126.74	41.73	(-) 85.01
2	Local Bodies (58 numbers)	36.35	11.68	(-) 24.67
Shortfall Total (83)				(-) 109.68
Excess receipts in TNCWWB account				
1	Departments (13 numbers)	50.14	130.37	80.22
2	Local Bodies (20 numbers)	34.15	69.78	35.62
Excess Total (33)				115.84

(Source: Details furnished by Local Bodies/Departments/TNCWWB)

¹¹ Tamil Nadu Maritime Board, Chennai.

As shown above, there were significant differences between remittances shown by Local Bodies/Departments and the actual receipts reflected in the TNCWWB accounts. This was due to non-reconciliation between TNCWWB and Cess remitting offices.

Report on DDs/ECS remittances: In Kancheepuram and Tiruvannamalai districts, out of 1,017 DD/ECS remittances amounting to ₹1.76 crore verified with reference to the receipt and accounting of these remittances by TNCWWB, 79 DDs/ECS worth ₹12.04 lakh remitted by six Local Bodies were not reflected in TNCWWB accounts, as listed in **Appendix 3.3**.

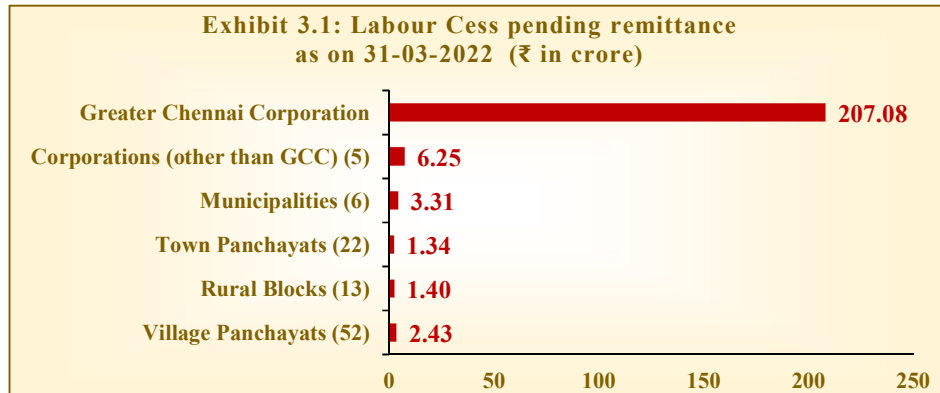
TNCWWB replied (December 2022) that they verified the remittance details through bank statement, covering letter furnishing the details of remittances and ECS. TNCWWB, further stated that they could not reconcile the differences stated above, as the Local Bodies/Department did not furnish the covering letters containing the details such as date of remittance, Unique Transaction Reference Number, Amount, Form III and Form IV, etc., while remitting Labour Cess.

Further, GoTN replied (February 2023) that the concerned Government Departments and Local Bodies were instructed (January 2023) to remit the shortfall in the Cess amount remitted by them. Audit, however, observed that the issue was not only about short remittance, rather it was due to lack of a system to correctly capture the remittances against the respective Local Body.

Thus, Audit observed that there was complete lack of a system for receipt and accounting of Labour Cess collected by Local Bodies and other establishments due to non-enforcing of submission of Form III and Form IV (**Appendix 3.1**).

3.4 Temporary misappropriation of Labour Cess by Local Bodies - ₹221.81 crore

Audit scrutinised the Cess collection by 124 Local Bodies in 10 sampled districts of Tamil Nadu and noticed that a sum of ₹221.81 crore (**Appendix 3.4**) was pending remittance by 99 Local Bodies; out of which the Greater Chennai Corporation (GCC) alone had a pending remittance of ₹207.08 crore. Non-remittance of Labour Cess collected, for a prolonged period of time, is construed as temporary misappropriation of funds, the details are given in **Exhibit 3.1**.



(Source: Details furnished by Local Bodies)

Analysis of the reasons for the huge pendency by GCC disclosed that in violation of the extant rule to collect the Cess amount through DD in favour of TNCWWB, GCC collected the Cess from building permit applicants by way of cash/DD/ECS in its own favour and kept it as a receipt in a Deposit head within its account (Code No.350200401). The money retained by GCC increased from ₹18,051 in April 2017 to ₹206.25 crore at the end of March 2022. During 2017-22, GCC received ₹206.33 crore as Cess from building permit applicants but remitted only ₹8.57 lakh into the accounts of TNCWWB. The violation of TNMW Rules went unchecked as TNCWWB did not have a system to estimate Local Body-wise receipts and to pursue it with the Local Bodies.

Remittance of Cess by the Local Bodies/other agencies were not watched and reconciled by TNCWWB due to three reasons *viz.*, (i) TNCWWB does not have a database of Cess collecting/remitting Agencies; (ii) TNCWWB is unaware of the actual Cess amount due, what was collected and remitted, and (iii) No Authority is appointed for assessing the Cess collected.

GoTN replied (February 2023) that a letter had been sent (January 2023) to respective Local Bodies to remit the pending amounts to TNCWWB's account.

As per Section 30 of TNMW Act, any person, who contravenes any of the provisions of this Act or any rule made thereunder shall on conviction be punished with fine which may extend to ₹500, and in case of continued contravention thereof, with an additional fine which may extend to ₹100 per day for every day during which such contravention continues.

Even though TNCWWB is empowered to impose penalty as mentioned above, till date, no penalty was collected from defaulting offices by TNCWWB.

GoTN replied (February 2023) that an Online Cess Collection Module would be developed to monitor Cess collection/remittance. Further, GoTN instructed (December 2022) the Commissioner of Labour to notify Inspectors to ensure prompt collection and remittance by Local Bodies. Results of the action taken by Commissioner of Labour is awaited (March 2023).

3.5 Remittance of Labour Cess into Government Account - ₹22.67 crore

The contribution payable under Rule 20A(1) and Rule 20A(2) of TNMW Rules shall be paid by means of DD drawn in favour of Manual Workers General Welfare fund of TNCWWB, payable at Chennai or through ECS to the bank account of TNCWWB. However, in Kancheepuram Block, it was noticed that Labour Cess collected for building permit approval and their own construction works were wrongly remitted into Government Head of Account-0230-00-106-AA-0002, which relates to catering head under Labour department. The remittance of Labour Cess into Government account was also noticed for the period 2017-22 in 16 districts, as detailed in **Appendix 3.5**.

As early as November 2017, the Commissioner of Labour addressed the Directorate of Rural Development and Panchayat Raj regarding remittance of

Labour Cess into Government account, but this wrong remittance continued till January 2022.

GoTN replied (February 2023) that TNCWWB will coordinate with Commissioner of Labour to assess and recover the Cess wrongly remitted into Government account. Audit observed that this issue requires co-ordination with the Finance department as well.

3.6 Short collection of Labour Cess - ₹61.78 lakh

Under Section 8A of TNMW Act, 1982, in December 2013, GoTN increased the rate of Labour Cess from 0.3 *per cent* to one *per cent* of the estimated value of construction.

The Local Bodies were to assess and collect Labour Cess at the rate of one *per cent* of the estimated value of the building for which they accorded building permit approvals. State and Central Government agencies that carried out building, road and other constructions were to deduct Labour Cess from the contractor's bills at the rate of one *per cent* of the value of the work done. These Cess collecting agencies were to remit the Cess amount collected by them into the Bank account of TNCWWB.

Audit checked the Labour Cess collections of the sampled Local Bodies, Government departments and other agencies and found that:

- In the 124 sampled Local Bodies, eight Village Panchayats (VPs), five Panchayat Unions (Blocks), six Town Panchayats, one Municipality and one Municipal Corporation, collected Labour Cess at the rate of 0.3 *per cent* instead of the correct rate of one *per cent* in respect of 61 construction works for which building permission was granted during 2017-22. The short collection amounted to ₹18.95 lakh (**Appendix 3.6**).
- Fifteen Cess remitting agencies (Government departments, PSUs and contractors), which were also to assess and deduct Cess at the rate of one *per cent* had deducted Labour Cess at the rate of 0.3 *per cent* instead of one *per cent* in 106 instances during 2017-22. The short collection amounted to ₹42.83 lakh (**Appendix 3.6**).

Audit observed that TNCWWB having no system to verify the correctness of assessment and collection of Cess by the Local Bodies merely accepted whatever amount was remitted by a Local Body. Similarly, Government agencies responsible for deducting Labour Cess from the contractor's bills did not furnish the value of construction works carried out by them to enable TNCWWB to verify the correctness of Cess paid.

This resulted in short assessment and collection of ₹61.78 lakh as Labour Cess in some of the test-checked units.

GoTN replied (February 2023) that directions have been issued (November 2022 and January 2023) to all the Agencies to remit the balance

amount of Cess to TNCWWB's account. Audit observed that TNCWWB had not yet addressed the larger issue of lack of a system to verify the correctness of the amount collected and remitted by Local Bodies and Cess remitting Agencies.

3.7 Misappropriation of Labour Cess

While applying for building permit approval, the applicant must pay the Labour Cess component, at prescribed rates. Those who want to pay by cash do so by remitting cash into any of the bank branches of the Nodal Bank in which TNCWWB maintains its account. The applicant pays the assessed Labour Cess amount into the bank branch through a challan in duplicate. The bank, after receiving and accounting for the remittance, retains the main challan (bankers' copy) and issues the counterfoil to the remitter. By producing the counterfoil of the challan, the applicant confirms payment of Labour Cess into its account, as a part of the requirement to obtain a building permit. The Local Body retains the counterfoil of the challan as proof of payment of Labour Cess. TNCWWB receives a statement from the Nodal bank containing details of the Cess remitted into its account. The Bank statement, however, does not show the details of the Local Body from which the amount was received. Therefore, TNCWWB is not able to recognise the Local Body from which the Cess is received. Unless the Form III is submitted by the Local Bodies, TNCWWB cannot reconcile the amount of Cess received in its bank account. Thus, TNCWWB is unable to verify or reconcile the correctness of the amount of Labour Cess remitted to its accounts.

Considering the risk involved in these transactions, Audit, with the help of the TNCWWB and its Bank, obtained the bankers' copies of challans and attempted to trace the money claimed to have been credited into the account of TNCWWB. Out of 980 building permit approvals by Kancheepuram Corporation and 30 in Thimmasamudram VP during January 2020 to December 2022, Audit sampled 90 cases of suspected fraudulent remittances and conducted detailed investigation. On comparing the bankers' copies of the remittance challans with copies of counterfoils of the challans available in the Local Body, Audit could establish that a lesser amount was remitted into the bank account and the counterfoil of the bank challan was fraudulently tampered with by increasing the amount of deposit to match with the Cess amount (Local Body copy of challan) required to be paid. Audit noticed such misappropriation of ₹15.85 lakh (**Appendix 3.7**) by short remittances in 68 of the 90 cases verified. In five of these cases, even bogus counterfoils were produced without remitting any amount into the account of TNCWWB and Local Bodies issued building permits based on such bogus counterfoils.

Kancheepuram Corporation and Thimmasamudram VP have acknowledged the short-remittance and informed Audit that they would initiate appropriate action. A sample case of misappropriation is given in **Exhibit 3.2**.

**Exhibit 3.2: A sample case of misappropriation
₹5,000 paid into bank account of TNCWWB but Counterfoil corrected to ₹1,85,000**

The counterfoil contains the following information:

- Bank: Union Bank of India
- Branch: Annanagar
- Account No: 530601010038239
- Date: 16/8/2021
- Transaction ID: AA405208
- Beneficiary: TNCWWB
- Amount: ₹5,000 (as per counterfoil)
- Amount: ₹1,85,000 (as per tampered counterfoil)

The applicant Smt. Amudha had applied for a Building permit approval. The Corporation assessed the estimated value of the building as ₹1.85 crore and levied ₹1,85,000 as Labour Cess. The applicant/representative, while remitting cash into the Union Bank of India Bank branch on 16 August 2021, remitted only ₹5,000 and tampered the counterfoil to show as if ₹1,85,000 was paid, while submitting it to the Corporation for Building permit approval. It is established from the transaction ID (AA 405208) that the name of the applicant recorded both in bank copy and counterfoil are for the same remittance. The TNCWWB received only ₹5,000 as given below.

M/s Manual Workers General Welfare Fund of TNCWWB			
A/c NO: 530601010038239 Union Bank of India, Annanagar			
Date	Particulars	Deposits	Balance
16/08/2021	Amudha, Kancheepuram	5,000.00	1,10,11,446.54

Thus, a sum of ₹1.80 lakh was fraudulently short remitted on 16 August 2021 and both Kancheepuram Municipal Corporation and the TNCWWB could not identify this misappropriation by fraud.

Further, it was seen from the Local Fund Audit Reports of Vadakarai Keelpidagai TP of Tenkasi District for the years 2019-21 that there were short remittances of ₹10.35 lakh by tampering with challans relating to Cess remittance for building permit approval. The misappropriation happened by overwriting the amount of Labour Cess in the counterfoil of the challan prepared for remittance of Labour Cess. Similar misappropriation of ₹1.45 lakh had also happened in Achanpudur TP of Tenkasi district.

Audit observed that Form III (**Appendix 3.1**), which was to be submitted mandatorily by the Establishments, was a tool to monitor the value of building and reconcile the Labour Cess collected by the Local Body. Failure to ensure receipt of Form III contributed to the misappropriation.

Thus, Audit observed that failure to reconcile Cess received through bank remittances led to misappropriation of ₹27.65 lakh in the Local Bodies of two sampled districts.

GoTN replied (February 2023) that letters have been sent (January 2023) to the concerned TPs to pay the short remittance to TNCWWB's account. However, the reply addresses only the cases pointed out by Audit through sample check.

3.8 Delay in remittance of Labour Cess - Loss due to lack of interest provision - ₹78.91 crore

As per Section 8 of BOCWW Cess Act, if any employer fails to pay any amount of Cess within the time specified in the order of assessment, 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.

BOCWW Cess Act is not implemented by GoTN and there is also no provision in TNMW Act/Rules to levy interest for delay in remittance of Cess. In the sampled districts, Cess collection and remittance details in respect of 124 Local Bodies were test checked and it was noticed that a sum of ₹221.81 crore was pending remittance by the Local Bodies as stated in **Paragraph 3.4**. Had the TNMW Act/Rules been aligned with the provisions of BOCW Act, 1996, TNCWWB could have levied an interest amount of ₹78.91 crore as given in **Appendix 3.4**, which would have been a deterrent against delayed remittance of Cess.

During the Exit Conference, the ACS to Government stated that suitable amendments would be made in the State Act/Rules to include penal interest provision.

3.9 Conclusion

In the absence of a system to watch the collection and remittance of Labour Cess, TNCWWB did not exercise any control over its sole source of revenue. This had resulted in temporary misappropriation of Cess amount by Local Bodies that collected the Cess and retained it in their accounts instead of remitting it to TNCWWB. Short assessment of Cess at 0.3 *per cent*, instead of the revised rate of one *per cent* of estimated cost of construction, went unnoticed. Deficiencies in the system and non-reconciliation of collection and remittance of Cess amount had resulted in misappropriation, short-remittance, delayed remittance, and wrong remittance of the collected amount. Detailed investigation of 90 suspected cases of fraudulent short remittance of Labour Cess in Kancheepuram District revealed misappropriation of ₹15.85 lakh in 68 cases.

3.10 Recommendations

- Government should strictly enforce furnishing of details by Cess remitting Agencies through Form III and Form IV and TNCWWB should put in place a system to check the correctness of the Cess collected and remitted/deducted by Local Bodies and Cess remitting Agencies.
- Government should expedite the implementation of the online Cess collection module including facility for automatic reconciliation of remittance with assessment of Labour Cess at Local Body level. Pending its implementation, Government should instruct Local Bodies to enclose the copies of counterfoil of challan and to provide transaction ID for each cash receipt.
- Government should ensure that responsibility is fixed for misappropriations of Labour Cess by tampering with counterfoils of remittance challans and direct TNCWWB to carry out a State-wide exercise to unearth similar cases of misappropriation. Government should also ensure that action is initiated to recover short collection of ₹61.78 lakh from the 167 cases pointed out by Audit.
- Accountability should be fixed by Government on those officials who were responsible for non-remittance/wrong remittance/short remittance of Cess. Government should amend the TNMW Act to authorise collection of interest by TNCWWB in respect of delayed remittances.