

Chapter IV: Assessment, collection and transfer of collected cess to the Board

This chapter highlights shortcomings in assessment, collection and transfer of collected cess to the Board.

Brief snapshot of the Chapter:

- The status of assessment of cess in the State was deficient as either the employers did not submit required return (Form-I) or Assessing Officers did not make assessments based on submitted returns.
- The assessment of cess in selected districts ranged from zero to 24 *per cent* of registered establishments during 2017-22, as assessment was made in respect of only individual employers, ignoring construction works of Government departments/local bodies.
- There was accumulated arrears of ₹ 20.06 crore in four selected districts against the cess assessments made during 2017-22.
- The implementation of GIS survey project for identification and assessment of properties in five cities of the state, was inefficient due to partial serving of bill/notices to the identified properties and non-realisation of cess of ₹ 1,179.95 crore.
- The six test-checked municipalities either did not approve the building plan or approved building plan without collection of cess.
- The Cess Collectors did not consider Goods & Services Tax and Centage Charges as part of construction work costs, resulting in short collection of cess of ₹ 3.66 crore during 2017-22 in selected districts.
- The test-checked Development Authorities also failed to collect cess according to estimated cost of work, resulting in short collection of cess of ₹ 12.99 crore.
- The Board lacked a mechanism for ensuring the timely transfer of collected cess by Cess Collecting Officers to its bank account.
- The lack of a prescribed accounting system for cess receipt and transfer to the Board resulted in non-realisation of ₹ 3.88 crore due to returned cheques/bank drafts by the banks.
- The cess deposited into treasuries and bank account of the Board, did not appear in Public Account of the State, violating Article 266(2) of the constitution.
- The State Government also short transferred ₹ 34.60 crore to the Board against cess deposited into treasuries during 2017-22.

The provisions of the Act, the Cess Act and the Rules 2009 warrant that the lawfully imposable cess should be imposed, collected, and put in the statutory Welfare fund without any delay, so that the benefits may flow to the eligible workers at the earliest.

However, audit observed that there were many shortfalls in the process of assessment, collection and transfer of collected cess to the Board, as discussed in succeeding paragraphs.

4.1 Assessment of cess

Section 3 of the Cess Act requires levy of a cess of at least one *per cent* of the cost of construction incurred by the employer. This is to be collected from employer through 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 at the time of approval of such building or other construction work, subject to final assessment in this regard.

However, audit observed following deficiencies in the process of assessment of the cess:

4.1.1 Return in Form-I not submitted by the employers

As per the provisions of Section 4 of the Cess Act and Rule 6 of the Cess Rules, every employer is required to submit prescribed return in Form-I to the Assessing Officer. This is to be submitted within 30 days of commencement of work for assessment of cess, indicating estimated cost of construction. Failure to do so may result in issue of notice by the Assessing Officer for furnishing of required return in a specified period. The GoUP also directed (February 2014) Assessing Officers to issue registered notices to the non-compliant employers for submission of Form-I.

However, audit observed that in none of the six selected districts, any register/record was maintained by the Labour department for Form-I submissions and assessment made there against during the period 2017-22. Besides, in four selected districts³⁰, Form-I were not submitted by the employers on their own for assessment of cess, however, ALC/DLC of these districts did not issue required notice to the employers of all registered establishments. Further, in the selected G B Nagar and Moradabad districts, though the employers had submitted a total 7,680 and 1,369 Form-I respectively during the period 2017-22 along with the due amount of cess on the basis of details of Form-I, however, no assessment of cess was made by the ALC/DLC in compliance with the provisions of the Cess Act and Cess Rules.

Besides, it was also observed that in none of the selected districts, required action was initiated against the employers, who failed to submit Form-I, though Rule 15 of the Cess Rules requires sending of such cases to the GoI for deciding the further course of action.

Thus, due of not furnishing of required returns by the employers, assessment of cess could not be ensured in most of the cases.

In reply, the State Government stated (March 2024) that direction has been issued for maintenance of required register for Form I submissions and assessments. Further, in G B Nagar and Moradabad districts, assessment orders are being issued after serving notices to employers, who have

³⁰ Agra, Lucknow, Prayagraj and Varanasi.

submitted Form- I. The State Government also stated that directions are being issued for implementation of Rule 15 of Cess Rules. Further, the State Government also intimated that a cess portal (cessupbocw.in) has been developed (February 2023) to streamline the cess collection process, wherein provisions for keeping details of Form I, assessment of cess, notice *etc.* have been made.

4.1.2 Assessment of cess not done by the Cess Assessment Officers other than DLC/ALC

As per Section 5 of the Cess Act and Rule 7 of the Cess Rules, assessment of cess is to be made by the Assessing Officer within six months of receipt of Form-I. The Assessing Officers are required to issue an assessment order specifying date of payment, amount of cess due, cess already paid by the employer or deducted at source and the balance amount payable by the employer. This order is to be provided to the employer, the Board and to the Cess Collecting Officer within five days of such order.

To execute related provisions, the GoUP appointed (November 2009 and September 2010) all District Magistrates and the officers of 16 Government departments³¹ including the ALC/DLC of Labour Department as Cess Assessment Officer and Cess Collectors to make them responsible for assessment and collection of cess. Moreover, ALC/DLC were also assigned to monitor assessment and collection of cess made by these officers. Further, the GoUP also appointed (November 2014) Deputy/Assistant Director (Factories) and Deputy/Assistant/Director (Boiler) of the Labour Department as Cess Assessment Officer and Cess Collector in their respective jurisdictions.

However, audit observed that the Cess Assessment Officers of the test-checked units in all selected districts, except the DLC/ALC, did not carry out assessments of cess by issuing assessment orders in compliance with the provisions of the Cess Act and Rules and were only functioning as Cess Collectors. This led to not communicating of details of due amount and balance amount of cess to the Board officials, when collected cess amount was transferred by these Cess Collecting authorities. Moreover, role of these authorities as the Cess Collecting Officers was also deficient as discussed in succeeding *paragraph no. 4.2.1*.

In reply, the State Government stated (March 2024) that officers from other departments were nominated as Cess Assessment Officer and Cess Collector only to ensure cess collection for works executed by their respective departments.

³¹ The Secretary (Development Authorities), Executive Engineer (Public Works Department), Executive Engineer (Irrigation Department), Executive Engineer (Power Corporation), Secretary (Mandi Parishad), Project Manager (UP Bridge Corporation), Executive Engineer (*Rajkiya Nirman Nigam*), Executive Engineer (*Rajkiya Nalkup Nigam*), Executive Engineer (*UP Jal Nigam*), Executive Engineer (*Samaj Kalyan Nigam*), Executive Engineer (*UP Awas evam Vikas Parishad*), Additional/Deputy/ Municipal Commissioner (*Nagar Nigam*), Executive Officer (Municipalities), Block Development Officer, Assistant/Deputy/Additional Labour Commissioner (Labour Department) and District Basic Education Officer.

Reply is not acceptable as notification (September 2010) of the State Government assigned assessment responsibilities to officers of various Government departments.

4.1.3 Status of assessment of cess

The GoUP directed (February 2014) ALC/DLC to make assessment orders with help of a specialised committee and after vetting by an Income Tax Evaluator.

Audit observed that in compliance with the provisions of Section 5 of the Cess Act and Rule 7 of the Cess Rules, the ALC/DLC of selected districts made some assessment of cess through assessment orders during the period 2017-22. However, these cases of assessment were minimal compared to the number of registered establishments. It was also observed that in four³², out of the six selected districts, no register was maintained by the ALC/DLC in respect of assessment orders made during the period 2017-22, leading to lack of details such as total number of assessment orders made during the period 2017-22, amount of cess assessed and received, balance amount *etc.*

However, based on progress reports and registers from ALC/DLC of two selected districts³³, the status of cases of assessment of cess *vis-a-vis* the registration of establishments during the period 2017-22 have been detailed in **Table 4.1** below:

Table 4.1: Cases of assessment and registration of establishments during 2017-22

Name of district	Total no. of registered establishments during 2017-22	No. of assessment orders made during 2017-22	Percentage of cases of assessments
Agra	2131	467	22
G B Nagar	18177	02	00
Lucknow	3951	No Records Maintained	-
Moradabad	1369	No Records Maintained	-
Prayagraj	2464	95	04
Varanasi	629	154	24

(Source: Information provided by the DLC/ALC of selected districts)

It is evident that the cases of assessment of cess ranged between zero to 24 *per cent* as against the registered establishments, violating the provisions of the Cess Act and Cess Rules requiring assessment of cess in respect of every employer. Further, audit also found that ALC/DLC of selected districts only made assessments during 2017-22 in respect of individual employers and neglected assessment of works of the Government departments/local authorities. Despite this fact, no monitoring mechanism was established by the Board to ensure assessment of each establishment. As a result, audit could not ascertain due and balance amount of cess against the registered establishments during the period of the year 2017-22. Further, it was also observed that neither the assessments were made by the ALC/DLC with the help of specialised committee nor vetted by the Income

³² Agra, G B Nagar Lucknow and Moradabad.

³³ Prayagraj and Varanasi.

Tax Evaluator in compliance with the direction of the GoUP, leading to deficient assessments as discussed in **paragraph no. 4.1.5**. Thus, despite evolving a mechanism for assessment of cess by appointment of various Assessment Officers, it could not be implemented, resulting in non-assessment of cess in most of the cases.

In reply, the State Government stated (March 2024) that the directions are being issued for maintaining register by the Cess Assessment Officers and monitoring is also being done at different levels to ensure *cent per cent* assessment and collection of cess in respect of all registered establishments. The State Government further claimed that deficiencies indicated in **Table 4.1** has been addressed by the selected districts, but did not submit any documentary evidence in this regard. For Government department works, the State Government intimated that an online system (cessupbocw.in) has been developed (February 2023) for entering assessment details.

4.1.4 Cess not paid

As per the provisions of the Cess Act and Cess Rules, employer is liable to pay cess by the stipulated date of assessment order.

However, audit observed that in selected districts, the employers did not pay due amount of cess against the assessments made during the period 2017-22 as of March 2023. The status of due and received amount of cess against the assessments in the selected districts during the period 2017-22 is given in **Table 4.2** below:

Table 4.2: Details of received cess against the assessments during 2017-22

(₹ in lakh)

Name of district	Total amount of assessments during the period 2017-22	Received amount against the assessments	Balance amount
Agra	1659.91	484.66	1175.25
G B Nagar	4.28	4.28	0.00
Lucknow	No Records Maintained	No Records Maintained	No Records Maintained
Moradabad	No Records Maintained	No Records Maintained	No Records Maintained
Prayagraj	972.08	629.96	342.12
Varanasi	1025.12	535.77	489.35
Total	3661.39	1654.67	2006.72

(Source: Information provided by the DLC/ALC of selected districts)

It is evident from the above that accumulated arrears for cess in selected four districts totalled ₹ 20.07 crore, exceeding the received amount. This indicated inefficiency of Labour Department in collecting and monitoring of compliance of assessment orders.

In reply, the State Government stated (March 2024) that in Prayagraj and Varanasi districts, Recovery Certificates for ₹ 724.72 lakh have been issued, but did not provide any documentary evidence in this regard. Besides, the State Government also mentioned initiating Recovery certificate issuance in Agra and Moradabad districts.

4.1.5 Deficiency in assessments

The Board issued (December 2018) instructions for assessment of cess, based on rates of Central Public Works Department or Public Works Department (PWD).

However, audit observed that the ALC/DLC of selected districts applied incorrect plinth area rates of the PWD schedule for calculating the cost of the construction work, resulting in understatement of the construction cost and consequently less assessment and collection of cess amounting to ₹ 2.95 crore during the period 2017-22, as detailed in **Appendix- IV**.

In reply, the State Government, while accepting the audit observation, stated (March 2024) that notices have been issued for reassessment of cess in Agra district, process for recovery of additional amount of cess is underway in G B Nagar after re-examination of assessments and re-assessment of cess has been done based on revised plinth area rates of PWD schedule in Prayagraj. The State Government also assured that development of a Standard Operation Procedure for assessment of cess is underway.

4.1.6 Implementation of GIS survey

In accordance with the Board's approval in January 2015, a project was initiated to identify and estimate the cost of constructed properties and buildings in urban and rural areas of Lucknow, Meerut, Ghaziabad, Kanpur, and Noida (including Greater Noida) districts/cities of the State. This identification and cost estimation of properties were to be carried out using a Geographical Information System (GIS) survey, starting from February 2009. Agreements were entered into with four private firms/government enterprises³⁴ between March 2015 and March 2017 for this purpose, with the aim of generating cess equivalent to one *per cent* of the total cost of construction of properties.

As per provisions of agreements, the contracted firms were to submit cess bills for the properties built after February 2009, based on the survey. Subsequent actions such as issuing notices and assessment orders were to be undertaken by the relevant ALC/DLC for recovery of cess as per these bills. This project was scheduled to be completed within eight months of award of work.

However, audit observed that the contracts were awarded for conducting GIS survey without inviting tenders, violating the provisions of the UP Procurement Manual 2016. Further, none of the nominated firms had completed their assignment within the agreed timeframe³⁵. The details of bills generated and amount thereof *vis-à-vis* recovery of cess have been given in the **Table 4.3** below:

³⁴ Science and Technology Entrepreneurs Park, Harcourt Butler Technical Institute (March 2015) for Lucknow; M/s Millennium Telecom Ltd. (December 2016) for Meerut and Ghaziabad; Construction Industry Development Council (December 2016) for Kanpur and Indian Telephone Industries Ltd. (March 2017) for Noida and Greater Noida.

³⁵ The scheduled completion date of project was eight months from the date of work award.

Table 4.3: Showing status of generated bills and recovery of Cess as of January 2023
(₹ in crore)

Name of district	No. of correct bills generated for levy of cess	Amount of correct bills	No. of bills served through notice	Amount of bills served	Amount of cess recovered against notices	Amount of cess recovered through assessment orders against unserved notices	Amount recovered through RC against the outstanding assessment orders	Total amount recovered against the bills (percentage)
Ghaziabad	21438 ³⁶	341.94	12901	266.49	22.96	49.18	11.18	83.32 (24)
Kanpur	22368 ³⁷	74.51	15401	47.97	12.51	6.66	4.06	23.23 (31)
Lucknow	41972	160.86	18917	94.48	3.70	22.32	11.98	38.00 (24)
Meerut	14260 ³⁸	60.74	10737	36.81	6.98	6.59	0.81	14.38 (24)
Noida & G Noida	17386	884.56	14165	695.20	156.60	24.82	2.31	183.73 (21)
Total	117424	1522.61	72121	1140.95	202.75	109.57	30.34	342.66 (23)

(Source: Information provided by the Secretary of the Board)

It is evident from the above that the cess amounting to only ₹ 342.66 crore was recovered as of January 2023 against the amount of bills of ₹ 1,522.61 crore, leaving a shortfall of ₹ 1,179.95 crore (77 per cent). Further, the engaged firms submitted not only erroneous bills³⁹ but also failed to serve all correct bills to the individuals; resulting in poor recovery of the cess against the assessment.

Thus, due to pending recovery of levied cess, funds for welfare of labourers could not be generated to the desired extent.

In reply, the State Government stated (March 2024) that an amount of ₹ 872.11 crore has been recovered and process for recovery of remaining amount is underway. The State Government also attributed first time implementation of GIS survey and unanticipated practical problems towards delays.

Reply is not acceptable as correction of erroneous bills amounting to ₹ 48.69 lakh and distribution of bills/notices amounting to ₹ 132.29 crore were pending at the level of engaged firms and concerned ALC/DLC as of December 2023 even after seven to nine years of the scheduled completion date of the GIS survey.

4.2 Collection of cess

An effective machinery and full compliance of the provisions the Cess Act and Rules are crucial for cess collection. The GoUP appointed various authorities as the Cess Assessment and Collecting Officers to establish and strengthen the collection machinery. However, non-compliance with provisions of the Cess Act and Rules hindered the collection of due cess. The audit findings in this regard are as under:

³⁶ Out of 23,761 generate bills, only 21,438 bills were found correct.

³⁷ Out of 22,827 generated bills, only 22,368 bills were found correct.

³⁸ Out of 16,688 generated bills, only 14,260 bills were found correct.

³⁹ 5,210 bills in Ghaziabad, Kanpur and Meerut districts.

4.2.1 Delayed or failure to collect cess on approval of building plans

The GoUP appointed (September 2010/August 2011) the Secretary of Development Authority (DA) and the Executive Officer of Nagar Palika Parishad (NPP)/Nagar Panchayat (NP) of the State as the Cess Assessment and Collection Officer for collecting cess at the time of approval of the building plans.

However, audit noticed that, in disregard of the provisions of the Cess Rules and GoUP orders, the six Development Authorities under examination failed to establish a mechanism for collecting cess based on the estimated cost of construction works when sanctioning building plans, till the GoUP once again directed (March 2016) them to do so.

Further, as per the provisions of the Section 178 to 180 (read with Section 298) of the UP Municipalities Act 1916, NPPs/NPs of the State are empowered to approve building plans after making required bye-laws in this regard. However, audit observed that out of the six NPPs/NPs examined, four⁴⁰ of them did not formulate required bye-laws for approving the building plans, leading to non-approval of building plans by three NPPs/NPs⁴¹. In the case of NPP Dadari in G B Nagar district, eight building plans were approved between September 2020 and February 2023 without formulation of bye-laws and without levy and collection of cess. Moreover, in remaining two NPPs/NPs⁴², where bye-laws were formulated, a total of 422 maps⁴³ were approved during the years 2017-22 without the levy and collection of cess. This indicated a lack of oversight by designated officers in collecting cess, resulting in a loss of revenue for the Board.

Thus, due to not implementing or delayed implementation of the provisions of the Cess Act and Rules by the authorities responsible for approving building plans, many establishments may have remained outside of cess net.

In reply, the State Government stated (March 2024) that an online portal has been introduced for real time collection of cess from DA. Further, the State Government stated that matter has been referred (January 2024) to the Urban Development Department for ensuring advance cess collection at the time of approval of building maps by the Municipalities of the state.

4.2.2 Shortfalls in collection of cess

The Cess Collecting Officers did not collect/deduct due cess from the individual employers or bills of contractors, the details of which are discussed below:

⁴⁰ NP (Bakshi ka Talab); Lucknow, NP (Gangapur); Varanasi, NPP (Dadri); G B Nagar, and NP (Lalgopalganj); Prayagraj.

⁴¹ NP (Bakshi ka Talab); Lucknow, NP (Gangapur); Varanasi and NP (Lalgopalganj); Prayagraj.

⁴² NPPs Thakurdwara (Moradabad) and Shamshabad (Agra).

⁴³ NPP Thakurdwara (Moradabad): 199 maps during 2019-22, though no records were maintained for the period 2017-19 and NPP (Shamshabad) Agra: 223 maps during 2017-22.

4.2.2.1 Not including GST and centage charges in the cost of work

The GoUP directed (February 2010) the Government departments/Public Sector Undertaking/Local Authorities to deduct cess from contractors' bills alike Income tax. After implementation (July 2017) of Good and Service Tax (GST), the GoUP reaffirmed this direction and further instructed (November 2017) to deduct cess after adding GST to cost of work. Besides, the Secretary of the Board also decided (October 2011) to include Centage Charges in construction cost for cess calculation.

However, audit observed that the test-checked units did not comply with orders of the GoUP and deducted cess from the contractor's bills without including amount of GST in cost of work. As a result, ₹ 2.49 crore could not be realised on account of cess as detailed in *Appendix-V*.

Besides, out of the 12 test-checked units related with the execution of work, seven units⁴⁴ received ₹ 116.53 crore on account of Centage Charges from the other departments or their own works during the period 2017-22. However, these Centage Charges were not included in cost of the works, resulting in non-collection of ₹ 1.17 crores as cess (*Appendix-VI*).

Thus, due to not observance of orders of the GoUP/Board, due amount of cess could not be deducted from contractor's bills.

In reply, the State Government stated (March 2024) that since GST is a tax, imposition of cess on tax does not seem to be proper.

Reply is not acceptable as the GoUP did not issue any order to this effect.

4.2.2.2 Not deducting cess from the contractors bill

In accordance with Section 3 (1) of the Cess Act, the Government departments/local authorities are required to deduct cess equivalent to one *per cent* of the cost of the construction work from the bills of contractors.

However, audit observed that out of the 12 units examined in connection with the execution of works, five units⁴⁵ failed to deduct cess amounting to ₹ 2.21 crore from the contractor's bills during the period 2017-22. This omission occurred in relation to 443 vouchers for the payment of construction works totalling ₹ 220.95 crore. Similarly, in three NPPs/NPs⁴⁶, out of six test-checked NPPs/NPs, cess amounting to ₹ 34.85 lakh was not deducted from 223 vouchers for the payment of construction work amounting to ₹ 34.85 crore to the contractors during the period 2017-20. This highlights a lack of oversight in ensuring cess deductions.

The State Government did not offer (March 2024) any comment in this regard.

⁴⁴ CD-I (Taj Trapezium) Agra, PD (PWD) Agra, Head works division (Okhala) G B Nagar, World Bank division (PWD) Moradabad, CD (Kumbh Mela), Prayagraj and CD-I (PWD) Prayagraj.

⁴⁵ PD (PWD) Varanasi, CD-3(PWD) Varanasi, PD (PWD) Agra, CD-4 (Kumbh Mela), Prayagraj and CD-I (PWD), Prayagraj.

⁴⁶ NPP; Dadri (G B Nagar), NPP; Shamshabad (Agra) and NP; Bakshi ka Talab (Lucknow).

4.2.2.3 Less collection of cess

As per provisions of Rule 4(4) of the Cess Rules, advance cess at the notified rates on the estimated cost of construction is to be collected at the time of approval of a construction work by a local authority.

The GoUP implemented (June 2019) Online Building Plan Approval System (OBPAS) in DA of the State for approval of building plans. Audit observed that in the test-checked five DA⁴⁷, a total 9,825 building plans having estimated construction cost of ₹ 3,515.44 crore were approved during the period 2019-22 through OBPAS. In respect of these approved maps, cess of only ₹ 22.16 crore, as against the due cees of 35.15 crore, was collected by the concerned DA from the employers, resulting in short collection of cess amounting to ₹ 12.99 crore, as detailed in *Appendix-VII*.

In reply, the State Government stated (March 2024) that a proper system has been developed through online portal for cess collection and instructions are being issued to concerned authorities to ensure actual cess collection.

4.2.3 Cost of construction not calculated on uniform rates

The GoI directed (October 2018) for adoption of a uniform mechanism based on rates of the PWD/Municipal/local authority for calculating construction cost to collect advance cess uniformly at the time of approval of building plans. Accordingly, the Board issued (December 2018) instructions for assessment of cess based on rates of Central Public Works Department (CPWD) or PWD.

However, audit observed that the test-checked DA (except YEIDA⁴⁸ of G B Nagar) adopted different rates⁴⁹ during the period 2017-22 for this purpose. The rates used by these DA were based on circle area rate of District Magistrate, issued for determining the cost of construction for levy of stamp duty on sale deed of transfer of immovable properties. Additionally, the ALC/DLC of these selected districts made assessments during the period 2017-22 on the basis of plinth area rates of PWD schedule. This resulted in inconsistent assessment of construction cost by DA and Labour department officials.

Moreover, it was also observed that circle rates did not include additional construction cost for internal and external services ranging from 23 to 34.25 *per cent* as provided in plinth area rate of PWD schedule. As a result, there was underestimation of construction cost by the DA.

Thus, not calculating the cost of construction works on uniform rates in the state resulted in less collection of cess.

⁴⁷ Agra, Lucknow, Moradabad, Prayagraj and Varanasi.

⁴⁸ Yamuna Expressway Industrial Development Authority, wherein no mechanism was established for collection of advance Cess at the time of approval of buildings plans and employers directly deposited advance Cess to the ALC/DLC prior to the approval of the maps by the DA.

⁴⁹ Agra (₹ 14500 per meter² for the period 2017-22), Lucknow (₹ 20000 per meter²), Moradabad (w.e.f. August 2017; ₹ 13000 per meter² and w.e.f. August 2019; ₹ 14000 per meter²), Varanasi ((₹ 15635 per meter² for the period 2017-22) and Prayagraj (₹ 18000 per meter² for the period 2017-22).

In reply, the State Government stated (March 2024) that directions were issued (December 2018) for assessment of cess on the basis of scheduled rates of PWD or CPWD or evaluation report of registered evaluators of Income Tax department.

Reply is not acceptable as there is a lack of uniformity in application of rates.

4.2.4 Deduction of collection charges without working out actual expenditure on collection of cess

As per Rule 5 of the Cess Rules, the proceeds of cess are required to be transferred by Government departments, PSUs, and local authorities to the Board. They are allowed to deduct actual collection expenses up to one *per cent* of the total collected amount or claim these expenses from the Board.

However, audit observed that neither the GoUP nor the Board issued instructions on deduction of collection expenses from cess proceeds. Further, no system was in place for claiming of collection expenses from the Board. Despite this, four DA⁵⁰ that were examined deducted one *per cent* collection expenses amounting to ₹ 105.36 lakh from cess collected by them during 2017-22. These deductions were made in respect of cess proceeds of approval of building plans either by accepting the total amount of cess or one *per cent* of the levied cess into their own bank accounts, and without working out any actual expenditure on cess collection.

Therefore, the deduction of collection expenses, without working out corresponding expenditure, was not as per Rule 5 of the Cess Rules. Moreover, accepting the cess into their own bank accounts by the DA also violates the provisions of the Cess Rules, as these rules require the collection of cess through a crossed bank draft made in favour of the Board.

The State Government replied (March 2024) that a system has been developed to transfer collected cess by the DA directly into the bank account of the Board from OBPAS, eliminating the need for collection charges.

Reply of the State Government is silent regarding deduction of collection charges by some Cess collecting authorities as no directives have been issued to address the issue.

4.3 Transfer of collected cess to the Board

Section 3 of the Cess Act and Rule 5 of the Cess Rules require cess collecting authorities to transfer collected cess to the Board within 30 days of its collection.

However, audit observed that there was no mechanism in place to ensure timely transfer of collected cess to the Board. Scrutiny of records of test-checked units revealed that collected cess were either not transferred or

⁵⁰ Lucknow (₹ 88.21 lakh), Moradabad (₹ 1.39 lakh), Prayagraj (₹ 10.67 lakh) and Varanasi (₹ 5.09 lakh).

transferred to the Board with delays. The audit findings in this regard are as under:

In reply, the State Government stated (March 2024) that an online system has been developed to avoid delays in this regard.

4.3.1 Collected cess not transferred to the Board

The GoI directed (October 2018) strict adherence to Section 3 of the Cess Act and Rule 5 of the Cess Rules and recommended taking suitable action against non-compliant cess collectors. Accordingly, the GoUP instructed (January 2019) Cess Collecting Officers to deposit collected cess to the Board on time and provide details of establishments from which cess was collected. Besides, the GoUP also directed initiating legal action against non-compliant Cess Collecting Officers.

Audit observed that the Cess Collecting Officers within the six units⁵¹ under scrutiny failed to transfer cess amounting to ₹ 84.64 crore, collected during 2017-22, to the Board as of March 2023 (as detailed in *Appendix-VIII*). Furthermore, no action was taken by the Board against non-compliant Cess Collecting Officers. This indicates the absence of a system for reconciling cess deductions and collections, as well as the subsequent transfer of these funds to the Board.

It was also observed that the Cess Collecting Officers, except those from the Labour Department, did not provide details of employers such as registration number of establishment, cost of construction work, due and collected amount of cess *etc.* along with the cess transferred to the Board. As a result, officials of the Board could not ensure correctness of cess transferred.

Thus, absence of a reconciliation mechanism raised concerns about potential loss of revenue to Board and diversion of collected cess by the Cess Collecting Officers.

In reply, the State Government stated (March 2024) that requests have been made to concerned DA for transfer of collected cess to the Board and a real time cess collection system has been developed through OBPAS.

4.3.2 Delayed transfer of collected cess to the Board

The GoI directed (October 2018) State Governments to ensure timely transfer of collected cess to the Board and asserted for initiating penal action in case of non-compliance of prescribed timeline of 30 days.

However, audit observed that among the six DA that were examined, four⁵² of them transferred the collected cess amounting to ₹ 29.48 crore during the period 2017-22 to the Board with delays ranging from one to 31 months, as detailed in *Appendix-IX*. This resulted in a loss of accrued interest to the Board.

⁵¹ Development Authorities of the Agra, Lucknow, Moradabad and Varanasi districts, Yamuna Expressway Industrial Development Authority (G B Nagar) and NP Lalgopalganj (Prayagraj).

⁵² Agra, Moradabad, Prayagraj and Varanasi.

Besides, the GoI also directed (October 2018) State Boards to ensure proper cess collection from Indian Railways. However, instances were found in audit that cess collection from Indian Railways was not proper as in selected Prayagraj District, no cess was collected from Indian Railways prior to the period of July 2020. Besides, cess of ₹ 5.11 crore deducted by the Indian Railways within the Prayagraj region, during the period of July 2020 to June 2022, was transferred to the Board with a delay of one to 24 months.

In reply, the State Government stated (March 2024) that communications have been made with concerned authorities in this regard.

Reply is not acceptable as corrective measures have not been taken by the State Government.

4.4 Accounting of cess

The GoUP or Board did not prescribe proper accounting system for receipts of cess and its transfer to the Board. This is not only important for recording the financial transactions and upkeep of proper records but also for ensuring checks on pilferage and delays in transfer of funds to the Board. The audit observations in this regard are discussed in succeeding paragraphs.

In reply, the State Government stated (March 2024) that Board has decided procedure for receipt and transfer of cess to Board, and maintenance of accounts along with audit of accounts are being ensured in all districts. However, no documentary evidence was provided by the State Government in this regard.

4.4.1 Transactions outside of the Government Account

Article 266(2) of the Constitution of India states that all other public funds received by or on behalf of the Government of a State should be credited to the Public Account of the State. Additionally, Rule 5 of the Cess Rules specifies that collected cess should be transferred to the head of account of the Board under the State's accounting procedure. Consequently, collected cess should initially appear in the Public Account before being transferred to the Board's bank account.

However, audit noted that the GoUP permitted the opening of a savings bank account for the Board in any nationalized bank's Lucknow Branch in March 2010. Subsequently, the GoUP decided (August 2011) to use heads of account 0230 (Labour & Employment)- 800 (Other receipts)-11 (Receipts under BOCW Act)- 00 (Labour Cess) for depositing collected cess into the treasury. Besides, as per the instructions (December 2012) of the GoUP, deposited amounts under above heads of accounts were to be transferred to the Board's bank account for expenditure on welfare of workers. To facilitate the transfer, the GoUP employed heads of account 2230 (Labour & Employment)-01(Labour receipts)-111(social security of labourers)-04 (refund of amount deposited for the fund of BOCW) under the Grant 76, for making necessary budget provisions.

It is important to note that the heads of account designated by the GoUP for cess transactions were outside the Public Account of the State, which is inconsistent with the provisions of Article 266(2) of the Constitution of India.

However, the GoUP later directed (August 2013 and September 2016) to deposit cess amount directly into the Board's bank account. Despite the fact, many Cess Collecting Officers continued to deposit the cess amount into treasuries, though major portion of cess proceeds during the period 2017-22 (₹ 4,483.63 crore out of ₹ 4,559.09 crore) was directly deposited into the bank account of the Board.

Thus, depositing cess directly to the Board's bank account without bringing it into Government Accounts, violates the provisions of Article 266 of the Constitution and the Cess Rules, 1998. This made it unfeasible to determine the amount of cess collected and transferred to the Board through Government Accounts.

In reply, the State Government stated (March 2024) that the Board has been empowered to open and operate bank account and that the Hon'ble Supreme Court of India has also ordered to deposit cess into the Board's bank account. While agreeing with the authority of the Board, it is required that all public money received by or on behalf of the State Government should be credited with Public Account before being transferred to Board's bank account.

4.4.2 Not transferring of cess deposited into treasuries to the Board

As discussed in *paragraph 4.4.1* above, the process of transferring deposited cess from treasuries to the Board's bank account involves budget route of the GoUP. This process necessitates the certification of challans by the respective treasuries through which cess amounts were initially deposited and accounted for under the prescribed heads of account.

However, audit noted that either due to insufficient budget provision under Grant 76 for refund of cess amounts to the Board by the GoUP or failure to certify the challans by the treasuries, cess amounts deposited into treasuries during the period 2017-22 could not be transferred to the Board, as detailed in **Table 4.4** below:

Table 4.4: Transfer of cess amount deposited into treasuries to the Board during 2017-22

(₹ in lakh)					
Year	Amount of cess with treasuries in the beginning of the FY	Amount of cess received by treasuries during the year	Amount of budget provision for refund of collected cess	Amount transferred to the bank account of the Board	Closing Balance
2017-18	2927.17	769.09	3696.26	3696.26	00.00
2018-19	00.00	1472.34	1000.00	1000.00	472.34
2019-20	472.34	1198.12	1000.00	873.21	797.25
2020-21	797.25	838.77	1000.00	1000.00	636.02
2021-22	636.02	3802.03	1000.00	977.77	3460.29

(Source: Information provided by the Secretary of the Board)

It is evident that due to less provisioning of budget and certification requirements, ₹ 34.60 crore could not be transferred to the Board at the end of March 2022.

In reply, the State Government stated (March 2024) that during the year 2022-23, ₹ 40.10 crore was transferred from treasuries to the Board's bank account and that the repeated orders have been issued for depositing cess directly into the Board's bank account.

Reply is not acceptable as at the end of the financial year 2022-23, cess amounting to ₹ 36.09 crore was pending at the Government level for transfer into the Board's bank account.

4.4.3 Inadequate accounting of receipts of cess

Audit observed that the Board has not established a system for the proper accounting of cess receipts, both at the district-level offices and at the Board's headquarters. In absence of specific guidelines, a register was maintained in the offices of the ALC/DLC of selected districts (except Prayagraj⁵³) to record the details of cheques/demand drafts received from Cess Collecting Officers and individuals during the period 2017-22. However, due to direct online transfers of cess by individuals into Board's bank account, the entries in this register were often incomplete. This occurred because there was no established system to provide real-time notifications of online transactions to the Board authorities. Besides, monthly reconciliation of the register's total with the bank statement was also not done in any of the selected districts.

This situation suggests that the Board relied solely on bank statements for accounting of cess and did not verify the accuracy of collected and deposited amounts. This lack of verification is further evident in the absence of records maintained by Board officials to track due cess amounts, and the amounts deposited by cess collectors/individuals against these dues.

Audit further observed that many cheques/demand drafts received on account of cess and deposited into bank account by the authorities of the Board, were returned by the bank during the period 2017-22. The details of returned cheques/demand drafts and amount recovered there against in the selected districts during the period 2017-22 are given in the **Table 4.5** below:

⁵³ No register was maintained for the period 2019-22.

Table 4.5: Details of returned cheques/demand drafts and amount recovered there against during 2017-22

(₹ in lakh)

Name of District	No. of cheques/demand drafts returned by the banks during the period of 2017-22	Amount of returned cheques/demand drafts by the banks	No. of cheques/demand draft received back from the employers	Amount of received back cheques/demand drafts	Amount not recovered from the employers
Agra	09	05.60	00	00.00	5.60
G B Nagar	16	299.21	16	299.21	0.00
Lucknow	189	674.78	149	589.94	84.83
Moradabad	18	10.18	02	01.05	09.13
Prayagraj	65	146.08	00	00.00	146.08
Varanasi	55	347.53	06	205.08	142.45
Total	352	1483.38	173	1095.28	388.09

(Source: Information provided by the DLC/ALC of selected districts)

It is evident from the above that ₹ 3.88 crore could not be recovered in the selected districts on account of returned cheques/demand drafts. Besides, audit also found instances of return of cheques/demand drafts by the banks at the headquarters of the Board, but due to non-maintenance of records, amount involved could not be ascertained in audit. This situation suggests that there were potential errors in accounting of cess.

It was also observed that in selected Prayagraj district, 97 cheques of ₹ 262.17 lakh were received in the office of the ALC/DLC between November 2017 and April 2022, though not deposited into the bank account of Board up to the month of September 2022. Due to this delay, these cheques became time barred, and against these time barred cheques only ₹ 145.89 lakh was recovered as of June 2023. Besides, due to non-maintenance of any register in this regard during the period 2019-22, status of deposition of other received cheques/drafts in the bank account of the Board by the officials of the ALC/DLC Prayagraj, could not be ascertained in audit.

Further, as per the directions (October 2018) of the GoI, the Board is required to maintain complete break-up of each source of welfare fund including the amount of penalty received on account of delay or less payment of cess. However, in absence of accounting system, such data was not available at the headquarters of the Board, though required under the directions of the GoI for presenting the true financial position of the Board.

In reply, the State Government stated (March 2024) that Cess Deposit register, which was not maintained during 2019-22 in Prayagraj district, has been maintained and assured that required action would be taken after getting the details of returned cheques/bank drafts.

4.4.4 Data of cess receipts not processed

Audit observed that the Board received cess proceeds in the form of cheques, demand drafts, or through RTGS/NEFT from employers and cess collecting authorities but did not process this data for the purpose of cess

assessment, registration of establishments and the workers employed therein. Further, the Board failed to maintain a comprehensive database of construction works undertaken in the State.

In reply, the State Government stated (March 2024) that system has been developed for recognition of establishments, assessment and collection of cess and that the online database is being prepared through coordination with different Government departments.

To sum up:

The GoUP and the Board did not establish a mechanism to ensure the submission of Form-I by employers, hindering the cess assessment process. This led to ineffective performance by the Cess Assessing Officers and limited cess assessments. Besides, lack of proper monitoring prevented the recovery of assessed cess amounts from employers.

The Cess Collecting Officers exhibited a lackadaisical approach to cess collection, either not collecting cess at all or collected insufficient amounts. Additionally, they also did not adhere to the directives issued by the GoUP/Board. Moreover, the absence of a standardized rate for calculating construction cost also contributed to the shortfall in cess realisation.

The Cess Collecting Officers either did not transfer the collected cess to the Board or did so with significant delays. Besides, the GoUP/Board did not prescribe any accounting policies to ensure the proper accounting of cess receipts, and these transactions were not accounted for under the Public Account of the State.

Recommendation 7: *The State Government needs to introduce a system to monitor submission of required return (Form-I) by the employers and processing of returns within the stipulated time.*

Recommendation 8: *The State Government should ensure that all Cess Assessment Officers assess cess in accordance with the Cess Act and Rules and adopt uniform rates for calculating construction cost across the state.*

Recommendation 9: *The State Government should ensure assessment of cess for works of the Government departments/local bodies along with the individuals.*

Recommendation 10: *The State Government should introduce a system for approval of building plans with levy and realisation of cess at the local Government level.*

Recommendation 11: *The State Government must develop a mechanism for reconciliation of collected cess and ensure that cess receipts are made part of the Public Account of State Government and are transferred to the Board on time.*