

CHAPTER IV

Assessment, Collection and Transfer of Cess

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4.1 Assessment, collection and transfer of cess

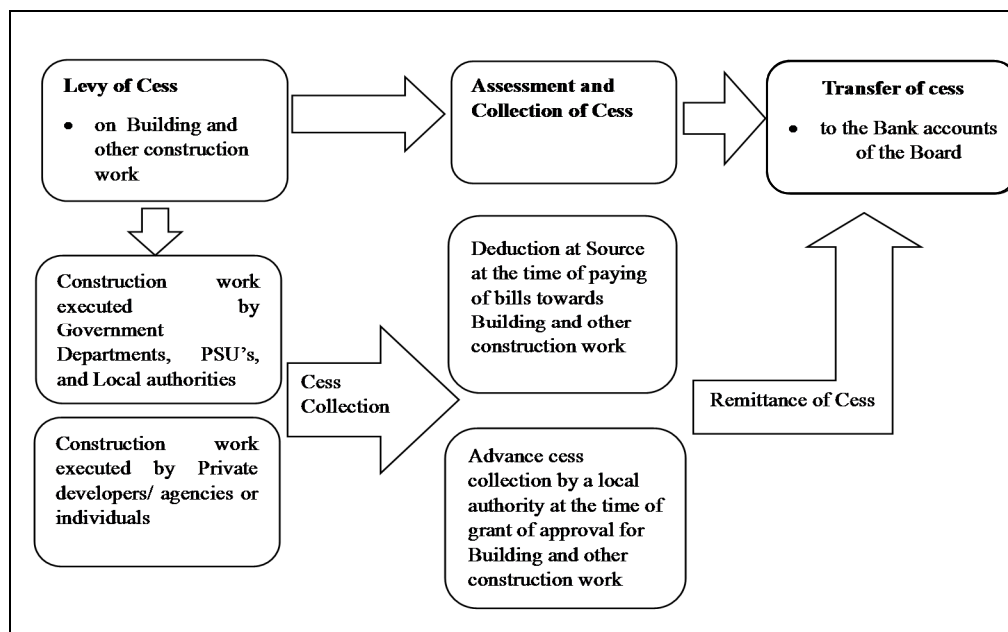
To augment the resources of the Building and Other Construction Workers' Welfare Board, the GoI enacted (August 1996) the Building and Other Construction Workers' Welfare Cess Act, 1996 (the Cess Act) to provide for the levy and collection of a cess on the cost of construction incurred by employers. To implement the Cess Act, GoI notified (March 1998) the Building and Other Construction Workers' Welfare Cess Rules, 1998 (Cess Rules).

The cess was leviable at the rate of one *per cent* of the cost of construction incurred by an employer on building or other construction work. As per Section 3 of the Cess Act and Rule 5 of the Cess Rules, the cess collected should be transferred to the Board within 30 days of its collection. Cess collection was done in two ways *viz.* (i) deduction at source at the time of paying the bills towards building or other construction work (ii) cess collection by a local authority at the time of grant of approval for building or other construction works. The cess collector thereafter remits the cess to the Board.

Section 14 of the Cess Act empowers the Central Government to make rules for carrying out the provisions of the Cess Act. By virtue of this power, the Central Government enacted the Cess Rules. Rule 2(f), 2 (g) and 2 (h) of the Cess Rules provided for the appointment of 'Cess Collector', 'Assessing Officer' and 'Appellate Authority' by the State Government. Accordingly, the Department vide notification issued in April 2008, appointed various officers by designation for Government departments, public sector undertakings *etc.* as the Cess collectors, Assessing Officers and Appellate authorities. The Cess collectors, Assessing Officer and Appellate authorities appointed for various classes of construction as per the notification are given in **Appendix 4.1**.

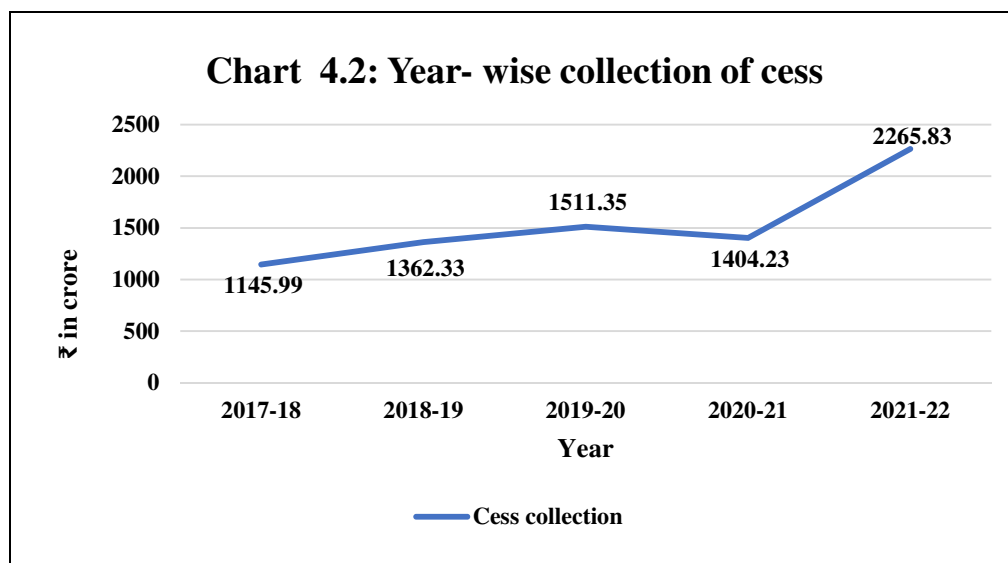
The mechanism of cess collection, assessment and transfer thereof, is depicted in **Chart 4.1**.

Chart 4.1 Mechanism for collection, assessment and transfer of cess



During 2017-18 to 2021-22, cess of ₹7,689.73 crore was transferred to the Board's bank accounts. Year-wise amount of cess deposited in the Board's account during 2017-18 to 2021-22 is given in **Chart 4.2**.

Chart 4.2: Year-wise cess deposited in the Board's account during 2017-18 to 2021-22



Source: Information on year wise collection of cess compiled from Annual Accounts approved by the Board for the years 2017-18 to 2021-22

4.2 Levy and collection of cess

As per Section 3 (1) of the Cess Act, GoI notified (September 1996) that cess for the purpose of the BOCW Act, 1996 would be levied at the rate of one *per cent* of the cost of construction incurred by an employer on building or other construction work.

Deficiencies in levy and collection of cess are discussed in succeeding paragraphs.

4.2.1 Determination of cost of construction for levy of cess

As per Rule 3 of Cess Rules, for levy of cess, the cost of construction should include all expenditure incurred by an employer in connection with the building or other construction work excluding the cost of land and any compensation paid or payable to a worker or his kin under the Workmen's Compensation Act, 1923.

4.2.1.1 Exclusion of non-FSI area

- The Labour Department had issued a Government Resolution (June 2010) and directed that the estimated cost of construction should be worked out considering the Annual Statement of Rates (ASR) prepared by the Inspector General of Registration, under the Registration and Stamps Department, GoM. Audit noticed that in the 10 test-checked Planning Authorities in the six selected districts, the estimated cost of construction was determined by the Planning Authorities for the levy of cess by the Cess Collectors based on the ASR and the Built-up Area²⁴ (BUA) of construction without considering the Built-up Area of non-FSI area (non-FSI area is the area of staircase, lifts, basement *etc.* which are not considered while computing the Floor Space Index²⁵ utilised as per the Development Control Regulation (DCR) /Unified Development Control and Promotion Regulations (UDCPR) issued by the Urban Development Department, Government of Maharashtra). Since the cess was leviable on the total cost of construction, the non-FSI area too should have been considered for determining the estimated cost of construction.

Scrutiny of 169 Building Plans in the 10 test-checked Planning Authorities in the six selected districts revealed that in 57²⁶ cases, ASR was applied only on the BUA excluding non-FSI area by four²⁷ planning authorities. The determination of the estimated cost of construction excluding non-FSI area resulted in short-recovery of cess amounting to ₹ 29.41 crore as shown in **Table 4.1**.

²⁴ Built-up area as per the Unified Development Control and Promotion Regulations 2020 issued by the Urban Development Department and regulated by the Town planning departments of Municipal Corporations/ Municipal councils/ Authorities means the area covered by a building on all floors including cantilevered floors, mezzanine floors, if any, but excluding the areas specifically exempted from computation of Floor space index under these regulations.

²⁵ FSI is the ratio of the total permissible built-up area to the total plot area.

²⁶ In the remaining 105 cases (excluding one case of Thane Municipal Corporation and six cases in Ichalkaranji in which there was no short recovery) the building plans/Commencement certificates did not indicate the non-FSI component for determining the short levy of cess.

²⁷ Brihanmumbai Municipal Corporation, Mumbai Metropolitan Region Development Authority, Lonavala Municipal Council and Kulgaon Badlapur Municipal Council.

Table 4.1: Short recovery of cess in test-checked units

Sr. No.	Test-checked unit	Number of cases	Short recovery of cess (₹ in lakh)
1	Kulgaon Badlapur Municipal Council (KBMC)	1	1.31
2	Brihanmumbai Municipal Corporation	35	295.27
3	Mumbai Metropolitan Region Development Authority	18 ²⁸	2,643.90
4	Lonavala Municipal Council	3	0.17
Total		57	2,940.65

Source: Compiled based on scrutiny of test-checked cases

In one case in Thane Municipal Corporation, the stilt area was not considered for determining the cost of construction for levy of cess resulting in short recovery of ₹ 1.21 crore. On being pointed out (May 2023) by Audit, Thane Municipal Corporation recovered ₹ 1.21 crore in June 2023. The Assistant Town Planner, KBMC stated (June 2023) that action is being taken to recover the amount from the developer. The Assistant Town Planner, Lonavala Municipal Corporation stated (July 2023) that the cases pointed out by Audit would be verified and recovered.

4.2.1.2 Exclusion of cost of landscaping, walking tracks, garden etc.

- Audit noticed that the cost incurred on landscaping, walking tracks, gardens etc., which do not involve BUA, was not considered by any of the 10 Planning Authorities in the six selected districts for determining the cost of construction for levy of cess.

Thus, the exclusion of non-FSI area and cost incurred on landscaping, walking tracks, gardens in the determination of cost of construction resulted in short levy of cess.

The Chief Engineer (Development Plan), BMC while accepting (July 2023) the audit findings stated that as per the new policy approved by the Municipal Commissioner in July 2023, cess would be recovered on the total constructed area. MMRDA stated that cess would be recovered as per the practice followed by BMC and intimated to the developers for payment of cess.

In the exit conference, the Principal Secretary agreed to take up the issue of non-levy of cess on non-FSI area etc. with the Planning Authorities.

4.2.2 Levy of cess on estimated cost of construction instead of the actual cost of constructions

As discussed in **paragraph 4.2**, the cess was levied on the estimated cost of construction determined by the Planning Authorities. Since cess has to be levied on the final cost of construction as per Rule 7 of Cess Rules, the Assessing Officer has to assess the final cost of construction and issue assessment orders.

Rule 6 of Cess Rules stipulated that every employer has to submit information in Form I within 30 days of commencement of work to the Assessing Officer. Form I *inter alia* contained information regarding the date of commencement

²⁸ In nine cases, since the non-FSI area was not indicated in the Commencement Certificates (CCs), Audit relied on the Environment Impact Assessment reports of these projects which indicated the total BUA (FSI and non-FSI area) to determine the ratio of FSI and non-FSI area in the projects. This ratio was used by Audit to work out the non-FSI area in the Building plans/CCs issued, for computing the short-recovery of cess.

of work, estimated cost of work, amount of cess paid, and number of workers employed. As per Rule 7 of the Cess Rules, the Assessing Officer should make an assessment by scrutinizing the information furnished by the employer, within a period not exceeding six months from the date of receipt of information in Form I by determining the final cost of construction. Audit noticed the following:

- In the 10 test-checked Municipal Corporations/Councils and Development Authority (Planning Authorities) in the six selected districts, neither Form I was submitted by the employers to the Assessing Officers (in Planning Units/ Works executing units) during the period 2017-18 to 2021-22 nor was any action taken by these Authorities to obtain Form I.
- The Assessing Officers also did not assess the cess recoverable after determining the cost of construction by exercising the powers under Rule 10 of the Cess Rules which *inter alia* empowered the Assessing Officers to require the production of any prescribed register or any other document relevant to the assessment of cost of construction or number of workers employed, exercise such other powers considered absolutely necessary for a reasonable assessment of cost of construction.
- During the period 2017-18 to 2021-22, the 10 test-checked Municipal Corporations/Councils and Development Authority in the six selected districts, had issued 34,802 commencement certificates²⁹ to applicants seeking permission for development under the Development Control Regulation. However, since no assessment was done and assessment orders issued, the cess was being levied on the estimated cost of construction instead of on the final cost of construction.

Thus, the recommendation of Public Accounts Committee in its 23rd Report of 2015-16, to take steps to ensure issue of assessment orders as per the provisions of the Cess Act, also remained unimplemented.

In reply, the Government stated that a letter has been issued to all concerned Assessment officers regarding non-submission of Assessment orders based on the actual cost of construction. The reply points out the non-adherence to the Cess Rules and lack of monitoring by the Board/Department. In the exit conference, the Principal Secretary stated that the issues raised by Audit regarding assessment orders would be looked into.

4.3 Mechanism for Transfer of cess

As per Section 3 of the Cess Act and Rule 5 of the Cess Rules, the cess collected shall be transferred to the Board within 30 days of its collection. The Cess Collector was allowed to retain the cost of collecting the cess before depositing the cess to the Board. Audit noticed that cess collected by the Cess Collectors in the State was either remitted through bank transfers by the collecting authorities such as the local bodies and public works department or was remitted directly by the employer to the collection account of the Board.

²⁹ Commencement certificate is the permission granted to an applicant for carrying out development work under Development Control Regulations.

4.3.1 Delay in remittance of cess to the Board

Scrutiny of records in the 20 test-checked units (10 Planning and 10 works executing units) in the six selected districts revealed that during the period 2017-18 to 2021-22, cess amounting ₹ 1,986.10 crore was collected of which ₹ 1,965.28 crore was remitted to the Board. Audit also noticed delays in the remittance of cess by the Cess Collectors in seven out of 20 test-checked units as given in **Table 4.2**.

Table 4.2: Delay in remittance of cess during 2017-18 to 2021-22

Sr. No.	Name of the test-checked unit	Amount collected during 2017-18 to 2021-22 (₹ in crore)	Total amount remitted to the Board during 2017-18 to 2021-22 (₹ in crore)	Amount delayed out of total amount remitted (₹ in crore)	Period of delay beyond 30 days
1	Mumbai Metropolitan Region Development Authority	216.25	214.48	34.47	Delay of 12 days to 325 days.
2	Kamptee Municipal Council	0.26	0.26	0.12	Delay of one month to two years.
3	Pune Municipal Corporation	542.28	536.86	536.86	Delay of two to eight months.
4	Lonavala Municipal Council	8.06	7.99	5.35	Delay of one to eight months.
5	Thane Municipal Corporation	207.55	205.50	205.50	Delay of one to 25 months.
6	Public Works Division (South), Kolhapur	7.02	7.02	0.68	Delay of 15 days to 2.5 months.
7	Public Works Division (East), Pune	36.69	36.69	5.75	Delay of one month to seven months.
Total		1,018.11	1,008.80	788.73	

As seen from **Table 4.2**, out of ₹ 1,008.80 crore remitted to the Board during the period 2017-18 to 2021-22, there was delay in remittance of ₹ 788.73 crore (78 per cent) during the period 2017-18 to 2021-22 in the seven test-checked units in the six selected districts.

4.3.2 Non-remittance of cess to the Board

Scrutiny of records in the 20 test-checked units in the six selected districts revealed non-remittance of cess to the Board as shown in **Table 4.3**.

Table 4.3: Non-remittance of collected cess to the Board

Sr. No.	Name of the test-checked unit	Amount of cess not remitted (₹ in lakh)	Audit Findings
1	Kolhapur Municipal Corporation	86.60	Cess amounting to ₹ 86.60 lakh collected during the period April 2019 to November 2022 was not remitted (December 2022). Out of ₹ 86.60 lakh, the Kolhapur Municipal Corporation had remitted only ₹ 23.85 lakh in December 2022 after being pointed out by Audit. The Chief Accountant Of Kolhapur Municipal Corporation stated (December 2022) that the remaining amount would be paid after reconciliation with the Town Planning department.

Sr. No.	Name of the test-checked unit	Amount of cess not remitted (₹ in lakh)	Audit Findings
2	Ichalkaranji Municipal Corporation (MC)	235.00	Cess amounting to ₹ 2.35 crore collected during April 2018 to March 2022 was not remitted (December 2022). After being pointed out by audit, the Corporation furnished a challan showing remittance of ₹ 2.33 crore in March 2023 after retaining ₹ 0.02 crore towards collection expenses.
		2.24	In two out of 20 challans showing the direct remittance of cess by the employers to the collection account of the Board, test-checked in Ichalkaranji MC, an amount of ₹ 2.24 lakh was not found to be credited to the collection account of the Board. In response, Ichalkaranji Municipal Corporation issued notices to both the parties for depositing the unpaid cess amount. However, recovery from both the parties was pending.
3	Brihanmumbai Municipal Corporation (BMC)	43.97	Cess amounting to ₹ 43.97 lakh collected in seven out of 40 test-checked building plans during 2017-18 to 2021-22 was wrongly accounted as cost of collection and therefore not remitted to the Board (December 2022). The Deputy Chief Accountant, (Revenue-3) of BMC stated (June 2023) that after verification of similar cases if any the amount would be credited to the Board.
4	Mumbai Metropolitan Region Development Authority (MMRDA)	4.19	In one case MMRDA granted commencement certificate to BMC for the construction of a Maternity Home and directed (September 2021) to pay cess of ₹ 4.19 lakh. BMC however, requested MMRDA (February 2022) to adjust the cess from other dues payable by MMRDA to BMC. Audit noticed that MMRDA did not adjust the amount and pay the cess to the Board (December 2022).
		372.00	

As seen from **Table 4.3**, ₹ 3.72 crore cess was not remitted into the collection account of the Board by four out of 20 test-checked units and after being pointed out in audit, out of ₹ 3.72 crore an amount of ₹ 2.57 crore was transferred to the Board.

4.3.3 Reconciliation of cess received

Rule 5 of Cess Rules stipulated that the Cess Collector should transfer the cess to the Board along with the form of challan prescribed, to the head of account of the Board. Audit noticed that though the amount was received by the Board through bank transfers, challans were not submitted by the Cess Collectors. Further, the Department had directed (June 2010) that the details of cess deducted from the bills of each employer, amount remitted, date of remittance and challan number should be sent by the Cess Collectors to the Board in the prescribed format for reconciliation with the amount credited in the collection account of the Board. Similarly, the Cess Collector was also required to send yearly details of cess collected and remitted to the Board in the prescribed format.

Audit noticed that the Board did not receive the monthly and yearly details in the prescribed format for reconciliation with the amount credited in the collection account. In the absence of such reconciliation, the Board could not ensure that the entire cess collected was remitted to the Board and the amount

remitted was credited correctly in the bank collection account thereby exposing it to the risk of non-remittance or credit to incorrect bank account.

In reply, the Government stated that the Board is in the process of updating the institution-wise list of Cess Collectors, Assessing Officers and Appellate Authorities and developing a dedicated BOCW Cess Collection portal. It was further stated that instructions have been issued to the Government offices, PSUs and local bodies to submit a monthly and yearly report of the Cess collected and remitted to the Board and Assessing officers instructed to adhere to the provisions of Section 3 of the Cess Act and Rule 5 of the Cess Rules.

4.3.4 Cess collection and Accounting module under IWBMS

The Board awarded (March 2019) the contract for the implementation, operations and maintenance of Integrated Welfare Board Management System (IWBMS) to M/s ITI Limited (a Government of India undertaking) in consortium with M/s Arceus Infotech Private Limited at a cost of ₹ 88.60 crore. The scope of the work *inter alia* included providing computer hardware/manpower at Worker Facilitation Centre, development of modules for registration of workers, claims management, scheme management, cess collection, and Accounting and finance modules.

The cess collection module envisaged integrated payment gateway to track and monitor cess collection and accounting process of cess collection. The system envisaged provision to upload/update the details of assessment orders indicating the amount of cess payable by the cess payer, to the Board via a payment gateway integration through an online platform. To improve the operational efficiency of the Board, the contract also envisaged an integrated double entry financial accounting system to perform its financial accounting functions.

Audit noticed that modules for registration of workers, claims management, scheme management, MIS and Analytics were functional from July 2020. However, the cess collection, and Accounting and Finance modules were not developed by the agency as of July 2024 whereas as per the agreement they were to be completed by August 2019.

The Board neither issued any default notice to the consortium for not complying with contract obligation nor levied penalty as per the contract conditions.

In reply, the Government stated that the Board is in the process of developing a dedicated BOCW Cess Collection portal through a new agency for which a work order has been issued in March 2024.

Incidentally, Audit also noticed that the annual accounts of M/s ITI Ltd. submitted with the technical bid in response to the tender invited for implementation of IWBMS showed negative net worth (₹ 866.06 crore) as of March 2017. Thus, M/s ITI Ltd in consortium with M/s Arceus Infotech Ltd. (Consortium) was not eligible to take part in the bid process since each bidder or each member of the consortium was required to have a positive net worth. However, in the technical evaluation report, the net worth of the firm was shown as “₹ 866.06 crore” instead of negative net worth of ₹ 866.06 crore and it was allowed to participate in the bid process. After the bid process, the contract was placed with the Consortium which had quoted the lowest. Thus, the incorrect technical evaluation resulted in the placement of an order to an

ineligible agency. Reply from the Government in this regard was awaited (December 2024).

Conclusion

Audit observed that cess was not being levied covering the whole constructed area as the non-Floor Space Index area of construction and costs incurred on landscaping, walking track *etc.*, were excluded for levy of cess resulting in short recovery of cess. The Assessing Officers were not ensuring the assessment of cess on final cost of construction. Cess collected was not remitted fully to the Board and in the absence of a reconciliation system, the Board could not ensure that the entire cess collected was remitted to the Board. Non-development of Cess collection and Accounting & Finance Modules by the contractor affected better reconciliation and management of the cess collection system.

Recommendation 5: The Government may issue directions to all the Planning Authorities to work out the cost of total constructed area and other costs incurred in construction, for levy of cess.

Recommendation 6: The Government may direct all the Cess Collectors to adhere to the provisions in the Cess Act and Cess Rules for timely remittance of cess collected to the Board.

Recommendation 7: The Government may ensure that the Cess Collection module under IWBMS is developed and implemented in a time bound manner to facilitate reconciliation of cess collected by the Cess collector and remitted to the Board.

