

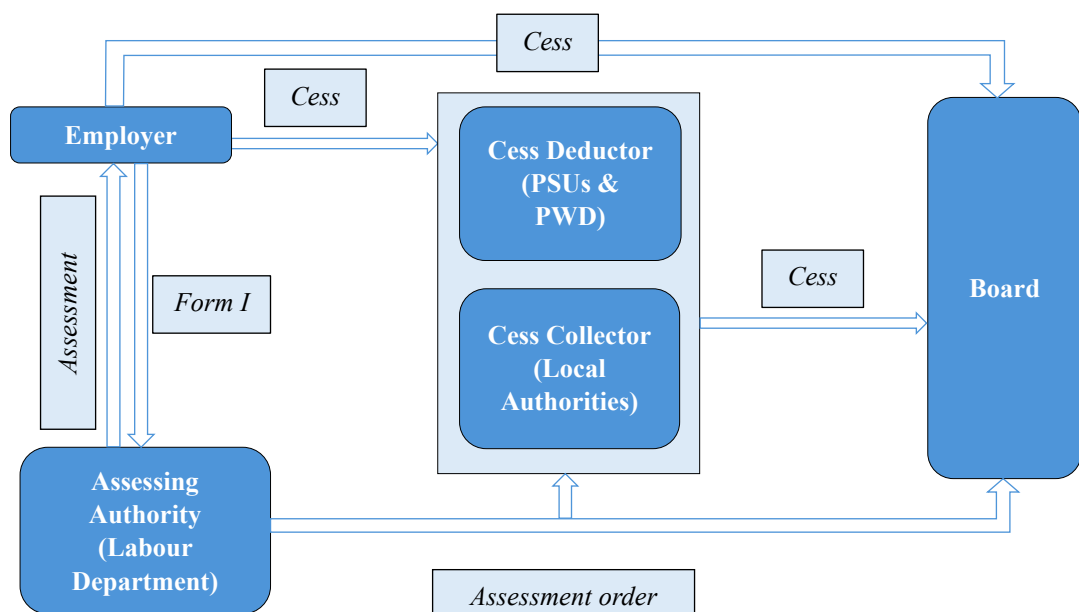
## Chapter 4: Assessment, Collection and Remittance of Cess

A cess was to be levied and collected for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (27 of 1996), at such rate not exceeding two *per cent* but not less than one *per cent* of the cost of construction incurred by an employer.

The main sources of cess were - deduction at source from contractor's Running Account bill in case the work is executed by the Government departments or Public Sector Undertakings and in other cases, advance cess collection by the construction licence issuing authorities (Local Bodies). The proceeds of the cess collected were to be paid by the local authority or the State Government agency collecting the cess to the Board after deducting the cost of collection, not exceeding one *per cent* of the amount collected. Further, an employer may also pay in advance an amount of cess calculated on the basis of estimated cost along with the notice of commencement of work to the Board.

The cess was to be collected at a uniform rate as prescribed on the basis of the quantum of the building or other construction work involved and was subject to final assessment made by assessing officers. The cess collection mechanism is depicted in **Figure 3** given below:

**Figure 3: Cess collection mechanism**



### 4.1 Non-assessment of cess

The Cess Act, 1996 requires every employer carrying on building or other construction works to pay cess (Section 3 of the Act) and to furnish returns to the prescribed Authority/Officer within 30 days (Section 4 of the Act). In

case of default, the Authority shall give notice to furnish the return within a specified date. The Cess Act further provides that in absence of any return, the Authority shall assess the amount of cess payable after inquiry and issue an order specifying a date for payment. In case of non-payment, such an employer shall be liable to pay interest on the amount to be paid at the monthly rate of two *per cent* (Section 8 of the Act). If any amount of cess is not paid within the specified date (30 days), the authority may impose a penalty not exceeding the amount of cess. Deputy Labour Commissioners (DLCs) and Assistant Labour Commissioners (ALCs) were appointed (February 2007) as Assessing Officers (AOs) under their jurisdiction for assessment of cess under the Cess Act (Section 9 of the Act).

Local Bodies collect the advance cess @ one *per cent* at the time of issue of construction license. Advance cess is levied based on estimated cost submitted by the valuers/engineers.

In case of variation in estimated cost, as per section 6, 7 and 8 of the Cess Rules, 1998, the employers are to furnish to the AO within 30 days of commencement or modification of work regarding the same through Form I, which is then to be assessed by the AO within six months. Under-assessment and over-assessment so identified would lead to the employer having to pay the additional cess calculated or being eligible for refund of the excess cess collected respectively.

Audit observed the following:

- ❖ The prescribed returns as per the Cess Act were not received from any of the registered employers by the four test-checked AOs during 2017-22. The AOs appointed for the purpose did not carry out any assessments/issued Assessment Orders in their jurisdictions. The same was the case in all other jurisdictions across the State.
- ❖ The AOs did not issue any notice to employers under the Cess Act.
- ❖ The test-checked AOs had no information about the number of building and other construction works undertaken in their jurisdiction.
- ❖ Enquiries of work sites were not conducted by any officer authorized by the AOs to estimate the cost of construction.
- ❖ Revised Goa Schedule of Rates (GSR) were not followed by VPs to determine the estimated cost of construction.

As a result, the overall cost of construction, the cess realizable or penalty/interest on unrealized cess, was not ascertained by the Assessing Officers. AOs appointed for the purpose have not done any assessment in the State since their appointment and consequently, the Board remained

unaware of the quantum of cess assessed as well as unrealized cess. Further, AOs did not issue notices in instances where employers failed to submit the required returns under the Cess Act.

The Government replied (April 2024) that it was observed by the Board that Village Panchayats are not collecting cess as per the revised GSR and the Board has informed the Director of Panchayat to issue necessary instructions to all Village Panchayats to collect cess as per revised GSR. It was also stated that ALCs and DLCs are notified as AOs and it shall be ensured that these officials will do the assessment work hereafter.

The reply is not tenable as the Labour Department did not take any action against the AOs for disregarding Government orders and failing to perform their assigned duties. As a result, realization of actual cess amount payable to the Board could not be ascertained.

#### **4.2 Loss of revenue due to delayed commencement and non-collection of cess by Village Panchayats**

A test check was conducted to verify whether the correct amount of cess as notified (January 2009) by the State Government was being collected and remitted to the Goa Building and Other Construction Workers Welfare Board in a timely manner. However, scrutiny of records in four VPs<sup>1</sup> revealed that even though cess collection was notified by the State Government with effect from 01 January 2009, the VPs started collecting cess only from 2021-22 onwards. The inordinate delay in commencement of cess collection resulted in a huge loss of revenue to the BOCW fund. In the case of the test checked VPs, ₹ 383.53 lakh was to be collected against 348 applications for which construction licenses were issued during 2017-21. Details of non-collection of cess are given in Table 4.1.

**Table 4.1: Issue of construction license without collecting cess by VPs during 2017-21**

Sl. No.	Name of VPs	No. of construction licenses where cess was due	No. of construction licenses issued without collecting cess	Estimated cost of construction where cess was not collected (₹ in lakh)	Amount of cess not collected @one per cent of estimated cost (₹ in lakh)
1	Calangute	122	122	24504.05	245.04
2	Aldona <sup>2</sup>	51	51	2039.85	20.40
3	Sancoale	168	168	11548.06	115.48
4	Betoda <sup>3</sup>	20	07	261.13	2.61
<b>Total</b>		<b>361</b>	<b>348</b>	<b>38353.09</b>	<b>383.53</b>

(Source: Information furnished by the test checked VPs)

<sup>1</sup> Calangute, Aldona, Sancoale & Betoda

<sup>2</sup> Cess collection started from 2020-21

<sup>3</sup> In 13 cases of 2017-21, demand were raised and cess collected during 2021-22.

The VPs could not furnish any reason for delayed commencement of cess collection in disregard of Government notification in January 2009. Non-collection of cess by the VPs was not taken up by the Board for action by the Government.

The State Government replied (April 2024) that the Board has taken active steps and instructed (August 2021) the Directorate of Panchayats to direct panchayat secretaries to recover the cess. The Board had also brought it to the notice of the Government and published notice in local dailies to raise awareness about cess collection. Regarding collection of cess for prior period, it was stated that the matter would be placed in the Board's meeting for appropriate decision.

Reply has to be viewed against the fact that the Board failed to instruct Director of Panchayats in time for issuing directive to VPs for cess collection which was effective from January 2009, resulted in delayed collection of cess commencing from 2021-22 onwards. Moreover, neither the Board and Director of Panchayats had taken follow up action nor any step was taken by VPs for recovery of cess except by VP Betoda.

#### **4.3 Non-remittance of the collected cess to the Board**

Rule 5(3) of the Cess Rules provides that the cess collected should be remitted to the Board within 30 days of collection. Scrutiny of records of 12 test checked units (cess collectors/cess deductors)<sup>4</sup> revealed that two VPs (Calangute and Aldona) did not remit cess amounting to ₹ 39.81 lakh to the Board as detailed in **Table 4.2** while the other two VPs (Betoda and Sancoale) had deposited the entire collected amount to the Board.

**Table 4.2: Non remittance of cess to the Board**

*(₹ in lakh)*

Name of the VPs	Year of cess collection	Amount of cess collected by VPs	Amount of cess deposited to Board by VPs	Amount of cess not deposited with the Board
Calangute	2021-22	24.33	Nil	24.33
Aldona	2021-22 <sup>5</sup>	22.17	6.69	15.48
<b>Total</b>		<b>46.50</b>	<b>6.69</b>	<b>39.81</b>

*(Source: Information furnished by the test checked VPs)*

As seen in the table above, an amount of ₹ 39.81 lakh was not deposited with the Board by Calangute VP and Aldona VP, which was in contravention of Cess Rules. Reasons for non-remittance of cess to the Board were not furnished to Audit by the VPs. Further, as the Board did not have any mechanism for monitoring and ensuring cess collection and its

<sup>4</sup> Four test checked VPs- Aldona, Calangute, Betoda, Sancoale, four ULBs- CCP, Ponda, Curchorem-Cacora, Quepem, and four work executing departments - GSIDCL, PWD Div. III, Div. VI & Div. XII

<sup>5</sup> VP Aldona collected cess of 2020-21 by issuing demand notices in 2021-22.

remittance by cess collectors, the possibility of unauthorized utilisation of cess amounts could not be ruled out.

The State Government replied (April 2024) that Directorate of Panchayat has passed necessary instructions to all Village Panchayats to remit the cess within 30 days of collection.

The Government's reply is not tenable as both the VPs still had not deposited the collected cess in violation of the extant Rules and no action was taken by the Government to address the issue.

#### 4.4 Delay in remittance of labour cess amounting to ₹ 4.79 crore

Rule 5 of the BOCW Cess Rules, 1998 provides that the cess amount collected shall be transferred to the Board within 30 days of its collection. Government of Goa notified collection of cess @ one *per cent* of construction cost (above ₹10 lakh) with effect from 01 January 2009.

Records of four work executing departments (cess deductors)<sup>6</sup>, four Municipal Councils/Corporations<sup>7</sup> and four Village Panchayats (cess collectors)<sup>8</sup> were test checked to verify whether the correct amount of cess was deducted/collected and remitted to the Board in a timely manner. It was observed that out of the 12 selected units, three remitted cess with a delay ranging up to 1,000 days during 2017-22 as detailed in **Table 4.3** while remaining nine units remitted cess in time.

**Table 4.3: Details of delayed remittance of cess**

(₹ in lakh)				
Name of the unit	Amount remitted with delay (up to 100 days)	Amount remitted with delay (101 to 500 days)	Amount remitted with delay (501 to 1000 days)	Total
GSIDCL	50.97	138.95	67.91	257.83
CCP	215.68	-	-	215.68
VP Betoda	1.98	3.20	-	5.18
<b>Total</b>				<b>478.69</b>

(Source: Information provided by the selected units)

As seen in the table above, there was a substantial delay in remittance of cess by the GSIDCL. Reasons for delayed remittance of cess to the Board were not furnished to Audit. The GSIDCL replied (July 2023) that due to financial constraints which were faced by the company over the past few years, the accumulated cess amount was not remitted to the Board.

<sup>6</sup> GSIDCL, PWD Div. III, Div. VI & Div. XII

<sup>7</sup> CCP, Ponda, Curchorem-Cacora, Quepem

<sup>8</sup> Aldona, Calangute, Betoda, Sancoale

Delayed remittance of cess to the Board is a violation of the provisions of the Act and carries the risk of unauthorized utilization of cess amounts by the cess collecting entities.

The Secretary (Labour) assured (March 2024), to take up the matter with the Managing Director of GSIDCL, during the exit conference.

The Government replied (April 2024) that the Board has also planned to discuss the issue with the concerned cess collectors/cess deductors and ask them to adhere with the provisions of the Cess Act, 1996.

Reply is not tenable as action taken by the Government does not fully address the problem, as no mechanism to monitor the timely remittance of cess has been considered amidst possibility of utilization of cess collected by the collectors/deductors for other purposes. In the absence of a robust monitoring mechanism within the Board to ensure timely and accurate collection and remittance of cess, the Board would not have any control over realising the proceeds of the cess.

#### **4.5 Collection of cess through cash or cheques by Village Panchayats in violation of provisions of Cess Rules**

According to Rule 4(4) of the Building and Other Construction Workers' Welfare Cess Rules, 1998 (BOCWW Cess Rules), where the approval of a construction work by a local authority is required, every application for such approval shall be accompanied by a crossed DD in favour of the Building and Other Construction Workers Welfare Board for the applicable amount of cess.

During scrutiny of records in test checked VPs<sup>9</sup>, it was observed that the VPs started collecting cess from the year 2021-22 onwards. The entire amount (₹ 97.99 lakh) was collected either in cash or in cheque/DDs in favour of VP.

Collection of cess in cash or by cheques, other than that prescribed under the Rules *ibid* is fraught with the risk of cheque bounce/unauthorized holding/use of cess amount by the cess collectors.

The Government replied (April 2024) that Directorate of Panchayat has passed (June 2023) necessary instructions to all VPs to collect cess by crossed demand draft and now compliance is being done by all the VPs. Further, the Board instructed (June 2024) Directorate of Panchayats to collect cess through electronic mode (RTGS/NEFT). Accordingly, the Directorate of Panchayat issued (July 2024) an order to implement the instructions of Board by all VPs.

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<sup>9</sup> Aldona, Calangute, Betoda and Sancoale

Audit is of the view that compliance of instruction to collect cess by crossed demand draft/electronic mode need to be ensured by the Department to avoid the risk of unauthorized holding/use of cess amount.

**Conclusion:**

Assessing Officers appointed by the Government in the year 2007 for assessment of cess, had not done any assessment in their respective zones. Commencement of cess collection was notified by State Government *w.e.f.* 01 January 2009, however, Village Panchayats started collecting cess only in 2021-22, resulting in less collection of cess for welfare of workers. Cases of non-remittance, delayed remittance by Local Bodies and Goa State Infrastructure Development Corporation Limited and unauthorized mode of collection of cess were also observed.

**Recommendation 5: The Government should fix responsibility for non-assessment of cess and ensure commencement of cess assessment at the earliest.**

**Recommendation 6: The State Government may issue necessary directions to Local Bodies and PSUs for ensuring that cess is duly assessed, levied, collected and remitted to the Board within specified time of 30 days as per the Cess Act. The Board may strictly monitor timely collection and remittance of the cess.**