

Chapter IV

Assessment, Collection and Transfer of Cess

4.1 *Assessment and levy of the 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 the employers. To implement the Cess Act, GoI notified (March 1998) the Building and Other Construction Workers' Welfare Cess Rules, 1998 (Cess Rules).

GoI notified (September 1996) the levy of cess at the rate of one *per cent* of the cost of construction incurred by the employers. The GoR adopted the Cess Rules, 1998 in Rajasthan in July 2009 to levy cess at the rate of one *per cent* of the total cost of construction incurred by an employer.

There are three sources of cess: (i) Government departments/ PSUs while undertaking construction works are responsible for deduction of the cess at source from contractor's bills; (ii) Local Bodies/Urban Development authorities are responsible for collection of advance cess as a percentage of the estimated construction cost at the time of approval of building plans submitted by the entities undertaking construction and (iii) Collection of cess on the basis of assessment made by Labour Department.

According to Rule 5(3) of Cess Rules, the amount of cess collected by the labour department from the establishments is required to be transferred to the Board Fund within 30 days of its collection. Audit noticed that cess collected by the Cess Collectors in the State was first deposited in the revenue head (0230-800-06) of the State Government and then transferred to the RBOCW welfare fund.

Audit observed that during 2017-18 to 2021-22, cess of ₹ 2,002.43 crore was collected, and cess of ₹ 1,788.99 crore was transferred to the Board with delay of three to 22 months. Year-wise amount of cess collected in revenue head and deposited in the RBOCW welfare fund is given in **Table 4.1** below:

Table 4.1: Year-wise amount of cess collected in revenue head and deposited in the RBOCW welfare fund

(₹ in crore)

Year	Cess collected in revenue head	Cess transferred to RBOCW welfare fund
2017-18	338.60	342.69
2018-19	382.59	338.60
2019-20	412.82	382.59
2020-21	367.55	357.56 ¹
2021-22	500.87	367.55

Source: As per information provided by the Board.

The GoR stated (December 2023) that the cess collected in a year is transferred to RBOCW welfare fund in the next financial year by GoR. The transfer of collected cess on a monthly basis from July 2023 is under consideration with Finance Department.

Deficiencies noticed during audit in assessment and levy of cess are discussed in succeeding paragraphs.

4.1.1 Shortfall in conducting survey to identify establishments liable to pay cess

Labour Department issued (March 2019) Standard Operating Procedure (SOP) wherein targets were fixed for survey to identify establishments coming under the purview of the Act. Every Labour Inspector was required to survey 50 construction works per month in his/her jurisdiction and submit report to the concerned Assessing Officer, who in turn issues notice to the employer for depositing the cess if due.

Audit observed that targets were fixed in March 2019 i.e. ten years after framing of the RBOCW Rules, 2009. Further, during 2019-22, against the target of 1,74,000 surveys, only 60,590 (34.82 per cent) surveys were conducted at the State level. In selected five districts, 12,552 (25.56 per cent) surveys were conducted against the target of 49,100 surveys (*Appendix 4.1*).

The GoR replied (March 2024) that the shortfall in conducting surveys was due to Covid pandemic and shortage of Labour Inspectors in the department.

Audit is of the view that suitable mechanism may be devised to ensure compliance of the targets in future.

¹ ₹ 55.26 crore were not transferred from ₹ 412.82 crore collected on account of expenditure on BOC workers during covid-19 Pandemic.

4.1.2 Assessment orders not issued

(i) Assessment orders not issued by works executing departments and local bodies

In compliance of the Cess Rules, Dy. Labour Commissioner/other labour officers were appointed (July 2009) as ‘Cess Collector’ and ‘Assessing Officer’. Additionally, officers of local bodies and works executing departments were also appointed (January 2015) as ‘Cess Collector’ and ‘Assessing Officer’.

Further, as per Rule 6(1) of Cess Rules, every employer, within thirty days of commencement of work will furnish information in Form I to the Assessing Officer. The Assessing Officer, after scrutinizing such information, is required to issue assessment order within six months. Assessment order specifies the amount of cess due, cess already paid by the employer or deducted at source and the balance amount payable and the date by which the cess shall be paid.

Audit observed that the officers of the local bodies and works executing departments were performing the duty of cess collection only by collecting advance cess while giving approval of building plans or by deducting cess from payments made to the contractors but no final assessment order to ensure collection of due cess was being issued by them in test checked five districts during 2017-22.

On being pointed out by Audit, the department conducted a meeting under the Chairmanship of the Principal Secretary, Labour Department with all assessing officers (January 2024) and directed to assess the cess from assessee under their jurisdiction and share the information with the Labour department.

(ii) Assessment orders not issued by Labour department

Audit further observed that assessment orders after determining the final cost of construction were issued by labour department to only 49² establishments (five *per cent*) out of a total of 1,153 establishments registered during audit period 2017-18 to 2021-22 in test checked five districts.

The GoR in its reply stated (March 2024) that assessment orders of 386 establishments (out of 1,153) have been issued and Assessment Officers have been instructed to issue assessment orders in the remaining cases.

4.1.3 Mechanism for calculation of construction cost for assessment of cess

In accordance with Section 3(1) of Cess Act, GoR notified (July 2010) the rate of cess as one *per cent* of the construction cost (excluding land cost). For calculation of cost of construction by Assessing Officer, Labour Department had prescribed (September 2016) minimum rate to be made applicable per square feet of different types of buildings (commercial, residential, shopping mall etc.). Buildings under each type were further sub-divided into three categories: A, B or C *i.e.* superfine, medium and simple construction based on the quality of

² 02 in Jodhpur and 47 in Kota.

construction. Minimum rate of cost of construction was to be decided as per the category of building (A, B, C) and for this a check list was developed to determine the category of construction based on various criteria³. This list was to be filled by the establishment.

However, Audit observed that Labour department did not prescribe detailed method of calculation to be adopted for classification of building under A, B and C category from the filled checklist. Moreover, during scrutiny of selected 157 assessment orders in test checked five districts, Audit observed that in all these cases the check list was not filled up by the entity undertaking construction.

The GoR replied (November 2023) that a committee was constituted (September 2009) which prescribed modalities to be adopted to determine construction cost by classifying construction works into three categories (A, B and C) based on utilization of the building and materials used.

The GoR reiterated the facts and did not provide specific reply regarding lack of specific criteria in the existing mechanism to be used to determine category of buildings which decides estimated rate of cost of construction. This indicates subjectivity in calculation of cost of construction and assessment of cess.

4.2 Collection of Cess

4.2.1 Non recovery of Cess

(i) Non recovery of cess by Labour department

As per Rule 4(1) of the Cess Rules, cess should be collected within 30 days from the issuance of Assessment Order, failing which, the employer shall be liable (Section 8 of the BOCW Cess Act) to pay interest on the amount to be paid at the rate of two *per cent* for every month of delay. Further, Rule 13 of Cess Rules stipulates that for any amount due from the employer, Secretary of Board shall direct the District Collectors to recover the same as an arrear of land revenue.

Scrutiny of selected 157 assessment files where assessment was done by Labour Department, showed that cess amounting to ₹ 2.87 crore was not recovered in 75 (48 *per cent*) cases as of March 2022. The employers were liable to pay interest of ₹ 2.52⁴ crore for the uncollected cess. Thus, a total of ₹ 5.39 crore remained uncollected. Further, only 27⁵ out of 75 cases (36 *per cent*) were sent to concerned District Collectors for recovery as of March 2024.

The GoR replied (March 2024) that pursuance of remaining cases was being ensured.

³ Number of elevators, details of wood used, AC system, basement, sanitary fixtures and stone used.

⁴ Dholpur- ₹ 0.01 crore, Jaipur- ₹ 1.12 crore, Jodhpur- ₹ 0.57 crore, Karauli- ₹ 0.13 crore and Kota- ₹ 0.69 crore.

⁵ Jodhpur-2 cases and Kota-25 cases.

(ii) Non recovery of cess by works executing departments

According to Rule 4(3) of the Cess Rules, where the levy of cess pertains to BOC work of a Government or of a Public Sector Undertaking (PSU), such Government or the PSU shall deduct or cause to be deducted the cess payable at the notified rates (one *per cent*) from the bills paid for such works.

Audit observed that in selected 44 works executed by works executing departments during 2017-22, cess due was deducted in case of 30 works. In remaining 14 works valuing ₹ 1,103.62 crore, cess of ₹ 11.04 crore was to be levied at the rate of one *per cent* of the value of the works, however, cess amounting to ₹ 1.23⁶ crore was not recovered while making final payments to the contractors. Thus, the due cess was not recovered by works executing departments.

Divisional Joint Labour Commissioner, Jaipur and Labour welfare officer, Dholpur stated (May and March 2023) that it is the responsibility of executing departments to deduct the due cess and Labour welfare officer (Jodhpur) stated (May 2023) that the executive department concerned has been directed to deduct and deposit the due cess.

4.2.2 Non collection of cess by planning authorities

According to Rule 4(4) of the Cess Rules, local authority will deduct cess on estimated cost of construction at the notified rates. Further, Labour Department, GoR in its meeting (September 2016) directed its officers to hold regular meetings with representatives of BOC workers, government departments associated with BOC works to ensure registration of BOC workers, establishments and collection of cess.

(i) Audit selected 78 building plans approved by test checked ULBs (planning authorities) out of these 78 plans, advance cess was required to be collected in 70⁷ building plans. However, it was noticed that advance cess of ₹ 8.34⁸ lakh was not collected while approving 16 building plans.

(ii) Rule 4(4) of the Cess Rules provides that local authority will collect advance cess while approving a construction work based on the estimated cost of construction. If the duration of the project is likely to exceed one year, the cess payable on cost of construction estimated to be incurred during one year from the date of commencement shall be collected and further payments of cess due shall be made accordingly for every year thereafter.

⁶ Dholpur- ₹ 0.37 crore in two works, Jaipur- ₹ 0.12 crore in five works, Jodhpur- ₹ 0.71 crore in five works and Karauli- ₹ 0.03 crore in two works.

⁷ Eight out of selected 78 building plans were residential building plan valuing less than ₹ 10 lakh. Therefore, as per the Act advance cess was not required to be collected.

⁸ In one case cess of ₹ 6.16 lakh (as provided by ULB) and in remaining 15 cases, cess of ₹ 2.18 lakh (calculated by audit based on estimated construction cost which was arrived at by multiplying built up area of construction for which permission was granted with minimum applicable rate of construction as specified by Labour department).

Audit analysed the information (cost of construction) pertaining to selected 40 projects registered with RERA (available on its website) and the amount of Cess deposited with Labour Department and observed that in 17 projects, cess amounting to ₹ 4.82 crore⁹ (including interest) was not deposited as of March 2022.

Divisional Joint Labour Commissioner, Jaipur and Kota and Labour Welfare officer, Dholpur stated that due cess will be recovered accordingly after conducting survey.

This shows that Labour department had not used easily accessible information available with RERA to ensure cess collection.

4.2.3 Cess collection through cheques

Rule 4 of the Cess Rules stipulates that cess/advance cess payable to the Board shall be deposited through a demand draft.

During scrutiny of records in Labour Department, it was noticed that advance cess was received through cheques during 2017-22. However, 126 cheques amounting to ₹ 11.36 crore¹⁰ were dishonored for payment.

On this being pointed out, the Labour department stated (July 2023) that ₹ 2.28 crore were recovered but ₹ 9.08 crore¹¹ remains unrecovered. For recovery of the remaining cess, notices have been issued to the establishments concerned.

Audit is of the view that Labour Department needs to ensure compliance of Rule 4 of the Cess Rules to avoid cases of dishonor of cheques.

4.3 Transfer of Cess

4.3.1 Remittance of cess in the Welfare Fund of Board

According to Rule 5(3) of Cess Rules, the amount of cess collected by the labour department from the establishments is required to be transferred to the Board Fund within 30 days of its collection. Audit noticed that cess collected by the Cess Collectors in the State was first deposited in the revenue head (0230-800-06) of the State Government and then transferred to the RBOCW welfare fund.

⁹ Dholpur: ₹ 0.38 crore in five projects, Jaipur: ₹ 0.17 crore in one project, Kota: ₹ 4.27 crore in 11 projects.

¹⁰ 2017-18: ₹ 4.15 crore, 2018-19: ₹ 4.44 crore, 2019-20: ₹ 1.96 crore, 2020-21: ₹ 0.75 crore and 2021-22: ₹ 0.06 crore.

¹¹ 2017-18: ₹ 3.22 crore, 2018-19: ₹ 3.72 crore, 2019-20: ₹ 1.80 crore and 2020-21: ₹ 0.34 crore.

Audit observed that in selected 78 building plans approved by test checked ULBs, advance cess of ₹ 14.43 lakh collected during approval of 47¹² building plan was not deposited in the revenue head of State Government and was lying with the respective ULBs.

Conclusion

Audit has observed that labour department did not ensure the conduct of targeted surveys aimed at identifying establishments falling under the purview of the Act. During 2019-22, against the target of 1,74,000 surveys, only 60,590 (34.82 per cent) surveys were conducted at the State level. Further, there was non-compliance with key provisions related to Cess collection including the absence of assessment order and lack of clearly defined methodology for calculation of construction cost for assessment of cess.

Instances of non-collection and short recovery of Cess indicate towards inadequate monitoring by department to ensure effective Cess collection. In violation of cess rules, advance cess was received through cheques instead of demand draft, which were dishonored and resultantly cess of ₹ 9.08 crore remains unrecovered.

During 2017-18 to 2021-22, cess of ₹ 2,002.43 crore was collected under the revenue head of State Government and cess of ₹ 1,789 crore was transferred to the Board with delays ranging from three to 22 months.

Recommendation 3: The Labour Department may formulate and adopt comprehensive, measurable and verifiable criteria for determining construction costs to ensure uniformity and objectivity in assessment of Cess.

Recommendation 4: The Labour Department may strengthen the existing mechanism to ensure timely and accurate collection of cess as per assessment orders by cess collecting authorities.

¹² Audit selected 78 building plans approved by ULBs. Out of these 78 cases, advance cess was required to be deposited in 70 cases. Out of these 70 cases, advance cess of ₹ 8.34 lakh was not collected in 16 cases, advance cess of ₹ 14.43 lakh was collected but not deposited in Revenue head in 47 cases, advance cess of ₹ 4.57 lakh was collected and deposited in Revenue head in 6 cases and 1 case was sub judice.