

Chapter 3

Cess Assessment, Collection and Remittance

Cess Assessment, Collection and Remittance

As per Section 3 of the Cess Act, Labour Cess should be levied and collected for the Building and Other Construction Workers at such rate not exceeding two *per cent* but not less than one *per cent* of the cost of construction excluding land cost incurred by an employer.

As per Rules 3 and 4 of the Cess Rules, when levy of Cess pertains to building and other construction works of a Government Department or of a Public Sector Undertaking (PSU), such Government Department or PSU is required to deduct the Cess from the bills paid for such works and where the approval of a construction work is required from a ULB/UDA, such ULB/UDA shall collect the Cess at the time of issue of building plan approval. In compliance to the provisions of the Act, the Government ordered (December 2009) the Director of Works Accounts/PAO, Engineering Wing of ULB/UDA to deduct the Cess from the works' bills and Town Planning Wing of the ULB/UDA to collect the Cess in advance. The Cess levied was also to be collected as advance collection through a Local Authority, where an approval of such building (including private) or other construction work by such Local Authority is required, as prescribed.

3.1 Non-availability of details of Demand, Collection and Balance

As per provisions of the Act, Cess collected forms the major source of funds for the Board. The Cess levied was to be collected¹³ from every Employer in relation to a building or other construction work of a Government or of a Public Sector Undertaking or of a private individual.

Scrutiny of records revealed the following:

- The Board does not have any ULB/PAO-wise details of Cess to be levied, Cess levied and received and balance due to be received.
- In the absence of these details, the preparation of the Budget by the Board was not realistic as Audit observed non-allocation/release of the required funds and non-implementation of certain new envisaged schemes. (*Paragraph 6.7 refers*)

On being brought to notice, the Board replied that the primary objective of the Board was to formulate policies and implement schemes for the welfare of BOC Workers. The Board further stated that the Cess is to be collected from various Government agencies as well as non-government agencies and hence maintenance of such centralised database is a difficult task. The Board also stated that it is in the process of getting database sharing with stake holder Departments through NIC.

¹³ including deduction at source

It is evident from the reply that the Board lacks a clear mechanism to ensure monitoring of the Cess amount due, received, and the balance yet to be received.

Non-coordination through District Co-ordination Committee

As per the orders of the Government (September 2009), the Deputy Commissioner of Labour (DCL) is the Member-Convener of the District Co-ordination Committee (DCC). Commissioner had issued (March 2011) instructions to the DCLs to obtain the following details from:

- a. **Local Body Authorities:** Details of the plan approvals issued to private individuals/Establishments, works undertaken by the Local Bodies.
- b. **State Government Authorities:** Details of the plan approvals of Government projects.
- c. **Central Government Authorities:** works/ projects approved by the Central Government.

The above information is required to take necessary steps for assessment of Cess; to ensure the list of contractors who paid Value Added Tax (VAT) under the Building and Other Construction activities and take follow up action under Cess Act and place before the Committee/DCL.

Scrutiny of the records of test-checked DCL offices revealed that, out of the five test-checked Districts, the DCC was not formed in two test-checked Districts *viz.*, Hyderabad and Hanumakonda (Warangal Urban).

Though Committees were formed in Karimnagar, Khammam and Rangareddy Districts, required information regarding plan approvals from Local Bodies/State Government / Central Government Authorities was not obtained.

The Board replied (January 2024) that the functions of the District Coordination Committees stipulated during pre-IT developed period are taken care of by using IT Plat form. The reply furnished is not acceptable as the functions of the District Committee is not limited to Cess collection alone but also includes coordination with various stakeholder agencies for registration of establishments and monitoring the registration/renewal of the Building & Other Construction Workers which was not done in absence of proper functioning of DCC.

3.2 Collection of Cess

As per Section 3 of Cess Act read with Rule 4(3) of Cess Rules (1996), the Board was empowered to impose and collect Cess¹⁴ on Building and Other Construction Works¹⁵. As per Rule 4(4) of the Cess Rules, where the approval of construction work by a Local Authority is required, every application for such approval shall be accompanied by a crossed demand

¹⁴ at a rate not exceeding two *per cent* but not less than one *per cent* of the cost of construction incurred by an employer other than construction work in relation to his own residence the total cost of such construction not being more than rupees ten lakh

¹⁵ at the notified rate of one *per cent* of the total cost of construction excluding cost of land and compensation paid to worker or his kin under the Workmen's Compensation Act, 1923

draft in favour of the Board for amount of Cess on the estimated cost of construction for the total project or for the period of one year.

3.2.1 Collection of Cess by ULBs at the time of plan approvals

As per Government orders (December 2009) the controlling Departments of the Local Bodies/Authorities which are competent to approve plans for BOC Works were requested to issue instructions to Heads of Departments and the Local Bodies/Authorities to maintain a Register and submit monthly statements to the Board before 10th of the succeeding month.

The Commissioner and Director of Municipal Administration (CDMA), Hyderabad issued (October 2018) a circular to all Local Body authorities to remit the amount of Cess collected by them to the Board and to submit the list of buildings for which plans were approved and amount of Cess that was collected as required under Act.

- However, it was observed from the records of the Board that information of building plans approved by the ULBs and amount of Cess collected and remitted to the Board was not being sent to the Board by the ULBs. In the absence of above details with the Board, Audit could not verify the amount of Cess due and Cess amount collected by the test-checked ULBs/UDAs.
- Further, the ULBs/UDA approved plans till September 2020 through the Development Permission Management System (DPMS) and thereafter plans were approved through the Telangana State Layout and Building Permission Approval and Self Certification System (TS-BPASS).
- Details of Cess collected (2017-22) by test-checked ULBs/UDA during the approval of plans and remittance to the Board are given in **Table-3.1**.

Table-3.1: Details of the Cess collected (2017-22) during the approval of plans by test-checked ULBs/UDA

(₹ in crore)

Name of the District	Name of ULB/ UDA	Type of ULB	Collection	Remitted	Yet to be remitted	Remarks
Hanumakonda	GWMC	Corporation	24.75	15.51	9.24	
	Parakala	Municipality	0.40	0.28	0.12	
Hyderabad	GHMC	Corporation	123.89	35.07	88.82	2020-22 ¹⁶
	HMDA	UDA	5.08	5.08	0	2021-22 ¹⁷
Karimnagar	MCK	Corporation	5.21	0.00	5.21	
	Choppadandi	Municipality	---	---	---	Not furnished
Khammam	KMC	Corporation	3.87	3.87	---	
	Wyra	Municipality	0.05	0.05	0	2020-22 ¹⁸
Rangareddy	Bandlaguda Jagir	Corporation	1.00	---	1.00	
	Turkayamjal	Municipality	---	---	---	Not furnished
Total			164.25	59.86	104.39	

Source: Information furnished by the respective ULBs/UDA

¹⁶ After the resolution of the Standing Committee in August 2020, GHMC collected Cess from the Employers.

¹⁷ HMDA approved plans and the charges were collected by the concerned Municipalities till 2020-21 later in 2021-22 HMDA collected the Cess from employers.

¹⁸ Municipality formed in March 2018

Scrutiny of the records and information furnished by the test-checked ULBs/UDA revealed the following:

- Greater Hyderabad Municipal Corporation (GHMC) commenced collection of Cess only from September 2020 contrary to Government instructions issued in December 2009.
- Out of ten test-checked ULBs/UDA, the details of building plans approved, and the details of the Cess collected through DPMS were not furnished by six¹⁹ ULBs/UDA.
- Audit observed that out of ₹164.25 crore collected by eight ULBs/UDA, only ₹59.86 crore (36 per cent) was remitted, leaving ₹104.39 crore (64 per cent) unremitted to the end of March 2022 of which ₹88.82 crore (85 per cent) pertains to GHMC.

On being brought to notice, the Board replied (January 2024) that matter will be pursued to collect the Cess amount lying with the ULBs/UDAs prior to integration of Bank Accounts with TS-BPASS for direct remittance of Cess.

Thus, the ULBs/UDA failed in remittance of the Cess collected to the Board in deviation to the provisions of the Act and instructions issued by the CDMA. Further, the Board also failed in monitoring the remittance of Cess collected by the ULBs in absence of monthly statements to be furnished by the ULBs.

3.2.2 Deduction of Cess from Works Bills by test-checked ULBs/UDA and PAOs of Works Divisions

In compliance to the provisions of the Act, the Government ordered (December 2009) the Director of Works Accounts/PAO, Engineering Wing of ULBs/UDA to deduct the Cess from the works' bills and Town Planning Wing of the ULB/UDA to collect the Cess in advance and remit to the Board within 30 days from the date of deduction. Details of the Cess deducted and remitted by the test-checked ULBs/UDA during 2017-22 are given in **Table-3.2.**

Table-3.2: Details of the Cess deducted and remitted by the test-checked ULBs /UDA during 2017-22

(₹ in crore)					
District	Name of the ULBs/UDA	ULBs/UDA	Cess collected	Remitted	Yet to be remitted
Hanumakonda	GWMC	Corporation	5.28	4.81	0.47
	Parakala	Municipality	0.19	0.19	0.00
Hyderabad	GHMC	Corporation	126.86	127.11	-(0.25)
	HMDA	UDA	6.31	6.31	0.00
Karimnagar	MCK	Corporation	Data not furnished.		
	Choppadandi	Municipality	0.02	0.02	0.00

¹⁹ (1) Choppadandi Municipality (Karimnagar District) (2) Karimnagar Municipal Corporation, (3) Khammam Municipal Corporation, and (4) Wyra Municipality (Khammam District), (5) Bandlaguda Jagir Municipal Corporation and (6) Turkeyamjal Municipality (Rangareddy District)

District	Name of the ULBs/UDA	ULBs/UDA	Cess collected	Remitted	Yet to be remitted
Khammam	KMC	Corporation	2.16	2.16	0.00
	Wyra	Municipality	0.06	0.06	0.00
Rangareddy	Bandlaguda Jagir	Corporation	0.22	0.22	0.00
	Turkayamjal	Municipality	0.25	0.25	0.00
Total			141.35	141.13	0.22

Source: Information furnished by ULB/UDA

Scrutiny of the information revealed following:

- Audit observed that GHMC, HMDA; Khammam, Bandlaguda Jagir, Parakala, Choppadandi, Wyra and Turkayamjal ULBs/UDA had remitted the entire Cess collected by them.
- Though as per the provisions, the Cess collected should be remitted within 30 days, Greater Warangal Municipal Corporation (GWMC) had remitted ₹4.81 crore (out of ₹5.28 crore Cess collected) leaving a balance of ₹0.47 crore remaining unremitted from 2017-18 onwards. Reasons for non-remittance were not forthcoming from the records and reply from the Corporation was not received.

Further, during verification of the records of PAOs (Works & Projects) in test-checked Districts, it was observed that ₹96.82²⁰ crore collected as Cess was remitted (100 per cent) during the period 2017-22. Delays were however noticed in the remittance of the Cess amounts by the PAOs (Works & Projects) in test-checked Districts.

3.2.3 Improper provision of Labour Cess in the Work Estimates

As per the orders (December 2009) of the Government the Labour Cess amount of one per cent of the estimated cost of the works should be deducted and it should be recovered directly from the contractor. Further, the CDMA also instructed in December 2017 and February 2018 not to include the same in the work estimates.

During scrutiny of 50 (12 per cent) test-checked works (out of 414 works executed by Khammam Municipal Corporation during the period 2017-22), it was observed that a provision of ₹5.11 lakh for labour Cess was made in the estimates of six works instead of recovering the Cess from the bills of the contractors, which resulted in excess payments to the contractor as given in *Appendix-3.1*.

When the issue of provision of labour Cess component in the estimate of the works was brought to the notice of the authorities, it was replied (June 2023) by the Executive Engineer, Khammam Municipal Corporation that, the Cess for above works would be recovered from concerned agencies in the final bill.

²⁰ PAO Hanumkonda: ₹18.97 crore; Hyderabad: ₹13.51 crore; Karimnagar: ₹32.40 crore; Khammam: ₹15.01 crore and Rangareddy: ₹16.93 crore

3.2.4 Short levy of Cess on construction of Cellars and Stilts

As per the Government orders (December 2009) Labour Cess should be levied at the rate of one *per cent* on the estimated cost of construction of building works. The amount deducted should be calculated based on the rates per square feet (Sq.ft) prescribed by the proceedings (July 2007) of the Registration Department and subsequent amendments from time to time.

Out of the 974 building plans approved by Bandlaguda Jagir Municipal Corporation during the period 2017-18 to 2021-22, detailed scrutiny was conducted in respect of 25 building permissions, and it was observed that in respect of 14 permissions (56 *per cent*), the estimated costs of the works/projects were arrived at without including the cost of cellar/stilt area in the total estimated cost of the building construction work which resulted in short levy of Cess amounting to ₹12.84 lakh .(*Appendix-3.2*)

Audit observed that during the year 2019-20, the cost of stilt and cellar had been correctly included in the cost of construction in some of the cases for the calculation of labour Cess which indicates that the rule provisions were clearly known to the authorities concerned.

It was replied by the ULB that all cases will be scrutinized for further action.

3.3 Assessment of Cess

3.3.1 Lack of assessment of Labour Cess by the Department

As per Rule 6(1) of the Cess Rules, every Employer should furnish the details as contained in Form-I to the Assessing Officer²¹ within 30 days of commencement of work. On receipt of the information, an order of assessment should be issued as per Rule 7 of the Rules within a period not exceeding six months. Further, the Assessing Officers should collect the data of private construction owners/builders *etc.*, from the ULBs/UDAs and issue them notices of Cess assessment.

Contrary to the above Statutory provisions, the Government issued (August 2010) orders permitting self-assessments. Further, except in cases of complaints and similar matters, no verification was mandated for assessments up to ₹one crore. The order prescribed that five *per cent* of the self-assessments should be verified based on Random Sampling Method by the Assessing Officers as part of their assigned responsibilities.

Scrutiny of records of the Department in the test-checked Districts revealed following:

- The Government had not stipulated any penal clause against non-compliant Employers in the orders issued for submission of self-assessments by Employers along with Form- I.
- Self-assessments were not received from the Establishments in the test-checked Districts.

²¹ Commissioner of Labour, Deputy Commissioner of Labour, and Assistant Commissioner of Labour are the assessing officers w.r.t the provisions given in the G.O.Ms. No.3 of LET&F Department dated 20 January 2009

- Due to non-receipt of required Form-I from the employers, no assessment orders could be issued by the Assessing Officers.

In regard to self-assessments, the Assessing Officers in the test-checked Districts replied (May 2023) that required forms and self-assessments were not received from the Employers. It was also stated that self-assessment order was issued to mitigate the hardship of the assesses.

Reply of the Assessing Officers goes contrary to the provisions of Rule 7 of the Cess Rules which states that on receipt of information in Form I from an Employer, the Assessing Officer was to scrutinise such information and make an order of assessment. As no action had been initiated by the Department to obtain self-assessments, Assessing Officers could not make the assessments.

3.3.2 Assessment of Cess on Vigilance Alert Notes (VANs)

The Vigilance and Enforcement Wing of the General Administration Department issues Alert Notes to the Labour Department regarding non-remittance of Labour Cess. These Alert Notes are used to monitor compliance and ensure the remittance of any evaded amounts. In cases of deviations, information related to permissions issued by plan Approval Authorities for construction of buildings is obtained. Subsequently, calculations are made in accordance with Government Orders, and Alert Notes are issued accordingly. Based on these Alert Notes, the Labour Department issues notices to the relevant Officers to ensure the collection and payment of the Cess amounts.

Section 5 of the Act read with Rule 7 of the Cess Rules stipulates that Assessing Officer shall issue assessment orders within a period of six months from the date of receipt of information.

Information on Vigilance Alerts Notes *viz.*, Alert notes received, Cess collected *etc.*, was not furnished by the Department. Audit addressed (March 2023) this issue to the Special Chief Secretary, Labour Employment Training & Factories, however, information is awaited from the Administrative Department (April 2024).

In the absence of information for entire State, Audit was constrained to analyse the information obtained from the Assessing Officers in the test-checked Districts only. Year-wise details of VANs issued during the period from 2009-10 to 2021-22 in the selected offices of the test-checked Districts are as given in **Table-3.3:**

Table-3.3: Details of Cess evaded by Establishments as per VANs issued to Selected offices of test-checked Districts

(₹ in crore)

Year	No. of Establishments	Amount of Cess to be collected	Amount of Cess collected	Short Collection	Percentage of short collection
Prior to 2017-18	165	289.97	43.84	246.13	85%
2017-18	65	27.01	20.40	06.61	24%
2018-19	95	28.60	12.07	16.53	58%

2019-20	71	38.88	14.57	24.31	62%
2020-21	23	5.64	0.73	04.91	87%
2021-22	33	20.89	8.06	12.83	61%
Total	452	410.99	99.67	311.32	76%

Source: Information furnished by the Department of Labour

Action taken by the Department of Labour on the VANs issued by the General Administration Department was as follows:

- Cess amount of ₹69.09 crore (17 per cent) was collected from the 117 Establishments out of 452 Establishments (26 per cent) in full (*Appendix-3.3*).
- Partial Cess amount of ₹30.58 crore was collected from 55 Establishments out of ₹66.75 crore of Cess levied, and balance amount of ₹36.17 crore is yet to be collected from these Establishments (*Appendix-3.4*). Of 36.17 crore Cess due to be collected, ₹34.57 crore (96 per cent) was due from Hyderabad and Rangareddy Districts (*Appendix-3.5*).
- Out of total Cess levied of ₹275.16 crore, no amount was collected from 280 Establishments and entire Cess was pending (*Appendix-3.6*). Of which ₹229.94 crore (84 per cent) was due from Hanumakonda District from 12 Establishments (*Appendix-3.7*).
- Although demand notices for ₹4.91 crore were prepared, the same were not issued to 34 Establishments as address could not be found in Rangareddy District (*Appendix-3.8*).

3.3.3 Non-enforcement of Revenue Recovery Act, 1864 (RR Act, 1864)

As per Section 10 of BOCWW Cess Act read with Rule 13 of BOCWW Cess Rules, the Assessing Officers shall prepare a certificate specifying the amount due and amount that could not be collected and send to the District Collector who shall proceed to recover from the Employer, as if it were an arrear of Land Revenue.

Audit observed the following:

- Out of the 127 cases identified in VANs (Cess amount involved: ₹50.52 crore) wherein Assessment Orders were issued for payment, 44 cases (Cess amount involved: ₹23.36 crore) were not referred for collection of Cess under RR Act though Cess amount was to be recovered (*Appendix-3.9*).
- Of the balance 83 cases (Cess amount involved: ₹27.16 crore) referred under the RR Act, one Establishment paid the whole Cess amount of ₹0.34 crore and two Establishments made part payment summing up to ₹0.41 crore. The balance amount of ₹26.41 crore still remained unrecovered under RR Act.

When the issue of non-referral for recovery of Cess under RR Act, non-recovery of Cess amounts under RR Act was brought to the notice of the Department, it was replied (May/August 2023) that action would be taken for recovery of the amounts and the matter would be brought to the notice of the District Collector.

Thus, despite identification of evasion of Cess amounting to ₹410.99 crore by 452 Establishments, inadequate follow-up led to only partial recovery of ₹99.67 crore. This was compounded by non-enforcement of the Revenue Recovery Act in respect of Establishments which defaulted in Cess payments to the extent of ₹311.32 crore even after the Assessment Orders were issued which impacted the welfare measures of Building and Other Construction workers.

3.4 Conclusion

The Board does not have Urban Local Bodies (ULB)/Pay and Accounts Officer (PAO) wise details of Cess to be received, actually received and the balance due to be received. Lack of coordination through District Co-ordination Committees (DCCs) as mandated by Government orders, had resulted in significant deficiencies in implementing the Cess Act. Out of ₹164.25 crore collected by the Seven sampled ULBs and one Urban Development Authority (UDA) during the period 2017-22, an amount of ₹59.86 crore only was remitted into account of the Board and the balance of ₹104.39 crore (64 per cent) was lying with the ULBs/ UDA. Contrary to the Statutory provisions, the Government issued (August 2010) orders permitting self-assessments. Further, except in cases of complaints and similar matters, no verification was mandated for assessments up to ₹one crore. In the absence of penal provisions, no self-assessments were received by the Assessing Officers from the Establishments. In the test-checked Districts, Department received (2009-22), Vigilance Alert Notes (VANs) regarding Cess evasion of ₹410.99 crore by 452 Establishments from General Administration Department (GAD). Out of this, the Department had realized ₹99.67 crore only leaving a balance of ₹311.32 crore (76 per cent).

3.5 Recommendation

- The Board should establish a centralized data base for tracking Cess amounts due, received and outstanding by duly integrating the data obtained from all the relevant authorities.

