

Chapter-3
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The BOCW Welfare Cess Act provides for the levy and collection of a cess on the construction costs incurred by employers to augment the resources of the UKBOCW Welfare Board constituted under the BOCW Act, 1996. The chapter highlights concern such as non-collection and short collection of cess, an incomprehensive and outdated formula for cess collection, delays in cess transfer, lack of assessment and inaccurate and short assessments.

3.1 Cess Collection

3.1.1 Cess not collected

As per Rule 4 (4) the Cess Rules 1998, where the approval of construction work by a local authority is required, every application for such approval shall be accompanied by a crossed demand draft in favour of the Board for an amount of cess payable. The estimated cess was to be collected in advance by Development Authorities as per Government Order (December 2016).

Scrutiny of data (April 2017 to August 2019) provided by MDDA revealed that cess amounting to ₹ 13.73 crore in respect of 909 approved building plans was not collected. **Table-3.1** below has the details.

Table-3.1: Details of non-collection of cess

(₹ in crore)

Category	Number of approved building Plans	The sum of approved covered area (in sq. mtr.)	The sum of labour cess paid to MDDA	Cess leviable as per extant orders
Layout Plan	11	23,574.80 ¹	0	Not computable as per GO
Non-Residential	124	1,91,999.33	0	3.42
Residential	774	5,73,812.94	0	10.31
Grand Total	909	7,89,387.07	0	13.73

Source: Data provided by MDDA.

The computation of cess is tied to the covered area² of the building. Audit observed that the covered area for 14 approved building plans was captured as zero in the database and accordingly no cess was collected from these building plans. However, the ground coverage³ of these buildings ranged from 44.56 to 72.03 *per cent*⁴ of ground area, therefore, their covered area could not have been zero. Details are given in **Appendix-3.1**.

3.1.2 Short collection of cess

On review of MDDA data for the period from September 2019 to February 2023, Audit noticed short collection of cess amounting ₹ 13.04 crore in respect of 15,381 approved building plans. Details are given in **Table-3.2**.

¹ Sum of three plans out of 11.

² For non-residential = Covered area x 177.90 and for residential = Covered area x 179.70.

³ The Ground coverage area is the ratio of the maximum allowed build-up area on ground level to the total area of the plot.

⁴ Ground coverage *per cent* = (approved area of ground floor) x 100/ (Plot Area).

Table-3.2: Details of short collection for approved building plans

(₹ in crore)				
Category	Number of Building plans	Sum of Labour cess paid to MDDA	Sum of Cess to be paid as per GO	Short Collection
Mixed Use	119	3.03	3.30	0.27
Non-Residential	1,510	25.89	31.16	5.27
Residential	13,752	48.63	56.13	7.50
Grand Total	15,381	77.55	90.59	13.04

Source: Data provided by MDDA.

On being pointed out, the concerned authority (MDDA Dehradun) gave no reply. However, in Exit Conference (October 2023) Secretary, Labour Department assured that the replies will be furnished soon after meeting with the Vice Chairman of MDDA.

3.1.3 Collection of cess in test checked cases

Scrutiny of ten test checked cases in MDDA Dehradun revealed that in one case ₹ 119.89 lakh of cess was not collected and in another case ₹ 48.60 lakh amount of cess was less collected at the time of approving the building plan (*Appendix-3.2*).

On being pointed out, the concerned authority (MDDA Dehradun) gave no reply. However, in Exit Conference (October 2023) Secretary, Labour Department assured that the replies will be furnished soon after meeting with the Vice Chairman of MDDA.

3.1.4 Cess not deducted

As per Rule 4(3) of Cess Rules 1998, where the levy of cess pertains to building and other construction work of a Government or of a Public Sector Undertaking, such Government or the Public Sector Undertaking shall deduct or cause to be deducted the cess payable at the notified rates from the bills paid for such works.

During scrutiny of records in one of the working agencies (Ex. En., Construction Division PWD, Dehradun), Audit observed that the said Division had not deducted cess amounting to ₹ 31.01 lakh from the paid bills of the construction works. In this context, EE while admitting facts replied (December 2022) that the cess was not deducted due to non-provision of cess in the work estimate. The reply confirms that the statutory provision for deducting cess was not complied with.

3.1.5 Comprehensive and updated rates not adopted for calculation of cess

Uttarakhand GO (December 2016) provides a methodology for the calculation of the estimated cost of building. It further envisaged that the plinth area rates will be revised from time to time to assess the cost of construction.

On review of the provisions of the said Government Order, Audit observed that the said order did not cover all types of buildings as detailed in *Appendix-3.3*. The lack of inclusion of certain types of buildings (Colleges, Hospitals, Schools, Mall, etc.) would impact the collection of appropriate amount of cess.

Further, it was noticed that the order was not revised after December 2016 even as cost of construction has gone up. For instance, CPWD⁵ has revised the cost of

⁵ PWD Uttarakhand issued an order dated 20 August 2015 wherein it is instructed that the Plinth area rates of the building will be taken based on DPAR available on the website cpwd.gov.in.

construction through revision of plinth area rates in 2019, 2020 and 2021. In view of lack of cognizance of revision of plinth rate by CPWD and lack of revision of aforesaid GO, MDDA Dehradun and DDA US Nagar continued to use plinth rates as per GO of 2016. This resulted in short levy of cess amounting to ₹ 28.77 crore.

Table-3.3: Details of difference in rates between Uttarakhand GO and CPWD

Year	Rates adopted by MDDA for RCC framed structure as per GO (December 2016) (₹ per square meter)		Rates ⁶ as per CPWD for RCC framed structure (₹ per square meter)	
	Non residential	Residential	Non residential	Residential
2019	17,790	17,970	25,500	19,500
2020	17,790	17,970	25,800	19,700
2021	17,790	17,970	27,090	20,685
Estimated Cost of Construction = Rate x Covered Area Cess = Estimated Cost of Construction x .01				

In the Exit Conference (October 2023), the Secretary, Labour Department stated that GO would be reviewed and frequently used categories of construction works would be incorporated, since the inclusion of all categories would make the formula complicated.

3.2 Delay in the transfer of cess by the development authorities

Under Section 5(3) of the Cess Rules 1998, the cess collected shall be transferred to the Board within thirty days of its collection. Audit noticed that:

- Cess was transferred annually to the Board instead of monthly by the test checked development authorities.
- As per the information provided by MDDA, cess of ₹ 24.29 crore collected till 2021-22 was not transferred to the UKBOCW Welfare Board till the date of audit (February 2023). Similarly, as per information provided by DDA US Nagar cess amount of ₹ 4.32 crore was parked till 2022-23.
- Moreover, it was seen that there was continuous growth in the closing balance of non-transferred cess in the accounts of collecting authorities ranging from four *per cent* in 2018-19 to 100 *per cent* in 2019-20 of cess received in respective years.

The DDA US Nagar replied (December 2022) that being a new organization and due to shortage of manpower, the cess could not be deposited to the Board in timely manner. The reply was not acceptable as the authority did not adhere to the time frame under the cess rules. No response was received from MDDA Dehradun on the observation. However, in the Exit Conference (October 2023) Secretary, Labour Department assured that the replies will be furnished soon after meeting with the Vice Chairman of MDDA.

3.3 Diversion of cess fund

Under Rule 5(3) of the Cess Rules 1998, the cess collected shall be transferred to the bank account of the Board within thirty days of its collection.

⁶ These rates are exclusive of building additionalities such as electrification, drainage etc.

3.3.1 Cess fund of ₹ 1.49 crore diverted to Government Revenue

Records of test checked working agencies revealed that ₹ 1.49 crore amount of cess was deposited in government accounts⁷ in place of Board's accounts. Details are provided in *Appendix-3.4*.

It was stated by the working agencies (December 2022) that before implementation of Integrated Financial Management System (IFMS) in April 2019, deducted cess was being directly transferred to the government accounts (Labour and Employment Receipt Head of Account "023000106000000") and was being deposited now in the Board's account from the year 2019-20.

3.3.2 Cess fund of ₹ 13.80 lakh diverted to UHUDA

Scrutiny of records of District Development Authority, Udham Singh Nagar (DDA, US Nagar) revealed that in the earlier stage of its working ₹ 13.80 lakh was deposited by them in the account of Uttarakhand Housing and Urban Development Authority (UHUDA).

On being pointed out, the DDA, US Nagar responded (February 2023) that all fees charged by the authority at the time had been transferred to UHUDA, including the cess amount and that the audit would be intimated after an analysis of whether the cess amount had been sent to the UKBOCW Welfare Board or not. The response of the Authority admitted initial diversion as well as ignorance of the latest status of the diverted cess fund.

3.3.3 Cess fund of ₹ 1.76 crore diverted by MDDA

Scrutiny of the bank statement relating to labour cess of MDDA Dehradun revealed that it was not clear that an amount of ₹ 1.76 crore, (involving eight entries) had been transferred to the Board or not. In view of lack of reconciliation between the MDDA and the Board, there was no assurance the said amount had been deposited with the Board.

On this being pointed out MDDA neither provided details of the actual recipients of funds worth ₹ 1.76 crore nor any response to the observation.

In the Exit Conference (October 2023) the Secretary, Labour Department stated that he would ensure the replies will be furnished soon after meeting with the Vice Chairman of MDDA.

3.4 Cess Assessment

3.4.1 Non-compliance with the BOCW Act and Rules made thereunder in the performance of duties as assessing officers

Under Section 5 of the Cess Act, the final assessment be collected at a uniform rate as may be prescribed based on the quantum of the building or other construction work involved. As per para 4 (B) of Labour Cess GO 2016, development authorities and Assistant Labour Commissioners (ALC) in districts have been appointed as Assessing Officers/Authorities for the assessment of cess. On review Audit observed as under:

⁷ Transferred and remitted to the departmental head of "Major Head 0230" Labour & Employment Department.

Deputy Labour Commissioner (DLC), Dehradun carried out assessment of 16 cases (against 15,104 building plans approved by MDDA Dehradun) while ALC U S Nagar did not conduct any assessment (against 1,650 building plans approved by DDA U S Nagar). Further, in 16 assessment cases of DLC, Dehradun, it was found that final assessment of cess was not computed on the actual cost of construction. Still further, cess due, cess paid and balance amount payable, if any, were to be calculated at the time of assessment, which was not done.

During Exit Conference (October 2023), Secretary, Labour Department assured that assessment exercise would be increased.

3.4.2 Recovery after Assessment

As per Section 5 of the BOCW Welfare Cess Act, an Assessing Officer shall assess the amount of cess payable by the employer and specify the date within which the cess shall be paid by the employer.

Audit reviewed 16 assessment cases in DLC Dehradun and found that cess amounting to ₹ 6.96 crore was due to be collected from two builders as on March 2023. Details are depicted in **Table-3.4**.

Table-3.4: Details of cess to be recovered

					(₹ in lakh)
Sl. No.	Name of Construction or Building Work/Firm	Cost of Construction	Cess due	Cess Paid	Balance Cess Payable
1.	Imperial Heights	6,497	64.97	38.47	26.50
2.	Windlass Developers	69,793.78	697.94	28.93	669.01
	Total		762.91	67.4	695.51

Source: Labour Department.

DLC, Dehradun stated (March 2023) that an order has been issued (06 February 2023) to firm for acknowledging the details about the remittance of the cess. However, the fact remain that the recovery is still pending.

3.4.3 Assessment after 05 to 10 years from completion of construction

As per Rule 6 of the BOCW Welfare Cess Rules 1998, every employer will furnish the return to assessing officer within thirty days of commencement of work.

Audit observed that three out of 16 test checked cases were assessed 05 to 10 years after completion of construction works. This was due to lack of furnishing of return despite statutory requirement. Details are depicted in **Table-3.5** below:

Table-3.5: Details of delayed cases

Sl. No.	Name of Employer	Completion Date/Year	Assessment order date
1.	M/s Red Fox/Westend	2016-17	16 February 2022
2.	M/s Hotel Saffron Leaf	2010-11	20 August 2022
3.	M/s Hotel Forest Avenue	2011-12	28 February 2022

Source: Labour Department.

On this being pointed out, DLC Dehradun stated that it was a matter of inspection and whenever it was noticed, action was taken immediately. The reply is not satisfactory as it is against the statutory provision.

3.4.4 Inaccurate and short assessment

According to Rule 7 (6) of the Cess Rule 1998, the assessment was to be done to get the cost of construction as accurate as possible. Audit noticed that the assessment carried out was inaccurate and short. Reasons for inaccurate and short assessment are elaborated below:

i. Building additionalities not taken into consideration for assessment

As per Uttarakhand GO (February 2014), definition of “Building and other Construction Work” also include sewage and plumbing work, installation of fire equipment, electric work, installation and repair of fire equipment along with 18 other specified works.

Audit observed that the Assessing Authorities assessed the construction cost solely based on declaration furnished by the employers and did not consider building additionalities such as sewage and plumbing work, electric work etc in the actual cost of construction resulting in short assessment of cess.

In his reply, DLC Dehradun stated (March 2023) that action was taken in accordance with relevant Hon’ble Supreme Court Order⁸. The reply is not acceptable because said judgment of Supreme Court was related to generation, transmission and distribution of power, electric lines, pipelines etc. and not for the building/ construction works. Further, Hon’ble Supreme Court clarified that construction of aforesaid additionalities in relation to building construction work are amenable for cess.

ii. Assessment without physical verification and taking measurement

As per rule 10 of the Cess Rules 1998, Assessing officer may exercise following powers to assess the cost of construction:

1. Enter any establishment where building and other construction work is going on;
2. Take measurement, notes or photographs;
3. Exercise such other powers considered necessary for reasonable assessment of cost of construction etc.

Audit observed that assessment was finalised without physical verification and measurements. Further, the Assessing Officer did not exercise any power except to call for certain documents and declaration from the employer, to assess the cost of construction as accurate as possible.

In this context, DLC, Dehradun contended (March 2023) that departmental officers are not technically equipped and skilled to take measurements. The reply is not acceptable because Department was to acquire capabilities to enforce BOCW Act effectively.

iii. Assessment based on area less than approved area

In one case, DLC, Dehradun under assessed an establishment/construction work by 13,813 square metres by relying on self-declaration of the builder rather than

⁸ SLP(C) N. 8630 of 2020.

documentary evidence⁹ of the MDDA. This shows lackadaisical approach of assessing authority which resulted in under assessment of ₹ 26.82¹⁰ lakh of cess.

On this being pointed out, DLC, Dehradun stated (March 2023) that MDDA was authorised for approval related work. The reply is not acceptable as the audit observation related to under assessment, not for the approval of the building.

3.5 Poor maintenance of cess records

i. By UKBOCW Welfare Board

Scrutiny of records of the Board revealed that the cash book/records of cess transactions were not being maintained properly and reconciliation of cess collection and expenditure was not being conducted either with the bank or the collecting/deducting agencies. In this context, the Audit selected 88 cases of cess collection and shared the list with the Board to confirm whether the amounts were being deposited into the Board's bank account or not. However, the Board could not confirm this due to poor maintenance of records related to cess collection.

ii. By MDDA

Audit observed variation of ₹ 42.50 lakh during 2019-20 and ₹ 40.07 lakh during 2020-21 in the party ledger¹¹ and General Ledger. Similarly, there was a difference of ₹ 0.45 lakh in the General Ledger of Cess Payable between Closing Balance of 2020-21 (₹ 6.01 lakh) and Opening Balance of 2021-22 (₹ 5.56 lakh). Such variations indicate ineffective accounting system of the MDDA. No reply of the MDDA on this issue has been received. In the Exit Conference (October 2023) the Secretary, Labour Department stated that he would ensure the replies soon after meeting with the Vice Chairman of MDDA.

iii. By DDA US Nagar

It was noticed that cess was being received by DDA US Nagar in multiple bank accounts. However, debit and credit from these accounts were not reconciled. Moreover, Cess deducted, received and pending recovery related records were also not maintained.

On this being pointed out, DDA replied that due to shortage of manpower in DDA, required records could not be maintained and it will be complied in future. Secretary, UKBOCW Welfare Board stated in Exit Conference (October 2023) that a software is being prepared in collaboration with the Banks to track and reconcile the cess receipts.

3.6 Conclusion

Adherence to the Cess Rules was not followed in the collection of cess, resulting in non-collection or short collection of cess. Moreover, assessing officers appointed by

⁹ Imperial Heights on covered area of 37,784.70 Sqm with a total cost of construction ₹ 64.97 crore, as declared by the employer. However, the assessing authority, contained MDDA approved map, which showed covered area of the building plan as 51,597.80 Sqm.

¹⁰ (₹ 9,179 lakh - ₹ 6,497 lakh) x 0.01 = ₹ 26.82 lakh.

¹¹ It shows the amount collected from map approval by Development Authority and transferred to the Board.

the notified authorities displayed non-compliance with government orders in the execution of their duties, undermining the intended goal of ensuring ample funds for welfare measures. The absence of a proper mechanism of cess collection resulted in the inability to confirm the accuracy of cess amounts with collectors/deductors, and transparency in cess collection was diluted due to poor maintenance of cess records.

The rates used for cess collection at the time of approving building plans were not comprehensive and not updated in accordance with government rules. This led to the collection of insufficient cess amounts.

3.7 Recommendations

Following recommendations may be considered for cess collection and assessment:

- 1. The Government should formulate a comprehensive and updated rate for deriving cost of construction and cess as accurate as possible;*
- 2. Recovery of outstanding cess by concerned authorities and timely transfer of collected cess to the Welfare Board should be ensured through proper monitoring;*
- 3. The Board may establish a mechanism whereby the cess amount is directly credited into its bank accounts by the Development Authority and ensure monthly reconciliation statements are submitted by the Development Authorities.*