THE BUILDING & OTHER CONSTRUCTION WORKERS' WELFARE CESS RULES, 1998[1]

In exercise of the powers conferred by Sub-sec (1) of Sec. 14 of the Building and Other Construction Workers Welfare Cess Act 1966 (Act 28 of 1996), the Central Government hereby makes the following rules, namely:

1. Short title and commencement:- (1) These rules may be called the Building and Other Construction Workers' Welfare Cess Rules, 1998.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions:-In these Rules, unless the context otherwise requires.

(a) _Act' means the Building and Other Construction Workers' Welfare Cess Act, 1996 (Act 28 of 1996).

(b) —Main Act' means the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 (Act 27 of 1996).

(c) _Form' means the form annexed to these Rules.

(d) All other words and expressions used in these Rules but not defined and defined in the Act or in the main Act shall have the meanings respectively assigned to them in those Acts.

(e) _Cess Collector' means an officer appointed by the State Government for collection of cess under the Act

(f) _Assessing Officer' means a gazetted officer of a State Government or an officer of a local authority holding an equivalent post to a gazetted officer of the State Government appointed by such State Government for assessment of Cess under the Act.

(g) _Appellate Authority' means an officer, senior in rank to the Assessing Officer, appointed by the State Government for the purposes of Sec. 11 of the Act.

3. Levy of Cess:-For the purpose of levy of cess under Sub-sec (1) of Sec. 3 of the Act, cost of construction shall include all expenditure incurred by an employer in connection with the building or other construction work but shall not include—

—cost of land;

—any compensation paid or payable to a worker or his kin under the Worker's Compensation Act, 1923.

4. Time and manner of collection:-(1) The cess levied under Sub-sec. (1) of Sec. 3 of the Act shall be paid by an employer, within thirty days of completion of the construction project or within thirty days of the date on which assessment of cess payable is finalized, whichever is earlier, to the cess collector.

(2) Notwithstanding the provisions of Sub-rule (1), where the duration of the project or construction work exceeds one year, cess shall be paid within thirty days of completion of one year from the date of commencement of work and every

1 Notification No G.S.R 149(E), dated 26th March, 1998. Published in Gazette of India, Extra Part II, Sec. 3(i) dated 26th March 1998.

year thereafter at the notified rates on the cost of construction incurred during the relevant period.

(3) Notwithstanding the provisions of Sub-rule (1) and Sub-rule (2), where the levy of cess pertains to building and other contraction 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.

(4) Notwithstanding the provisions of Sub-rule (1) and Sub-rule (2), where the approval of a 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 and payable at the station at which the Board is located for an amount of cess payable at the notified rates from the estimated cost of construction:

Provided that if the duration of the project is likely to exceed one year, the demand draft may be for the amount of cess payable on cost of construction estimated to be incurred during one year from the date of commencement and further payment of cess due shall be made as per the provisions of Sub-rule (2).

(5) An employer may pay in advance an amount of cess calculated on the basis of the estimated cost of construction along with the notice of commencement of work under Sec. 46 of the Main Act by a crossed demand draft in favour of the Board and payable at the station at which the Board is located: Provided that if the duration of the project is likely to exceed one year, the demand draft may be for the amount of cess payable on cost of construction estimated to be incurred during one year from the date of such commencement and further payment of cess due shall be made as per the provisions of Sub-rule (2).

(6) Advance cess paid under Sub-rules (3), (4) and (5), shall be adjusted in the final assessment made by the Assessing Officer.

5. Transfer of the proceeds of the cess to the Board:-(1) The proceeds of the cess collected under Rule 4 shall be transferred by such Government office, Public Sector Undertaking, local authority, or cess collector, to the Board alongwith the form of challan prescribed (and in the head of account of the Board) under the accounting procedures of the State, by whatever name they are known.

(2) Such government office of Public Sector Undertaking may deduct from the cess collected, or claim from the Board, as the case may be, actual collection of expenses not exceeding one per cent of the total amount collected.

(3) The amount collected shall be transferred to the Board within thirty days of its collection.

6. Information to be furnished by the employer:-(1) Every employer, within thirty days of commencement of his work of payment of cess, as the case may be, furnish to the Assessing Officer, information in

Form I.

(2) Any change or modification in the information furnished under Sub-rule (1) shall be communicated to the Assessing Officer immediately but not later than thirty days from the date of affecting the modification or change.

Form I from an employer shall make a scrutiny of such information furnished and, if he is satisfied about the correctness of the particulars so furnished, he shall make an order of assessment within a period not exceeding six months from the date of receipt of such information in Form I, including the amount of cess payable by the employer and endorse a copy thereof to the employer, to the Board and to the

cess collector and dispatch such order within five days of the date on which such order is made.

(2) The order shall inter-alia specify the amount of cess due, cess already paid by the employer or deducted at source and the balance amount payable and the date, consistent within the provision of the rule 4, by which the cess shall be paid to the cess collector.

(3) If on scrutiny of information furnished, the Assessing Officer is of the opinion that employer has under-calculated or miscalculated the cost of construction or has calculated less amount of cess payable, he shall issue notice to the employer for assessment of the cess.

(4) On receipt of such notice the employer shall furnish to the Assessing Officer a reply together with copies of documentary or other evidence in support of his claim, within fifteen days of the receipt of the notice:

Provided that the Assessing Officer may, in the course of assessment, afford an opportunity to the assessee to be heard in person, if he so requests to substantiate his claim.

(5) If the employer fails to furnish the reply within the period specified under Sub-rule (4), or where an employer fails to furnish information in

Form I, the Assessing Officer shall proceed to make the assessment on the basis of available records, and other information incidental thereto.

(6) The Assessing Officer may, at anytime while the work is in progress, authorise such officer to make such enquiry at the work site or from documentary evidence in any other manner as he may think fit for the purpose of estimating the cost of construction as accurately as possible.

8. Return of overpaid cess:-(1) Where the Assessing Officer has passed an order of assessment and the employer decides to withdraw from or foreclose the works or modifies the plan of construction thereby reducing the cost of construction undertaken or has been forced by other circumstances to call off the completion of the work undertaken, he may seek revision of the assessment order by making an information in

(2) Revision of order of assessment shall be made by the Assessing Officer, in the same manner as the original order, within thirty days of receipt of such information in

Form II.

(3) Following the revision of assessment as per Sub-rule (2) the Assessing Officer shall, wherever necessary, endorse a copy of the revised assessment to the Board or cess collector, as the case may be, for making the refund of excess cess as ordered in the revised assessment.

(4) The Board shall, within thirteen days of receipt of the endorsement from the Assessing Officer under Sub-rule (3), refund the amount specified in the order to the employer through a demand draft payable at the station where the establishment is located.

(5) Where the Appellate Authority has modified the order of assessment reducing the amount of cess, refund shall be made within such time as may be specified in that order.

9. Exemption:-(1) Any employer or class of employers in a State seeking exemption under Sec. 6 of the Act may make an application to the Director General of Labour Welfare, Ministry of Labour, Government of India, stating the details of works undertaken, name of the Act or corresponding law in force in that State under which he is liable to pay cess for the welfare of the construction workers and amount of cess actually paid alongwith the date of such payment

and proof thereof. A copy of such application shall be endorsed to each of the Assessing Officer and the board concerned.

(2) On receipt of such application the Central Government may, if it feels necessary, seek a report from the State Government concerned.

(3) On examining the grounds, facts and merits of such application the Central Government may, by notification in the Official Gazette, issue an order exempting the employer or class of employers, as the case may be, from payment of cess payable under the Act where such cess is already levied and payable under such corresponding law.

(4) Assessment proceedings shall be stopped by the Assessing Officer for a period of thirty days commencing from the date of the receipt of a copy of the application under Sub-rule (1) to him, or till the order of the Central Government under Sub-rule (3) is conveyed to an employer or class of employers who made the application under Sub-rule (1), whichever is earlier.

10. Powers of Assessing Officer and other officers:-(1) An assessing Officer, or an officer authorised under Sub-rule (6) of Rule 7, if empowered by the State Government under Sec. 7 of the Act, may—

(a) enter any establishment where building and other construction work is going on;
(b) make an inventory of materials, machinery or other articles laying at the work place;
(c) enquire about the number of workers engaged in various activities:
(d) require the production of any prescribed register or any other documents relevant to the assessment of cost of construction or number of workers employer;
(e) seize or take copies of any such records;
(f) make general assessment of the stage of the construction work having been completed;
(g) direct the employer or any other person incharge of the place that no material or machinery shall be removed or disturbed for so long as is necessary for the purpose of any examination;
(h) take measurement, notes or photographs;
(i) exercise such other powers considered absolutely necessary for reasonable assessment of cost of construction.

11. Date of payment:-Of cess shall be the date on which the amount Date of payment of cess shall be the date on which the amount is deposited with the cess collector under Sub-rule (1) of the rule, 4, or the date of deduction at source under Sub-rule (3) of Rule 4, or the date on which the draft has been deposited with the local authority under sub-rule (4), as the case may be.

12. Penalty for non-payment:-(1) An Assessing Officer, if it appears to him that an employer has not paid the cess within the date as specified in the assessment order or has paid less cess, including the cess deducted at source or paid in advance, shall issue a notice to such employer that it shall be deemed to be in arrears and such Assessing Officer may, after such inquiry as it deems fit, impose on such employer, a penalty not exceeding such amount of cess.

Provided that before imposing any such penalty, such employer shall be given a reasonable opportunity of being heard and if after such hearing the Assessing Officer is satisfied that the default was for any good and sufficient reason, no penalty shall be imposed on such employer.

13. Recovery of overdue amount:-For the purpose of recovery of sums due on account of unpaid cess, interest for overdue payment or, penalty under these Rules, the assessing officer shall prepare a certificate signed by him, specifying the amount due and send it to the collector of the district concerned who shall proceed to recover form the said employer the amount specified thereunder as if it were an arrear of land revenue.

14. Appeal:-(1) An employer aggrieved by an order of the assessment made under Rule 7 or by an order imposing penalty made under Rule 12 may appeal against such order, within three months of the receipt of such order, to the Appellate Authority.

(2) The appeal shall be accompanied with—

(a) the order appealed against;

(b) a certificate from the cess collector to the effect that the amount of cess or

(c) penalty or both, as the case may be, relating to such appeal has been deposited;
a fee equivalent to one per cent, of the amount in dispute or

penalty or both, as the case may be, under such appeal;

(d) a statement of points in dispute;

(e) documentary evidence relied upon.

(3) On receipt of the appeal the Appellate Authority may call from the Assessing Officer a statement on the basis of his assessment order appealed against, as such Appellate Authority may consider necessary for the disposal of such appeal.

(4) The Appellate Authority shall give the appellant an opportunity of being heard in the manner and dispose of the appeal as expeditiously as possible.

(5) On being satisfied on the quantum of cess the Appellate Authority shall confirm the order of the Assessing Officer or if in his opinion the assessment was wrong or on the higher side shall modify the order of assessment or if in his opinion the assessment in on the lower side or if the basis of assessment is wrong, it shall, remand back the assessment order to the Assessing Officer alongwith his observations to rectify the wrong.

(6) An order remanded back under Sub-rule (5) shall be disposed of by the Assessing Officer within one month in view of the observation made by the Appellate Authority:

Provided that if the amount of cess is proposed to be enhanced the assessee shall be given an opportunity of being heard.

(7) No appeal shall lie against the order of the Appellate Authority under this rule.

(8) If the Appellate Authority is of the opinion that the quantum of penalty imposed is on the higher side or not correctly made it shall suitably modify or set aside the order of the Assessing Officer, as the case may be.

(9) The appeal under this rule shall be disposed of by making a speaking order and a copy of such order shall be sent to each of the appellant, the Assessing Officer and the Board within five days of the date on which such order is made.

(10) An order in appeal reducing the amount of cess shall also ask the Board to refund the excess cess.

(11) An order in appeal reducing, enhancing or confirming the orders of penalty, as the case may be, shall also specify the date by which the amount of penalty should be paid/refunded.

15. Filing of Complaints:-(1) Assessing Officer, or any inspector under the main Act, or a Trade Union, having come to know of violation of an obligation to

furnish return, furnishing of false information, intentionally or wilfully evading or attempting to evade the payment of cess may make a complaint to the Board. The Board on receiving such complaint shall examine the complaint and if it so decide may refer such complaint to the Central Government for taking legal action against the offender.

(2) The Central Government on receiving such reference may make such inquiry as may be considered necessary and authorise an inspector of appropriate jurisdiction to file a complaint in the Court of Law.

FORM I

[SEE RULE 7]

1. Name of Establishment — Registration No. under Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996.
   Registering Authority
2. Address
3. Name of Work
4. No. of workers employed
5. Date of commencement of work — Estimated period of work: Month
   Year

   Date Month Year

6. Estimated cost of construction		Details of payment of cess	
Stages	**Cost**	**Amount Challan No. and date**	**Advance—A Deduction at Source—D Final—F**
1st Year			
2nd Year			
3rd Year			
4th Year			
Total			

Signature of Employer

Name of Employer

Date

TO BE FILLED BY ASSESSING OFFICER

7. Date of Completion
8. Final cost
9. Date of assessment
10. amount assessed
11. Date of Appeal, if any
12. Date of order in Appeal
13. Amount as per Order in Appeal
14. Date of transfer of cess to the Board
15. Amount transferred Challan No. and date

Signature

Designation

FORM II

[SEE RULE 9(1)]

NOTICE OF STOPPAGE OR REDUCTION OF WORK

1. Name of Establishment — Registration No. under Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996.

Address

II Date of commencement of work — Estimated period of work: Month Year

Date Month Year

Estimated cost of work (original) — Advance Cess/Deduction at source Date of Assessment Order Amount of Cess assessed

III Modification to the original estimates — Reason

Revised date of completion/date of stoppage

Actual cost estimates Actual cost incurred

Whether work is being handed over to any other person/agency for completion. — Yes/No.

If yes, Name/Address of such person/agency — Signature of employer

Name of Employer

Date

TO BE USED BY ASSESSING OFFICER

Date of revision of assessment

Amount of cess after revision Cess already received

Cess to be refunded, if any

Cess to be recovered

Reference to Board for refund; Date/number

Signature

Designation
