

శ్రీ సీఎస్ఆర్  
డి.ఎ. డి.సి.ఓ

15 JUN 2013

No. 1676  
శ్రీ సీఎస్ఆర్

O/o the Chief Engineer (R&B), CRN & Managing Director, APRDC  
5<sup>th</sup> floor R&B Complex,  
AC Guards, Hyderabad-500 004.

Circular Memo.No.MD/ APRDC/GM/DCEII/DEE-7AEE-20/2013; Dt: 10-06-2013

Sub:- R&B Department –APRDC –Filing of writ appeals against the orders of High Court of AP in WPs filed by certain petitioners regarding the deduction of 1% labour cess from out of the payments to the petitioner – Certain instructions - Reg.

Ref: Govt. T(R&B) Memo No.9766/R.IV.2/2011-9. Dt: 01.02.2013.

\*\*\*\*

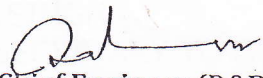
A copy of the reference cited along with it's enclosures is communicated herewith to all the Superintending Engineers (R&B) and they are informed not to provide labour cess in the estimates and working estimates and to follow the Government instructions as communicated vide reference cited, scrupulously.

శ్రీ సీఎస్ఆర్  
డి.ఎ. డి.సి.ఓ  
Supt.  
of all-arms  
శ్రీ సీఎస్ఆర్

A  
#

Encl: a/a

Supt.  
Communicate to all  
Dy. Ss / AEs / JEs  
to  
To, Chief Engineer  
R&B  
2-6/6/13

  
Chief Engineer (R&B) CRN & Managing Director, APRDC

All the Superintending Engineers (R&B)

Copy to DCE-I, DCE-II & DCE-III of this office for information and necessary action.

Spelt  
2-6/6/13

Office of the Superintending Engineer,  
(R&B) Circle, Karimnagar.

Endt.No.1632/A1/ SEK/2013 / 1129

Dt: 17-6-2013

Copy communicated along with its enclosures to the Executive Engineer (R&B) Division, Karimnagar, Peddapally and Jagitial for information and necessary action.

Sd/-  
Superintending Engineer,  
(R&B) Circle, Karimnagar

To  
The Executive Engineer,  
(R&B) Division, Karimnagar, Peddapally  
and Jagitial.

// t.c.f.b.o.//

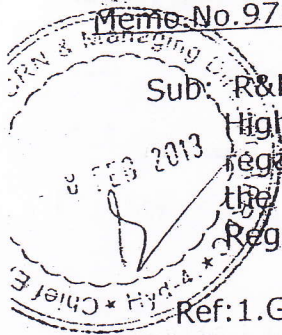
*[Signature]*  
17/6/2013  
Superintendent.

17/6/13

GOVERNMENT OF ANDHRA PRADESH  
TRANSPORT ROADS AND BUILDINGS (R.IV) DEPARTMENT

Dated:01-02-2013.

Memo No.9766/R.IV.2/2011-9,



Sub: R&B Deptt- Filing of Writ Appeals against the orders of High Court of AP in WPs filed by certain petitioners regarding on the deduction of 1% labour cess from out of the payments to the petitioner - Certain Instructions - Regarding.

Ref:1.Govt. Memo.No.9766/R.IV.2/2011-2, Dt:08-06-2012  
&reminders thereon

- 2.From the ENC(R&B) Roads, Hyd., Lr No.036736/EE@/DEE3/AEE/2008, dt:08-01-2013
3. From the CE(Buildings) Hyd., Lr No.TA8/AEE3 /BldngSOR/2012, dt:21-01-2013

\*\*\*

A copy of the minuets of meeting held in the chambers of Pri.Secy., Finance Deptt on 27-08-2011 regarding collection of labour cess is sent t herewith to the Chief Engineer (Buildings) Hyderabad., for information and necessary action.

2. The Heads of Departments noted in the address entry, are also requested to file Writ Appeals in the **similar cases** regarding deduction of 1% labour cess from out of the payments to the petitioner, and keeping in view of the orders of Hon'ble High Court of Andhra Pradesh, dated:02.02.2012 in WPN0.10615/2010, filed by Sri C. Suresh Kumar Reddy, Kadapa District and on the lines of Writ Appeal filed in WPN0:11269/2009 (Copy enclosed) and batch dated:22-10-2009 by the Finance(W&P)Department.

S.P.SINGH,  
PRINCIPAL SECRETARY TO GOVERNMENT

To  
The Engineer in Chief (R&B) Roads, Hyderabad(we)  
The E-in- C (R&B) Rural Roads, Hyderabad(we)  
The Chief Engineer( R&B) Buildings, Hyderabad(we)  
The Chief Engineer (R&B) CRN & MD, APRDC, Hyderabad(we)  
The Chief Engineer (R&B) PPP, Hyderabad(we)

//FORWARDED BY ORDER//

*J. S. Singh*

PREMACHANDRA REDDY, I.A.S.,  
Secretary to Government (W&P)



☎: Off :+91-40-2345 2641  
Fax :+91-40-2345 0045  
e-mail : prt secy\_fin\_wp@ap.gov.in

27-57

7 SEP 2011  
Dear Sir,

**Finance (Works & Projects) Department**  
D-Block, A.P. Secretariat, Hyderabad - 22.

D.O. Letter No.2989/F8(1)/2011-3, Dated 5-9-2011

Sub: Fin.(W&P)Dept. - W.P.No.9316/2009 and batch filed by the contractors regarding collection of 1% labour cess Meeting convened - Minutes communicated.

Ref: D.O.Letter No.2989/F8(1)/2011-1, Dated 22-8-2011.

Copy of the minutes of the meeting conducted on 27-8-2011 as per the directive of Hon'ble High Court on the very important issue of collection of Labour Cess in the Finance Conference Hall, 3<sup>rd</sup> Floor, 'D' Block, Secretariat is enclosed herewith.

2. I request you to take necessary action in the matter accordingly.

Yours Sincerely,  
  
(L. PREMACHANDRA REDDY)

JS/R)

what  
is  
the  
action  
to be  
taken

from  
the  
file

with  
the  
file

Sri S.P.Singh, IAS,  
Pri.Secretary to Govt.,  
TR&B Dept.

2. IV

- 29 -  
(3/7)

**Minutes of the meeting dt.27.08.2011 convened by the Principal  
Finance Secretary regarding collection of labour cess**

Officers representing the following engineering departments have attended the meeting.

- I & CAD Department
- T R & B Department
- MA & UD Department
- PR & RD Department
- LET & F Department
- List of officers who attended the meeting is appended to the minutes.

Govt. Pleader for Finance, High Court of A.P has also attended the meeting.

The meeting was convened, in obedience to the observations of Hon'ble High Court of AP, as conveyed by the GP for Finance Department, to take a considered and comprehensive decision regarding collection of labour cess from work bills of contractors applicable uniformly across all departments of Govt. of A.P.

The Principal Finance Secretary has requested the Special Secretary, I&CAD, who represented the I & CAD Department to explain the issues involved in this matter. The Special Secretary, I & CAD has explained the issues involved in collection of labour cess.

The ENC, Panchayat Raj, has stated that as seen from the Act, the payment of Labour Cess is the responsibility of the contractor and clarification on this is needed.

Principal Secretary, R&B, invited attention to the following provisions of Act & rules on the relevant issues.

**ISSUE I:- Who is the employer in respect of works contracts:  
Provisions of the Building and other Construction Workers Welfare  
Cess Act, 1996 (Act No.28 of 1996) are:**

**Section 3:- Levy and collection of cess:-**

(1) There shall be levied and collected a cess for the purposes of

and Conditions of Service) Act, 1996, at such rate not exceeding two per cent, but not less than one percent, of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time specify.

(2) The cess levied under sub-section (1) shall be collected from every employer in such manner and at such time, including deduction at source in relation to a building or other construction work of a Government or of a public sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required, as may be prescribed.

(3) The proceeds of the cess collected under sub-section (2) shall be paid by the local authority or the State Government collecting the cess to the Board after deducting the cost of collection of such cess not exceeding one per cent. of the amount collected.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), the cess leviable under this Act including payment of such cess in advance may, subject to final assessment to be made, be collected at a uniform rate or rates as may be prescribed on the basis of the quantum of the building or other construction work involved.

From the above, it can be understood that, the labour cess is payable by the "employer".

Section 2(d):- words and expressions used herein but not defined and defined in the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 shall have the meanings respectively assigned to them in that Act.

**Provision of the Building & other Construction Workers (Regulation of Employment and conditions of Service) Act 1996 (Act No.27 of 1996):**

Section 2 of the above Act defines 'Employer' as follows:

2(i) "Employer", in relation to an establishment, means the owner thereof, and includes,-

- (i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the

- 33 -  
5/7

- (ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of the authority or establishment;
- (iii) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor;

From the above definition at 2(iii), it is amply clear, that, in the case of buildings or other construction work carried on by or through a contractor or by the employment of building workers supplied by a contractor

**"it is the contractor, who is the employer".**

Thereby, in all the cases of works contracts undertaken by a Govt./PSU, it is the contractor, who is the employer, for the purpose of L.C Act.

#### **ISSUE-II:-**

##### **"Manner of collection of cess:-**

Rule 4 of the Building & Other Construction Workers' Welfare Cess Rules, 1998 stipulated as follows:-

##### **Time and manner of collection:-**

(1) The cess levied under sub-section (1) of Section 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 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.

-35-

6/7

(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 on the estimated cost of construction:

Rule 4 (3) is the relevant para in respect of works contracts.

It places the responsibility of deduction from the bills, of the contractors on the respective Govt. or P.S Undertaking.

The Principal Secretary, R&B, stated that from the above, it is clear that, in respect of works contract of Govt., or P.S.U, employer is the contractor, the responsibility to pay the Labour Cess is on the contractor (who is the employer) and recovery of the amount from the bills of the contractor and remitting to the board is the responsibility of the Govt./PSU.

From the foregoing paras, it can be summarized that,

- It is abundantly clear that payment of labour cess is the responsibility of the contractor (who is the employer in respect of works contracts) and deduction from the bills and remittance to the board is the responsibility placed on the Govt./PSU.
- The Acts governing Labour Cess have come into force in the year 1996. The contractor bidding for a work, who is expected to be aware of the laws, build the related costs into the price quoted. Therefore the Govt. is not under obligation to pay either in respect of ongoing works or future works.
- In view of the above legal position, the question of making a provision towards labour cess in the estimate does not arise.
- Though it is not necessary to incorporate a condition to that effect into the contract document, as a matter of abundant caution, it is felt that a suitable condition be incorporated in all the agreements. The I & CAD Department may entrust the job of finalization of the draft condition to the 'Board of Chief Engineers', in consultation with the G.P High Court and issue instructions to all the departments concerned.

(Action: I&CAD Deptt.)



57  
7/7

After a very detailed and thorough discussion of issues involved the representatives of all the departments agreed with the above proposal of R&B Department.

After thorough and in depth deliberations, the following course of action was agreed upon:

(1) An appeal to be filed by I&CAD Department comprehensively considering all the issues in various judgments particularly orders passed in W.P.No.11269/2009 and batch dated 22.10.2009.

(Action: I&CAD Deptt.)

(2) There is no necessity of amending G.O.Ms.No.94, I & CAD Dept., dt.1-7-2003.

(3) I & CAD Dept. may suitably modify / withdraw Memo No. 636 /Reforms/A1/2011, dt.8.6.201.

(Action: I&CAD Deptt.)

(4) To withdraw the instructions issued in the U.O.Note No. 4763/PFS.F8(A1)/07-1, Finance (W&P) Dept., Dt. 4-2-2008 & U.O. Note No. 4763/PFS.F8(A1)/07-4, Finance (W&P) Dept., Dt. 28-2-2008 in consultation with the G.P.

(Action: Finance (W&P) Deptt.)

I & CAD Dept. was requested to take further action on the common stand taken by all the Engineering Departments, if necessary in consultation with the Law Department and Advocate General.

(Action: I&CAD Deptt.)

P.F.S has requested the G.P to apprise the Hon'ble High Court and seek time for one month.

PRINCIPAL FINANCE SECRETARY