

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



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

97-7

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

Dear Sir,

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/FB(1)/2011 L, Dated 27-8-2011.

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, 3rd Floor, 'C' Block, Secretariat is enclosed herewith.

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

Yours Sincerely,

(L. PREMACHANDRA REDDY)

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

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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 1:- Who is the employer in respect of works contracts:
Provisions of the Building and other Construction Workers Welfare Cess Act, 1996 (Act No.20 of 1996) are:

Section 3:- Levy and collection of cess:-

(1) There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers (Regulation of Employment

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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 head of the department;

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 construction work of a Government or of a Public Sector Undertaking, such Government or the

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 Estimators.

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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 Deptt., dt.1-7-2003.

(3) I & CAD Deptt. 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.No. 4763/PFS.F8(A1)/07-1, Finance (W&P) Deptt., Dt. 4-2-2008 & U.O. Note No. 4763/PFS.F8(A1)/07-4, Finance (W&P) Deptt., Dt. 28-2-2008 in consultation with the G.P. (Action: Finance (W&P) Deptt.)

I & CAD Deptt. 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

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