

THE BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS ACT, 1996

INTRODUCTION

To provide for the levy and collection of a cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers' Welfare Boards which were to be constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1995, an Ordinance, namely the Building and Other Construction Workers' Welfare Cess Ordinance, 1995 (Ord 15 of 1995), was promulgated by the President on 3rd November, 1995. In order to replace this Ordinance by an Act of Parliament, a Bill was introduced in the Lok Sabha. Since the Bill could not be taken up for consideration and passing in the Winter Session, 1995 and the Budget Session, 1996 of Lok Sabha, the Building and Other Construction Workers' Welfare Cess Ordinance, 1996 and the Building and Other Construction Workers' Welfare Cess Second Ordinance, 1996 respectively were promulgated on 5th January ' 1996 and 27th March, 1996 with a view to give continued effect to the legislative protection. On the dissolution of the Tenth Lok Sabha, the Building and Other Construction Workers' Welfare Cess Bill, 1995 stood lapsed On 20th June, 1996 another Ordinance namely the Building and Other Construction Workers' Cess Third Ordinance was promulgated by the President. To replace this Ordinance by an Act of Parliament the Building and Other Construction Workers' Welfare Cess Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

The Bill is complementary to the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Bill, 1996 proposed to be introduced and considered simultaneously. With a view to provide for the levy and collection of a cess on the cost of construction incurred by the employers for augmenting the resources of the Building and Other Construction Workers' Welfare Boards constituted by the State Governments under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1955 (Ordinance 14 of 1995), an Ordinance, namely, the Building and Other Construction Workers' Welfare Cess Ordinance, 1995 (Ordinance 15 of 1995), was promulgated by the President on the 3rd November, 1995. The intention was to make over, after due appropriation by Parliament by law, the proceeds of the cess, to the State Building and Other Construction Workers' Welfare Boards and the cost of collection not exceeding one per cent. of the cess collected to the State Governments to whom it is proposed to delegate the authority to collect the cess. A Bill, namely, the Building and Other Construction Workers' Welfare Cess Bill, 1955 was introduced in Lok Sabha on the 1st December, 1995 to replace the said Ordinance by an Act of Parliament. Since the said Bill could not be taken up for consideration and passing in the Winter Session, 1995 and the Budget Session, 1996 of Lok Sabha, the Building and Other Construction Workers' Welfare Cess Ordinance, 1996 and the Building and Other Construction Workers' Welfare Cess Second

Ordinance, 1996 respectively were promulgated on the 5th January, 1996 and the 27th March, 1996 with a view to give continued effect to the legislative protection. On the dissolution of the Tenth Lok Sabha, the Building and Other Construction Workers' Welfare Cess Bill, 1995 stood lapsed. By virtue of Article 123(2)(a) of the Constitution the Building and Other Construction Workers' Welfare Cess Second Ordinance, 1996 promulgated on the 27th March, 1996 would have also ceased to operate With effect from the 4th July, 1996. In view of the urgency felt and as the Parliament was not in session, the President was pleased to promulgate the Building and Other Construction Workers' Welfare Cess Third Ordinance, 1996 on 20th June, 1996 in order to give continued effect to the legislative protection envisaged in the earlier Ordinance.

2. The Bill seeks to replace the Building and Other Construction Workers' Welfare Cess Ordinance, 1996 (Ordinance 26 of 1996).

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The Building and Other Construction Workers' Welfare Cess Bill having been passed by both the Houses of Parliament received the assent of President on 19th August, 1996. It came on the Statute Book as THE BUILDING AND OTHER CONSTRUCTION WORKERS " WELFARE CESS ACT, 1996 (28 of 1996).

THE BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS ACT, 1996

(28 of 1996)

[19th August, 1996]

An act to provide for the levy and collection and collection of a cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers' Welfare Boards constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

BE it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:-

1. Short title, extent and commencement.- (1) This Act may be called the Building and Other Construction Workers' Welfare Cess Act, 1996.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 3rd day of November, 1995.

2. Definitions -In this Act unless the context otherwise requires,-

- (a) "Board" means a Building and other Construction Workers' Welfare Board constituted by State Government under sub-section (1) of section 18 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
- (b) "Fund" means the Building and Other Construction Workers' Welfare Fund constituted by a Board:
- (c) "prescribed" means prescribed by rules made under this Act:
- (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.

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 and Conditions of Service) Act, 1996, at such rate not exceeding two percent- but not less than one per cent. 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 percent 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 may be prescribed on the basis of the quantum of the building or other construction work involved.

COMMENTS

For the purposes of the Building and Other Construction Workers Regulation of Employment and Conditions of Service) Act, 1996 (27 of 1996), a cess at the rate of one per cent. of the cost of construction incurred by the employer is to be levied and collected, vide S.O. 2899, dated 26th September. 1996

4. Furnishing of returns.- (1) Every employer shall furnish such return to such officer or authority, in such manner and at such time as may be prescribed.

(2) If any person carrying on the building or other construction work, liable to pay the cess under section 3, fails to furnish any return under sub-section (1), the officer or the authority shall give a notice requiring such person to furnish such return before such date as may be specified in the notice.

COMMENTS

Every employer who is carrying on the building or other construction work is to furnish a return to an officer or authority prescribed by the Government. If any employer fails to furnish such return the officer or the authority shall give notice requiring such employer to furnish such return before the specified date.

5. Assessment of cess.- (1) The officer or authority to whom or to which the return has been furnished under section 4 shall, after making or causing to be made such inquiry \blacklozenge IS he or it thinks fit and after satisfying himself or itself that the particulars stated in the return are correct, by order, assess the amount of cess payable by the employer.

(2) If the return has not been furnished to the officer or authority under sub-section (2) of section 4, he or it shall after making or causing to be made such inquiry as he or it thinks fit, by order, assess the amount of cess payable by the employer.

(3) An order of assessment made under sub-section (1) or sub-section (2) shall specify the date within which the cess shall be paid by the employer.

6. Power to exempt.-Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, exempt any employer or class of employers in a State from the payment of cess payable under this Act where such cess is already levied and payable under any corresponding law in force in that State.

7. Power of entry.-Any officer or authority of the State Government specially empowered in this behalf by that Government may-

- (a) with such assistance, if any, as he or it may think fit, enter at any reasonable time any place where he or it considers it necessary to enter for carrying out the purposes of this Act including verification of the correctness of any particulars furnished by any employer under section 4;
- (b) do within such place anything necessary for the proper discharge of his or its duties under this Act; and
- (c) exercise such other powers as may be prescribed.

8. Interest payable on delay in payment of cess.-If any employer fails to pay any amount of cess payable under section 3 within the time specified in the order of assessment, such employer shall be liable to pay interest on the amount to be paid at the rate of two per cent, for every month or part of a month comprised in the period from the date on which such payment is due till such amount is actually paid.

COMMENTS

Failure to pay any amount of cess within the specified time entails payment of interest on the amount to be paid at the rate of two per cent. for every month or a part of a month comprised in the period from the date on which such payment is due till such amount is actually paid.

9. Penalty for non-payment of cess within the specified time.-If any amount of cess payable by any employer under section 3 is not paid within the date specified in the order of assessment made under section 5, it shall be deemed to be in arrears and the authority prescribed in this behalf may, after making such inquiry as it deems fit, impose on such employer a penalty not exceeding the 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 said authority is satisfied that the default was for any good and sufficient reason, no penalty shall be imposed under this section.

COMMENTS

Failure to pay the payable amount of cess within the specified date shall be deemed to be in arrears and the prescribed authority can impose a penalty not exceeding the amount of cess. But before imposing any penalty the employer shall be given a reasonable opportunity of being heard.

10. Recovery of amount due under the Act.- Any amount due under this Act (including any interest or penalty) from an employer may be recovered in the same manner as an arrear of land revenue.

COMMENTS

Any amount due under the Act is to be recovered as an arrear of land revenue.

11. Appeals.-(1) Any employer aggrieved by an order of assessment made under section 5 or by an order imposing penalty made under section 9 may, within such time as may be prescribed, appeal to such appellate authority in such form and in such manner as may be prescribed.

(2) Every appeal preferred under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) After the receipt of any appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

(4) Every order passed in appeal under this section shall be final and shall not be called in question in any court of law.

12. Penalty.-(1) Whoever, being under an obligation to furnish a return under this act, furnishes any return knowing, or having reason to believe, the same to be false shall be punished with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever, being liable to pay cess under this Act, wilfully or intentionally evades or attempts to evade the payment of such cess shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

(3) No court shall take cognizance of an offence punishable under this section save on a complaint made by or under the authority of the Central Government.

13. Offences by companies.- (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of; or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section,-

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm.

14. Power to make rules.- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the manner in which and the time within which the cess shall be collected under sub-section (2) of section 3;
- (b) the rate or rates of advance cess leviable under sub-section (4) of section 3;
- (c) the particulars of the returns to be furnished, the officer or authority to whom or to which such returns shall be furnished and the manner and time of furnishing such returns under sub-section (1) of section 4;
- (d) the powers which may be exercised by the officer or authority under section 7;
- (e) the authority which may impose penalty under section 9;
- (f) the authority to which an appeal may be filed under sub-section (1) of section 11 and the time within which and the form and manner in which such appeal may be filed;
- (g) the fees which shall accompany an appeal under sub-section (2) of section 11; and
- (h) any other matter which has to be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions, aforesaid, both Houses agree in making any modification in the rule or both Houses, agree that the rule should not be made, the rule shall there after have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be Without prejudice to the validity of anything previously done under that, rule.

15. Repeal and saving.- (1) The Building and Other Construction Workers Welfare Cess Third Ordinance, 1996 (Ord. 26 of 1996), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.