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Government of Jammu and Kashmir
Office of the Chief Executive Officer/Secretary
J&K Building and other Construction Workers Welfare Board,
H.No. 331 Gool House Laker Mandi Road Behind Dreamland School Janipur Jammu
(www.jkbocwwb.org)

No. CEO/ J&K/BCB/015/4035-40

Dated:- 12-02-2015

ATTENTION PLEASE

All executing agencies engaged in Construction activities, i.e R&B, JKPC, JKPHC, SIDCO, SICOP, JDA, SDA, Rural Development, Urban Development Authorities Local Bodies, JMC, SMC, Mughal Road, PMGSY, PDD, PHE, Irrigation, Flood Control, Railway, BEACON, GREF, NHAI, Airtel, Aircel, BSNL, Reliance, MES etc., etc.

Sub: **Levy of Labour Cess & Registration of employers and employees.**

CIRCULAR

It has been observed that despite of regular reminders through circulars in the leading news papers by this Office many employers, government Departments/ Corporations etc are not adhering to the Rules pertaining to Levying and collection of Labour cess and have failed to deposit the cess with the Board. Therefore through the medium of this circular it is once again enjoined upon all the concerned agencies to kindly strictly adhere to the Rules with regard to levying and collection of Labour cess and deposit the same with the Board within one month.

The Government of Jammu and Kashmir vide Notification No. SRO 232 dated: 17-7-2006 notified J&K Building and Other Construction Workers (RE&CS) Rules, 2006 and accordingly has constituted the J&K Building and Other Construction Workers Welfare Board vide Notification No. 274 dated: 31-7-2007 and reconstituted vide SRO No. 439 dated: 01-12-2010. Accordingly, Building and Other Construction Workers Cess Act, 1996 (hereinafter referred as the Cess Act) and Building and Other Construction Workers Cess Rules, 1998 (hereinafter referred as the Cess Rules) have become operative w.e.f. January, 17-7-2006 in the whole of Jammu and Kashmir State.

Section 3 of the Cess Act provides for mandatory levy and collection of cess on the cost of construction works which are covered under section 2(d) of the Building and Other Construction Workers Welfare Board (RE&CS) Act, 1996

(hereinafter referred as the main Act). The Government of India Vide Notification No. S61011/9/95-RW [SO. 2899] dated the 26th September, 1996 has **provided that the cess shall be levied at 1% of the cost of construction incurred by an employer which shall exclude the cost of land and any compensation paid or payable to a worker or his kin under the Workmen Compensation Act, 1923.**

The section 3(2) of the Cess Act provides that the cess shall be collected from every employer in such a 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.

Section 2(d) of the Building & other Construction Worker (RE&CS) Act 1996 is reproduced hereunder:

“ 'building or other construction work' means the construction, alteration, repairs, maintenance or demolition, of or, in relating to, building, streets, road, railways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948 (63 of 1948), or the Mines Act, 1952), apply”.

The Government of Jammu and Kashmir, therefore, has notified all Assistant Labour Commissioners in 22 districts of the State as Cess collectors to perform the function provided under Sec. 3 of the Building and Other Construction Workers Welfare Cess Act 1996 and rule 4 of the Building and other Construction worker's Welfare Cess Rules 1998 vide Notification No. 13 of 15-01-2007 and Registering Officers Vide Notification No. 250 of 23-6-2010:

- (i) Therefore, all Government Departments, local bodies viz. PWD, PHE, PDD JKPCC, JKPHC, IRRIGATION, FLOOD CONTROL, PMGSY JMC, SMC, JDA, SDA, etc, and all Public Undertakings and other **Government Bodies carrying out any building or other construction**

works which are covered under Section 2(d) of the main Act (reproduced above) shall get themselves registered under Section 7 of the main Act with the concerned District Registering Officer i.e. Assistant Labour Commissioner of respective district.

- (ii) **All Government Departments, Public Undertakings and other Government Bodies carrying out any building or other construction works** which are covered under section 2(d) of the main Act shall, in case the work is carried out through a contractor, **deduct mandatory 1% of the amount of cost approved as per the tender notification from the bills at the time of making payment to the contractors.** Such amount as is deducted from the contractors' Bills shall be remitted by way of A/c Payee Cheque, in favour of the CEO/Secy. J&K Building and Other Construction Workers Welfare Board, within 30 days of making such payment alongwith a forwarding letter addressed to the CEO/Secy. J&K Building and Other Construction Workers Welfare Board H.No. 331 Gool House Laker Mandi Road Behind Dreamland School Laker Mandi Road Janipur Jammu.
- (iii) In case the aforesaid work is carried out internally without employing contractors, the 1% of the total cost shall be remitted by way of A/c Payee Cheque drawn in favour of the CEO/Secy. J&K Building and Other Construction Workers Welfare Board by the Government Department/Public Undertaking/other Government Body, etc.
- (iv) Return on the prescribed format (Annexure 'I') shall be furnished to the concerned Assessing Officer within 30 days of the completion of the project or 30 days of completion of the previous financial year as prescribed under section 4 of the Cess Act.

So, far as private constructions are concerned, all local authorities i.e. SMC, JMC, JDA, SDA, **Municipal Councils, Municipal Committees**, shall obtain estimated cost of the construction along with the building plans which are submitted to them for approval by the concerned employers i.e. owners/contractors, builders etc. Such bodies shall collect upfront an amount of 1% of the estimated cost furnished along with building plans and remit by way of a A/c Payee Cheque drawn in favour of the CEO/Secy. J&K Building and Other Construction Workers Welfare Board along with a forwarding letter within 30 days of its collection in terms of Rules 5(3) of the Cess Rules. While remitting the

amount, details of all the cases from whom cess has been collected shall be furnished.

In case of **individual residential building plans, the 1% cess shall be collected only when the estimated cost is more than Rs. 10 lakh.** In respect of Group Housing Societies, the Managing Committee of the Society is liable to pay the cess. Where the building is built by the builders, builder shall be liable. In the cases of collaboration agreements where builder is constructing or has constructed the building in collaboration with the owner of the land/original building on sharing basis, the cess would be recovered from the **builder** or **owner** or both as per the collaboration agreement. It shall be ensured that **no building plan is approved** by such local bodies without collecting 1% cess.

Further more it is also enjoined upon all the agencies engaged in execution any of the works as mentioned in Sec. 2(d) (reproduced above) to strictly adhere to the prescribed Act and Rules made there under. In case of failure to comply the prosecution and other punitive/corrective measures as enshrined in the Rules shall be initiated.

It shall also be the responsibility of the employer to provide facilities like, Canteen, Toilet etc at the workplace and to take all necessary precautionary measures required for safety and health of the workers, as per the notification issued vide SRO. 232 of 17-07-2006.

It is also requested to all the Departments, Public undertakings and other Bodies which come under the purview of Sec. 2(d) of the main Act, to facilitate the workers engaged by them for getting registration as beneficiary with the Registration Officer i.e. ALC of the district, so that benefits of various welfare schemes approved by the Board may reach to them.

Definition of the building worker as envisaged in the main Act, Sec. 2(e) is reproduced as under:

“ 'building worker' means a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, in connection with any building or other construction work".

Action against defaulters

Sec. 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 2% 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.

Sec. 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.

Sec. 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.

Sec. 12 Penalty

- 1) Whoever, being under an obligation to furnish a return under this Act, furnishes any return knowingly, or having reason to believe, the same to be false be punishable 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, willfully 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.

Sd/-
(SYED MURIED HUSSAIN) KAS
CEO/Secretary,
J&K Building and Other Construction
Workers Welfare Board.

Copy to the: -

1. Welfare Commissioner (HQ), Ministry of Labour, Government of India, Jaisalmer House, Man Singh Road, New Delhi-110011.
2. Secretary to Government Labour & Employment J&K Govt. Civil Secretariat, Jammu for information please.
3. Director Information J&K Govt., Jammu with the request to publish the circular in three leading news papers of Jammu and three leading daily newspaper published from Kashmir province preferably Daily Excelsior, Kashmir Uzma, State Times, Greater Kashmir, Raising Kashmir and Srinagar Times, etc.
4. Deputy Labour Commissioner Kashmir/Jammu.

ANNEXURE-A

(To be furnished within 30 days of completion of the project or within 30 days of the previous financial year under section 4 of the Building and Other Constructions

Workers Welfare Cess Act, 1996)

Performa of Return to be submitted

1. Name of the owner/employer :
2. Address of the owner/employer :
3. Registration No.
(If registered under section 7 of Building and
Other Construction Workers (RE&CS) Act, 1996)
4. Address of the site of construction work :
5. Date of approval of Building plan by the local
authority :
(Attach a copy of approved Building plan)
6. Date of commencement of work :
Date _____ Month _____ Year _____
7. Estimated period of work :
Month _____ Year _____
8. Estimated cost of construction of building :
(Please attach copy of relevant documents such as
Agreement, Award of Contract, Estimates etc.)

Stages	Const of Construction

9. **Amount & date of Advance Cess deposited with the local authorities i.e. A.L.C of the District (Attach a copy of receipt):**

Stages	Amount of Cess	Challan No. & Date	Advance-A Deduction at source-D Final-F
1 st year			
2 nd yer			
3 rd year			
4 th year			

10. Indicate if construction of building has been completed fully during the previous financial year : Yes/No
11. If yes, give details of cost of construction of building along with an Affidavit in this regard.
12. For any other type of construction work covered under Sec. 2 (d) of the Building & Construction Workers' (RE&CS) Act, 1996, (Reproduced overleaf), please give specific details and cost incurred in the an Affidavit in the enclosed Performa:

13. Total cost of construction incurred during the previous financial year for an ongoing project

(Attach audited accounts, in support):

14. Detail of payment of final amount of Cess payable during the previous financial year after adjusting advance tax (Attach a copy of challan).

Employer's Signature;

Name:_____

Date:_____