

Bill No. 22 of 1996

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

BILL

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

Short title, extent and commencement.

5 (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. In this Act, unless the context otherwise requires,—

Definitions.

10 (a) "Board" means a Building and Other Construction Workers' Welfare Board constituted by a 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. (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 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. 5

(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. 10 15

(3) The proceeds of the cess levied under sub-section (1) shall first be credited to the Consolidated Fund of India and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, pay to the Boards from time to time out of such proceeds such sum of money as it may think fit for being utilised for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and to the State Governments such sum of money, not exceeding one per cent. of the amount collected, towards the cost of collection of such cess. 20

(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. 25

4. (1) Every employer shall furnish such return, to such officer or authority, in such manner and at such time as may be prescribed. 30

(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.

5. (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 as 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. 35

(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. 40

(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. Notwithstanding anything contained in this Act, if the Central Government is satisfied that it is necessary or expedient so to do in the public interest, it may, by notification in the Official Gazette and subject to such conditions, if any, as may be specified therein, exempt any employer or class of employers from the payment of the cess payable under this Act for such building or other construction work as may be specified in such notification. 45

Levy and Collection of cess.

Furnishing of returns.

Assessment of cess.

Power to exempt.

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

(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. 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. Interest payable on delay in payment of cess.

9. 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 such inquiry as it deems fit, impose on such employer, a penalty not exceeding the amount of cess: Penalty for non-payment of cess within the specified time.

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.

10. 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. Recovery of amount due under the Act.

11. (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. Appeals.

(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. (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 punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Penalty.

(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. (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. Offences by companies.

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 10

(b) "director", in relation to a firm, means a partner in the firm.

14. (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:— 15

(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, 20

(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; 25

(g) the fees which shall accompany an appeal under sub-section (2) of section 11; and

(h) any other matter which has to be, or may be, prescribed. 30

(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 thereafter 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. 35

15. (1) The Building and Other Construction Workers' Welfare Cess Third Ordinance, 1996, is hereby repealed. 40

(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.

Power to make
rules:

Repeal and
saving.

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, 1995 (Ord. 14 of 1995), an Ordinance, namely, the Building and Other Construction Workers' Welfare Cess Ordinance, 1995 (Ord. 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, 1995 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 (Ord. 26 of 1996).

NEW DELHI;

The 2nd July, 1996.

M. ARUNACHALAM.

FINANCIAL MEMORANDUM /

Sub-clause (1) of clause 3 of the Bill provides for the levy of a cess at such rate, not exceeding one per cent. of the cost of construction incurred by employers of the building and other construction workers, and the Central Government may, by notification in the Official Gazette, specify.

2. The proceeds of the above-mentioned cess will be paid into the Consolidated Fund of India. The Central Government may, if Parliament, by appropriation made by law in this behalf, so provides, pay to the various State Building and Other Construction Workers' Welfare Boards, from time to time, out of such proceeds (after deducting the cost of collection not exceeding one per cent. of the amount collected) such sums of money as it may think fit.

3. The collection of the above-mentioned cess will involve some expenditure from the Consolidated Fund of India. It is not possible at this stage to estimate the amount of such expenditure as that will depend upon various contingencies such as the rate at which the cess may be levied, etc. As only the balance of the proceeds, after deducting the cost of collection not exceeding one per cent. of such cess collected may be utilised for making payments to the various State Building and Other Construction Workers' Welfare Boards, there will, in effect, be no net outgo from the Consolidated Fund of India.

4. The expenditure on the collection of cess will be of a recurring nature and the Bill does not involve any other expenditure, whether of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 14 of the Bill seeks to empower the Central Government to make, by notification in the Official Gazette, rules for carrying out the provisions of the proposed legislation. The various matters in respect of which rules may be made, have been detailed in sub-clause (2) of the said clause.

2. The matters in respect of which rules may be made under the proposed legislation are matters of procedure and administrative detail and it is very difficult to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

LOK SABHA

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BILL

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 constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

*(Shri M. Arunachalam,
Minister of Labour)*