



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(पोत परिवहन, सड़क परिवहन और राजमार्ग मंत्रालय)

National Highways Authority of India

(Ministry of Shipping, Road Transport and Highways)

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No. 11041/217/2007/Admn.

26th February 2009

POLICY MATTER – ADMINISTRATION/FINANCE (47/2009)

(Decision taken on Finance Division File No. NHAI/F&A/ Workers' Welfare Cess)

Sub: Applicability of Building and Other Construction Workers (Regulation of employment and Conditions of Service) Act, 1996 and The Building and Other Construction Workers' Welfare Cess Act 1996- Projects finalized on Public Private Partnership (PPP) – BOT – Annuity/Toll.

The Building and Other Construction workers' Welfare Cess Act 1996 (28 of 1996), an Act provides for levy and collection of 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 are constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. The Building and Other Construction Workers' Welfare Cess Act, 1996 (the Act) came into force on the 3rd day of November, 1995. The Act provides for levy and Collection of Cess at such rate not exceeding 2 (Two) percent but not less than 1 (One) percent of construction cost incurred by the employers and is to be deposited with Building and Other Construction Workers' Welfare Board of the Concerned State. Though, the Act was enacted on 19.08.1996, the different States have made their own rules, notification and administrative order effective from different dates.

2. In this connection policy circular No. 9/2007 dated 29/3/2007 has already been issued, which addresses the compliance in respect of Engineering, Procurement and Construction (EPC) Contract/ Maintenance Contracts concluded with the Authority. Subsequently we have received reference from projects about Cess recovery/payment for Built, Operate and Transfer-BOT-Toll/ Annuity projects.

3. Under Public Private Partnership (PPP) NHAI enters into Agreement for construction, maintenance and management of roads under BOT – Annuity/Toll Agreements. As already stated above, Cess shall be levied and collected at such rate not exceeding 2 (two) percent but not less than 1 (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. The matter has been examined and it is clarified that Cess recovery is applicable on payment made by concessionaires to their contractors for construction and maintenance of roads as they are employer for the purpose of deductions and payment of Cess to Govt. Account. In both the cases of BOT-Toll and Annuity, NHAI does not make any direct payment to the EPC contractor which is the liability of the concessionaire.

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4. The above subject was placed in Weekly Meeting held on 20.10.2008 and 10.11.2008 and it was approved as under: -

“It was noted that under the provisions of Model Concession Agreement, the concessionaire is to mandatorily abide by the provisions of relevant State Acts. However, in order to ensure the same, an undertaking be obtained from the concessionaires regarding the fulfillment of the obligations of various Acts enacted in the States”.

5. Accordingly concerned division/Project Directors are requested to obtain an annual undertaking (**format enclosed**) from the concessionaire regarding fulfillment of obligations of the various Acts enacted in the States. Such undertaking may be normally taken at the start of every financial year.

6. This issues with the approval of Chairman.


(S.K. Nirmal)

General Manager (Admn&Coord)

To:

1. PS to Chairman
2. PS/PA to All Member
3. All CGMs/CVO
4. All GMs/DGMs/Managers
5. PIUs/CMUs/SPVs
6. Librarian/Hindi Officer

UNDERTAKING

I/WE the authorized representative of M/s, the concessionaire of, project hereby certify that we have fulfilled/ we will fulfill the obligations of various Acts including The Building and Other Construction workers' Welfare Cess Act 1996 enacted in the State of, where the project is situated.

Signature

Name & Designation

(With Seal)

Name of the company with address

Place:

Date: