

**FAQ ON BUILDING & OTHER CONSTRUCTION WORKERS' WELFARE CESS**  
**[BOCWW CESS]**

SL. NO.	QUESTION / ANSWER
<b>Q1</b>	<b>What is Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess]?</b>
<b>A1</b>	<p>Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] is a means to provide health and welfare measures for the workers engaged in building and other construction works.</p> <p>Building and other construction workers are one of the most numerous and vulnerable segments of the unorganized labour in India. The building and other construction works are characterised by their inherent risk to the life and limb of the workers. The work is also characterised by its casual nature, temporary relationship between employer and employee, uncertain working hours, lack of basic amenities and inadequacy of welfare facilities.</p> <p>That is why; a need has been felt for a comprehensive statute for regulating their safety, health, welfare and other conditions of service.</p>
<b>Q2</b>	<b>What is Labour Cess?</b>
<b>A2</b>	<p>In the truest sense, there is no cess called Labour Cess.</p> <p>It is the Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] which is often referred as labour cess by certain section/ individual.</p>
<b>Q3</b>	<b>How is this Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] enacted?</b>
<b>A3</b>	<p>Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] is administered under the Building and Other Construction Workers' Welfare Cess Act, 1996 read with relevant sections of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.</p>
<b>Q4</b>	<b>What is the constitutional foothold of the enactment of the Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess]?</b>
<b>A4</b>	<p>The Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] under the provisions of the Building and Other Construction Workers' Welfare Cess Act, 1996 is a levy covered under Entry 97 of List – I, Union List, read with Entry at serial 23 and 24 of List III in Schedule VII.</p> <p>The same has been upheld in the case of <i>Dewan Chand Builders and Contractors v. Union of India and Other</i> [(2012) 1 SCC 101] where the Hon'ble Supreme Court has said that the levy under the Building and Other Construction Workers' Welfare Cess Act, 1996 is a "fee"</p>

	referable to Schedule VII of List I Entry 97 of the Constitution of India.
<b>Q5</b>	<b>Is this cess another tax levied on the labour portion of a contract?</b>
<b>A5</b>	<p>No. The levy of Cess on the cost of construction incurred by the employers on the building and other construction works is a means for ensuring sufficient funds for the Welfare Boards to undertake social security schemes and welfare measures for building and other construction workers.</p> <p>In this connection, the Hon'ble Supreme Court in the case of <i>Dewan Chand Builders and Contractors v. Union of India and Other</i> [(2012) 1 SCC 101] has said that:</p> <p>"The fund, so collected, is directed to specific ends spelt out in the BOCW Act. Therefore, applying the principle laid down in the aforesaid decisions of this Court, it is clear that the said levy is a 'fee' and not 'tax'. The said fund is set apart and appropriated specifically for the performance of specified purpose; it is not merged in the public revenues for the benefit of the general public and as such the nexus between the Cess and the purpose for which it is levied gets established, satisfying the element of quid pro quo in the scheme. With these features of the Cess Act in view, the subject levy has to be construed as 'fee' and not a 'tax'.</p>
<b>Q6</b>	<b>What is the difference between a tax and fee in connection with cess?</b>
<b>A6</b>	<p>In the case of <i>State of WB vs. Kesoram Industries Ltd. &amp; Ors.</i> [(2004) 10 SCC 201], the Constitution Bench of the Supreme Court, was faced with a challenge to the Constitutional validity of the levy of Cesses on coal-bearing lands, tea plantation lands and on removal of bricks earth.</p> <p>Relying on the decision in <i>Hingir Rampur Coal Co. Ltd</i> (AIR 1961 SC 459), speaking for the majority, R.C. Lahoti, J. (as His Lordship then was), explained the distinction between the terms 'tax' and 'fee' in the following words: "...The term cess is commonly employed to connote a Tax with a purpose or a tax allocated to a particular thing. However, it also means an assessment or levy. Depending on the context and purpose of levy, cess may not be a tax; it may be a fee or fee as well.</p> <p>It is not necessary that the services rendered from out of the Fee collected should be directly in proportion with the amount of Fee collected.</p> <p>It is equally not necessary that the services rendered by the Fee collected should remain confined to the person from whom the fee has been collected.</p> <p>Availability of indirect benefit and a general nexus between the persons bearing the burden of levy of fee and the services rendered out of the fee collected is enough to uphold the validity of the fee charged."</p>

<b>Q7</b>	<b>What is the controlling body for ensuring the provision of health and welfare measures to the workers engaged in building and other construction works?</b>
<b>A7</b>	<p>The Welfare Boards constituted under Section 18(1) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 are entrusted with the task of ensuring the provision of health and welfare measures to the workers engaged in building and other construction works of the Building and other construction Workers.</p> <p>In West Bengal, such functions are carried out by the West Bengal Building and Other Construction Workers' Welfare Board (WBBOCWW Board) constituted vide Notification No. 1182-I.R/ EIL/ 1A-18/ 2004(Pt) Dt. 20.09.2005 of the Labour Department, Govt. of West Bengal.</p> <p>Reconstituted latest by Notification No. Labr/895/ (LC-IR)/LW/3A-1/16 Dt. 31.08.2016.</p>
<b>Q8</b>	<b>What is the name of the Fund created for ensuring the provision of health and welfare measures to the workers engaged in building and other construction works?</b>
<b>A8</b>	<p>The "Building and Other Construction Workers' Welfare Fund" created under the provisions of Section 24 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 provides for health and welfare measures to the workers engaged in building and other construction works.</p> <p>In the State of West Bengal, the same functions are carried out through the "West Bengal Building and Other Construction Workers' Welfare Fund".</p>
<b>Q9</b>	<b>What is the source of this Welfare Fund?</b>
<b>A9</b>	<p>The source of this Fund is the Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] levied and collected on the cost of construction incurred by employers, under Section 3 of the Building and Other Construction Workers' Welfare Cess Act, 1996. This Cess augments the resources of the Building and Other Construction Workers' Welfare Boards constituted by the Government (Central, State &amp; Union Territory).</p>
<b>Q10</b>	<b>Should one take a Registration under BOCWW Cess Act, 1996?</b>
<b>A10</b>	<p>No, there is no registration process associated to BOCWW Cess Act, 1996.</p> <p>However, under Sec. 7 of the Building &amp; Other Construction Workers' (Regulation of Employment &amp; Condition of Service) Act, 1996 there lies a provision for registration of establishment where the employer employs, or had employed on any day of the preceding twelve months, ten or more building workers in any building or other construction work. The employer shall apply for registration within a period of sixty days from commencement of such construction work.</p> <p>Thus, it is evident that this is a liability on the part of an employer (i.e. contractor) and not that of the Govt. Dept. engaging a contractor for building &amp; other constructions.</p>

<b>Q11</b>	<b>What is the rate of levy of Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess]?</b>
<b>A11</b>	Building & Other Construction Workers' Welfare Cess [BOCWW Cess] is levied @ 1% on the cost of construction incurred by an employer as per the provisions of Sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No.S.O 2899 dated 26.9.1996.
<b>Q12</b>	<b>On what value is this Cess levied?</b>
<b>A12</b>	The Building & Other Construction Workers' Welfare Cess [BOCWW Cess] levied and collected on the cost of construction incurred by employers.
<b>Q13</b>	<b>What is meant by the term 'cost of construction'?</b>
<b>A13</b>	<p>In exercise of the power conferred under Section 14 of the Building and Other Construction Workers' Welfare Cess Act, 1996, the Central Government has framed the Building and Other Construction Workers' Welfare Cess Rules, 1998.</p> <p>While the charging Section 3 of the Building and Other Construction Workers' Welfare Cess Act, 1996 uses the expression, "cost of construction", the same is explained in the Rules.</p> <p>Thus, the charging Section as well as rule 3 ought to be read together homogenously to subserve the object of the enactment.</p> <p>As per Rule 3 of the Building and Other Construction Workers' Welfare Cess Rules, 1998, the "cost of construction" is an inclusive definition which includes all expenditure except</p> <ul style="list-style-type: none"> <li>• cost of land and</li> <li>• any compensation paid or payable to a worker or his kin under the Workmen's Compensation Act, 1923.</li> </ul>
<b>Q14</b>	<b>The name of the Cess itself is Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess]. So, is this Cess levied on the labour portion of the cost incurred during a construction?</b>
<b>A14</b>	<p>The Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] is levied on the total cost of construction (i.e. the cost comprising of both the materials [supply] and the labour [service] portion). The definition of cost of construction as per the statute (as already discussed above) excludes only cost of land and any compensation paid or payable to worker or his kin under the Workmen's Compensation Act, 1923.</p> <p>The same has been upheld by the High Court of Madhya Pradesh, Jabalpur in the order dt. 3.5.2012 passed in relation to Writ Petitions vide No. WP-3956/2009 [M/s. Technical Associates Limited vs The Assistant Labour Commissioner, Jabalpur, and others]; No. WP-14029/2009 [M/s. Star Delta Transformers Limited vs The Assistant Labour Commissioner,</p>

	<p>Jabalpur, and others]; No. WP-7303/2011 [M/s. G. V. P. R. Engineers Limited vs State of Madhya Pradesh and others]; No. WP-3226/2010 [Rohini Industrial Electricals Limited vs The Assistant Labour Commissioner, Jabalpur, and others]; No. WP-9871/2010 [M/s. Easun Reyiole Limited vs The Assistant Labour Commissioner, Jabalpur, and others]; No. WP-15906/2011 [M/s. K. E. I. Industries Limited vs The Assistant Labour Commissioner, Jabalpur, and others]; No. WP-5173/2011 [M/s. Bajaj Electrical Limited vs The Assistant Labour Commissioner, Jabalpur, and others]; No. WP-2893/2012 [M/s. Eltel Engineers (JV) vs The Assistant Labour Commissioner, Jabalpur, and others] where the Hon'ble Court has stated that</p> <p><i>“The cost of construction cannot be divided in parts, as argued by the petitioners, into supply portion and erection portion. Even the cost for supply portion is incurred by the petitioners and cannot be separated from the total cost incurred...”</i></p>
<b>Q15</b>	<b>Why is this cess levied on the entire cost of construction inspite of the nomenclature based on Labour only?</b>
<b>A15</b>	<p>The exception clauses relating to cost of construction as provided in Section 3 of Building and Other Construction Workers' Welfare Cess Act, 1996 and Rule 3 of the Building and Other Construction Workers' Welfare Cess Rules, 1998 clearly indicate that there was no intention of the statute to exclude the cost of supply part.</p> <p>Thus, the Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] is applicable on the total contract price and thus such cess is levied on both the materials [supply] and the labour [service] portion.</p> <p>This has also been upheld by the High Court of Madhya Pradesh, Jabalpur in the order dt. 3.5.2012 passed in relation to Writ Petitions vide No. WP-3956/2009 [M/s. Technical Associates Limited vs The Assistant Labour Commissioner, Jabalpur, and others]; No. WP-14029/2009 [M/s. Star Delta Transformers Limited vs The Assistant Labour Commissioner, Jabalpur, and others]; No. WP-7303/2011 [M/s. G. V. P. R. Engineers Limited vs State of Madhya Pradesh and others]; No. WP-3226/2010 [Rohini Industrial Electricals Limited vs The Assistant Labour Commissioner, Jabalpur, and others]; No. WP-9871/2010 [M/s. Easun Reyiole Limited vs The Assistant Labour Commissioner, Jabalpur, and others]; No. WP-15906/2011 [M/s. K. E. I. Industries Limited vs The Assistant Labour Commissioner, Jabalpur, and others]; No. WP-5173/2011 [M/s. Bajaj Electrical Limited vs The Assistant Labour Commissioner, Jabalpur, and others]; No. WP-2893/2012 [M/s. Eltel Engineers (JV) vs The Assistant Labour Commissioner, Jabalpur, and others].</p>
<b>Q16</b>	<b>What is the mechanism by which this Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] is levied?</b>
<b>A16</b>	<p>As per the provisions of Section 3(2) of the Building and Other Construction Workers' Welfare Cess Act, 1996, Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] is levied and collected in two ways:</p>

	<p>i) By way of deduction at source by Government and PSU, from the cost of construction.</p> <p>ii) As an advance collection through a local authority where an approval of such building or other construction works by such local authority is required.</p>
<b>Q17</b>	<b>Is it mandatory for a Govt. Dept. to deduct Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] at Source?</b>
<b>A17</b>	<p>As per the provisions of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, all the Govt. Departments are required to collect Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] for building &amp; other construction works of establishments from employer-contractors.</p> <p>Rule 4 of the Building and Other Construction Workers' Welfare Cess Rules, 1998 makes it mandatory for deduction of cess payable at the notified rates (i.e. @1% as discussed above) from the bills paid for the building and other construction work of a government or a public sector undertaking.</p> <p>The procedural parts of such deduction are guided by the provisions of the West Bengal Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2004.</p>
<b>Q18</b>	<b>Is there any collection charge for cess collected?</b>
<b>A18</b>	Yes. Such government office of Public Sector Undertaking may deduct from the cess collected, actual collection expenses not exceeding one per cent, of the total amount collected by them.
<b>Q19</b>	<b>Is there any time limit for transfer of the cess collected to the Welfare Fund of the Board?</b>
<b>A19</b>	Yes. The amount collected shall be transferred to the Board within thirty days of its collection.
<b>Q20</b>	<b>Is there any statutory provision regarding exemption of levy and collection of Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess]?</b>
<b>A20</b>	<p>The levy and collection of Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] is applicable on all buildings or other construction works except on those buildings or other construction works to which the provisions of the Factories Act, 1948, or the Mines Act, 1952, apply, vide the provisions of Section 2(d) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Section 2(1)(d) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.</p> <p>However, the Central Government may, by notification in the Official Gazette, exempt any</p>



	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.
<b>Q21</b>	<b>Is there any establishment which does not come under the purview of this Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess]?</b>
<b>A21</b>	Yes. According to the definition of "establishment" as per Sec. 2(j) of the Building & Other Construction Workers' (Regulation of Employment & Condition of Service) Act, 1996, the mother Act – "establishment" does not include an individual who employs such workers in any building or contraction work in relation to his own residence where the total cost of such construction not being more than rupees ten lakhs.
<b>Q22</b>	<b>Is it mandatory to pay Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] is payable <i>suo-motu</i> as an advance in every case?</b>
<b>A22</b>	As per the provisions of Section 3(2) of the Building and Other Construction Workers' Welfare Cess Act, 1996, an employer may pay advance Cess on the basis of estimated cost of construction along with notice of commencement of work.  If the construction exceeds one year the final Cess payment is to be made after the total completion of work.
<b>Q23</b>	<b>Does the onus of Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] falls on the Government or the owner of a building which is being constructed only? Can the contractor undertaking the job on being instructed by the Govt. be held responsible anyhow for paying the Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess]?</b>
<b>A23</b>	Yes. The liability to pay Building & Other Construction Workers' Welfare Cess [BOCWW Cess] falls not only on the owner of a building or establishment, but on the contractor also under specific conditions.  Under the provisions of Section 2(1)(i)(iii) of the Building and Other Construction Workers' Welfare Cess Act, 1996, the contractor is Employer, i.e. the person responsible to pay Building & Other Construction Workers' Welfare Cess [BOCWW Cess], 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.  In this context, the Hon'ble Supreme Court in the case <i>Dewan Chand Builders and Contractors</i> [(2012) 1 SCC 101], has mentioned that " <i>The extension of the liability on to the contractor is with a view to ensure that, if for any reason it is not possible to collect Cess from the owner of the building at a stage subsequent to the completion of the construction, it can be recovered from the contractor. The Cess Act and the Cess Rules ensure that the Cess is collected at source from the bills of the contractors to whom payments are made by the owner.</i> "

	<i>In short, the burden of Cess is passed on from the owner to the contractor.”</i>
<b>Q24</b>	<b>What is the scope and meaning of contractor in the Building &amp; Other Construction Workers’ Welfare Cess [BOCWW Cess] laws?</b>
<b>A24</b>	<p>As per Section 2(1)(g) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 read with Section 2(d) of the Building and Other Construction Workers’ Welfare Cess Act, 1996, the term “<b>contractor</b>” means <u>a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or who supplies building workers for any work of the establishment, and includes a sub-contractor.</u></p> <p>Thus, it is needless to say, that the scope of liability to pay Building &amp; Other Construction Workers’ Welfare Cess [BOCWW Cess] extends to not only a contractor but also to a sub-contractor.</p>
<b>Q25</b>	<b>The Building &amp; Other Construction Workers’ Welfare Cess [BOCWW Cess] appears to be a Central Legislation. In that case is the State Government mandatorily bound to ensure the implement such law?</b>
<b>A25</b>	<p>As per Section 2(1)(a)(iii) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 read with Section 2(d) of the Building and Other Construction Workers’ Welfare Cess Act, 1996, the term “<b>appropriate Government</b>” means in relation to any other establishment which employs building workers either directly or through a contractor, <b>the Government of the State in which that other establishment is situated.</b></p> <p>Thus, the Government of a State is also a stakeholder in implementation of this statute.</p>
<b>Q26</b>	<b>What are the activities on which Building &amp; Other Construction Workers’ Welfare Cess [BOCWW Cess] is applicable?</b>
<b>A26</b>	<p>Building &amp; Other Construction Workers’ Welfare Cess [BOCWW Cess] is levied on the cost of construction incurred by the employers on the building and other construction works.</p> <p>As per Section 2(1)(d) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 read with Section 2(d) of the Building and Other Construction Workers’ Welfare Cess Act, 1996, the term “<b>building or other construction work</b>” has a very wide coverage.</p> <p>It includes the <u>construction, alteration, repairs, maintenance or demolition of or, in relation to, buildings, streets, roads, railways, tramways, 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 communication dams, canals, reservoirs, watercourses,</u></p>



	tunnels, bridges, viaducts, aquaducts, 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, or the Mines Act, 1952, apply.
<b>Q27</b>	<b>Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] is paid by an employer of the labours engaged in building construction. What is the scope and meaning of such employer?</b>
<b>A27</b>	<p>As per Section 2(1)(i) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 read with Section 2(d) of the Building and Other Construction Workers' Welfare Cess Act, 1996, an <b>“employer”</b> in relation to an establishment, means the owner thereof, and includes,—</p> <ul style="list-style-type: none"> <li>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;</li> <li>ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;</li> <li>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.</li> </ul>
<b>Q28</b>	<b>As per the statute, all the Govt. Departments are required to collect Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] for building &amp; other construction works of establishments from employer-contractors. What is meant by the term “establishment”?</b>
<b>A28</b>	<p>As per Section 2(1)(j) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 read with Section 2(d) of the Building and Other Construction Workers' Welfare Cess Act, 1996, an <b>“establishment”</b> means <u>any establishment belonging to, or under the control of, Government</u>, any body-corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work; and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or contraction work in relation to his own residence the total cost of such construction not being more than rupees ten lakhs.</p>
<b>Q29</b>	<p><b>Consider the following cases:</b></p> <ul style="list-style-type: none"> <li>i) <b>PWD, G/WB undertakes the renovation of the offices building of the Directorate of Commercial Taxes and engages a contractor M/s X to do the same.</b></li> </ul>

	<p>ii) <b>Housing Dept, G/WB engages a contractor to construct residential buildings to be handed over to applicants in lease.</b></p> <p>iii) <b>I&amp;W Dept, G/WB undertakes an extensive area development project of digging of new irrigation canals, constructing embankments on the river and digging of water-bodies.</b></p> <p>iv) <b>NH Division of PW (Roads), G/WB undertakes the project of extension of the existing Highway and addition of multi-lanes therein.</b></p> <p>v) <b>Health Dept, G/WB makes necessary alterations in an indoor stadium to convert it into a quarantine centre to fight pandemic.</b></p> <p>vi) <b>P&amp;RD Dept, G/WB constructs a new bridge thus connecting two blocks across the river.</b></p> <p>vii) <b>Education Dept, G/WB completes the project of interior decoration of its District offices.</b></p> <p>viii) <b>PHE Dept, G/WB undertakes a project for supply of safe drinking water based on Surface Water.</b></p> <p><b>Now, when the payments will be made to the beneficiaries for such work done, will Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] be deducted on the Bill amount?</b></p>
<b>A29</b>	<p>As already discussed above, as per Section 2(1)(d) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 read with Section 2(d) of the Building and Other Construction Workers' Welfare Cess Act, 1996, the term <b>"building or other construction work"</b> has a very wide coverage.</p> <p>It includes activities like</p> <ul style="list-style-type: none"> <li>• construction,</li> <li>• alteration,</li> <li>• repairs,</li> <li>• maintenance and even</li> <li>• demolition</li> </ul> <p><u>of or, in relation to</u>, a wide area of works like:</p> <p>buildings, streets, roads, railways, tramways, 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 communication 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.</p>

	<p>The only area of exclusion is any building or other construction work to which the provisions of the Factories Act, 1948, or the Mines Act, 1952, apply.</p> <p>It may be stated that the term “of” as well as “in relation to” has a very wide range of meaning.</p> <p>The Hon’ble Supreme Court has thrown some light on the meaning of the word “in relation to” and opined that the term “in relation to” is a very broad expression which pre-supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as indirect significance depending on the context.</p> <p>In <i>Doypack Systems Pvt. Ltd. vs. Union of India and Ors.</i> [1988 AIR 782, 1988 SCR (2) 962] the Court has observed: "The expressions 'pertaining to', 'in relation to' and 'arising out of', used in the deeming provision, are used in the expansive sense. The expression 'arising out of' has been used in the sense that it comprises purchase of shares and lands from income arising out of the Kanpur Undertaking. The words "pertaining to" and "in relation to" have the same wide meaning and have been used interchangeably for among other reasons, which may include avoidance of repetition of the same phrase in the same clause or sentence, a method followed in good drafting. The word 'pertain' is synonymous with the word 'relate'. The term 'relate' is also defined as meaning to bring into association or connection with. The expression 'in relation to' (so also 'pertaining to'), is a very broad expression which presupposes another subject matter. These are words of comprehensiveness which might have both a direct significance as well as an indirect significance depending on the context."</p> <p>In <i>Home Solution Retail India Ltd vs. UOI &amp; Ors</i> [2009(237) ELT 209 (Del.)], the Court has observed: “The phrase ‘in relation to’ has been construed by this Court to be of the widest amplitude.”</p> <p>Thus it may appear that the terms “in relation to” are subject to interpretations.</p> <p>But, in the given cases (i – vii) all the activities and the areas of such work appear to be explicitly covered by the given definition of <b>building or other construction</b> as per Section 2(1)(d) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 read with Section 2(d) of the Building and Other Construction Workers’ Welfare Cess Act, 1996.</p> <p>Thus, in absence of anything to the contrary at this instance, it appears that Building &amp; Other Construction Workers’ Welfare Cess [BOCWW Cess] is required to be deducted by the DDO while making payments to the beneficiaries in all the above cases.</p>
<b>Q30</b>	<b>What is the methodology of payment of the beneficiaries in all the above cases by a DDO of a WB Govt. Dept. for the purpose of deducting Building &amp; Other Construction Workers’ Welfare Cess [BOCWW Cess]?</b>
<b>A30</b>	As it has already been discussed, the term “building or other construction work” has a very large ambit covering almost every area of supply where both goods and services are involved simultaneously.

	<p>As evident from the nature of such work, the payments for any such work when undertaken by the Govt. is made through the IFMS e-billing module.</p> <p>The same should be done in these cases too where deduction of Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] is involved.</p>
<b>Q31</b>	<b>On being deducted, how should the Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] be transferred to the appropriate Account?</b>
<b>A31</b>	<p>It is needless to say that any payment made by a WB Govt. Dept. to any beneficiary is done by raising a Bill in the appropriate TR Form in the e-billing module of IFMS.</p> <p>The respective DDO enters the applicable data pertaining to the respective Bill amount payable to the beneficiary with inputs of all applicable deductions (e.g. IT-TDS, GST-TDS, Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] etc) and uploads the Bill in the IFMS e-billing module.</p> <p>The Bill then flows to the Treasury and upon approval; the payment (after all deductions) gets credited to the beneficiary. The transfer of the Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] so deducted to the appropriate Account is done by the system itself.</p> <p>The said fund is set apart and appropriated specifically for the performance of specified purpose. It is not merged in the tax or non-tax revenues but gets appropriated to a Public account.</p>
<b>Q32</b>	<b>In case a DDO of a WB Govt. Dept. inadvertently misses out in deducting Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] on an applicable Bill uploaded in the IFMS, can the system give him any alert for rectification?</b>
<b>A32</b>	<p>No. Currently, there is no system check for the deduction of this Cess. Hence, deduction of this Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] currently remains as the prerogative of the DDO. In case of any error on the part of the DDO, even when inadvertent in nature, a Bill for payment to a contractor in relation to such construction works may get approved without deduction of Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess].</p>
<b>Q33</b>	<b>Does a DDO deducting Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] need to file any return showing the data of such deductions?</b>
<b>A33</b>	<p>No. Section 4 of The Building and Other Construction Workers' Welfare Cess Act, 1996 requires "every employer" to file returns in the manner prescribed.</p> <p>As already discussed above, as per Section 2(1)(i) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 read with Section 2(d) of the Building and Other Construction Workers' Welfare Cess Act, 1996, an "employer" mostly means a contractor, so far the works undertaken by WB Govt. Departments are</p>

	concerned.
<b>Q34</b>	<b>In a particular agreement, a Govt. Dept. has entered into an agreement with a contractor for construction, operation, maintenance and transfer of a road on “Design, Built, Finance, Operate and Transfer (DBFOT)”. For carrying out the aforesaid construction of the said road, the main contractor has appointed EPC Contractors/Sub-Contractors. Shall the provisions of Building &amp; Other Construction Workers’ Welfare Cess [BOCWW Cess] be applicable on the contractor only or on the sub-contractors too?</b>
<b>A34</b>	<p>As already discussed above an “<b>employer</b>” as defined in Section 2(1)(iii) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 read with Section 2(d) of the Building and Other Construction Workers’ Welfare Cess Act, 1996, 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, means the contractor.</p> <p>Again, as per Section 2(1)(g) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 read with Section 2(d) of the Building and Other Construction Workers’ Welfare Cess Act, 1996, the term “<b>contractor</b>” means a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or who supplies building workers for any work of the establishment, and includes a sub-contractor.</p>
<b>Q35</b>	<p><b>The levy and collection of Building &amp; Other Construction Workers’ Welfare Cess [BOCWW Cess] is exempted in case of buildings or other construction works to which the provisions of the Factories Act, 1948, or the Mines Act, 1952, apply.</b></p> <p><b>Does this mean that construction of a factory does not involve levy of Building &amp; Other Construction Workers’ Welfare Cess [BOCWW Cess]?</b></p>
<b>A35</b>	<p>Building &amp; Other Construction Workers’ Welfare Cess [BOCWW Cess] is a means to provide health and welfare measures for the workers engaged in building and other construction works. It is levied for building &amp; other construction works of all establishments except on those buildings or other construction works to which the provisions of the Factories Act, 1948, or the Mines Act, 1952 are applicable.</p> <p>As per Section 2(l) of the Factories Act, 1948, "worker" means a person employed in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any kind of work incidental to or connected with, the manufacturing process, or the subject of the manufacturing process.</p> <p>As under Section 2(k) of the Factories Act, 1948, "Manufacturing process" includes the following:</p> <ol style="list-style-type: none"> <li>i) Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance</li> </ol>



- with a view to its use, sale, transport, delivery or disposal.
- ii) Pumping oil, water, sewage or any other substance.
- iii) Generating, transforming or transmitting power.
- iv) Composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding.
- v) Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels.
- vi) Preserving or storing any article in cold storage.

In view of the above, it is inferred that the term "worker" under the Factories Act, 1948, does not involve a person involved in the construction of buildings. Also, the term "manufacturing process" does not involve any process for construction of buildings. Hence, the Factories Act covers only those workers who are engaged in the manufacturing process or any work that is incidental to the manufacturing process, and not workers who are involved in building and construction works.

The fact that construction workers are not covered under the Factories Act, 1948, and are therefore entitled to welfare measures under the Building and Other Construction Workers' Welfare Cess Act, 1996 was put forth in the case of *Lanco Anpara Power Ltd. V. State Of Uttar Pradesh & Others* dated Oct. 10, 2016.

The petitioner construction companies, which are engaged in construction activities, argued that once the undertaking or the establishment had obtained a license for registration under the Factories Act, the Building and Other Construction Workers' Welfare Cess Act, 1996 was not applicable on account of the exclusion under Section 2(1)(d) of the Building and Other Construction Workers' Welfare Cess Act, 1996.

The issue before the Supreme Court was whether the Building and Other Construction Workers' Welfare Cess Act, 1996 was applicable to those premises that are registered under the Factories Act, 1948.

The Court held that the establishments/premises registered under the Factories Act, 1948, employing construction workers in the construction of factory premises were not excluded from the application of the Building and Other Construction Workers' Welfare Cess Act, 1996 in terms of the exclusion clause. The Court reasoned that an establishment/premise would become a factory under Section 2(m) of the Factories Act only when the manufacturing process as defined under Section 2(k) of the Factories Act commenced.

Consequently, the provisions of the Factories Act would apply only when the manufacturing process commences, and even upon commencement of the manufacturing activity, it only covered those workers who are engaged in such manufacturing activity under the Factories Act and not construction workers.

Hence, construction activities which are carried out in relation to establishments/registered premises /licensed under the Factories Act, 1948, would not attract the exclusion clause of the Building and Other Construction Workers' Welfare Cess Act, 1996 by itself. Workers carrying on such activities would be covered under the Building and Other Construction

	Workers' Welfare Cess Act, 1996.
<b>Q36</b>	<b>The DDO of a WB Govt. Dept. has to process a Bill of payment to a beneficiary contractor for construction works. The DDO has so many deductions to make while making the payment - Income Tax deducted at source, GST deducted at source &amp; Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess]. The DDO is confused. Can all such deductions be made from a single Bill? Or, any one deduction blocks the occasion of other deductions? In that case, which deduction should get the priority?</b>
<b>A36</b>	The deductions of Income Tax deducted at source, GST deducted at source & Building & Other Construction Workers' Welfare Cess [BOCWW Cess] are not mutually exclusive in nature. In case, the said deductions are required to be made on any Bill depending on the conditions as laid down in the respective statutes, all such deductions have to be made on the single Bill.
<b>Q37</b>	<b>Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] is a fee as per the Court of Law. In that case, is GST applicable on Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess]?</b>
<b>A37</b>	<p>As per the provisions of Section 15(2)(a) of the Central Goods &amp; Services Tax Act/State Goods &amp; Services Tax Act, 2017, the value of a supply of goods or services or both includes any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier.</p> <p>This means that while determining the value of supply on which GST is levied, all taxes, duties, cesses, fees and charges levied under any law for the time being in force other than GST &amp; GST compensation cess, if charged separately, are to be taken into account.</p> <p>Now, Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] is actually not separately charged but is a deduction that is made on the Bill value. So, by default, the Bill value without the GST will automatically be inclusive of this amount to be deducted as Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess]. This means GST is charged on Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess].</p>
<b>Q38</b>	<b>Will TDS under GST be deducted on a Bill before or after deducting Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess]?</b>
<b>A38</b>	<p>As per the explanation provided to Section 51(1) of the Central Goods &amp; Services Tax Act/State Goods &amp; Services Tax Act, 2017, for the purpose of TDS under GST, the value of supply is to be taken as the amount excluding the components of GST and GST cess indicated in the invoice.</p> <p>Thus, TDS under GST is to be deducted on a Bill only after excluding the GST components (including GST cess) and not on the value after deduction of the Building &amp; Other</p>

	Construction Workers' Welfare Cess [BOCWW Cess].
<b>Q39</b>	<b>Is there any provision of penalty under Building &amp; Other Construction Workers' Welfare Cess [BOCWW Cess] Act?</b>
<b>A39</b>	<p>Yes. An Assessing Officer, shall impose a penalty upto such amount of cess which an employer :</p> <ul style="list-style-type: none"> <li>• has not paid within the date as specified in the assessment order</li> <li>• has less paid, including <ul style="list-style-type: none"> <li>✓ the cess deducted at source or</li> <li>✓ paid in advance</li> </ul> </li> </ul>
<b>Q40</b>	<b>Does a Govt. DDO have any liability to pay interest or penalty for non-deduction or short deduction of BOCWW Cess?</b>
<b>A40</b>	<p>Under the BOCWW Act &amp; Rules, the employer is responsible for non-deduction/short deduction of cess.</p> <p>If the DDO is also an employer by nature, as provisions of Section 2(1)(i) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 read with Section 2(d) of the Building and Other Construction Workers' Welfare Cess Act, 1996, already discussed above, he will also stand responsible.</p> <p>However, if the DDO is only making a payment to the contractor, he has no such liability to pay any penalty for non-deduction/short deduction of cess.</p>

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