

GOVERNMENT OF ANDHRA PRADESH
FINANCE (WORKS & PROJECTS) DEPARTMENT

From
Sri E.V.Ranga Chary, B.Sc.,
Director of Works Accounts,
M3 Block, First Floor,
Manoranjan Complex,
M.J. Road, Hyderabad.

To
The Secretary to Government,
Finance (W&P) Department,
'D' Block, 1st Floor,
A.P. Secretariat,
Hyderabad.

Lr.No. DOWA/Hyd/Sn.II/A9/F-EPC/2008-09/ 456 Dated: 24-01-2009.

Sir,

Sub:-The Building & other construction Works Welfare Cess Act -
unauthorized provision made in the estimate - Regarding.

Ref: -1) U.O.Note No.4763/PFS/F8 (A1)/08-4, dated 28/2/2008.
2) Lr.No.JDWA/NSP/HC/ITC/CESS/08-09/177, dated 06.01.2009.

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In the reference cited, the Joint Director of Works Accounts, W&P, Hillcolony seeking for clarification on the inclusion the provision towards labour welfare cess @ 1% in the estimates on the basis of U.O.Note.No.4763/PFS/F.8(A1)/08-4 of Finance(W&P) Department. dated 28.02.2008 addressed to I & CAD on the above subject (copy enclosed). So far no Government Orders are received on the U.O.Note. But the Superintending Engineer, N.S.Dam Circle, Hillcolony has included the above 1% cess in the estimates and also incorporated condition for repayment in the agreements also duly quoting the reference 1st cited.

I am in the opinion, without specific Government Orders for provision in the estimates and condition for repayment in the agreement is irregular. Instructions are being issued to Joint Director of Works Accounts/Pay & Accounts Officers accordingly.

The opinion of this office may please be confirmed.

Yours faithfully,

Sd/-

DIRECTOR OF WORKS ACCOUNTS,
A.P., HYDERABAD.

Encl:- Copy of Reference 1st cited

Copy to all Joint Directors of Works Accounts/Pay & Accounts Officers/Asst. Pay & Accounts Officers for information and necessary action.


DIRECTOR OF WORKS ACCOUNTS,
A.P., HYDERABAD.

24/1/09

Sir,

Sub:- W.P.No.26939 of 2009 filed by M/s. Thirupathi Rao & Co. filed for having deducted the 1% Labour Cess to a tune of Rs. 6,25,806/- Submission of detailed report - Request for clarification - Reg.

- Ref:-
- 1) Agreement No. 2/2004-05, dt: 08-04-2004.
 - 2) Govt. Memo No.4763/PFS/F8(A.1)/07, Dt: 04-02-2008 from the Finance (W&P) Dept.
 - 3) Lr.No.DWA/Hyd/Sn-II/A9/F.CPC/2008-09/456, Dt: 24-01-2009.
 - 4) This office Lr.No.PAO/N/2009-10, Dt: 17-12-09.
 - 5) G.P. for Finance & Plg. Hon'ble High court of A.P. Lr.No.W.P26939/09MMR/F&P, Dt: 21-12-09.

* * *

I submit herewith the detailed report in the W.P.No.26939 of 2009 filed by N. Thirupathi Rao & Company the Hon'ble High court of Andhra Pradesh, Hyderabad for payment of Labour Cess of an amount of Rs.6,25,806/- work of 'Formation of New Tank across Salpalavagu, near Komaticheruvu (Village), Kasipet (M) Adilabad (Dist) entrusted to M/s. Thirupathi Rao & Co. vide Agreement No.2/2004-05, Dt: 08-04-2004 an amount of Estimated Rs.2,44,35,861/- at 25.29% less over E.C.V priced with S.S.R2002-03.

The contractor has represented for amount of 1% labour cess which was added in Revised Technical sanction. The final bill 1% Cess was added by incorporating the provision in the Revised Estimate 2009-10 and in scrutiny amount of 1% labour cess was deleted as per Government Rules. This office has disallowed the amount as per Government rules and aggrieved by the contractor has filed the W.P. No.26939 of 2009. A brief note was submitted to G.P for (Finance & Plag) Andhra Pradesh Hon'ble High Court to safeguard the interest of Government.

The W.P. came up for hearing on 18-12-2009 before his lordship Mr. Justice L.Narsimaha Reddy. The Hon'ble High Court has informed vide reference 5th cited has directed to follow the judgment in the High Court batch cases in no.11269/2009 and to report compliance.

In this regard, it is to submit that there are no clear orders from The Government, that adding of 1% labour cess to the estimate is to be implemented as per instructions vide reference 2nd cited, the Director of works and construction in the letter 3rd cited has clearly brought to the Government clarification. That adding 1% Cess in the estimate without condition for repayment as the agreement is irregular.

The same was brought to the notice of the G.P. for defending the case in Govt. favour.

Therefore it is requested to issue instruction whether to pay the amount or not by obtaining Govt. instructions so as to inform the GP and to Hon'ble High Court early action is solicited in the matter as it is urgent to be submitted in the Hon'ble High Court.

Yours faithfully,

[Signature]
Pay & Accounts Officer,
Nirmal, Dist: Adilabad.

26/12/09

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Address DWA for
clarification
17/12/2010

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For the kind attention of S. Sreenivasulu Reddy

GOVERNMENT OF ANDHRA PRADESH
FINANCE(WORKS &PROJECTS)DEPARTMENT

U.O. Note No. 4763/PFS.F8(A1)08-4

Dated: 28-2-2008.

Sub: The Building and other Construction Workers Welfare Cess Act - Provision to be made in the estimates - Procedure for Ongoing works - Regarding.

Ref: U.O.Note No. 4763/PFS.F8(1)07-1, Finance (W&P) Deptt., Dated 4-2-2008.

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In continuation of the U.O.Note cited, in which it was requested to Issue Orders for making L.S. provision @ 1% towards Labour Cess in all the estimates sanctioned from 26.6.2007, the following guidelines are communicated in respect of ongoing works:

- (i) In respect of ongoing works, wherever agreements do not contain the clause relating to the condition of the Building and other construction Workers Cess Act, an amount of @ .1% of the amount will be added to the estimates and the estimates revised accordingly for all payments made after 26.6.2007.
- (ii) In respect of agreements which provided that the Contractor shall pay Cess at the rate not exceeding 2% of the cost of Construction under the Building and other Construction Workers Cess Act, 1996, the Contractor has no option but to Pay Cess by way of deduction at source effective from 26.6.2007.

It is requested to issue common Order applicable to all Engineering Departments on the above lines .

P.B.S.S.SARMA
DEPUTY FINANCIAL ADVISER &
E.O.D.S. TO GOVERNMENT

To *EGCO Dept*
The Director, Works and Accounts, Hyderabad.

//FORWARDED BY ORDER//

L. S. S. Sarma
SECTION OFFICER

GOVERNMENT OF ANDHRA PRADESH

Lr.No.W.P.26939/09/MMR/F&P.
From:

Dated: 21.12.2009.

To:

M. Madhava Reddy,
Govt. Pleader for Fin & Plg,
A.P. Hyderabad, High Court.

The Pay & Accounts Officer,
Nirmal, Adilabad District.

Sir,

Sub:- Suits - High Court - W.P.No.26939/2009 filed by M/s.
.ThirupathiRao & Company, H.No.3-1-547, Vavilalapally,
Karimnagar, Karimnagar District - Reg.

The WPNo.26939/2009 filed by r M/s. N.Thirupathi Rao & Co., H.No.3-1-547, Vavillapally, Karimnagar challenging your action in withholding an amount of Rs.6,25,806/- while paying final bill, to a tune of 1% towards labour cess.

The said Writ Petition came up for hearing on 18-12-2009 before His Lordship Mr. Justice L.Narsimha Reddy. His Lordship was pleased to dispose of the writ petition directing the Executive Engineer I&CAD I.B Division, Mancherial, Adilabad District, and you to dispose of the representation, which the Writ Petitioner said to have submitted on 16-11-2009, with in 2 weeks from the date of the receipt of copy of the order in writ petition. (a copy of the representation is enclosed herewith).

I may also bring to your notice, that the Hon'ble High Court in batch cases in WP.No.11269/2009 and batch held that

"The Respondents shall include 1% Cess in the estimates for the works, which they propose to under take, if the work continues for or beyond 12 moths, and involves engagement of workers or more" and

"The Respondents shall not deduct any annual towards, cess, unless the corresponding amounts is included in the estimate".

Therefore, you are advised to follow the direction issued by the Hon'ble High Court in the above W.P.No.26939/2009.

This is for your kind information.

Yours sincerely

M. Madhava Reddy
21/12/09
Govt. Pleader for Fin. & Plg.

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GOVERNMENT OF ANDHRA PRADESH
FINANCE AND PLANNING (W&P) DEPARTMENT

U.O. Note: No. 4763/PFS.F6(A1)/07-1

Dt: 4-2-2008

Sub: The Building and other Construction Workers Welfare Cess Act-
Provision to be made in the estimates and recovery to be effected from
Contractor's bills.

Ref: 1. U.O. Note No. 5437/Lab. II/A1/07-4, dt. 3-1-08 of LET&F Department.

The I&CAD Department are informed that the Labour, Employment
Training and Factories Department have informed this Department in U.O. Note cited
that 1% towards labour cess is to be deducted from Contractor's bills in respect of all
payments made from 26-6-07.

Therefore the I&CAD Department are requested to issue orders for
making L.S. Provision at 1% of the estimate amount towards Labour cess under the
Building and other Constructions Workers welfare cess Act, 1996 of, all the estimates
sanctioned from 26-6-07 onwards, as an amendment to Annexure (1) of
G.O. Ms. No. 94, I&CAD, dt. 1-7-03.

B.B.S. SARMA
DEPUTY FINANCIAL ADVISER &
I.O.D.S. TO GOVERNMENT

To
The I&CAD Department
S.F.S. Co

//forwarded by order//

K. C. L. M. S. R.
SECTION OFFICER
JS

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