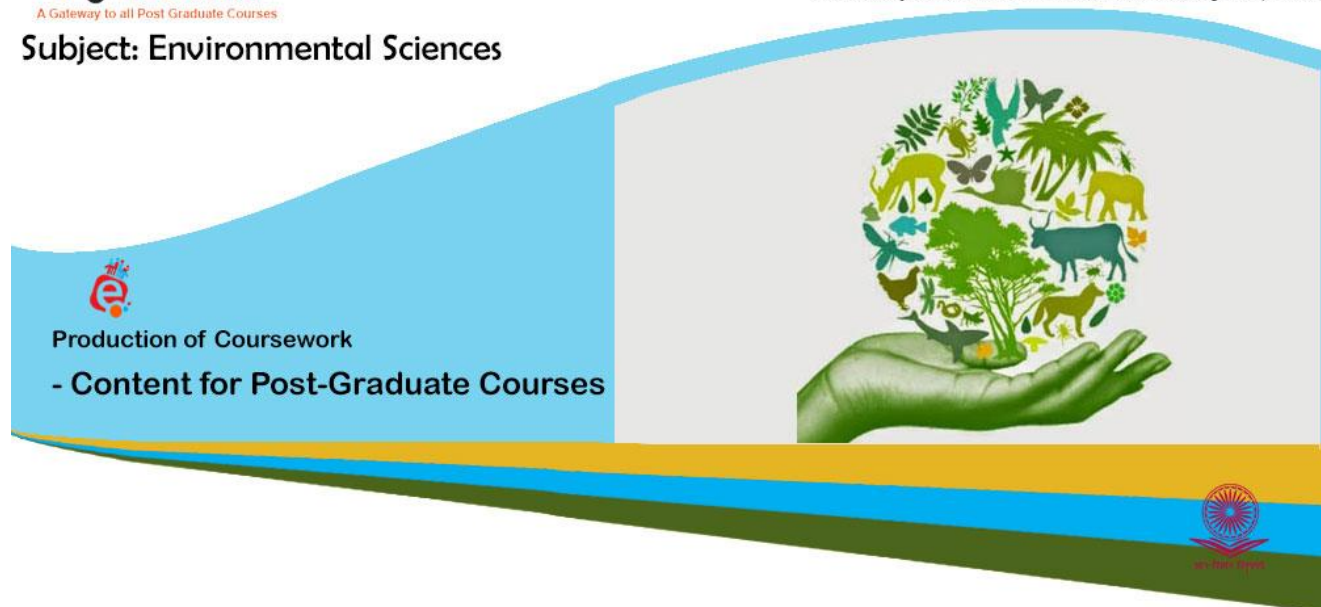


Subject: Environmental Sciences



Paper No: 13 Environmental Law and Policies

Module: 10 Water (Prevention and Control of Pollution) Cess Act , 1977



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| Description of Module | |
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| Subject Name | Environmental Sciences |
| Paper Name | Environmental Law and Policies |
| Module Name/Title | Water (Prevention and Control of Pollution) Cess Act , 1977 |
| Module Id | EVS/ELP-XIII/10 |
| Pre-requisites | |
| Objectives | The objective of this paper is to inform the reader about the provisions and working of Water (Prevention and Control of Pollution) Cess Act, 1977 |
| Keywords | Water Pollution, Water Act, State Pollution Control Board, Central Pollution Control Board |

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Water (Prevention and Control of Pollution) Cess Act, 1977

Water (Prevention and Control of Pollution) Cess Act, 1977 hereinafter referred to as Cess Act was enacted by Parliament to augment the resources of the Central and State Pollution Control Boards established under the Water (Prevention and Control of Pollution) Act by imposition of Cess on water usage by specified persons and authorities. Cess Act is complementary to Water Act as it generates revenue for the Boards so that they can function smoothly and achieve the objectives of Water Act. Like Water Act, Cess Act is also enacted by Union legislature i.e. by Parliament. The Cess Act came into force on 01st April 1978. Cess Act is relatively small enactment having only seventeen sections. Need for levy of cess was felt as there were inadequate funding of State Pollution Control Boards by the State governments.¹

1.1 Learning Outcome

The objective of this paper is to inform the reader about the provisions and working of Water (Prevention and Control of Pollution) Cess Act, 1977. The discussion is divided into following topics:

- Introduction
- Levy of Cess
- Collection of Cess and Assessment Procedure
- Fines and Penalties
- Appeals
- Conclusions and Summary

2.1 Introduction

At the outset, it is essential to differentiate briefly 'tax' from 'cess'. Though both are levied by the government and are compulsory exaction by the government yet there is difference between the two. Whereas tax is levied for general public purpose, Cess is levied for a particular purpose. It is ascribed the same meaning as is ascribed to fee which is charged for providing a service and has a correlation with the serviced rendered. Cess is levied for a specific purpose like Swachh Bharat Cess, Education Cess, Secondary Higher Education Cess etc.

Cess Act is applicable in all the States and Union territories where Water Act, 1974 applies except the State of Jammu & Kashmir.ⁱⁱ As stated above, Cess Act is complementary to Water Act, 1974. As such, Cess Act provides that words and phrases used in Cess Act and not defined in Cess Act shall have same meanings as are ascribed to them under the Water Act, 1974.ⁱⁱⁱ Act levies cess for the purposes of Pollution Boards on industries and local authorities only. Water cess is levied only on industries and the local authorities. Therefore, it is expedient to define these two expressions.

Act gives inclusive definition of word 'Industry'. Act provides, 'Industry' includes any operation or process, or treatment and disposal system, which consumes water or gives rise to sewage effluent or trade effluent but does not include any hydel power unit.^{iv} Thus, the industry means and includes industries using water or discharging sewage or trade effluent.

'Local Authority' means a municipal corporation or a municipal council or cantonment board or any other body, entrusted with the duty of supplying of water.^v Thus the municipal bodies (known by whatever name) which are entrusted with the duty of supplying water are included in the term 'Local Authority'.

2.2 Levy of Cess

Water Cess is levied on two groups i.e. Industries and Local authorities. Upto 2003 i.e. before the enactment and enforcement of Water (Prevention and Control of Pollution) Cess (Amendment) Act, 2003, cess was levied only on specified industries. These industries were specified in the First Schedule of the Act. These industries included Ferrous metallurgical industry, non-ferrous metallurgical industry, mining industry, Ore-processing, petroleum, Petro-Chemical, Chemical, Ceramic, Cement, Textile, Paper, Fertilizer, Coad, Power, Processing of animal or vegetable products including processing of milk, meat, hides and skins, agricultural products and Engineering industries. 2003 Amendment Act made Cess Act applicable to all industries and therefore Schedule I was deleted from the Statute Book with effect from 06th May 2003.

Local authorities are liable to pay cess on consumption as well as supply of water. However, where local authority supplies water to an industry liable to pay cess then local authority is not liable to pay cess. Similarly, when one local authority supplies water to another local authority which is liable to pay cess, the first local authority is not liable to pay cess. Cess payable under the Act is linked with water consumed. Maximum rate for payment of Cess is prescribed in Schedule II, column 2 of the Act. Rate of Cess is to be fixed by the Central government subject to the maximum rate specified in appropriate columns of Second Schedule.

Where any industry or local authority violates section 25 of Water Act, then Cess is payable at the enhanced rates. In other words, if any person or local authority establishes any industry, operation or process or any treatment or disposal system which is likely to discharge sewage or trade effluent into any stream or well, it is required to obtain previous consent of the State Board under the Water Act, 1974. Similarly, existing industries which were discharging sewage or trade effluent into stream or well were also required to obtain consent of the State Board. State Boards are competent to impose such terms and conditions as they deem fit. If any person carrying on any industry or a local authority commits violation of these provisions, it is required to pay cess not exceeding the rates specified in the third column of the table. Similarly, any person committing violation of norms set up under Environment (Protection) Act, 1986 is also liable to pay cess at the enhanced rates.

Schedule II

| Purpose for which water is consumed | Maximum Rate | Maximum rate when any industry or local authority fails to comply with Section 25 of Water Act |
|--|--------------------------|--|
| 1. Industrial cooling, spraying in mine pits or boiler feeds | Five paise per kilolitre | Ten paise per kilolitre |
| 2. Domestic purpose | Two paise per kilolitre | Three paise per kilolitre |

| | | |
|--|-----------------------------|----------------------------|
| 3. Processing whereby water gets polluted and the pollutants are – a) easily biodegradable ; or b) non-toxic; or c) both non-toxic and easily biodegradable | Ten paise per kilolitre | Twenty paise per kilolitre |
| 4. Processing whereby water gets polluted and the pollutants are – (a) not easily biodegradable ; or (b) toxic; or (c) both toxic and not easily biodegradable | Fifteen paise per kilolitre | Thirty paise per kilolitre |

2.3 Collection of Cess and Assessment Procedure

As stated earlier, levy of water cess is linked to consumption of water for different purposes. As such, it required to measure the water consumed/supplied by local authorities and water consumed by any person carrying on any industry. For this purpose, Cess Act prescribes that Meter for measuring water consumption of prescribed standards and norms shall be affixed at the entrance of water supply connections.^{vi} Act further provides that it shall be presumed that the reading/measurement indicated by the meter is correct unless it is proved otherwise. Where any person fails to install meter of prescribed standard, then the Central government can cause such meter to be installed and the cost of meter together with installation cost shall be recovered from the person. Any officer of the State government authorised by that government is empowered under the Cess Act to enter into any premises for checking the correctness of meters affixed and also for discharging other functions under the Cess Act.^{vii}

Persons liable to pay cess are required to furnish the return in Form I giving details of water consumed during the month. The return is required to be filed before 05th of next Calendar month.^{viii} The assessing officer is required to make an assessment of Cess payable after checking the return and after making such enquiry as he deems fit. If return has not been furnished, then the assessing officer is required to make an assessment of water consumed after making such enquiry as he deems fit and pass an order determining the amount of cess payable by that person.^{ix} The copy of the order shall be served on the person liable to pay cess. The assessment order shall specify the date before which Cess shall be paid by the person liable to pay. The Cess is required to be paid to the State government. The Cess collected by the State government is required to be remitted to the Central government before 10th of every month.

Cess is payable by industries being carried on by government also. In *Union of India v. Rajasthan State Board for Prevention and Control of Water Pollution*,^x Cess was levied on Rajasthan Atomic Power Corporation owned by Union. The levy of cess under section 6 was challenged by Atomic Power Corporation on the ground that it is a central government owned corporation and that it is regulated by Atomic Energy Act, 1962. The Atomic Power Corporation claimed that under Article 285 of the Indian Constitution, they are exempt from levy of taxation by state government. Article 285 exempts union property from state taxation. However, these contentions of Atomic Power Corporation were rejected by the Rajasthan High Court. Rajasthan High Court declared that it is assessable to Water Cess under the Cess Act, 1977. The Court ruled that Cess is not on the property of the Union but on use of water and discharge of the same. High Court held that Atomic Energy Act was enacted for development, control and use of atomic energy, whereas Water Cess Act was enacted for levy and collection of cess for augmenting the resources of Pollution Control Boards and therefore, there is no conflict and both the laws operate in different fields. The High Court also observed that Rajasthan Atomic Energy Corporation consumed huge quantity of water to push water past nuclear core for carrying heat elsewhere and for condenser cooling thereby resulting in increase in the temperature of water. The court ruled that such increase in temperature is alteration of physical properties of water and hence is covered under the definition of water pollution.

An incentive has been provided in the Cess Act for installation of plant for treatment of sewage or trade effluent. If any person liable to pay cess, installs such plant for treatment of sewage or trade effluent, then he shall be entitled to 25% rebate on the amount of cess payable by him.^{xi} Rule 6 of Water Cess Rules 1978 read with Schedule I appended to the rules specify the maximum quantity of water to be used by prescribed industries. If any person uses water in excess of the prescribed norms or violates the provisions of section 25 of Water Act or commits a violation of norms laid down in Environment (Protection) Act, 1986, he shall not be entitled to rebate. Rebate is admissible from the expiry of fifteen days from the date of successful commissioning of the plant and it is admissible till the time, the plant functions successfully.^{xii}

Cess payable under the Act including any other amount due under the Act can be recovered as arrears of land revenue.^{xiii}

2.4 Fines and Penalties

Cess Act prescribes that the person liable to pay cess is required to pay the same within the time specified in the assessment order. If any person fails to pay the cess within the time specified in the assessment order, he will be liable to pay the cess together with interest. Interest is chargeable at the rate of two percent per month.^{xiv} Fraction of a month is treated as equivalent to a month. This apart, the Act prescribes following penalties

- 1) If the amount of cess due under the Act is not paid within the period specified in the order, then the assessing authority can impose penalty upto the amount of cess due. However, before any penalty is imposed upon any person, he is required to be provided reasonable opportunity of being heard.^{xv} The penalty can be imposed only when the assessing authority is satisfied that there was no sufficient or reasonable cause for not depositing the Cess. Interest, penalty and any other amount payable under the Act can be recovered as arrears of land revenue.^{xvi}
- 2) If any person liable to file return under the Cess Act knowingly furnishes a false return, he can be punished with imprisonment upto six months or with fine which can extend upto one thousand rupees or with both.

- 3) Similarly, if any person wilfully or intentionally evades payment of cess or makes an attempt to evade the payment of tax, he shall also be punished with imprisonment upto six month or with fine which can extend upto one thousand rupees or with both.
- 4) If any of the offences are committed by Companies, in such a scenario, every person who at that time was in charge of the Company or was responsible for the conduct of the business of the company, alongwith the Company shall be deemed to have committed the offence. However, if such person proves that he has exercise due diligence and taken reasonable steps to prevent the commission of the offences and that the offences were committed without his knowledge, then he shall not be deemed to be guilty of the offences. If the offences are committed by a company and it is proved that the offence was committed with the consent or connivance or due to the neglect of director, manager, secretary or other officer of the Company, such person shall also be deemed to have committed the offence.

2.5 Appeals

Any person who is dissatisfied with the following may file an appeal

- 1) Person dissatisfied with the assessment order passed under section 6 or
- 2) Person aggrieved with the imposition of penalty under section 11 for non-payment of cess^{xvii}

Appeal lies to the appellate Committee consisting of three persons. Appellant is required to state the facts and the grounds of appeal. The appeal shall be accompanied by copy of assessment order or copy of order imposing penalty. Appeal shall be filed within 30 days from the date of the communication of the order complained of.^{xviii} If the appeal is filed after the lapse of time allowed but before 45 days from the date of communication of the order, the appeal can still be heard, if the appellant satisfies the appellate committee that there is good and sufficient reason for delay. The appellant is required to pay the requisite fee alongwith his memorandum of appeal. After the appeal is filed, it is required to be disposed of, as expeditiously as possible, after hearing the appellant.

If any person is dissatisfied with the order of the Appellate Committee, he can file appeal against the decision of the Appellate Committee. An appeal can be filed before the National Green Tribunal. National Green Tribunal has been constituted under National Green Tribunal Act, 2010.

2.6 Power of the Centre Government to Exempt and Frame Rules

The Central government has been empowered to frame rules under the Water Cess Act. The Central government has also been empowered to exempt any industry consuming water below the specified quantity from the payment of water cess. However, before exempting any establishment, the government shall keep into mind the following factors:

- a) Nature of raw material used;
- b) Nature of manufacturing process employed;
- c) Nature of effluent generated;
- d) Source of water extraction;
- e) Nature of effluent receiving bodies; and
- f) Production data, including water consumption per unit production in the industry and the location of the industry.^{xix}

Conclusion

Water Cess Act has been enacted as supplementary legislation to generate revenues for ensuring effective implementation of Water Act, 1974 since it was found that State Pollution Control Boards were not having sufficient funds at their disposal to enable them to discharge their functions. In this backdrop, Water Cess Act provided for levy of cess on water used. The cess rates are dependant upon the purpose for which the water is used. Moreover, the Act has also given an incentive for those who establish water and sewage treatment plant so as to ensure that water bodies are not polluted and also to ensure effective utilization of scarce water resources.

Endnotes

- i Member Secretary, Kerala State Board for Prevention and Control of Water Pollution, Trivandrum v. Gwalior Rayon Silk Manufacturing (Weaving) Company Limited, AIR 1986 Ker. 256
- ii Section 1
- iii Water (Prevention and Control of Pollution) Cess Act, 1977; Section 2(d)
- iv Section 2(c)
- v Section 2(a)
- vi Section 4 and Rule 3 of Water (Prevention and Control of Pollution) Cess Rules , 1978
- vii Section 9
- viii Section 5 and Rule 4
- ix Section 6(1A)
- x 2016(1)RLW 537(Raj.)
- xi Section 7
- xii Rule 6 of Water Cess Rules, 1978. In Member Secretary, Kerala State Board for Prevention and Control of Water Pollution, Trivandrum v. Gwalior Rayon Silk Manufacturing (Weaving) Company Limited, AIR 1986 Ker. 256, Rule 6 was challenged on the ground that Central government does not have power to make such a rule under Section 17. However, the High Court rejected this contention.
- xiii *Revenue Recovery Act, 1890* prescribe the procedure for recovery of arrears of land revenue. If any amount is recoverable as arrears of land revenue, collector can issue a proclamation prohibiting that person from transferring his immovable properties or from creating any interest in those immovable properties till proclamation remains in force. Such immovable properties can be sold for recovery of arrears of land revenue. If the person sells or creates any interest in those properties after the issuance of proclamation, such transaction shall be void.
- xiv Section 10
- xv Section 11
- xvi Section 12
- xvii Section 13
- xviii Rule 9
- xix Section 16