

THE KHYBER PAKHTUNKHWA INFRASTRUCTURE DEVELOPMENT

CESS ACT, 2022.

(KHYBER PAKHTUNKHWA ACT NO. XXV OF 2022)

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CESS ACT, 2022.

(KHYBER PAKHTUNKHWA ACT NO. XXV OF 2022)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 12th June, 2022).

AN
ACT

to provide for levy, collection and administration of infrastructure development cess in the Province of Khyber Pakhtunkhwa.

WHEREAS it is expedient to provide for levy, collection and administration of infrastructure development cess on transportation or movement of goods manufactured, produced, traded or consumed in, imported into or exported out of or transited through the Province of Khyber Pakhtunkhwa;

AND WHEREAS it is necessary to provide internal resources for the development, maintenance and improvement of the infrastructure to cater for the ever increasing load of goods' traffic and to deal with other purposes, matters and affairs connected therewith or allied thereto;

It is hereby enacted by the Provincial Assembly of Khyber Pakhtunkhwa as follows:

CHAPTER-I
PRELIMINARY

1. Short title, extent and commencement.--- (1) This Act may be called the Khyber Pakhtunkhwa Infrastructure Development Cess Act, 2022.

(2) It shall extend to the whole of the Province of Khyber Pakhtunkhwa.

(3) It shall come into force at once.

2. Definitions.--- (1) In this Act, unless there is anything repugnant or contrary to the subject or context, the following words shall have the meanings as are assigned to them that is to say,-

(a) "Authority" means the Khyber Pakhtunkhwa Revenue Authority, established under the Khyber Pakhtunkhwa Finance Act, 2013 (Khyber Pakhtunkhwa Act No. XXI of 2013);

(b) "cess" means the infrastructure development cess levied, collected and administered under this Act and unless the context requires otherwise, includes default surcharge or penalty or any other sum payable under this Act and the rules, regulations or notifications issued thereunder;

(c) "Customs Act" means the Customs Act, 1969 (IV of 1969) and, so far as the collection or administration of the cess is concerned, includes rules, notifications, general orders or public

notices made or issued thereunder;

(d) "FBR" means Federal Board of Revenue, established under the Federal Board of Revenue Act, 2007 (IV of 2007);

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“Finance Act” means the Khyber Pakhtunkhwa Finance Act, 2013 (Khyber Pakhtunkhwa Act No. XXI of 2013);

“goods” means goods, classifiable under the First Schedule of the Customs Act;

“Government” means the Government of Khyber Pakhtunkhwa;

“infrastructure” means roads, streets, bridges, culverts, lights on passage, river or canal banks, beaches, public parks, place of public recreation or enjoyment and convenience, eating places, landscape, forests, fisheries, delta conservation, lakes, hatching or breeding places of aquatic life, wildlife and its sanctuaries, public schools, vocational and technical training centers and projects, libraries, museums and similar institutions controlled and financed by Government control of traffic for smooth flow and other movement of goods, public order, police force, patrol for safety of goods, stands for loading and unloading of goods, parking places, markets, water supply, hospitals and dispensaries and development, improvement, maintenance and protection of such infrastructure;

“owner” means a person who owns the goods or, as the case may be, the vehicle relevant to the assessment, payment or recovery of cess under this Act;

“person” includes-

(i) an individual;

(ii) an association of persons;

(iii) a company incorporated, formed, organized or established in Pakistan or elsewhere;

(iv) the Federal Government;

(v) Government;

(vi) a local authority in Pakistan; or

(vii) a foreign government, political subdivision of a foreign government, or public international organization;

“prescribed” means prescribed by rules and regulations;

“Province” means the Province of Khyber Pakhtunkhwa;

“regulations” mean regulations made under this Act;

“rules” mean rules made under this Act;

“Sales Tax Act” means the Sales Tax Act, 1990 (VII of 1990); and

“value” means value of goods, being transported or transited, as

determined for purposes of the Customs Act, and in case of goods, manufactured, produced, treaded or consumed _ in

Pakistan, the value shall be as determined or determinable by reference to the value determined or determinable under the Sales Tax Act, for purposes of levy and payment of sales tax thereunder and where required, the concept of open market price shall also, with necessary modifications, apply in this regard.

(2) The words and expressions, used but not defined in this Act, shall have same meanings as are assigned to them under the Finance Act or the rules or regulations issued thereunder.

(3) | Nothing shall bar the application or use of the definitions of the words, terms, concepts and expressions, not defined in this Act or the Finance Act as available in the other statutes cited in this Act; provided that they are directly relevant to the implementation or execution of this Act and the rules.

CHAPTER-II SCOPE OF CESS

3. Scope of cess and allied matters.---(1) Subject to this Act and the rules or regulations, there shall be levied, collected and administered a cess on transportation, carriage or movement of goods,-

- (a) manufactured or produced in;
- (b) traded or consumed in;
- (c) imported into or goods exported out of; or
- (d) transited through the Province;

at such rate or rates as Government may, through a notification, specify either at ad valorem, specific or fixed rate or rates and either on the basis of value of goods or otherwise.

(2) The cess shall be deposited in the Provincial Consolidated Fund, to be utilized by Government, exclusively for the maintenance and development of infrastructure and other activities, ancillary to the infrastructure, in such manner as may be determined by Government.

(3) Notwithstanding anything contained in sub-section (1), Government may, where deemed appropriate, specify the rate or rates of cess in case of any goods or class or category of goods either with reference to the type or types of vehicle or vehicles, including their other features or characteristics.

(4) Subject to the provisions of this Act, the Authority shall monitor, control, oversee, administer the collection of cess under this Act and shall as such be empowered and competent to take all steps, actions and measures and discharge all responsibilities necessary or required to be taken in this behalf.

4. Person liable to pay cess.--- (1) Every person,-

- (a) manufacturing, producing or trading goods for consumption in the Province;

(b) transported goods into or transported goods out of the Province through any port, dry-port, airport or custom stations including bonded warehouse, located therein; or

(c) transporting goods out of; or
(d) transiting goods through the Province;
shall be liable to pay cess under this Act and the rules or regulations.

(2) Nothing contained in this section shall prevent Government to collect cess from a different person, if that person is made separately, jointly or severally liable for payment of the cess under this Act and the rules or regulations or otherwise.

(3) Where cess has not been paid on any goods, the owner of the goods and owner of the vehicle, loaded with such goods including the person in-charge of the vehicle, shall be severally and jointly responsible for the payable cess and other liabilities.

(4) The Authority may, after prior approval from Government, develop and apply a scheme or schemes of payment of cess for any-

(a) goods or class or category of goods; or

(b) person or class or category of persons through withholding mechanism.

5. Payment of cess.--- (1) In case of goods transported into or transported out of

the Province, whether after or, as the case may be, before their transportation, carriage or movement therein, cess shall be payable in the same manner and at the same time, as if it were a customs duty under the Customs Act, regardless whether or not the goods are liable to such duty.

(2) In case of goods manufactured, produced or goods otherwise traded for consumption in the Province, cess shall be payable in the same manner and at the same time, as if it were a sales tax payable under the Sales Tax Act:

Provided that where sales tax is not payable on such goods, the cess shall be payable in such manner and at such time as may be prescribed.

(3) The cess, in case of goods transited through the Province, shall be collected and paid in such manner and at such time as may be prescribed.

(4) The amount of cess shall be deposited in head of account "B-03030-Infrastructure Cess" or such other head of account as may be specified by Government from time to time.

(5) Notwithstanding anything contained in this section, the Authority may-

(a) specify any other manner or time or mode of payment of cess, after approval from Government, and by a notification, in the official Gazette, in respect of any goods, category or class of goods and subject to such conditions, restrictions or limitations as it may impose, if any; or

(b) allow for a specified time and as a temporary measure, any person or class of persons to pay cess in any different manner in situations, involving emergency or circumstances of unforeseen or exceptional nature.

6. Exemptions.---The Authority may, with the prior approval of Government, through a notification in the official Gazette and subject to such conditions and

limitations, if any, exempt from the payment of the whole or part of the cess, on any goods or class or category of goods, transported into or transported out of, manufactured, produced or traded, other than goods imported on payment of cess, or transited through the Province.

CHAPTER-III

DEFAULT SURCHARGE, OFFENCES AND PENALTIES

7. Default surcharge.--- (1) Where any person has not paid any amount of cess, due under this Act or the rules or regulations or notification issued thereunder, he shall, in addition to the cess due or any other penalties payable under this Act, pay default surcharge at the compound rate of five percent of the payable amount of the cess per month.

(2) Where the period of default is less than one month, the amount of default surcharge shall be prorated in terms of days.

Explanation.— For the purposes of this section,-

(a) the cess due, shall not include penalty; and

(b) default surcharge shall not be treated or deemed as penalty.

8. Penalty.---Where a person has failed to pay any amount of cess, he shall be liable to pay a penalty, not exceeding twenty percent of the amount of cess due and payable.

9. Waiver of default surcharge or penalty.---The Authority may, after approval from Government and subject to such conditions or limitations as it deems appropriate, waive the payment of the whole amount of default surcharge or penalty payable under this Act in any case or class or category of cases or in respect of any

goods or class or category of goods.

CHAPTER-IV

MISCELLANEOUS

10. Extent of relevancy of other applicable laws.--- Where under this Act, cess is collected or collectable in terms of the provisions of the Customs Act or, as the case may be, the Sales Tax Act, such provisions shall be deemed to be the provisions of this Act, so far as they relate to the matters pertaining to-

(a) manner, time and mode of payment;

(b) declarations, processing and management thereof;

(c) keeping of records, accounts and documents;

(d) | enforcement including recovery and adjudication and appeals;

(e) detention, seizure and confiscation of goods;

(f) penalties and prosecution; and

(g) all other allied and ancillary matters.

11. Assumption and exercise of jurisdiction by the Authority.--- (1) | This Act and the rules, shall be treated as fiscal law for the purpose of clause (29) of section 2 of the Finance Act.

(2) The provisions of the Finance Act, read with the rules and regulations issued thereunder, shall apply only in situations arising after the expiry of time in which actions, under the terms of section 10 were required, to be taken.

(3) In situations, covered in sub-section (2), the Authority may, through its authorized officer or officers, take any action or measure in respect of cess, including default surcharge and penalty, in so far as such action or measure relates to-

(a) assessment or determination of any non-paid or short-paid amount of payable cess, including default surcharge and penalty through adjudication or otherwise;

(b) calling of or collecting information, access to records, accounts and other relevant documents of the persons liable to pay cess;

(c) audit and investigation;

(d) summoning of persons and recording of statements and evidences;

(e) recovery of defaulted amounts and arrears;

(f) tax fraud deemed as fraud with respect to non-payment or evasion of cess;

(g) arrest and prosecution; and

(h) all other allied or ancillary matters.

12. Seizure and confiscation of goods and vehicles and matters relating thereto.--

-(1) Where the Authority has initiated any action or measure under sub-section (3) of section 11 of this Act, its authorized officer or officers may check, inspect, detain, seize or confiscate any goods or vehicle, carrying goods in or within the Province, if there is a reasonable doubt or belief that the cess, due and payable thereon, has not been paid or has been under-paid; provided that reasonable opportunity shall be given to the owner of the goods or the person in-charge of the vehicle to prove through documents in his possession that the cess due has been paid.

(2) Goods or vehicle shall not be confiscated, unless the owner or the person in-charge thereof, has been served with a notice to show cause by the authorized officer of the Authority to explain his position and where upon request made of such person reasonable opportunity of hearing may be given to him either in person or through his authorized representative. All principles of natural justice shall be observed for the adjudication of the case.

(3) All provisions of the Finance Act and rules or regulations made thereunder, relating to revision and appeals, shall apply to the cases decided under sub-section (2).

(4) The goods or vehicles, confiscated under this Act, shall be disposed of

through open or public auction after prior permission from the Director General of the Authority and the sale proceeds shall be utilized sequentially for the purposes stated below:

(a) recovery of payable cess, default surcharge and penalty to be deposited in the relevant head of account;

(b) recoupment of all expenses incurred on auction;

(c) settlement of bonafide claims, if any, lodged by any other Government department or institution for recovery from the owner; and

(d) balance proceeds, if any, to be paid to the owner against proper receipt.

(5) A vehicle, seized under this Act, may be temporarily released against a bank guarantee, covering the value of the vehicle in the manner specified by the Authority and every such bank guarantee shall be encashable, in case the vehicle is not surrendered on its confiscation under this Act or otherwise

(6) Perishable goods and the vehicle carrying the goods shall not be seized or confiscated under any circumstances and recovery of unpaid cess etc, shall be made by detaining the original registration documents of such vehicles, including the original driving license of the driver and original Computerized National Identity Card of the owner of the goods and such detained documents, licenses, cards etc, shall be released within twenty-four hours of the discharge of all the cessliabilities in every such case.

13. Bar on suits or claims etc.--- No suit or claim shall be brought in any forum or court against the Authority or its officials or officers for the decisions made and acts done in good faith during the implementation or execution of this Act, rules or regulations or any other instrument issued thereunder.

14. Restriction on adjustment or credit.--- The amount of cess, payable or paid under this Act, shall not be adjusted or credited against any other tax, levy or cess, payable to Government under any other law, and no other such tax, levy or cess, shall not be adjusted or credited against any amount of the cess payable under this Act.

15. Inter-system connectivity.--- (1) The Authority may make or enter into such arrangements or setup for real time connectivity of its computerized system with the system of FBR or any other department, organization, institution etc of Government or Federal Government as it may deem proper for the purpose of regular and efficient monitoring of the collections and receipts of the cess.

(2) the authority may, in respect of the arrangements or setup under sub-section (1), enter into any agreement with FBR or its subsidiary Pakistan Revenue Automation Limited or any other quarters on such terms and conditions as may deem appropriate.

(3) The cess collection charges to FBR or, as the case may be, Pakistan Revenue Automation Limited, to be agreed in an agreement under sub-section (2), shall be subject to prior approval of the Finance Department of Government.

(4) The Authority may, after prior approval of Government, outsource any work relating to the assessment, collection, documentation, enforcement, recovery, audit or any other allied or related function or assignment to any person from the

private sector, having proper experience and capacity to carry out such function or assignment, subject to such terms and conditions, including payment of service charges, if any, as it may specify and agree with such person under the arrangement.

16. Assistance to the Authority.---All departments, organizations and institutions of Government, by whatever name called, shall, whenever so requested by the Authority or its any officer deputed or working to serve the purposes of this Act and the rules or regulations, shall be under official obligation to assist the Authority, so as to enable it, to carry out its functions amicably under this Act.

17. Bar on interpretation.--- Under any circumstances, situations or conditions, the cessleviable and payable under this Act shall be interpreted or construed as a tax on goods or vehicles perse, and it shall instead, be treated as a minimum compensation for the deterioration in the standards of the physical infrastructure of the Province bound to result from the logistical movement of goods therein.

18. Ratification.---Consequent upon the commencement of this Act, the entrustment of functions and powers to the officers and officials of the FBR under this Act and rules or regulations shall be deemed to have been ratified by the Provincial Assembly of Khyber Pakhtunkhwa for the purposes of Article 147 of the Constitution of Islamic Republic of Pakistan.

19. Power to make rules.--- (1) Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) All the rules, made during a financial year in the Provincial Assembly of the Khyber Pakhtunkhwa, at the time of presentation of the annual budget, for the next financial year.

20. Powers to make regulations.--- (1) The Authority may, by notification in the official Gazette, make regulations in respect of the matters relating to the-

(a) establishment of check posts and cess facilitation and service centers and management and operations thereof;

(b) mobile checking squads and management thereof;

(c) enforcement and audit;

(d) storage or warehousing of detained or seized goods and vehicles;

(e) auction of confiscated goods and vehicles including registrations of auctioneers;

(f) provisional release of seized vehicles against bank guarantees; and

(g) any other allied or ancillary matter.

(2) | The regulations, made under sub-section (1), shall be submitted to the Policy Making Council of the Authority for its information in its very next scheduled meeting.

(3) The Authority may issue general orders, circulars or instructions, directions or clarifications for the operational purposes of this Act and the rules or regulations issued thereunder, including prescribing standard forms, declarations, statements and other documents necessary for such purposes.

21. Removal of difficulty. - The Authority may in situations wherein a difficulty is faced, in giving effect to any of the provisions of this Act, the rules or regulations, pass

and implement such appropriate order, or give such suitable directions or instructions, not inconsistent with the provisions of this Act, as it may consider necessary, for the removal of such difficulty:

Provided that no order, direction or instruction shall be given under this section as may waive or reduce any cess liability due under this Act or the notification issued thereunder.

22. Repeal and savings.---(1) Subject to the provisions of section 4 of the General Clauses Act, 1956 (Act No. VI of 1956), the Khyber Pakhtunkhwa Finance Act, 2013 (Khyber Pakhtunkhwa Act No. XXI of 2013), is hereby repealed to the extent of section 94 thereof.

(2) Where Government or the Authority takes or has taken any action, makes or has made any decision or orders, issues or has issued any instructions, directions, clarifications or notifications, in pursuance of or in exercising of powers conferred under any provision of any law in respect of any matter relating to the cess and allied issues covered under this Act or the rules or regulations, such actions, decisions, orders, instructions, directions, clarifications and notifications shall be deemed and treated to have been validly taken, made or issued to serve the purposes of this Act and the rules or regulations issued thereunder.

Explanation: For the purpose of this section, the expression "Authority" covers its officials and officers and their predecessors in the Government, authorized to deal with matters related to the collection and administration of cess.