

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 62/2009

Coram

Dr. Pramod Deo, Chairperson

Shri S.Jayaraman, Member

Shri V. S. Verma, Member

Shri M. Deena Dayalan, Member

DATE OF HEARING: 9.3.2010

DATE OF ORDER: 23.9.2010

In the matter of

Miscellaneous petition under regulation 12 "Power to remove Difficulties" and Regulation 13 "Power to Relax" of the CERC (Terms and Conditions of Tariff) Regulations, 2004 for permission to bill and recover service Tax on transmission and other charges recoverable by Govt. of India in terms of Section 64 of the Finance Act, 1964 for the period 2004-09.

And in the matter of

Power Grid Corporation of India Ltd., Gurgaon

.... Petitioner

Vs

1. Bihar State Electricity Board, Patna
2. West Bengal State Electricity Board, Calcutta
3. Grid Corporation of Orissa Ltd., Bhubaneshwar
4. Damodar Valley Corporation, Calcutta
5. Power Deptt., Govt. of Sikkim, Gangtok
6. Jharkhand State Electricity Board, Ranchi
7. Assam State Electricity Board, Guwahati
8. Meghalaya State Electricity Board, Shillong
9. Govt. of Arunachal Pradesh, Arunachal Pradesh
10. Power & Electricity Deptt., Aizwal
11. Electricity Department, Govt. of Manipur, Imphal
12. Department of Power, Govt. of Nagaland, Nagaland
13. Tripura State Electricity Corporation Ltd., Agartala

14. Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
15. Ajmer Vidyut Vitran Nigam Ltd., Rajasthan
16. Jaipur Vidyut Vitran Nigam Ltd., Jaipur
17. Jodhpur Vidyut Vitran Nigam Ltd., Rajasthan
18. Himachal Pradesh State Electricity Board, Shimla
19. Punjab State Electricity Board, Patiala
20. Haryana Power Purchase Centre, Haryana
21. Power Development Deptt., Jammu
22. Uttar Pradesh Power Corporation Ltd., Lucknow
23. Delhi Transco Ltd., New Delhi
24. Chandigarh Administration, Chandigarh
25. Uttarakhand Power Corporation Ltd., Dehradun
26. BSES Yamuna Power Ltd., New Delhi
27. BSES Rajdhani Power Ltd., New Delhi
28. North Delhi Power Ltd., New Delhi
29. NDMC, New Delhi
30. North Central Railway, Allahabad
31. Karnataka Power Transmission Corporation Ltd., Bangalore
32. Bangalore Electricity Supply Company Ltd., Karnataka
33. Gulbarga Electricity Supply Company Ltd., Karnataka
34. Hubli Electricity Supply Company Ltd., Karnataka
35. Mangalore Electricity Supply Company Ltd., Karnataka
36. Chamundeshwari Electricity Supply Corporation Ltd., Mysore
37. Transmission Corporation of Andhra Pradesh Ltd., Hyderabad
38. Eastern Power Distribution Company of Andhra Pradesh Ltd., Andhra Pradesh
39. Southern Power Distribution Company of Andhra Pradesh Ltd., Andhra Pradesh
40. Central Power Distribution Company of Andhra Pradesh Ltd., Andhra Pradesh
41. Northern Power Distribution Company of Andhra Pradesh Ltd., Andhra Pradesh
42. Kerala State Electricity Board, Thiruvananthapuram
43. Tamil Nadu Electricity Board, Chennai
44. Electricity Department, Pondicherry
45. Electricity Department, Goa
46. Madhya Pradesh Tradeco, Jabalpur
47. Madhya Pradesh Adyogik Kendra Vikas Nigam (Indore) Ltd., Indore
48. M/s Jindal Powers Ltd., NOIDA
49. Maharashtra State Electricity Distribution Co. Ltd., Mumbai
50. Gujarat Urja Vikas Nigam Ltd., Baroda
51. Electricity Department, Daman
52. Electricity Department, Silvassa
53. Chhattisgarh State Electricity Board, Chhattisgarh

... Respondents

The following were present:

1. Sh. R. Rajagopalan, Power Grid
2. Sh. R. Krishnaswami, TNEB
3. Sh. S. Balaguru, TNEB
4. Sh. M. K. Singhal, NDPL
5. Sh. Abhay Mittera, NDPL
6. Sh. Abhishek Munot, NDPL
7. Sh. M. M. Mondal, Powergrid
8. Sh. V. K. Tyagi, Powergrid
9. Sh. R. B. Sharma, BSEB
10. Sh. Ramachandran, Powergrid
11. Sh. Mansoor Ali, NDPL
12. Sh. Naresh K. Sharma, BSEB
13. Sh. Bharat Sharma, NDPL
14. Sh. Anurag Bansal, NDPL

ORDER

This petition has been filed by the Power Grid Corporation of India Limited, the petitioner herein under Regulations 12 and 13 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter 2004 regulations) seeking approval to bill and recover service tax on transmission and other charges recoverable under section 64 of the Finance Act, 1994 for the period 2004-09.

2. The petitioner has submitted that the Central Service Tax Authorities at Shillong and New Delhi have issued show cause notices dated 22.1.2009 and 30.1.2009 to Powergrid raising a demand of service tax amounting to Rs. 65.00

crore (2006-07 to 2008-09 upto August 2008) and Rs.413.00 crores (1.5.2006 to 30.9.2008) respectively. It has been submitted that Powergrid has received further notices from regional offices of Central Excise and Customs located at Nagpur, Bangalore and Goa.

3. The Petitioner has further submitted that though the applicability of service tax is service specific and electricity transmission and wheeling are not covered under the list of taxable services notified in the Finance Act, 1994, but the Tax Authorities have interpreted the transmission of power as 'Business Support Services' or 'Business Auxilliary Services' which has been brought under the purview of service tax vide Notification No.15/2006-ST dated 1.5.2006 with effect from the date of notification.

4. The petitioner has submitted that on its request, Ministry of Power, Government of India has taken up with Ministry of Finance, Government of India for issue of clarification to the effect that transmission of power is not a service chargeable to service tax in terms of the Finance Act, 1994. The State Transmission Utilities and Transmission licensees have also taken up the case with the Ministry of Power and Ministry of Finance for similar clarification. The petitioner has further submitted that pending clarification on the issue, the present application has been filed under Regulation 12 and 13 of the 2004 regulations seeking specific directions by the Commission regarding recovery of

service tax from the respondents which may be chargeable in terms of section 64 of the Finance Act 1994, so that the petitioner shall be able to bill the same to the respondents and pay to the tax authorities.

5. The petitioner in its affidavit dated 3.2.2010 has submitted that the Office of the Commissioner of Central Excise Shillong in its order dated 23.11.2009 has confirmed the demand for service tax and ordered recovery of service tax of Rs.64.84 crore, interest at applicable rates, penalty in terms of sections 77 and 78 of the Finance Act, 1994.

6. Replies to the petition have been filed by Kerala State Electricity Board, Tamil Nadu State Electricity Board, Chhattishgarh State Power Distribution Company Limited, Maharashtra State Electricity Distribution Company Limited, Bihar State Electricity Board, Madhya Pradesh Power Trading Corporation Limited, Uttar Pradesh Power Corporation Limited, New Delhi Power Limited, and M/s Jindal Power Limited opposing the prayer of the petitioner for billing and recovery of service tax from the respondents.

7. During the hearing of the petition on 9.3.2010, it was noted by the Commission that in the Central Budget for the year 2010-11, transmission of power had been exempted from service tax, though there was no indication regarding its applicability to the past period. Government of India, Ministry of

Finance has also issued Notification No.11/2010-Service Tax dated 27.2.2010 exempting transmission of power from the purview of service tax. The said Notification is reproduced below:

" G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided to any person, by any other person for the transmission of electricity, from the whole of service tax leviable thereon under section 66 of the said Finance Act.

[F.No.334/1/2010-TRU]

Sd/-

(Prashant Kumar)

Under Secretary to Government of India"

8. In a subsequent notification No. 45/2010-Service Tax dated 20.7.2010, the applicability of service tax to transmission of power has been clarified as under:

"G.S.R. (E)-Whereas, the Central Government is satisfied that a practice was generally prevalent regarding levy of service tax (including a non-levy thereof), under section 66 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as 'the Finance Act'), on all taxable services relating to transmission and distribution of electricity provided by a person (hereinafter called 'the service provider') to any other person (hereinafter called 'the service receiver'), and that all such services were liable to service tax under the said Finance Act, which were not being levied according to the said practice during the period up to 26th day of February, 2010 for all taxable services relating to transmission of electricity, and the period up to 21st day of June, 2010 for all taxable services relating to distribution of electricity.

Now, therefore, in exercise of the powers conferred by section 11C of the Central Excise Act, 1944 (1 of 1944), read with section 83 of the said Finance Act, the Central Government hereby directs that the service tax payable on said taxable services relating to transmission and distribution of electricity provided by the service provider to the service receiver, which was not being levied in accordance with the said practice, shall

not be required to be paid in respect of the said taxable services relating to transmission and distribution of electricity during the aforesaid period.

[F. No. 356/13/2010-TRU]

Sd/-
(Prashant Kumar)
Under Secretary to the Government of India"

9. In the light of the Notifications Nos. No.11/2010-Service Tax dated 27.2.2010 and No. 45/2010-Service Tax dated 20.7.2010, transmission of service is exempted from the purview of service tax. Therefore, the prayer of the petitioner for appropriate orders permitting the petitioner to bill and recover the service tax from the respondents no more survives and, accordingly, the petition is disposed of without any relief.

sd/-
(M. DEENA DAYALAN)
MEMBER

sd/-
(V. S. VERMA)
MEMBER

sd/-
(S. JAYARAMAN)
MEMBER

sd/-
(Dr. PRAMOD DEO)
CHAIRPERSON