

**Central Electricity Regulatory Commission
New Delhi**

RECORD OF PROCEEDINGS

Petition No. 15/2010

Subject: Outstanding dues from KSEB towards income tax reimbursement-Seeking Commission's intervention and direction to KSEB to clear income -tax dues.

Date of Hearing: 21.10.2010

Coram: Dr. Pramod Deo, Chairperson
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member

Petitioner: Neyveli Lignite Corporation Ltd, Chennai

Respondent: Kerala State Electricity Board, Thiruvananthapuram

Parties present: Shri N.A.K.Sarma, Advocate, NLC

This petition has been filed by the petitioner Neyveli Lignite Corporation Ltd (NLC), seeking intervention and direction of the Commission to the Kerala State Electricity Board (KSEB) for reimbursement of the outstanding income-tax dues.

2. The learned counsel for the petitioner submitted as under:
 - (a) The present petition has been filed for a direction to the respondent for reimbursement of income-tax dues;
 - (b) that the generating stations of the petitioner viz NLC TPS I Expansion (2 x 210 MW) was declared under commercial operation during the year 2003 and NLC TPS II (Stages-I and II) was declared under commercial operation during the period 1986 to 1994 and the respondent has an allocation of about 14% power from NLC TPS I Expansion and 4% from NLC TPS II (Stages-I and II);
 - (c) In terms of Section 80 I A (2) of the Income tax Act, 1961, the tax holiday benefit could be claimed for any ten consecutive years out of 15 years, beginning in the year from the date of commercial operation of the generating station and the petitioner had not claimed tax holiday deduction in respect of NLC TPS I Expansion for the years 2003-04 to 2006-07 as there was no taxable profit for NLC TPS I Expansion during these years;
 - (d) From the year 2007-08 onwards the petitioner had availed the benefit of tax holiday, as there was taxable income in respect of NLC TPS I Expansion, and the same was passed on to the beneficiaries including the respondent;

- (e) The contention of the respondent that the petitioner should have availed of tax holiday benefit from the year 2003 itself is not admissible, since the provisions of Section 80 I A (2) of the Income Tax Act, 1961 does not provide that the generating station should avail the benefit of tax holiday from the date of commercial operation;
- (f) The letter of the respondent requesting the petitioner to obtain independent expert opinion from tax consultant of the petitioner cannot be acceptable since the petitioner had preferred income-tax reimbursement claims based on the certificate of the statutory auditors of the petitioner;
- (g) For the reasons above, the petition may be admitted. Since the respondent has filed its reply and served copy of the same to the petitioner, a formal notice may be issued to the respondent;
- (h) The petitioner may be granted some time to file its rejoinder to the reply of the respondent.

5. The Commission admitted the matter and directed issuance of notice to the respondent. The petitioner is directed to file its rejoinder, with copy to the respondent, latest by 11.11.2010.

6. The petition shall be listed for hearing on 25.11.2010.

Sd/-
Dr.N.C.Mahapatra
Chief Advisor (Law)