

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 115/MP/2016

Subject : Petition for determination of excess income tax reimbursed by beneficiaries, accrued on account of calculating income tax on the total profit instead of tax on ROE for the period 2005-2009 and subsequently in respect of NLC's Power Stations, namely NLC TPS-I (600 MW), NLC TPS-II, Stage-I (3x210 MW), NLC TPS-II, Stage-II (4x210 MW) NLC TPS-I Expansion (2 x 210 MW under Regulation 10 of Tariff Regulations, 2004) in pursuance of dated 12.05.2015 in Petition No.65/MP/2013.

Date of hearing : 22.9.2016

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : Tamil Nadu Generation and Distribution Corporation Limited

Respondents : Neyveli Lignite Corporation Limited & others.

Parties present : Shri S. Vallinayagam, Advocate, TANGEDCO.

Record of Proceedings

Learned counsel for the petitioner submitted that the present petition has been filed in pursuance of order dated 12.5.2015 in Petition No. 65/MP/2013 *inter alia* seeking direction to NLC to furnish details of accounts relating to all its income and details of tax paid on ROE, etc. Learned counsel for the petitioner further submitted as under:

- (a) The tax calculated and collected by NLC from the beneficiaries is not in line with the Clause 6.2 of Power Purchase Agreement. NLC has earned super profits during the period 2004-09 due to escalated O&M and excavation of mines more than the Capacity Utilization Factor and passed on the actual tax upon the beneficiaries on the super profits earned. Accordingly, the petitioner is not liable to pay for anything contrary to what is agreed to under Clause 6.2 of Power Purchase Agreement.
- (b) As per Regulation 7 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, tax on the income streams of

the generating company or the transmission licensee, as the case may be, from its core business, shall be computed as an expense and shall be recovered from the beneficiaries. Any under recoveries or over recoveries of tax on income is required to be adjusted every year on the basis of income tax assessment under the Income Tax Act, 1961, as certified by the statutory auditors.

(c) On the one hand, NLC is charging the pooled transfer price of lignite for the production beyond 85% level in mines and thereby increasing the NAPAF in respect of its thermal stations by using the excess lignite excavated resulting in generation above NAPAF level and incentive as per Regulation 23 of 2004 Tariff Regulations and on the other hand, passing the entire tax burden on the beneficiaries for the super profits earned by it. This tantamount to double profiting and is not permissible under law.

2. After hearing the learned counsel for the petitioner, the Commission admitted the petition and directed to issue notices to the respondents.

3. The Commission directed the petitioner to serve copy of the petition on the respondents on or before 30.9.2016. The respondents were directed to file their replies by 20.10.2016 with an advance copy to the petitioner who may file its rejoinder, if any, by 9.11.2016.

4. The Commission directed NLC to furnish the following details on affidavit by 20.10.2016 with an advance copy to the petitioner:

- (i) Accounts related to all its income;
- (ii) Accounts related to income from the petitioner
- (iii) Split up the details of the tax paid on ROE of all its mines and split up details of tax paid on profit.

5. The petition shall be listed for hearing on 22.11.2016.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Law)**