

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N. Sinha, Member**

Petition No.71/2003

In the matter of

Miscellaneous petition taking on record the methodology for provisional billing of instalments of Advance Tax for 2003-2004.

And in the matter of

National Thermal Power Corporation Ltd **Petitioner**

Vs

Transmission Corporation of Andhra Pradesh & others..... **Respondents**

The following were present:

1. Shri V.B.K. Jain, NTPC
2. Shri R. Datt, NTPC
3. Shri S.K. Samui, SM(C), NTPC
4. Shri M.S. Chawla, AGM(C), NTPC
5. Shri R.S. Sharma, ED(C), NTPC
6. Shri P.K. Gupta, DGM(F), NTPC
7. Shri S.D. Jha, Sr. Manager (C), NTPC
8. Shri Ajay Dua, Manager, NTPC
9. Shri Balaji Duney, Sr. Law Officer, NTPC
10. Shri A.K. Dhar, GM(F), NTPC
11. Shri A.K. Juneja, DGM(C), NTPC
12. Shri Manoj Mathur, DGM(C), NTPC
13. Shri Ajay Sardana, NTPC
14. Shri R. Singhal, NTPC
15. Shri N.K. Joshi, DTL
16. Shri K.V. Balakrishnan, NTPC
17. Shri S.K. Aggarwal, Sr. Engineer (C), NTPC
18. Shri D. Khandelwal, SE, MPSEB
19. Shri T.P.S. Bawa, PSEB
20. Shri J.Verma, UPPCL
21. Shri S.K. Jayaswal, MOP
22. Shri K. Gopalakrishnan, KSEB
23. Shri M.K. Choudhary, DTL
24. Shri A.K. Kaul, DTL
25. Shri V.K. Garg, DTL

- 26. Shri V.K. Mathur, DTL
- 27. Shri R.K. Arora, XEN, HVPN
- 28. Shri S. Gurcharan Singh, HVPN

ORDER
(DATE OF HEARING: 17.2.2004)

The petitioner is a generating company engaged in generation of electricity through the generating stations established by it in different parts of the country. The function of regulation of tariff of the generating stations owned by the petitioner is vested in the Commission. For determination of tariff for the period from 1.4.2001 to 31.3.2004, the Commission had notified the terms and conditions on 26.3.2001. While the tariff for some of the generating stations has been determined by the Commission in terms of the notification dated 26.3.2001, tariff for some other generating stations owned by the petitioner is yet to be notified. The tariff in respect of the stations whose tariff is not yet decided by the Commission is being charged in accordance with Ministry of Power notifications issued under Section 43 A (2) of the Electricity (Supply) Act, 1948 on provisional basis and is subject to adjustment in the light of final determination of tariff based on the norms contained in the notification dated 26.3.2001.

2. The methodology for recovery of income-tax by the petitioner from the respondents prescribed under Ministry of Power notifications and that contained in the Commission's notification dated 26.3.2001 is different. According to the petitioner, it is difficult to segregate income-tax liability as per the methodology contained in the notification dated 26.3.2001 for some of the stations and in

accordance with Ministry of Power notifications for the remaining stations. In view of this practical difficulty, the petitioner is recovering income-tax from the respondents based on the methodology prescribed under Ministry of Power notifications, but the total income-tax liability shall be revised based on the Commission's notification dated 26.3.2001, with retrospective adjustment after tariff for the remaining stations is also decided by the Commission. The petitioner has prayed that the methodology being presently adopted should be taken on record by the Commission.

3 Replies to the petition have been filed only by three respondents, namely KSEB, UPPCL, and MPSEB. According to these respondents, the income-tax recovery could be effected in terms of the Commission's notification dated 26.3.2001, as well.

4. We have heard Shri V.B.K. Jain, General Manager for the petitioner, Shri D. Khandelwal for MPSEB, Shri T.P.S. Bawa on behalf of PSEB and Shri R.K. Arora, on behalf of HVPN.

5. We have considered the rival submissions. The question raised is in regard to methodology for recovery of income-tax for the year 2003-2004. Shri Jain has stated that so far there has been no liability to pay income-tax during 2003-2004 and, therefore, no recovery on that account has been made from the respondents. He submitted that liability on account of income-tax is to be adjusted for the

previous years after final determination of tariff by the Commission for the tariff period from 1.4.2001 to 31.3.2004 in respect of all the generating stations owned by the petitioner. Shri Jain submitted that the necessary adjustments shall be made by 15.5.2004.

6. In view of the fact that the year is already coming to an end, we do not favour any change in methodology for recovery of income-tax at this stage, since in any case, the income-tax to be recovered by the petitioner is only provisional. The liability of the respondents to pay income-tax would ultimately be reviewed and will not be affected in any way, whatever methodology is adopted for month-wise recovery. We, therefore, direct that the present methodology for recovery of income-tax may continue up to 31.3.2004. From 1.4.2004, the petitioner shall recover income-tax in accordance with the methodology specified by the Commission. The recoveries on account of income-tax made up to 31.3.2004 for the tariff period from 1.4.2001 to 31.3.2004 shall be adjusted by 15.5.2004 as has been undertaken by Shri Jain.

7. With the above directions, Petition No. 71/2003 stands disposed of.

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 25th February 2004