

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 2/MP/2014**

- Subject : Claim of Kerala State Electricity Board regarding quantum of adjustment for Income Tax pursuant to the Commission's order dated 20.9.2012 in Petition No. 15 of 2010 and order of Hon'ble Appellate Tribunal for electricity dated 3.7.2013 in Appeal No. 250 of 2012.
- Date of hearing : 13.3.2014
- Coram : Shri Gireesh B. Pradhan, Chairperson  
Shri M. Deena Dayalan, Member  
Shri A.K. Singhal, Member
- Petitioner : Neyveli Lignite Corporation Limited, Chennai
- Respondents : Kerala State Electricity Board and others
- Parties present : Shri M.G. Ramachandran, Advocate, NLC  
Ms. Anushree Bardhan, Advocate, NLC  
Ms. Swagalika Sahoo, Advocate, NLC  
Shri S. Ravi Sankar, NLC  
Shri K. Nambirajan, NLC  
Shri R. Venkatachalam, NLC

**Record of Proceedings**

Learned counsel for the petitioner submitted that the present petition has been filed for adjudication of the disputes and differences between the petitioner and Kerala State Electricity Board in regard to the implementation of the Commission's order dated 20.9.2010 in Petition No. 15/2010 which has been upheld by the Appellate Tribunal for Electricity (ATE) in judgment dated 3.7.2013 in Appeal No. 250 of 2012.

2. Learned counsel for the petitioner further submitted as under:

(a) The petitioner had filed the petition No. 15/2010 on the ground that KSEB failed to reimburse the outstanding income tax dues to ₹ 119.0935 crore as on 31.3.21009 to NLC. The Commission vide order dated 20.9.2012 held that NLC is not entitled to recovery of income tax dues in respect of TPS-I Expansion. The Commission directed KSEB to release withheld income tax dues amounting to ₹ 57 crore pertaining to TPS-II along with interest at the rate of 9% per annum from June 2007 within 30 days upon NLC furnishing the claim.

(b) Aggrieved by the said order dated 20.9.2012, NLC filed an Appeal No. 250 of 2012 before ATE which was upheld. In the decision of the Commission and

ATE, there is a funding of non-existence of taxable income related only to TPS-I Expansion project and the tax holiday has been for the said project only and it does not extend to other projects of NLC. Accordingly, the liability of the beneficiaries to reimburse the tax as per the provisions of Regulation 7 of the Tariff Regulations, 2004 has to be determined taking into account the applicability of the tax holiday provided under Section 80IA of the Income Tax Act, 1961 for TPS-I Expansion project, namely wholly relating the advantage of tax holiday for TPS-I Expansion to the beneficiaries of power from TPS-I project. Such beneficiaries of TPS-I Expansion project are not required to pay the tax for the period 2003-04 onwards up to 2006-07 in terms of Regulation 7 of the Tariff Regulations, 2004.

(c) NLC re-worked out the amount to be reimbursed in terms of the order of the Commission and ATE and by letter dated 20.11.2013 requested the respondents including KSEB to reimburse the amount to the extent the same related to TPS-I Expansion project. In response, KSEB by its letter dated 7.12.2013 has disputed the claim of NLC in regard to the determination of the amount due to KSEB of ₹ 20.31 crore and has contended that the said determination is not in accordance with the order of the Commission and ATE.

(d) The petition has been filed to adjudicate the disputes raised by KESB in regard to implementation of the order of the Commission as upheld by ATE.

3. After hearing the learned counsel, the Commission directed to admit the petition and issue notice to the respondents.

4. The Commission directed the petitioner to serve copy of the petition on the respondents by 21.3.2014. The respondents were directed to file their replies by 15.4.2014, with an advance copy to the petitioner, who may file its rejoinder, if any, on or before 25.4.2014.

5. The petition shall be listed for hearing on 8.5.2014..

By order of the Commission

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