

**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 : 21.10.2014

Coram : Shri M. Deena Dayalan, Member  
Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member

Petitioner : Neyveli Lignite Corporation Limited

Respondents : Kerala State Electricity Board and others

Parties present : Shri M.G. Ramachandran, Advocate, NLC  
Ms. Anushree Bardhan, Advocate, NLC  
Ms. Poorva Saigal, Advocate, NLC  
Shri R. Venkatachalam, NLC  
Shri Siddhartha Jha, Advocate, KSEB  
Shri S. Vallinayagam, Advocate, KSEB  
Shri Anand. K. Ganesan, Advocate, Karnataka Discom  
Ms. Mandakini Ghosh, Advocate, Karnataka Discom  
Shri N. Mahendiran, TANGEDCO  
Shri S. Vallinayagam, Advocate TANGEDCO

**Record of Proceedings**

Learned counsel for the petitioner referred to the Commission's order dated 20.9.2012 in Petition No. 15/2010, which was upheld by the Appellate Tribunal for Electricity (ATE) in its judgment dated 3.7.2013 in Appeal No. 250 of 2012 and submitted that as per said order dated 20.9.2012, NLC is not entitled to recovery of income tax dues in respect of TPS-I Expansion up to 31.3.2009 and it has to be treated as separate unit for the purpose of tax holiday effective from 2003. He further submitted that in the Statement of calculation of the Income Tax reimbursement, ₹ 58 lakh has been adjusted among the beneficiaries namely Karnataka, Kerala, Tamil Nadu and Pondicherry. Learned counsel further submitted that mining activity is not covered Section 80IA of the Income Tax Act, 1961. Learned counsel for the petitioner further submitted that power component of NLC-I Expansion is covered under tax holiday and

NLC-I and II are not covered under tax holiday. NLC while giving effect to the Commission's order, did not impose tax on income on account of TPS-I Expansion which was availing tax holiday benefits admissible under Section 80 IA of the Income Tax Act, 1961.

2. Learned proxy counsel for KSEB submitted that arguing counsel in the matter was not available due to personal difficulty and requested for short adjournment. The Commission observed that KSEB's reply on record and KSEB may file written submission, if necessary.

3. Learned counsel for the distribution companies of Karnataka submitted that in terms of the Regulation 7 (2) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, the petitioner is entitled to recover the income tax as a reimbursement only to the extent of the core business of the petitioner, which is the generation business. The respondents cannot be expected to reimburse the income tax paid by the petitioner on its other businesses including mining business.

4. Learned counsel for TANGEDCO submitted that with respect to tax on income from mining, it covers 85% of the capacity and the petitioner has not submitted any documents regarding its claim. The petitioner submitted before the APTEL that it had adjusted the losses from 2003-04 to 2007. Therefore, income tax on the petitioner's business from mining activity cannot be passed on to the beneficiaries. Learned counsel for TANGEDCO submitted that mines cost/profits are regulated by Ministry of Coal.

5. After hearing the learned counsels for the parties, the Commission directed the petitioner to file the following information/clarification on affidavit by 15.11.2014:

(a) Revised calculation showing reimbursement of income tax (beneficiary-wise) as annexed vide affidavit dated 3.1.2014 duly certified by the Tax Auditor/Statutory Auditor;

(b) Reconciliation statement showing taxable income and tax liability for each station of NLC and that of NLC as a whole from financial year 2003-04 onwards; and

(c) Tax audit report with the income tax computation and income tax return for respective years.

6. The Commission further directed the petitioner and respondents to file their written submissions by 15.11.2014.

7. The Commission directed that due date of filing the information and written submissions should be strictly complied with. The information and written submissions filed after due date shall not be considered while passing the order in the petition.

8. Subject to above, the Commission reserved order in the petition.

**By order of the Commission**

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