

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 98/MP/2023

Subject : Petition under Section 79(1)(f) and other applicable provisions of the Electricity Act, 2003 in regard to disputes related to liability of Minimum Alternate Tax and recovery of excess amount paid by the Petitioner towards payment of Minimum Alternate Tax for the Financial Years 2011-2012 to 2021-2022 in relation to Power Purchase Agreements dated 22.09.2005 and 16.12.2008.

Petitioner : GUVNL

Respondents : NPCIL

Date of Hearing : **11.10.2023**

Coram : Shri Jishnu Barua, Chairperson
Shri I.S Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member

Parties Present : Shri M.G. Ramchandran, Senior Advocate, GUVNL
Ms. Sristi Khindaria, Advocate, GUVNL
Ms. Swapna Seshadri, Advocate, GUVNL
Shri Aneesh Bajaj, Advocate, GUVNL
Ms. Ashabari Basu Thakur, Advocate, GUVNL
Shri Narendra Hooda, Senior Advocate, NPCIL
Shri A.P. Singh, Advocate, NPCIL
Shri Shaurya Lamba, Advocate, NPCIL
Ms. Rashi, Advocate, NPCIL
Ms. Akshada Mujwar, Advocate, NPCIL
Shri Nitin Chaudhary, NPCIL
Shri S. Venugopal, NPCIL

Record of Proceedings

During the hearing, the learned Senior counsel for the Petitioner, made detailed oral submissions on 'maintainability', mainly as under:

- (a) Admittedly, Section 22 of the Atomic Energy Act, 1962, provides for the determination of tariff of the Respondent by the Department of Atomic Energy. However, on a harmonious interpretation of Section 22 of the Atomic Energy Act, 1962 and Section 79 of the Electricity Act 2003, the adjudication of disputes with regard to the regulation of generation tariff, shall fall under the jurisdiction of the Commission.



- (b) Section 173 only provides that the provisions of the Electricity Act, 2003 shall not have effect in so far as it is inconsistent with any other provisions of the Atomic Energy Act, 1962. Section 174 is not relevant to the present case. The Atomic Energy Act would prevail only in case of any inconsistency [(Section 22(2))] with the Electricity Act, 2003. There is no provision under the Atomic Energy Act, of 1962 which is inconsistent with Section 79(1)(f) of the Electricity Act, 2003.
- (c) The issue of jurisdiction in relation to the Respondent NPCIL has been considered and decided by this Commission in its order dated 26.8.2020 in Petition No. 12/MP/2019 (MPPMCL v NPCIL), wherein, the Commission, observed that the adjudication of disputes with regard to the regulation of generation tariff and transmission of electricity shall fall under the jurisdiction of the Central Commission.
- (d) The present case does not relate to the determination of the tariff of the Respondent either under a cost-plus basis or otherwise. Any dispute arising in relation to such generation and sale of electricity is to be adjudicated in terms of the provisions of the PPA. As the dispute is with the generating company owned and controlled by the Central Government, the provisions of Section 79(1)(f) would apply.
- (e) Even if this Commission does not have jurisdiction to determine the tariff of the Respondent under Sections 79(1)(a) and (b) of the Electricity Act, 2003, it does not mean that the Commission does not have power to adjudicate disputes arising out of the terms and conditions of the tariff.
- (f) APTEL, in its order dated 4.9.2012 in Appeal No. 94 & 95/2012 (BRPL v DERC & anr) had noted that the term 'regulate' is wider than the 'determination of tariff'. Also, in terms of the judgment of the Hon'ble Supreme Court in GUVNL v Essar Power Ltd, this Commission has the power to adjudicate the disputes or to refer the matter for arbitration.

2. In response, the learned Senior counsel for the Respondent, made oral submissions, mainly as under:

- (a) The dispute raised by the Petitioner does not fall within the scope of Sections 79(1)(a) to (d) of the Electricity Act, 2003. Admittedly, the tariff of the Respondent is determined by the Department of Atomic Energy and not this Commission. The Petitioner, in the petition, is not seeking the regulation of tariff in terms of Section 79(1)(a) of the said Act. Also, Section 79(1)(b) is not attracted. Moreover, the present case does not also pertain to the regulation and/or the determination of tariff for inter-State transmission of electricity in terms of Section 79(1)(c) and (d) of the Act.
- (b) The Petitioner cannot seek the indulgence of this Commission to interpret the tariff notification issued by the Department of Atomic Energy. Though the power for determination of the tariff including the norms for tariff, is vested with the Commission under Sections 61 and 62 of the Electricity Act, 2003, in the case of the nuclear power plants, the said power is vested with the Department of Atomic Energy, in terms of Section 22 (1) (b) of the Atomic Energy Act, 1962.



- (c) The Commission's order dated 26.8.2020 in Petition No.12/MP/2019 is not applicable to the present case, as the jurisdiction of the Commission to adjudicate the disputes therein involving this Respondent, was only in relation to the regulation of inter-State transmission of electricity, in terms of Section 79(1)(c) of the Electricity Act, 2003.
- (d) Since the Commission does not have the power to determine the tariff of the Respondent, it will not have the jurisdiction to regulate the tariff of the Respondent. The prayer of the Petitioner, if permitted, will amount to the re-determination of the tariff of the Respondent.
- (e) In terms of Article 12 of the PPA entered into by the parties, the dispute between the parties shall have to be adjudicated through Arbitration. Since the present case does not fall within the scope and ambit of Section 79 of the Electricity Act, 2003, and the Commission does not have jurisdiction, the parties can settle their disputes through arbitration.
3. At the request of the learned Senior counsels, the Commission permitted the parties to file their short-written submissions 'on maintainability'.
4. Without prejudice to the submissions of the parties, on 'maintainability', the Commission advised the Petitioner and the Respondent to explore possibilities of an amicable settlement of the issue and report the same by **15.11.2023**. Failing settlement, the parties may file their short submissions on 'maintainability' (not exceeding three pages), on or before **30.11.2023**.
5. Subject to the above, the Commission reserved its order on 'maintainability'.

By order of the Commission

Sd/-
(B. Sreekumar)
Joint Chief (Law)

