

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 2/MP/2014

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member**

Date of Order: 5th January, 2026

In the matter of:

Claim of Kerala State Electricity Board Limited regarding the adjustment for Income tax pursuant to the Commission's order dated 20.9.2012 in Petition No.15/2010 and judgment of the Appellate Tribunal for Electricity dated 3.7.2013 in Appeal No. 250/2012.

And

In the matter of:

Implementation of the APTEL judgment dated 26.3.2025 in Appeal No. 138/2017 (KSEBL vs CERC & ors)

And

In the matter of:

NLC India Limited
135, EVR Periyar High Road,
Kilpauk, Chennai - 600010

..... Petitioner

Vs

1. Kerala State Electricity Board Limited,
Vaidyuthi Bhavanam, Pattam
Thiruvananthapuram - 695004
2. Tamil Nadu Generation and Distribution Company Limited,
800, Anna Salai, Chennai – 600002
3. Puducherry Electricity Department,
137. NSC Bose Salai, Puducherry - 605001
4. Bangalore Electricity Supply Company Limited,
2nd Floor, II Block, KR Circle, Bangalore – 560001
5. Chamundeswari Electricity Supply Company Limited,
927, LJ Avenue, New Kantharaj Urs Road,
Saraswathipuram, Mysore – 570009



6. Hubli Electricity Supply Company Limited,
2nd Floor, Eureka Junction, Navanagar, P.B. Road,
Hubli – 570025

7. Mangalore Electricity Supply Company Limited,
Corporate Office, Paradigm Plaza, A.B. Shetty Circle,
Mangalore – 575001

8. Gulbarga Electricity Supply Company Limited,
Station Main Road, Gulbarga, Gulbarga-585102

..... Respondents

Parties Present:

Shri M. G. Ramchandran, Senior Advocate, NLCIL
Ms. Anushree Bardhan, Advocate, NLCIL
Ms. Ritika Singh, Advocate, NLCIL
Ms. Shrishti Kindaria, Advocate, NLCIL
Shri Pradyumna Pattnaik, NLCIL
Shri Divya Prakash, NLCIL
Ms. Ratna Chaudhary, NLCIL
Ms. Preethi, NLCIL
Ms. Pooja Menon, Advocate, KSEBL
Ms. Akanksha Bhola, Advocate, TANGEDCO

ORDER

Background

Petition No.15/2010 was filed by the Petitioner, NLC India Limited (in short' NLCIL), seeking the Commission`s intervention and direction to the Respondent KSEBL, to clear the outstanding income tax dues amounting to Rs. 119.09 crore, as on 31.3.2009, and the Commission, by its order dated 20.9.2012, disposed of the same, as under:

“16. NLC has claimed that it availed of the benefit of tax holiday under Section 80 IA of the IT Act with effect from the year 2007-08 and passed on the benefit to KSEB as mandated by the regulations. In view of this claim of NLC, no income-tax liability accrues on KSEB for the years 2007-08 and 2008-09. Therefore, the question of recovery of income-tax dues for these two years also does not-arise. We conclude our findings by stating that income-tax liability in respect of TPS-I Expansion did not accrue for the years 2003-04, 2004-05, 2005-06 and 2006-07 for want of taxable income and for the years 2007-08 and 2008-09 because of availing the tax holiday benefit. In view of these findings, the question whether NLC was obligated to avail the benefit of Section 80 IA from the date of commissioning of TPS-I Expansion does not survive for our examination.

17. During the course of hearing it was submitted on behalf of NLC that even though the tax benefit has already been passed on by NLCIL to the beneficiaries, the



assessing officer in his assessment order dated 28.12.2010 has disallowed its claim for tax benefit under Section 80 IA in respect of TPS-I Expansion for the financial year 2007-08 on the ground that the generating station was only an expansion of the then existing capacity and could not be considered as a separate undertaking as provided under Section 80 IA (4) (iv) of the IT Act. In case, NLC becomes liable to pay income-tax on account of unavailability of benefit under Section 80 IA, it shall be entitled to recover from KSEBL the income-tax along surcharge, interest etc paid to the Income-tax Department.

18. We have held that NLC is not entitled to recovery of income-tax dues in respect of TPS-I Expansion up to 31.3.2009. In view of this, there is justifiably no reason for KSEB to withhold income-tax dues for TPS-I. NLC has alleged that KSEB has been withholding income-tax dues in respect of TPS-II amounting to ` 57.00 crore included in the total amount of 119.0935 crore. We direct that KSEB shall release such withheld income-tax dues amounting to 57.00 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, duly supported by the statutory auditors' certificate.

19. We have held that NLC is not entitled to recovery of income-tax dues in respect of TPS-I Expansion up to 31.3.2009. In view of this, there is justifiably no reason for KSEB to withhold income-tax dues for TPS-II. NLC has alleged that KSEB has been withholding income-tax dues in respect of TPS-II amounting to ` 57.00 crore included in the total amount of Rs.119.0935 crore. We direct that KSEB shall release such withheld income-tax dues amounting to ` 57.00 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, duly supported by the statutory auditors' certificate."

2. Aggrieved by the order dated 20.9.2012, NLCIL filed Appeal No.250/2012 before the Appellate Tribunal for Electricity (in short 'APTEL'), and the APTEL vide its judgment dated 3.7.2013 disposed of the said appeal, as under:

"19. Even if the Appellant has availed tax benefit under Section 80-I A in respect of TPS-I Expansion from FY 2007-08, there was no taxable income for TPS-I Expansion during 2004-05 to 2006-07. Thus, the tax paid by the Appellant during these years as generating company could not be distributed to TPS-I Expansion for recovery from the beneficiaries of TPS-I Expansion as per the Tariff Regulations.

20. The Appellant might have set off the profit of its other generating station during the period 2004-05 to 2006-07 for computing its tax liability under the Income Tax Act for payment of tax as a generating company, but the total tax has to be distributed amongst the various generating stations as per the Tariff Regulations i.e. as per the station-wise profit before tax. Since there was no profit in TPS-I Expansion in the years from 2003-04 to 2006-07 in view of the huge accumulated loss in FY 2003-04, there is no question of any income tax being apportioned to TPS-I Expansion during this period."

3. Pursuant to the above APTEL judgment, the liability of the Respondent beneficiaries to reimburse the tax, as per the provisions of Regulation 7 of the 2024 Tariff Regulations, was to be determined, taking in into account the applicability of the tax holiday, provided under Section 80IA of the Income Tax Act, 1961 (in short 'IT Act')



for TPS-I Expansion Project, for the period 2003-04 to 2006-07. Accordingly, NLCIL vide its letter dated 28.11.2013, reworked the amount to be reimbursed by the Respondents, including KSEBL, on the basis of the APTEL's judgment, to the extent the same related to TPS-I Expansion Project. However, the Respondent, KSEBL vide letter dated 7.12.2013, disputed the claim of NLCIL with regard to the determination of the amount due to KSEBL of Rs 20.31 crore, stating that the same was not in compliance with the Commission's decision, as upheld vide APTEL's judgment. In this backdrop, NLCIL has filed the present Petition under Section 79(1)(f) of the Electricity Act, 2003 seeking (i) adjudication of the disputes raised by KSEBL with regard to the implementation of the Commission's order and upheld by APTEL vide its judgment dated 3.7.2013; and (ii) a declaration that KSEBL and other Respondents are entitled to the adjustment of an amount of Rs 5829.27 lakh and in the proportion, as contained therein. However, the Commission vide its order dated 9.9.2016, disposed of the said Petition as under:

"13. The difference between the original claim and the revised claim drawn up in compliance with the Commission's order and judgement of Appellate Tribunal, amounting to 5829.26 lakh (97570.78 lakh-91741.52 lakh) was appropriated between the beneficiaries according to their allocation of power.

14. In view of the above, in our opinion the points raised by KSEB and other respondents do not warrant any intervention as the same is in line with APTEL judgement dated 03.07.2013 in Appeal No. 250/2012 Accordingly, the parties should act in accordance with Revised IT reimbursement claim duly certified by auditor as submitted by the petitioner."

4. Aggrieved by the Commission's order dated 9.9.2016, the Respondent KSEBL filed an appeal (Appeal No. 138/2017) before the APTEL, and APTEL vide its judgment dated 26.3.2025, observed as under.

"18. It is, therefore, evident that in the final analysis of the case, the Commission neither referred to the contentions raised by the beneficiaries including Appellant-KSEB nor discussed the same. It has, after reiterating the submissions of the NLC, merely stated in one line that in the opinion of the Commission, the points raised by the KSEB and other respondents do not warrant any intervention. We find that the objections raised by the Appellant-KSEB to the petition filed by NLC, which have already been noted herein above, required due consideration from the Commission. The Commission may have found those objections of KSEB baseless and sans any



merit but it was bound to give reasons in detail for arriving at such conclusion. It is not appropriate for a quasi-judicial authority like the Commission to pass such a cryptic and non-speaking order which is devoid of proper reasoning.

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24. Hence, the impugned order of the Commission is hereby set aside. The Appeal stands allowed and the case is remanded back to the Commission with the direction to pass a fresh speaking/reasoned order after hearing the parties. The needful shall be done by the Commission within two months from the date of this order positively.

xxx.”

5. Accordingly, the Commission’s order was set aside to pass a speaking order after hearing the parties. Thereafter, the matter was listed for hearing on 23.4.2025, 24.5.2025 and 29.7.2025.

6. During the hearing on 23.4.2025, the Commission, while permitting KSEBL to place on record the documents filed by the parties before APTEL, also directed the parties to file their written submissions. In response, KSEBL vide affidavit dated 5.5.2025, has placed on record the documents filed by it before APTEL. NLCIL and KSEBL have filed their written submissions on 14.5.2025 and 25.7.2025, respectively. Thereafter, the Commission, after hearing the parties viz., NLCIL and KSEBL on 20.5.2025 and 29.7.2025 respectively, reserved its orders in the petition on 29.7.2025, after permitting them to file their written notes of arguments. The Respondent TANGEDCO, however, adopted the submissions of KSEBL. In compliance with the said directions, KSEBL and NLCIL have filed their written submissions vide affidavits dated 5.8.2025 and 18.8.2025, respectively, and TNPDCIL filed its written submissions on 18.8.2025. Based on the submissions and the documents on record, and in the light of the APTEL judgment dated 26.3.2025, we proceed to examine the matter, as stated in the subsequent paragraphs.

Submissions of the Respondent, KSEBL

7. The Respondent, KSEBL, in its written submissions, has submitted the following:



Jurisdiction

a) By NLCIL's own admission before APTEL, the Commission does not exercise the requisite jurisdiction to entertain and pass orders in the present Petition. This Commission, in its order dated 4.1.2000 in Petition No. 2/1999, has held that the mining activities are being regulated by the Ministry of Coal (MoC), and the Regulatory Commission cannot step in to regulate this activity. With regard to NLCIL's claim for consideration of fixed charges of mining therein, it would only be possible to admit a transfer price for lignite for the purpose of tariff of power.

b) The present issue pertains to whether income tax on mining activities can form a pass-through component in tariff. Hence, where this Commission has already held and concluded that lacks the requisite jurisdiction to entertain mining matters falling within the regulatory jurisdiction of MoC, the present Petition ought not to be entertained by this Commission. If the disputes pertaining to mining activities fall within the domain of the MoC, the issues surrounding the reimbursement of income tax from mining activities also ought to be instituted before the appropriate *fora*, i.e., MoC and not before the authorities presiding over electricity matters.

c) The above position is further confirmed by the observations of the MoC in its Guidelines, produced by NLCIL in its affidavit dated 5.7.2024 filed before the APTEL, which holds that, "*Income tax reimbursement is prevailing in power industry also and not a special feature in lignite pricing*". Assuming without admitting that there is liability for reimbursement in relation to Mine I Expansion, the above guideline leads to an irrefutable conclusion that income tax reimbursement in lignite mining is distinct from income tax generation from power generation in the power industry. Thus, while this Commission would be the appropriate authority for disputes arising within the latter category, NLCIL can only sustainably agitate the claims that are purely related to the mining activity, before the appropriate authority. Thus, this Commission lacks the jurisdiction to pass orders in a matter purely relating to mining activity.

Section 80 IA Deduction

d) Tariff in relation to PSA is governed by the 2001 and 2004 Tariff Regulations. As per proviso 3 to Regulation 7(2), the benefit of a tax holiday as applicable under the IT Act shall be passed on to beneficiaries. Without prejudice to this, from COD, for any consecutive period of 10 years (out of the first 15 years), NLCIL's TPS-I Expansion Project and all directly related industrial activities are entitled to a tax holiday amounting to 100% of the profit and gains derived from such business under Section 80 IA of the IT Act. Under clause 4 of this section, the various categories of business eligible to the same have been identified under which an undertaking set up for the generation of power has been included. It is evident from the language of Section 80IA, that it is the undertaking itself that is eligible for a complete tax holiday and not various sub-businesses carried out by



the undertaking. NLCIL having been set up for power generations is an undertaking eligible for the benefits provided under Section 80IA.

e) No manner of reading of the provision indicates any such bar on mining activities of NLCIL being barred from availing tax deductions under Section 80IA of the IT Act. During the tax holiday period, NLCIL is exempt from tax on profits from electricity produced using lignite from its own mines, in relation to TPS-I Expansion Project and the linked Mine-I Expansion.

f) The fact that the mining activity of NLCIL is eligible for Section 80IA deduction stands confirmed by the Income Tax Appellate Tribunal (ITAT) vide its order dated 11.4.2012 in I.T.A. Nos. 711, 712 & 713/2010 (DCIT vs M/s NLCIL). In this case, the original finding of the assessing Officer allowing the claim of Section 80IA deductions to NLCIL's mining activity was upheld and reopening of assessment was found to be unsustainable. Thus, the issue that NLCIL is eligible to avail the deductions under Section 80IA stands settled.

g) Assuming without admitting that any tax was payable, NLCIL has adduced no evidence to indicate that the assessment order disallowing tax allowance on mining activity was not sincerely contested by it, by way of appeals, till the final authority/the Hon'ble Supreme Court, qua the years relevant for KSEBL. It becomes incumbent upon NLCIL to diligently prosecute any tax holiday disallowance in the light of the statutory advantage contained in the 2001 Tariff Regulations viz, the benefit of any applicable tax holiday shall be passed on to the beneficiaries as also the observations of this Commission in its order dated 20.9.2012 (supra).

Core Business

h) Without prejudice to the above, in the event that there is bar placed on the mining activity under Section 80IA, this itself is a testimony to the fact that mining activity does not form core business and thus no tax liability for the same can be passed on to the beneficiaries. Regulation 7(1) of the 2004 Tariff Regulations prescribe that tax on income streams of the generating company, only from its core business can be recovered from the beneficiaries. Further, the first Proviso to Regulation 7(2) specifically stipulates that tax on any income stream other than 'core business' shall not constitute a pass-through component in tariff and tax on such other income shall be payable by the generating company.

i) As per the Tariff Regulations (2001 and 2004), tax on income streams of the generating company from its "core business" can be recovered from the beneficiaries. Core business has been specifically defined in the Regulations to be 'regulated activities of generation or transmission of electricity and does not include any other business or activity... of the generating company.' The core business has to be further understood in the nature of relationship between NLCIL and KSEBL- which is purely for supply of power. While mining activities are undertaken by NLCIL to source lignite, that business has no privity and



KSEBL whose contract/transaction with NLCIL is only for supply of power and not in relation with lignite mining. Thus, core generation stream pass through component is only power generation activities and not mining activities. This is also fortified by the fact that the applicable tariff regulations allow pass through components in tariff, treating NLCIL as a purely power generating company and not a mining company.

j) Thus, mining is a non-core business insofar as the transaction between NLCIL and KSEBL is concerned, and income tax arising out of mining activities cannot be passed on to KSEBL. KSEBL is not liable to pay income tax for NLCIL's mining activities. NLCIL may have several related businesses, which may not be the core business insofar as KSEBL is concerned, and also for the purpose of tariff regulations.

k) Mining charges, which include Lignite Transfer Price, are already being claimed by NLCIL from KSEBL as energy charges. To elaborate, the entire mining cost together with a reasonable profit, which is computed as per MoC guidelines, based on a normative capacity utilization factor of mines, is loaded on the beneficiaries a Lignite Transfer Price. KSEBL is already paying for the raw material that is used in power generation activities and power purchased by it. Therefore, KSEBL cannot be imposed with all expenses that NLCIL might incur in relation to its power generation activities.

Res Judicata and Estoppel

l) NLCIL's contention that tax holiday under Section 80 IA is not available to mines and thus, KSEBL is liable to reimburse the income tax paid on the linked mining activities of NLCIL, already been raised by it in the earlier round of proceedings. This contention was neither allowed by the Commission nor APTEL and to that extent, stands rejected. The Commission's order dated 20.9.2012 and the APTEL's judgment dated 3.7.2013 have not been challenged by NLCIL and have thus attained finality. Thus, NLCIL is bound by the principle of *issue estoppel* and is barred from raising the very same issue already agitated by them.

m) Vide the Commission's order dated 20.9.2012 and APTEL's judgment dated 3.7.2013, NLCIL was not entitled to any reimbursement of income tax dues from KSEBL herein in relation to TPS-I Expansion Project, till 31.03.2009. This was for the reason that from COD till 2006-07, TPS-I Expansion Project set-off large accumulated depreciation against its profits and thus, did not have any taxable income. For the years 2007-08 and 2008-09, tax holiday under Section 80IA had been availed. Thus, the tax reimbursement liability of Rs.62.08 Cr. raised by NLCIL on KSEBL, was set aside by the Commission and APTEL. In such total liability, no distinction or compartmentalisation was done in the said order/judgment insofar as 'income tax liability arising out of power generation activity' and 'income tax liability arising out of mining activity' was concerned. The entire claim of Rs. 62.08 crore was set aside.



n) NLCIL has illegally recomputed the tax liabilities, effectively raising a demand for Rs. 41.77 crores out of the disallowed Rs. 62.08 crores, as reimbursement of income tax towards mining activity. Thus, CERC is bound by principles of *res judicata* since it has already held that no tax liability arises against KSEBL till 31.3.2009. The contention of NLCIL that the benefit of Section 80 IA deduction is not available to mines has already been rejected by the Commission in the earlier proceedings, which has been confirmed by APTEL. Both these decisions have attained finality since the same was not challenged by NLCIL, especially insofar as NLCIL's arguments qua mines are concerned.

o) NLCIL's computation and claim for Rs. 41.77 crores is incorrect and unsustainable. Out of the total claim of Rs. 62.08 crores, if only an amount of Rs. 41.77 crores have been disallowed, Section 80 IA deductions, the same can only lead to an irrefutable conclusion that, mining activities have been treated differently from power generation activities, which in turn implies that mining is not a core activity and the resultant tax implications cannot be foisted on the beneficiaries. Moreover, the claim of Rs. 41.77 crores pertain to the entire period from COD till 2008-09 which is unsustainable for the reason that the period from COD till 2006-07 has already been admitted by NLCIL as being devoid of taxable income. Thus, no tax liability arises for the said period.

Written Submissions of Respondent, TNPDC

8. The Respondent TNPDC, vide its written submissions, has mainly stated the following:

a) In terms of Regulation 7 of the 2004 Tariff Regulations, NLCIL was obligated to claim benefits of tax holiday under Section 80 IA of the IT Act. Clause 4 of Section 80 IA, explicitly includes undertakings engaged in the generation of power as eligible for such benefits. The language of the provision makes it clear that the 'undertaking as a whole' is entitled to tax holiday, not isolated sub-components of its operations. Thus, NLCIL being an undertaking established for power generation qualifies for the tax holiday benefit under Section 80 IA.

b) NLCIL TPS-I expansion and its linked mining operations were eligible for a tax holiday under Section 80 IA, but the benefit was not duly availed due to NLCIL inaction, which cannot now be used to the detriment of the beneficiaries. In terms of Regulations 7(1) and 7(2) of the Tariff Regulations, the mining operations are ancillary and are undertaken to procure raw material (lignite) and do not constitute a standalone contractual obligation with the beneficiaries. Therefore, the generation of electricity alone constitutes the 'core business' and mining is not an income stream from which tax liability can be passed through in tariff.

c) NLCIL is only recovering mining charges, including the lignite transfer price, from the beneficiaries, as part of the energy charges. To additionally claim income tax reimbursement on the profits raising from such mining operations would



amount to double recovery, which is both inequitable and contrary to the express intent of the Tariff Regulations.

d) The agreement or arrangement between TNPDCIL and NLCIL is focused on the procurement of power and pertains solely to the generation and sale of electricity and not the mining activities. The mining operations carried out by NLCIL, which are part of the TPS - I Expansion, are not included in the scope of the agreement between the parties. This means that any claims/reimbursements relating to the mining component, such as tax holiday benefits or other financial considerations, are separate from the terms governing the power procurement arrangement. Consequently, TNPDCIL's obligations and reimbursements are confined to the power-related aspects and not the mining-related activities of NLCIL.

e) NLCIL failed to provide any supporting documentation to substantiate its claim that tax holiday benefits were not applicable to the mining component. Furthermore, NLCIL did not make any clear segregation or distinction of the income tax, particularly in terms of how it was attributed to the power component versus the mining component. While on the one hand, NLCIL is seeking the reimbursement for the income tax paid on the mining component of its business, on the other hand, NLCIL is simultaneously asserting that tax holiday benefits could not be claimed for its mining component.

NLCIL is estopped from claiming that the mining component be excluded from the tax holiday benefits

f) The Commission vide its order dated 20.9.2012 (in Petition No. 15/MP/2010), held that there was no question of reimbursement of the income tax, as for the periods 2003-04 to 2006-07, as there was no taxable income for TPS-I Expansion and for the years 2007-08 and 2008-09, NLCIL had claimed tax holiday benefit. This order was confirmed by APTEL vide its judgment dated 3.7.2013, which was not challenged by NLCIL, and therefore, attained finality. After the said orders were passed, NLCIL had claimed reimbursement of the income tax paid for the mining component for the years 2004-07 (as for the mining component no tax benefit component could be claimed) in Petition No. 2/MP/2014. The shift in NLCIL's stance – where they initially claimed no taxable income for these years and later sought reimbursement for a specific component, raises questions about the consistency and rationale behind their claims. NLCIL's attempt to unilaterally recompute the disallowed claim, as income tax reimbursement, for mining activities, is contrary to the findings of this Commission and APTEL and the same is barred by res judicata and estoppel.

g) TNPDCIL has already made payments to NLCIL, based on an erroneous interpretation of the orders, by NLCIL. The said payments were made under a mistaken belief that the amounts claimed were legally admissible, in accordance with the orders of this Commission and other competent authorities. However, in light of the correct interpretation of the regulatory framework and the binding findings of this Commission and APTEL, the said claim is not sustainable in law.



Accordingly, TNPDC is liable to be refunded in full along with the applicable interest from the date of payment till the date of refund to compensate for the time value of money.

Written Submissions of the Petitioner, NLCIL

9. The Petitioner, NLC, has made the following submissions:

a) The matter related to the reimbursement of the actual tax paid by NLCIL for its mine I expansion (linked to NLCIL's TPS-I Expansion for the years 2003-04 to 2008-09). The beneficiaries of the power are required to reimburse proportionately the tax paid as part of tariff, in terms of the relevant Tariff Regulations notified by this Commission. As KSEBCL did not make any payments to NLCIL in regard to Mine I expansion for the said period, the present Petition was filed, and the APTEL has remanded the matter with a direction to pass a speaking order after hearing the parties.

Tax reimbursement for Mine I Expansion

b) Mine I Expansion belongs to NLCIL, and TPS I Expansion power project also belongs to NLCIL. While the tariff for the generation and the sale of electricity is being determined by this Commission, the determination of the lignite transfer price by this Commission is as per the guidelines of the MoC, GoI. Under the Act, a generating company like NLCIL is treated as one assessee. The fact that there has been no taxable income in the power business in NLCIL's TPS I Expansion Project during 2003-07, and that there was a tax holiday in terms of Section 80 IA of the Act for the period 2007-09 and consequently the beneficiaries cannot be called upon to reimburse the taxes in relation to TPS I expansion, is no longer an issue and stands settled by the Commission's order dated 20.9.2012 and APTEL's judgment dated 3.7.2013

c) In the earlier proceedings, the tax reimbursement was claimed by NLCIL vide its bills for both TPSI Expansion and Mine I Expansion in a consolidated manner with detailed workings. Accordingly, the proceedings before this Commission (in Petition No. 15/2010) and before APTEL (in Appeal No. 250/2012), NLCIL claimed tax reimbursement for both TPS I Expansion and integrated Mine I Expansion in a consolidated manner. In both the decisions, it has been held that in case of actual liability to pay income tax on account of non-availability of Section 80 IA benefit, NLCIL will be entitled to recover the same from the beneficiaries along with surcharge and interest.

d) In a meeting with the Member Finance, of KSEBL on 10.8.2009, the above issue was discussed and recorded in the minutes, wherein it was clearly pointed out that the tax related to the mines portion is not covered under Section 80IA of the Act. The minutes were signed much before the Commission's order dated 20.9.2012 which indicated that KSEBL was aware that income tax reimbursement claim by NLCIL was for both thermal and mines components.



e) The decision in the earlier proceeding also stated that in case there is any actual tax payment to the income tax department, on account of non-availability of Section 80 IA benefit, NLCIL shall be entitled to recover from the beneficiaries including KSEB, the income tax along with surcharge, interest paid. This order was affirmed by APTEL. Thus, NLCIL is entitled to recover as reimbursement of taxes, if any, and actually paid by NLCIL during the relevant years, if there is no availability of tax holiday. The issue of tax holiday as well as existence of losses during the above years were restricted to TPS I expansion and did not extend to Mine I Expansion. Consequently, the beneficiaries cannot and have not been called upon to reimburse the taxes in respect of the power business of TPS I Expansion.

f) However, there has been an actual tax payment in regard to Mine I Expansion, which has been validly levied and paid by NLCIL, and has been sought for reimbursement. Except KSEBL, all other beneficiary discoms of AP, Karnataka, Tamil Nadu and Puducherry have duly paid the same. Accordingly, in compliance with the Commission's order and ATEL's decision, the claims were revised by NLCIL by excluding the thermal component of TPS I expansion while retaining the mines portion and necessary credit notes were issued.

g) NLCIL is entitled to the costs and expenses relating to the input of lignite secured from the relevant mines as per the terms and conditions of the BPSA dated 17.4.2002 (Clause 9-Income Tax) executed between KSEBL and NLCIL. The MoC, GoI, vide its order dated 30.1.2006, issued guidelines for the determination of the lignite transfer price for 2004-09 and para 3 provides for the income tax reimbursement. Till the year 2019, when the Commission issued the regulations for the lignite transfer price, the same was computed in terms of the MoC guidelines and was placed before this Commission, wherein the appropriate orders were passed for recovery from the beneficiaries, during the tariff determination process as well as the truing up process.

h) In line with the provisions of the 2001 and 2004 Tariff Regulations, relating to core business, tax on income and recovery of income tax & FERV, NLCIL, had given the details to each of the beneficiaries, including KSEBL, in regard to the taxes relating to the mines linked to the supply of lignite. The taxes paid by NLCIL for the period 2003-04 to 2008-09 are as under:

Details of Income Tax paid by NLCIL

Sr. No.	FY	Income Tax paid (Rs in lakh)
1	2003-04	17,909
2	2004-05	43,958
3	2005-06	25,262
4	2006-07	29,817
5	2007-08	48,504
6	2008-09	27,176
Total		1,92,625



Tax Reimbursement claimed from Beneficiaries:

Sr. No.	FY	Tax paid & claimed (Rs in lakh)
1	2001-02 to 2005-06	57,211
2	2006-07	3,350
3	2007-08	15,403
4	2008-09	15,777
Total		91,742

DISCOM Wise Tax Reimbursement:

Discoms	2001-02 to 2005-06	2006-07	2007-08	2008-09	Total (Rs in lakh)
APTRANSCO	10,200	-	2,153	2,979	15,333
KARNATAKA	12,435	-	3,240	3,307	18,982
KERALA	6,796	-	1,765	1,733	10,294
TNEB	24,945	3,350	7,660	6,910	42,865
PONDY	2,835	-	585	848	4,268
Total	57,211	3,350	15,403	15,777	91,742

Mines Portion of Tax Reimbursement:

SEB	2001-02 to 2005-06	2006-07	2007-08	2008-09	Total (Rs in lakh)
APTRANSCO	152	-	1,109	3,965	5,227
KARNATAKA	2,145	-	2,282	4,206	8,634
KERALA	1,324	-	1,291	2,176	4,791
TNEB	20,268	3,088	7,687	10,118	41,160
PONDY	292	-	274	1,140	1,706
Total	24,181	3,088	12,643	21,605	61,517

Thermal Portion of Tax Reimbursement:

SEB	2001-02 to 2005-06	2006-07	2007-08	2008-09	Total (Rs in lakh)
APTRANSCO	10,048	-	1,044	(986)	10,106
KARNATAKA	10,289	-	958	(899)	10,348
KERALA	5,472	-	474	(443)	5,503
TNEB	4,677	262	(26)	(3,208)	1,705
PONDY	2,543	-	311	(292)	2,562
Total	33,030	262	2,760	(5,828)	30,224

i) NLCIL vide affidavit filed on 9.9.2024 before APTEL, had placed on record the Assessment orders (of the corporate entity) of Income tax authorities for the financial years-dated 11.12.2006, 24.12.2007, 26.12.2008, 24.12.2009 and 28.12.2010 and the statutory audited certificates. In terms of this, NLCIL is rightly claiming that KSEBL ought to reimburse the actual tax paid by NLCIL's Mine 1 Expansion linked to NLC's TPS 1 Expansion Power Project for the years 2003-04 to 2008-09, proportionate to its share.



Lack of jurisdiction

j) The MoC guidelines dated 30.1.2006 for the determination of lignite price, direct NLCIL, to recast the transfer price of lignite, and inform this Commission and all other concerned parties. This Commission, vide its order dated 4.1.2000 in Petition No. 2/1999, while dealing with the Availability Based Tariff, held that since the mining activities are being regulated by the MoC, it cannot step in to regulate this activity, but would only be possible to admit a transfer price of lignite, for the purpose of the tariff of power.

k) Subject to the determination of the transfer price of lignite, and also to the conditions of such transfer price, this Commission is the Appropriate Commission to determine the tariff admissible to NLCIL, by including the transfer price and its terms and conditions as input cost. This has been the methodology followed by the Commission for the determination of tariff during the relevant years till 2018-19. The beneficiaries were aware of the same and had accepted the various orders of the Commission, regarding the Lignite Transfer Price, whenever NLCIL was issuing the credit/debit notes by way of recovery/refund of tariff. Thus, till the year 2019, when the Commission issued the regulations for Lignite Transfer Price, the same was computed in terms of the MoC guidelines, which was later approved by the Commission, and orders were passed for recovery of the same from the beneficiaries, based on the tariff determined/trued up.

l) The Commission has dealt with the issue of reimbursement of taxes related to mining in its various orders, and KSEBL has never raised the issue of jurisdiction. In proceedings before APTEL in Appeal No. 49/2016 related to the revision of the pooled lignite price on account of the inclusion of Mine-II Expansion lignite cost, KSEBL was also a party to the proceedings and no such objection was raised by KSEB, vis-à-vis the issue of jurisdiction.

m) In the said appeal, the APTEL has dealt with the jurisdiction of the Commission vis-à-vis the mining activities and held that if there is any additional profit earned by the sale of lignite to outside agencies through Mine II Expansion, the beneficiaries shall be apportioned to correspond to their share of power. By the same reasoning, any taxes paid by NLCIL for the mining component in the present case, the same ought to be paid by the beneficiaries.

n) Further, this Commission is competent under Section 79(1)(a) and (f) of the Electricity Act, 2003 to adjudicate upon the tariff-related disputes involving the generating companies owned and controlled by the Central Government. Therefore, the present dispute between NLCIL and KSEBL falls within the scope of this Commission. In light of the above, this Commission has the jurisdiction to decide on any dispute regarding the reimbursement of taxes related to the integrated Mine I expansion of TPS I expansion of the project, which have been duly paid by NLCIL for the period 2003-09.



Core Business

o) KSEBL has wrongly contended that Mine I Expansion linked to TPS I Expansion project is 'not a core business' of NLCIL, in respect of which tax reimbursement is admissible, and such tax reimbursement is related to the power business only. NLCIL undertakes mining of lignite for being used in the power project and the activities of mining and generation and supply of electricity are inter-related. The transfer price of lignite to be considered as fuel cost was determined by the MoC, GoI. In view of this, the fuel price needs to be considered as determined in terms of the guidelines of MoC, GoI which has also been accepted by KSEBL in terms of Clause 9 of BPSA dated 17.4.2002.

p) The 2004 Tariff Regulations defines 'core business' as – the regulated activities of generation company and does not include any other business or activity like consultancy, telecommunications of the generating company. The mining of lignite, being an integrated part of the activities of generation, and as it is regulated by the MoC, it squarely falls under the concept and purpose of core business as per the 2001 and 2004 Tariff Regulations.

q) In case the coal is procured from outside, such as from Coal India Limited or its subsidiaries, the transfer price of coal by Coal India to generation companies, such as NTPC was determined at the relevant years by the MoC, GoI, as in the case of lignite, and the same was being allowed to be recovered from the generation and the supply of electricity. The bill raised by Coal India, taxes, if any, paid by Coal India, was being allowed to be recovered. The transfer price was determined by Coal India by way of Regulation, and as a regulated price, taxes were being allowed.

r) This Commission has dealt with the issue of reimbursement of taxes related to mining in its various orders, and KSEBL has never raised the issue of the same, being not a part of the core business. The MoC guidelines explicitly provide for claiming income tax reimbursement for mines in the same manner as for thermal power stations. Accordingly, the income tax reimbursement claims for thermal as well as its linked mines from where the lignite is utilized has been made the beneficiaries.

s) In Commission's order dated 23.3.2007 in Petition No. 5/2002, pertaining to the revision of tariff for TPS-II for the period 2001-04, and as per the recommendations dated 8.1.2007 of the Single Member Bench constituted by this Commission to resolve the issue in the said petition, the income tax reimbursement in respect of mines has been separately allowed as a pass through at actuals.

Deduction under Section 80 IA

t) The deductions under Section 80 IA of the Act are not applicable to TPS-I Expansion mining component. Section 80 IA, prior to its amendment introduced by the Finance Act, 2000. One of the conditions was that an industrial undertaking manufactures or produces an article or thing. Based on the proviso (3) to Section



80 IA, NLCIL was claiming a deduction under Section 80 IA in respect of Mine-II during the years from 1991-93. However, Section 80 IA was amended through Section 38 of the Finance Act, 2000, replacing the term 'any industrial undertaking' with 'an industrial undertaking referred to in clause (iv) of sub-section (4), namely' an industrial undertaking',

u) It is clear that post-amendment, the term 'any industrial undertaking' is no longer broad or open to interpretation. The benefit under Section 80 IA was therefore restricted to the eligible business of generation or generation and distribution of power, as specified under clause (iv) of Section 80IA (4). Therefore, NLCIL has rightly not claimed Section 80 IA deduction for Mine I Expansion, which was commissioned during the year 2004-05, after the amendment came into effect, as the deduction was not allowable only against an undertaking engaged in generation or generation and distribution of power.

v) The income tax assessment order dated 28.12.2010, for the assessment year 2008-09, rejected the claim for Section 80 IA deduction for TPS-I power project. As regards the ITAT order dated 11.4.2012 in DCIT v NLC, relied upon by KSEBL, the same has no applicability to the facts of the present case as (i) the said order is for the integrated mine of TPS Stage -II (commissioned during 1993) and not for TPS-I Expansion (commissioned during 2003-after amendment), (ii) the issue dealt with was to the appeal filed by the Revenue Dept for re-assessment of the year 2002-03, which was not allowed. Moreover, the issue as to whether Section 80 IA benefits are applicable to the mining component or not was never decided in the above matter. Hence, no reliance can be placed by KSEBL on the said decision.

Analysis and Decision

Re: Jurisdiction

10. KSEBL has contended that the disputes pertaining to mining activities fall within the domain of the MoC, GoI and therefore, the issues surrounding the reimbursement of income tax from mining activities also sought to be instituted before the appropriate forum, i.e., the MoC and not before the authorities presiding over Electricity matters. While pointing out that the income tax reimbursement in lignite mining is distinct from that for power generation, KSEBL has argued that NLCIL ought to have agitated its claims falling under the former category before the appropriate authority. Accordingly, KSEBL has submitted that this Commission lacks the jurisdiction to pass an order in a matter purely related to mining activity. *Per contra*, NLCIL has contended that till the



year 2019, the lignite transfer price was computed in terms of the MoC guidelines and the same was duly placed before this Commission, which then passed appropriate orders for its recovery from the beneficiaries during the tariff determination/truing up process. Referring to Section 79(1)(a) of the Electricity Act 2003, NLCIL has submitted that the Central Commission is competent to adjudicate the tariff-related disputes involving the generating companies owned and controlled by the Central Government, and therefore, the present dispute falls within the scope of this Commission.

11. We have examined the rival submissions. It is an admitted fact that the lignite transfer price was decided by the Board of Directors of NLCIL and approved by the MoC, the nodal Ministry. Though the Commission, vide its order dated 4.1.2000 in Petition No.2/1999, recognised that the mining activities fall under the regulatory jurisdiction of the MoC, GoI, it had, vide order dated 21.12.2000 in Petition No.4/2000, while considering the norms for fixation of energy charges, felt the need to review the transfer price mechanism on the premise that the ultimate cost of power charged to the consumer is fair and reasonable and also directed NLCIL to furnish the details of the transfer price mechanism for the Commission's examination. The relevant portion of the order is extracted below:

"5.2.2 The situation is different in the case of NLC wherein they operate an integrated lignite mine. NLC has explained that lignite can neither be stored in large quantities nor can it be transported over long distances. Accordingly, the mining operations are totally matched with the requirements of the thermal power stations which are located very close to the mines. This being so, NLC is following a transfer price mechanism for arriving at the variable charge. In view of the peculiar situation in which NLC is operating, the Commission would have liked to review the transfer price mechanism so that the ultimate cost of power charged to the customer is fair and reasonable.

5.2.3 In the meantime, the present system of transfer price mechanism may continue to be followed. The Commission intends to examine the same in future and directs NLC to furnish the details of transfer price mechanism for the Commission's examination at the time of submission of tariff petition."

12. Thereafter, the Commission vide its order dated 3.5.2005 in Petition No.5/2002 (relating to the tariff of NLCIL TPS-II for the period 2001-04) observed as under:



“5. The petitioner is the producer of lignite and also the generator of electricity using this lignite. The Commission is mandated by law to ensure transparency in its operations. The Commission, in the matter of fixation of tariff for sale of power is also guided by the consumer interest under Section 61(d) of the Electricity Act. Therefore, its is not only desirable, but also essential to consider the aspect of the transfer price of lignite, used as an input for power generation by the petitioner itself...”

13. However, as the disagreement over the lignite transfer price persisted even after NLCIL worked out the lignite transfer price, based on the principles decided by MoC, the Commission vide its order dated 25.4.2006, had constituted a one-member Bench to consider the question of lignite transfer price and make appropriate recommendations to the Commission for its consideration. Accordingly, after considering the recommendations dated 8.1.2007 of the Bench on various issues connected with the determination of the lignite transfer price, and the objections/ comments of the parties, the Commission, vide order dated 23.3.2007 in Petition No.5/2002, worked out the lignite transfer price for the period 2001-04. The lignite transfer price computed by NLCIL in terms of the MoC guidelines is placed before this Commission during the tariff determination process for the NLCIL stations, and orders are passed by this Commission for the recovery of the same from the beneficiaries, including KSEBL. Thus, while the mining activities themselves are regulated by MoC Gol, the determination and approval of the lignite transfer price, including income tax and other related costs incurred on mining, form part of the input cost to power generation and accordingly fall within the jurisdiction of this Commission. In other words, the Commission does not regulate or interfere with the mining operations, but has the authority to decide on tariff-related components, of which the transfer price of lignite is a key element. Further, Section 79(1)(a) of the Electricity Act stipulates that the Central Commission shall regulate the tariff of generating companies owned or controlled by the Central Government. Section 178 of the Electricity Act confers power on the Central Commission to frame regulations. Accordingly, this Commission, in exercise of the said power, notified the 2001 Tariff Regulations and the 2004 Tariff



Regulations, applicable for the periods 2001-04 and 2004-09 respectively. In terms of Regulation 2.12 of the 2001 Tariff Regulations, tax on income from the core activity of the generating company, if any, is to be computed as an expense and shall be recoverable by the generating company from the beneficiaries. Similarly, Regulation 10 of the 2004 Tariff Regulations, NLCIL is entitled to recover income tax and FERV from the beneficiaries without making any application before the Commission. However, in case of any objection by the beneficiaries to the amounts claimed on account of Income Tax, NLCIL can make an appropriate application before the Commission for its decision. It is noticed that KSEBL had filed Petition No. 532/MP/2020 before this Commission seeking intervention on the Lignite Transfer Price fixed by NLCIL for the period 2019-24 (since MoC vide letter dated 24.6.2019 intimated that NLCIL's Board can, in consultation with the stakeholders decide the Lignite Transfer Pricing with effect from 1.4.2019) and had prayed, amongst others, for a direction on NLCIL to strictly follow the guidelines of MoC for fixing the Lignite Transfer Price for 2019-24, including a direction to follow the Lignite Transfer Price of 2018-19 till the Lignite Transfer Prices are re-fixed by this Commission. This Petition was disposed of by this Commission directing NLCIL to keep the MoC guidelines in abeyance and to continue to consider the Lignite Transfer Price based on the MoC Guidelines dated 2.1.2015, till the regulations for Lignite Transfer Price are notified. Thus, KSEBL, having acknowledged the jurisdiction of this Commission, cannot now argue that the dispute regarding the income tax reimbursement cannot be adjudicated by this Commission. We also note that the question of this Commission having no jurisdiction to adjudicate the Income Tax related issues came up for consideration in the Writ Appeal No. 3699/2024 filed by TNPDCCL before the Hon'ble High Court of Madras and the Hon'ble Court, after relying upon the provisions of the Regulation 2.12 of the 2001 Tariff Regulations and Regulation 10 of the 2004 Tariff Regulations,



Section 79(1)(a) of the Electricity Act and the APTEL judgment dated 10.9.2010 in Appeal No. 49/2010 (TNEB vs. NLC), vide its order dated 9.4.2025, upheld the jurisdiction of this Commission to adjudicate the Income Tax disputes, as extracted as under:

“18. Moreover, the power of CERC is traceable, in view of Sections 79 and 178 of the Electricity Act and under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations. Income tax claim is a component of tariff and therefore the CERC is empowered to adjudicate the tax related issues, which is falling under Section 79(1)(a) of the Electricity Act. Thus the power of CERC is traceable and the petition already filed by the N.L.C. India Limited was disposed of merely on the ground that the writ petitions are pending before various High Courts. Pertinently, liberty was granted to the second respondent to file a fresh petition. That being so, the apprehension of the appellant is unnecessary and the TANGEDCO is at liberty to participate in the process of adjudication, if any petition has been instituted by the generating company and resolve the issues in the manner known to law.

19. Beyond the grounds, disputed facts of this nature require elaborate adjudication by the CERC. The High Court may not be in a position to conduct roving enquiry, since it requires adjudication of facts with reference to the documents and evidences. Even under the scheme of the Electricity Act and the Regulations framed by the CERC, tax related claims are the components of tariffs and thus the writ Court is right in relegating the parties to approach the CERC for effective adjudication and to resolve the issues in the manner known to law. In the event of filing any petition by the generating company, the CERC is requested to dispose of the same by affording opportunity to the parties, as expeditiously as possible, considering the fact that the income tax claim is relating to several assessment years and the claim is pending for long period.”

14. In the light of the above discussion, we reject the contentions of KSEBL and hold that this Commission has the jurisdiction to adjudicate the issues relating to Income tax reimbursement in the present case.

Re: Deduction under Section 80 IA of the IT Act

15. KSEBL has submitted that, as per proviso 3 to Regulation 7(2) of the 2004 Tariff Regulations, the benefit of a tax holiday as applicable under the Act shall be passed on to the beneficiaries. Pointing out that under Section 80 IA (4) of the IT Act, the various categories of businesses eligible for the benefits, have been identified, under which an undertaking setup for generation of power has been included, KSEBL has contended that during the tax holiday period, NLCIL is exempt from tax on profits from electricity produced using lignite from its own mine, in relation to TPS -I Expansion and



the linked Mine-I Expansion. Referring to ITAT order dated 11.4.2012 (DCIT vs NLCIL) *supra*, KSEBL has argued allowing the claim of Section 80 IA deductions to NLCIL's mining activity was upheld and reopening of assessment was found to be unsustainable. TNPDC has submitted that the language of Section 80 IA (4) makes it clear that the 'undertaking as a whole', is entitled to a tax holiday, not isolated sub-components of its operations. Thus, NLCIL being an undertaking, established for power generation qualifies for the tax holiday benefit under the said section. *Per contra*, NLCIL has submitted that the benefit under Section 80 IA was restricted post 2000 Amendment of the Act, only to power generation undertakings and no longer to mining activities. NLCIL has pointed out that it had not claimed Section 80 IA deductions for Mine-I Expansion commissioned post the Amendment, consistent with the amended provision.

16. We have examined the submissions. Regulations 7(1) and 7(2) of the 2004 Tariff Regulations provides as under:

7. Tax on Income: (1) 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.

(2) Any under-recoveries or over-recoveries of tax on income shall be adjusted every year on the basis of income-tax assessment under the Income-Tax Act, 1961, as certified by the statutory auditors.

Provided that tax on any income stream other than the core business shall not constitute a pass-through component in tariff and tax on such other income shall be payable by the generating company or transmission licensee, as the case may be.

xx.

Provided further that the benefits of tax-holiday as applicable in accordance with the provisions of the Income-Tax Act, 1961 shall be passed on to the beneficiaries.

xxx

xxxx

17. It is evident from Regulation 7(1) that the tax on income streams of the generating company from its core business is to be computed as an expense and recovered from the beneficiaries, and Regulation 7(2) provides for the adjustment of over recoveries and under recoveries, on income tax, as certified by statutory auditors. While the first



proviso to the said regulation provides that the tax on income other than core business cannot be made a pass-through in tariff and is payable by the generating company, the third proviso provides that the benefits of the tax holiday shall be passed on to the beneficiaries. In other words, the income tax streams of the generating company, only from its 'core business', are recoverable from the beneficiaries, and the benefit of the tax holiday in accordance with the provisions of the IT Act shall be passed on to the beneficiaries. While the submissions of the parties on the term 'core business' of the generating company, are being examined under a separate head below, the submissions of the Respondents that NLCIL is exempt from tax on profits from electricity produced using lignite from its own mine and that in terms of the third proviso to the said regulations, the 'undertaking as a whole' is entitled to tax holiday, is being examined under this head. Section 80 IA of the IT Act, prior to the 2000 Amendment, states as under:

80-IA. Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.

(1) Xxx

xxx

(3) This section applies to any industrial undertaking which fulfils the following conditions.....

xxx

18. Section 80 IA of the IT Act, as amended through Section 38 of the Finance Act, 2000, replaced the term 'any industrial undertaking' with 'an industrial undertaking' referred to in Clause (iv) of sub section (4) is extracted below:

80-IA. Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.

(1) xxx

xxx

xxx

(3) This section applies to an industrial undertaking referred to in clause (iv) of sub-section (4) which fulfils al the following conditions,

(4) (iv) an undertaking which, —

(a) is set up in any part of India for the generation or generation and distribution of power, if it begins to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2017;

xxx



19. It is evident from the above that post the 2000 amendment of Section 80 IA of the IT Act, the term 'any industrial undertaking' has been replaced by 'an industrial undertaking' wherein, the benefit under Section 80 IA of the IT Act, has been restricted to the eligible business of the generation and distribution of power, as specified under clause (iv) of Section 80 IA (4). Mine-I Expansion was commissioned during the year 2004-05, post the amendment and therefore, the benefit of tax holiday under Section 80 IA was allowable only in respect of an 'undertaking' engaged in the generation and distribution of power of NLCIL generating station (viz TPS-I Expansion) and not to 'any mining activity'. In terms of this, the benefit of the tax holiday was applicable only to the generation business of NLCIL and not to its mining activity. We note that in the Commission's order dated 20.9.2012 in Petition No. 15/2010, which was upheld by APTEL vide its judgment dated 3.7.2013, it was observed that NLCIL had no liability to pay income tax for TPS-I Expansion during the years 2004-07 (as no taxable income accrued for it in the said station) and that it had availed the benefit of tax holiday under Section 80 IA of the IT Act, for the period 2007-09 to 2008-09. It was against this background that the Commission, in the said order, directed that NLCIL was not entitled to recover income tax dues in respect of TPS-I Expansion up to 31.3.2009. By no stretch of imagination can this order be extended to hold that the 'mining activity' of NLCIL is covered under the tax holiday benefit under Section 80 IA of the IT Act, pursuant to the 2000 amendment of the IT Act, as aforesaid. The definition of 'undertaking', having undergone a change pursuant to the 2000 amendment to Section 80 IA, as mentioned, the submission of KSEBL that NLCIL's undertaking as a whole, includes various other categories of business (including mining) and is eligible for a tax holiday, is not tenable. As regards the submission of KSEBL that the ITAT order dated 11.4.2012, wherein Section 80 IA deduction to NLCIL's mining activity was upheld, and the re-opening of assessment was found to be unsustainable, we notice



that there was no conclusive finding of ITAT with regard to Section 80 IA deduction being made applicable to the mining activity of NLCIL. In fact, the ITAT in the said order while rejecting the arguments of the Revenue department for re-assessment, took note that the Assessing officer was satisfied with regard to the claim of deduction under Section 80 IA of the IT Act, in respect of the electricity produced by the Assesee (NLCIL) at the time of original assessment, while having doubt with regard to the claim for deduction in respect of mining of lignite. The said doubt, however, has not been addressed by the ITAT in the said order. Hence, the reliance placed by KSEBL on the said ITAT order to argue that Section 80 IA deduction is applicable to NLCIL's mining activity is misconceived. In light of the above, the submissions of KSEBL and TNPDC stand rejected.

Re: Core Business

20. KSEBL has contended that in the event there is a bar placed on mining activity under Section 80 IA, that itself is a testimony to the fact that mining activity does not form the 'core business' and thus, no tax liability for the same can be passed on to the beneficiaries. Referring to the provisions of the 2001 and 2004 Tariff Regulations, which provide for tax on income streams of the generating company from its core activity to be recovered from the beneficiaries, KSEBL has argued that while the mining activities are undertaken by NLCIL to source lignite, that business has no privity with KSEBL, whose contract with NLCIL, is only for supply of power and not in relation with lignite mining. According to KSEBL, the applicable Tariff Regulations allow 'pass through' components in tariff, treating NLCIL purely as a power generation company and not a mining company and therefore, mining being a non-core business, insofar as the contract between KSEBL and NLCIL is concerned, the income tax arising out of the same cannot be imposed on KSEBL. TNPDC has submitted that the agreement between TNPDC and NLCIL is focused on the procurement of power and pertains



solely to the generation and sale of electricity, and not to mining activities and that the mining operations, which are part of the NLCIL TPS-I Expansion, are not included in the scope of the agreement between the parties and are separate from the terms governing power procurement arrangement. In response, NLCIL has stated that it undertakes the mining of lignite for use in the power project, and the activities of mining, generation and supply of electricity are integrated. While pointing out that the transfer of price of lignite to be considered as fuel cost is determined by the MoC, NLCIL has stated that in terms of the 2004 Tariff Regulations, 'core business' is defined as the regulated activities of the generating company and does not include any other business activities like consultancy, telecommunications of the generating company. It has also submitted that the MoC guidelines provide for claiming income tax reimbursement for mines in the same manner as for thermal power stations and accordingly, the said reimbursement claims for thermal as well as its linked mines from where lignite is utilised have been made by the beneficiaries.

21. We have examined the submissions of the parties. Clause 9 of the BPSA dated 17.4.2002 executed between KSEBL and NLCIL provides as under:

9.0. INCOME TAX

...

9.1. Tax liability, if any, on the following income streams of the Corporation shall be borne by the KSEB.

1) Generation of power from TPS-I Expansion

ii) Mining of lignite from Mine-I Expansion for the purpose of generation of power from TPS -I Expansion.

iii) The amount of grossed up tax that is payable by the Corporation under the income streams mentioned at items (i) and (ii).

9.2. The provisions under 9.1 above shall be governed by the norms/parameters/guidelines/amendments issued from time to time either by Government of India or by the CERC subject to the final order that may be passed by competent judicial forum in this regard.

10. In the event of any clerical errors or mistakes in the amount levied, demanded or charged by the Corporation, the Corporation shall have the right to demand an additional amount in the case of undercharging and the KSEB shall have the right to get refund in case of excess charging, provided such claims are not barred by limitation under the law in force."



22. A similar provision exists under clause 9.1 of the BPSA dated 20.9.2001, executed by NLCIL with TNPDCIL. Further, the MoC, GOI guidelines dated 30.1.2006, relating to income tax reimbursement pertaining to the determination of lignite transfer price of NLCIL for the period 2004-09 are as under:

4.7 Income Tax

Income tax reimbursement is prevailing in power Industry also and not a special feature in lignite pricing. In the earlier Bulk Power Supply Agreement (BPSA) between NLC and SEBS, there was a provision for reimbursement of Income tax. The present practice may continue.

23. Thus, the Respondents, KSEBL and TNPDCIL, were aware that the income tax, if any, from the income streams viz, (i) generation of power from TPS-I Expansion and (ii) Mining of lignite from Mine-I Expansion for the purpose of generation of power from TPS-I Expansion, are to be borne by it. Therefore, the contention of the Respondent, KSEBL and TNPDCIL, that there is no privity of contract or that the mining activities carried out by NLCIL (forming part of TPS-I Expansion) are not included in the scope of agreement between the parties, for the purpose of payments/reimbursement of tax is misconceived, as the provisions of clause 9.1 of the BPSA executed by these respondents with NLCIL, provides that the tax liability on the income streams of NLCIL, viz, (i) the generation of power from TPS-I Expansion and (ii) Mining of Lignite from Mine-I expansion, for the purpose of generation of power from TPS-I Expansion, and (iii) the amount of grossed up tax payable by NLCIL, under such income streams, are governed by the norms issued from time to time, either by the Government of India or this Commission. It is pertinent to note that the amount of grossed-up tax that is payable by NLCIL under clause 9.1(ii), i.e. Mining of lignite from Mine-I Expansion, is not dependent upon the tax paid under the income stream generation of power from TPS-I Expansion under clause 9.1(i) of the BPSA. In other words, the tax holiday availed under Section 80 IA in respect of the generation from the TPS-I Expansion project cannot be extended to Mine-I Expansion, as contended by KSEBL and TNPDCIL.



24. Reverting back to the submissions of the Respondents on the term 'core business', it is noticed that Regulation 6 of the 2004 Tariff Regulations defines 'core business' as the regulated activities of the generating company and does not include any other business activities like consultancy, telecommunications of the generating company. As stated, Regulation 7(1) of the 2004 Tariff Regulations provides that tax on the income streams of the generating company only from its core business, can be recovered from its beneficiaries. Further, the first proviso to Regulation 7(2) specifically stipulates that tax on any income streams, other than the 'core business', shall not constitute a pass-through component on tariff, and tax on such other income shall be payable by the generating company. In our view, the lignite mine is an integrated mine with the generating station, and its operations are closely dependent upon the operation of the generating station, due to the specific characteristics of lignite. Though the MoC, GOI regulates the mining activities and issues guidelines for the fixation of transfer price of lignite, from time to time, in case of NLCIL, the same is examined based on the details furnished by NLCIL and subsequently approved by the Commission, which forms the input cost, in the tariff determined for the generating stations of NLCIL, by this Commission. Therefore, being a regulated activity as such, the mining activity of NLCIL cannot be termed as a 'non-core business', as contended by the Respondents. Merely because the 'mining activity' is not included under the definition of 'undertaking' post Section 80 IA amendment (as stated above), it cannot be argued that the 'mining activity' does not form the 'core business' of NLCIL. In this backdrop, the contentions of the Respondents stand rejected.

Re: Res Judicata and estoppel

25. KSEBL has pointed out that the Commission, in its order dated 20.9.2012 (in Petition No. 15/2010) and APTEL judgment dated 3.10.2013 (Appeal No. 250/2012), came to the categorical conclusion that NLCIL was not entitled to any reimbursement



of Income tax dues from KSEBL in relation to TPS-I Expansion Project till 31.3.2009. Accordingly, it has submitted that the entire tax reimbursement liability of Rs. 62.08 crores raised by NLCIL on KSEBL was set aside by the Commission and APTEL. Pointing out that the issue of income tax from power generation activities and mining activities has been rejected by the Commission and APTEL, and thus having attained finality, NLCIL is barred from raising the very same issue already agitated by them in the earlier proceedings. TNPDCIL has also submitted that NLCIL is estopped from claiming that the mining component be excluded from the tax holiday benefits, as the Commission's order dated 20.9.2012 and the APTEL judgment dated 3.7.2013 confirming the same, have attained finality. Accordingly, it has submitted that the NLCIL's attempt to unilaterally recompute the disallowed claim as income tax reimbursement for mining activities is contrary to the findings of the Commission and APTEL, and the same is barred by res judicata and estoppel. *Per contra*, NLCIL has argued that the present Petition has been filed in line with the Commission's order dated 20.9.2012, which specifically held that NLCIL is entitled to recover the reimbursement of taxes, if any and actually paid by it during the relevant years, if there is no availability of tax holiday. It has pointed out that APTEL has upheld this finding. Accordingly, NLCIL has stated that refusal of KSEBL to make payment of the income tax liability incurred for Mine-I Expansion is contrary to the binding directions of this Commission and APTEL.

26. We have considered the rival submissions. Section 11 of the Code of Civil Procedure, 1908, which encompasses the principle of res judicata, provides as under:

"11. Res judicata—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

...



Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.”

27. As explained by the Hon'ble Supreme Court in its various decisions, in order to attract the principles of res judicata, the necessary ingredients required to be fulfilled are (i) the matter must have been directly and substantially in issue in the former suit; (ii) the matter must be heard and finally decided by the Court in the former suit; (iii) the former suit must be between the same parties or between the parties under whom they or any of them claim, litigating under the same title; and (iv) the Court in which the former suit was instituted is competent to try the subsequent suit or the suit in which such issue has been subsequently raised. Further, in the context of determining if an issue was 'directly and substantially' decided in the previous suit, the Hon'ble Supreme Court in the case of *Jama Masjid v. Sri K V Rudrappa (since dead) by Lrs. & Ors.*, [2021 INSC 528], after having referred to the previous authorities, reiterated the twin test of essentiality and necessity as under:

“36. The locus classicus on the point of determining if an issue was ‘directly and substantially’ decided in the previous suit is the decision of Justice M Jagannadha Rao (writing for a two judge bench) in Sajjadanashin Syed MD B.E. Edr. (D) by Lrs. v. Musa Dadabhai Ummer. During the course of the judgment, the Court analysed the expression “directly and substantially in issue” in Section 11 and laid down the twin test of essentiality and necessity:

“12. It will be noticed that the words used in Section 11 CPC are “directly and substantially in issue”. If the matter was in issue directly and substantially in a prior litigation and decided against a party then the decision would be res judicata in a subsequent proceeding. Judicial decisions have however held that if a matter was only “collaterally or incidentally” in issue and decided in an earlier proceeding, the finding therein would not ordinarily be res judicata in a latter proceeding where the matter is directly and substantially in issue.”

[...]

*18. In India, Mulla has referred to similar tests (Mulla, 15th Edn., p. 104). The learned author says: a matter in respect of which relief is claimed in an earlier suit can be said to be generally a matter “directly and substantially” in issue but it does not mean that if the matter is one in respect of which no relief is sought it is not directly or substantially in issue. It may or may not be. It is possible that it was “directly and substantially” in issue and it may also be possible that it was only collaterally or incidentally in issue, depending upon the facts of the case. The question arises as to what is the test for deciding into which category a case falls? **One test is that if the issue was “necessary” to be decided for adjudicating on the principal issue and was decided, it would have to be treated as “directly and substantially” in issue and if it is clear that the judgment was in fact based upon that decision, then it would be res judicata in a latter case (Mulla, p. 104).** One has to examine the plaint, the written statement, the issues and the judgment to find out if the matter was directly and substantially in issue (*Ishwer Singh v. Sarwan Singh* [AIR 1965 SC 948] and *Syed Mohd. Salie Labbai v. Mohd. Hanifa* [(1976) 4 SCC 780 : AIR 1976 SC 1569]). We are of the view that the above summary in Mulla is a correct statement of the law.*



19. We have here to advert to another principle of caution referred to by Mulla (p. 105): "It is not to be assumed that matters in respect of which issues have been framed are all of them directly and substantially in issue. Nor is there any special significance to be attached to the fact that a particular issue is the first in the list of issues. Which of the matters are directly in issue and which collaterally or incidentally, must be determined on the facts of each case. A material test to be applied is whether the court considers the adjudication of the issue material and essential for its decision."

37. Adverting to the decision in *Mahant Pragdasji Guru Bhagwandasji* (supra) and two earlier decisions, the Court held that these were instances where in spite of adverse findings in an earlier suit, the finding on that specific issue was not treated as *res judicata* as it was purely incidental, auxiliary or collateral to the main issue in each of these cases and not necessary in the earlier case.

38. In another decision in *Gram Panchayat of Village Naulakha v. Ujagar Singh*, it has been held that the decision in an earlier suit for an injunction, where no question of title was adjudicated upon will not be binding on the question of title:

"10. We may also add one other important reason which frequently arises under Section 11 CPC. The earlier suit by the respondent against the Panchayat was only a suit for injunction and not one on title. No question of title was gone into or decided. The said decision cannot, therefore, be binding on the question of title. See in this connection *Sajjadanashin Syed v. Musa Dadabhai Ummer* [(2000) 3 SCC 350] where this Court, on a detailed consideration of law in India and elsewhere held, that even if, in an earlier suit for injunction, there is an incidental finding on title, the same will not be binding in a later suit or proceeding where title is directly in question, unless it is established that it was "necessary" in the earlier suit to decide the question of title for granting or refusing injunction and that the relief for injunction was founded or based on the finding on title. Even the mere framing of an issue on title may not be sufficient as pointed out in that case."

However, in *Sajjadanashin Syed* (supra), an earlier judgment in *Sulochana Amma* (supra) and the Madras High Court's judgment in *Vanagiri* were referred to in order to lay emphasis on the unique facts of each case and its importance for determination of whether the issue was substantially decided. In both the referred cases, the issue was whether the finding of title in an injunction suit would operate as *res judicata* to a subsequent suit for declaration of title. While in *Sulochana Amma*, it was held that by the doctrine of *res judicata*, the finding would bar the subsequent suit, in *Vanagiri*, it was held that the title was not conclusively decided and that the subsequent suit would not be barred. It was observed that the twin tests of necessity and essentiality might lead to different conclusions on suits of a similar nature based on the facts and circumstances in each of them.

39. In a more recent decision in *Nand Ram (Dead) Through Legal Representatives v. Jagdish Prasad (Dead) Through Legal Representatives*, a Bench of two judges reiterated the principle that if a matter has only collaterally or in an auxiliary manner been in issue or decided in an earlier proceeding, the finding would not ordinarily be *res judicata* in a later proceeding where the matter is directly and substantially in issue. Justice Hemant Gupta (writing for a two judge bench) noted that the material test to be applied is whether the adjudication of the issue is material and essential for the decision. In *Nand Ram*, the land leased by the plaintiffs to the defendants was acquired under the Land Acquisition Act, 1894. A dispute arose on the apportionment of the compensation. The suit was decided against the defendant on the ground that defendant did not pay the lease rent for more than 12 months and thus according to the lease agreement, the lease had come to an end. It was thus held that the defendant would not be entitled to the compensation. Subsequently, the plaintiff filed an eviction suit asserting that the defendant was in possession of the land that was not included in the lease deed. The High Court in the second appeal held that the subsequent suit was barred by *res judicata* since the former suit had conclusively decided on the title of the suit property. On appeal,



this court set aside the judgment of the High Court on the ground that the issue of title was not conclusively decided in the former suit.

40. In view of the authorities cited above, the twin test that is used for the identification of whether an issue has been conclusively decided in the previous suit is:

A. Whether the adjudication of the issue was 'necessary' for deciding on the principle issue ('the necessity test'); and

B. Whether the judgment in the suit is based upon the decision on that issue ('the essentiality test')."

28. As per the principles laid down in the above judgment, in determining whether an issue was directly and substantially decided in the previous suit, the twin test of essentiality and necessity would apply. The necessity test would entail ascertaining whether an adjudication of the issue was necessary for deciding on the principal issue. Whereas, the essentiality test would entail ascertaining whether the judgment in the suit is based upon the decision on that suit. It has also been held that if a matter was only 'collaterally or incidentally' in issue and decided in the earlier proceedings, the finding therein would not ordinarily be res judicata in a latter proceeding where the matter is directly and substantially in issue.

29. In the present case, NLCIL filed Petition No. 15/2012, seeking the reimbursement of the outstanding income tax dues from KSEBL amounting to Rs. 119.09 crore as on 31.3.2009. In the said Petition, the Commission, after hearing the parties, i.e., NLCIL and KSEBL, examined the submissions and gave its findings as follows:

"13. We have heard the representative of the parties and have given our thoughtful consideration to the submissions made.

14. In terms of the regulations, while seeking refund of income-tax from the beneficiaries, the generating company was required to submit a certificate from the statutory auditors that the amount was immediately due and payable to the taxing authority. KSEB has alleged that NLC did not support its demand for income-tax with the certificate of its statutory auditors. In the rejoinder, NLC has denied the averment stating that the claims for reimbursement were made based on the advance tax remitted and that on completion of statutory audit, final income-tax adjustments were sent to KSEB along with statutory auditors' certificate. We have considered the allegation of KSEB. NLC has not averred that the demand for reimbursement of Advance Tax was supported by the certificate issued by its statutory auditors, neither has it filed any evidence to that effect. In response to the request by KSEB, NLC has filed certain documents under its affidavit dated 17.2.2011. At pages 144 to 149 of Volume I of the booklet accompanying the affidavit, NLC has filed the details of income-tax in respect of each of its generating station. These details are unaudited. Even otherwise, from the reply of NLC it follows that demand was not supported by



the statutory auditors' certificate. The procedure adopted by NLC is contrary to that prescribed under the regulations. The requirement for submitting the statutory auditors' certificate has been prescribed with a definite purpose. The liability for payment of Advance Tax was estimated for the generating company as a whole. The regulations provided for apportionment of liability of Advance Tax amongst all the generating stations owned by the generating company and thereafter amongst the beneficiaries of the generating station in the ratio of the fixed charges payable by each one of them. To obviate the possibility of under-recovery/over-recovery of the Advance Tax the regulations prescribed that the demand be accompanied by the statutory auditors' certificate. NLC's demands for refund of the income-tax did not adhere to the regulations, though the infringement was procedural.

15. NLC has claimed recovery of income-tax dues of `119.0935 crore, details of which are contained in Annexure-II of the petition. As per these details, a total amount of `171.7569 crore became payable by KSEB up to 31.3.2009 towards income tax. After adjusting the amount receivable by KSEB, the net dues have been arrived at `119.0935 crore. It is the case of NLC that there was no taxable income of TPS-I Expansion during these years after adjustment of unabsorbed depreciation for the year 2003-04. When there was no taxable income of TPS-I Expansion, there could be no justification for NLC to demand refund of income-tax dues. The demand of NLC being unjustified, KSEB was under no obligation to pay the amount demanded. Even if at some stage Advance Tax was paid by NLC for the years in question, it must have received credit from the Income-tax Department against the income-tax dues for other generating stations as NLC did not have the liability to pay income-tax for TPS-I Expansion for reason of taxable income not accruing during these years. Therefore, NLC cannot raise demand on KSEB for refund of income-tax for the years 2004-05 to 2006-07.

16. NLC has claimed that it availed of the benefit of tax holiday under Section 80 IA of the IT Act with effect from the year 2007-08 and passed on the benefit to KSEB as mandated by the regulations. In view of this claim of NLC, no income-tax liability accrues on KSEB for the years 2007-08 and 2008-09. Therefore, the question of recovery of income-tax dues for these two years also does not arise.

17. We conclude our findings by stating that income-tax liability in respect of TPS-I Expansion did not accrue for the years 2003-04, 2004-05, 2005-06 and 2006-07 for want of taxable income and for the years 2007-08 and 2008-09 because of availing the tax holiday benefit. In view of these findings, the question whether NLC was obligated to avail the benefit of Section 80 IA from the date of commissioning of TPS-I Expansion does not survive for our examination.

18. During the course of hearing it was submitted on behalf of NLC that even though the tax benefit has already been passed on by NLC to the beneficiaries, the assessing officer in his assessment order dated 28.12.2010 has disallowed its claim for tax benefit under Section 80 IA in respect of TPS-I Expansion for the financial year 2007-08 on the ground that the generating station was only an expansion of the then existing capacity and could not be considered as a separate undertaking as provided under Section 80 IA (4) (iv) of the IT Act. In case, NLC becomes liable to pay income-tax on account of unavailability of benefit under Section 80 IA, it shall be entitled to recover from KSEB the income-tax along surcharge, interest etc paid to the Income-tax Department.

19. We have held that NLC is not entitled to recovery of income-tax dues in respect of TPS-I Expansion up to 31.3.2009. In view of this, there is justifiably no reason for KSEB to withhold income-tax dues for TPS-II. NLC has alleged that KSEB has been withholding income-tax dues in respect of TPS-II amounting to `57.00 crore included in the total amount of `119.0935 crore. We direct that KSEB shall release such



withheld income-tax dues amounting to `57.00 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, duly supported by the statutory auditors' certificate."

30. It is evident from the above that KSEBL had, in Petition No. 15/2010, raised amongst others the issue of NLCIL not availing the tax holiday benefit under Section 80 IA of the Act, in respect of mines, which, according to it, were part of the generating stations of NLCIL. In response, NLCIL clarified that after the restructuring of Section 80 IA with effect from 1.4.2000, mining is not covered under Section 80 IA of the IT Act, apart from the fact that the assessing officer in his assessment order dated 28.12.2010, had disallowed the claim for tax benefits under Section 80 IA. The Commission, in its order dated 20.9.2012, while observing that NLCIL was not entitled to the recovery of the income tax dues in respect of TPS-I Expansion up to 31.3.2009, held that there was no reason for KSEBL to withhold income tax dues for TPS-II. This was subsequently upheld by APTEL in its judgment dated 3.7.2013. However, in the said order, no discussion or a specific finding/decision was rendered by the Commission on whether the mining activity of NLCIL is to be excluded from the tax holiday benefit or not under Section 80 IA. In other words, this issue was not 'direct and substantial' in the aforesaid petition, culminating in the order dated 20.9.2012 and later affirmed by APTEL. As laid down in the said judgment *supra* (para 26 above), if a matter was only 'collaterally or incidentally' in issue and decided in the earlier proceedings, the finding therein would not ordinarily be res judicata in a latter proceeding, where the matter is directly and substantially in issue. Apart from this issue being 'collateral or incidental', there was also no specific finding/decision on the same in the earlier proceedings. In view of this, the issues raised by NLCIL in the present Petition, seeking the reimbursement of the taxes actually paid by it during the relevant years in respect of the mining component (Mine-I Expansion), cannot be said to be hit by the principles of res judicata and estoppel. Merely because the IT assessment order



dated 28.12.2010 was not challenged by NLCIL, for any reason whatsoever, the same cannot be a ground for KSEBL to deny the income tax reimbursement to NLCIL. In light of the above, the submissions of the Respondents are rejected, and we hold that KSEBL is liable to reimburse NLCIL the revised income tax reimbursement claims in the Petition, duly certified by an auditor, as submitted by NLCIL.

31. It is pertinent to mention that the Respondent, TNPDCIL, had adopted the submissions of KSEBL in the present case. It has, however, been submitted that payments have been made to NLCIL, on the mistaken belief that the amounts claimed were legally admissible in accordance with the order of the Commission and other competent authorities, but in the light of the correct interpretation of the regulatory framework and the binding findings of the Commission and APTEL, the claim of NLCIL is not sustainable. Accordingly, TNPDCIL has prayed that the amounts paid to NLCIL are liable to be refunded along with applicable interest from the date of payment till the date of refund, to compensate for the time value of money. Considering the fact that the submissions of TNPDCIL, which are in line with the submissions of KSEBL, have been rejected as above, in terms of our findings, the prayer of TNPDCIL for a refund of the IT amounts already paid to NLCIL cannot be entertained and is accordingly rejected.

32. Petition No. 2/MP/2014, on remand, is disposed of in terms of the above. With this, the directions contained in the APTEL judgment dated 26.3.2025 in Appeal No. 138/2017 stand implemented.

Sd/-
(Ravinder Singh Dhillon)
Member

Sd/-
(Harish Dudani)
Member

Sd/-
(Ramesh Babu V.)
Member

Sd/-
(Jishnu Barua)
Chairperson

