

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.259/MP/2022

Coram:

**Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member**

Date of Order: 22nd November, 2022

In the matter of:

Petition under Section 61(d), 79 & 94 of the Electricity Act, 2003 read with Regulations 79,111 & 114 of CERC (Conduct of Business) Regulations, 1999 and Regulation 3(9), 31(8), 42(2), 54 &55 of CERC (Terms and Conditions of Tariff) Regulations, 2014 and Regulation 3(10),44(10),55(2),56,76 & 77 of CERC(Terms & Conditions of Tariff) Regulations, 2019 for recovery of Service Tax on Free Power and Goods and Service Tax (GST) On Free Power and Water Usage Charges to be paid by NHPC Limited in respect of NHPC Hydro- Power Stations.

And

In the matter of

NHPC Limited
NHPC Office Complex, Sector-33
Faridabad (Haryana)-121003

..... **Petitioner**

Vs

1. Punjab State Power Corporation Limited,
The Mall, Near Kali Badi Mandir,
Patiala Punjab -147001
2. Haryana Power Purchase Centre,
Shakti Bhavan, Sector-6
Panchkula, Haryana -134109
3. BSES Rajdhani Power Limited,
BSES Bhawan, 2nd Floor, B-Block Nehru Place,
New Delhi – 110019
4. BSES Yamuna Power Limited,
2nd Floor, B-Block Shakti Kiran Building,
Near Karkardooma Court, New Delhi – 110032



5. Tata Power Delhi Distribution Limited,
33 kV Sub Station Building, Hudson Lane,
Kingsway Camp, Delhi-110019
6. Himachal Pradesh State Electricity Board Limited,
Vidyut Bhawan, Shimla, Himachal Pradesh-171004
7. Uttar Pradesh Power Corporation Limited,
Shakti Bhavan, 14, Ashok Marg,
Lucknow-226001
8. Ajmer Vidyut Vitaran Nigam Limited,
Old Power House, Hatthi Bhatta,
Jaipur Road, Ajmer-305001
9. Jaipur Vidyut Vitaran Nigam Limited,
Vidyut Bhawan, Janpath,
Jaipur-302005
10. Jodhpur Vidyut Vitaran Nigam Limited,
New Power House, Industrial Area,
Jodhpur-342003
11. Uttarakhand Power Corporation Limited,
Urja Bhavan, Kanwali Road,
Dehradun-248001
12. Engineering Department,
1st Floor, Secretariat, Sector 9-D
Chandigarh-160009
13. Power Development Department,
New Secretariat, Jammu-180001
14. Chhattisgarh State Power Distribution Co. Limited,
Vidyut Seva Bhavan, Danganiya, Raipur-492013
15. West Bengal State Electricity Distribution Company Limited,
Vidyut Bhavan, 8th Floor, Block-DJ, Sector-II, Salt Lake,
Kolkata-700091
16. Damodar Valley Corporation
DVC Towers, VIP Road,
Kolkata-700054
17. Jharkhand State Electricity Board
Dorando, Ranchi, Jharkhand-834002



18. North Bihar Power Distribution Company Ltd.,
Vidyut Bhavan, Bailey Road,
Patna-800001

19. South Bihar Power Distribution Company Ltd.,
Vidyut Bhavan, Bailey Road
Patna-800001

20. Department of Power,
Govt. of Sikkim, Kazi Road,
Gangtok-737101

21. GRIDCO Limited,
4th Floor, Janpath, Bhubaneswar,
Orissa -751022

22. Assam Power Distribution Company Limited,
4th Floor, Bijulee Bhawan, Paltan Bazar,
Guwahati, Assam -781001

23. Department of Power, Vidyut Bhawan,
Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh -799111

24. Power & Electricity Department,
Government of Mizoram, Aizwal, Mizoram-796001

25. Tripura State Electricity Corp. Limited.,
Bidyut Bhawan, Banamalipur,
Agartala, Tripura-799001

26. Meghalaya Energy Corporation Limited,
Lum Jingsai, Short Round Road,
Shillong, Meghalaya-793001

27. Department of Power,
Govt. of Manipur, Keishampat,
Imphal, Manipur-795001

28. Department of Power,
Government of Nagaland,
Kohima, Nagaland-797001

Parties Present:

Shri Ved Jain, Advocate, NHPC
Shri Venkatesh, Advocate, NHPC
Shri Ashutosh Srivastava, Advocate, NHPC
Shri Siddhartha Nigotia, Advocate, NHPC



Shri Ankit Gupta, NHPC
Shri Aman Mahajan, NHPC
Shri Piyush Kumar, NHPC
Shri S.K. Meena, NHPC
Shri Mahesh Kumar, NHPC
Shri Shubham Arya, Advocate, HPPC
Shri Reema Singh, Advocate, HPPC

ORDER

The Petitioner NHPC Limited, is a Government Company which owns and operates various hydro-generating stations and the tariff of the generating stations of the Petitioner, are determined by this Commission, under section 62 of the Electricity Act, 2003 ('the Act') read with the applicable terms and conditions of tariff, notified by this Commission under section 61 of the Act.

2. The Petitioner, in this petition, has submitted that with the setting up of the Hydro projects, in mid-80's, under the Central Sector, the Government of India, had allowed a royalty at the rate of 1.5 paise per unit of energy sent out, and royalty so paid, was included in tariff. Subsequently, the Government of India, by order dated 5.9.1994, withdrew the royalty paid to the home State and introduced the concept of 12% free power to the home States, to compensate for the distress caused during the construction of project. Thereafter, in August, 1998 the MOP, GOI came up with the policy for hydro-power development, wherein, the concept of 12% free power to the home State was continued. It has also submitted that the 2001 Tariff Regulations (applicable for the period 2001-04) and the 2004 Tariff Regulations (applicable for the period 2004-09) provides for free power to the home State, the expenditure of which is to be compensated to the hydro power developers, by considering the same in the calculations of saleable primary design energy and secondary energy. The Petitioner has also stated that the 2009 Tariff Regulations (applicable for the period 2009-14), the 2014 Tariff Regulations (applicable



for the period 2014-19) and the 2019 Tariff Regulations (applicable for the period 2019-24) also provides for free power (12% plus 1% Local Area Development Fund) to be provided to the home States, in line with the Hydro Power Policy, 2008 notified by the MOP, GOI.

3. The Petitioner has further submitted that the Directorate General of Goods and Services Tax Intelligence, Chandigarh had on 5.10.2021 issued show cause-cum demand notice, demanding the Service tax for Rs 72.03 crore, plus interest and penalty, payable by the Petitioner, for the period from 1.4.2016 to 30.6.2017 (in respect of its generating stations) as detailed below.

Sl. No.	Name of Power & Name of Power Station	Taxable Amount (Rs.)	Service Tax (Including Cess) (Rs.)	Remarks
1.	Bairasiul (Himachal Pradesh)	22,10,21,000/-	3,29,66,550/-	Free Power
2.	Chamera-I (Himachal Pradesh)	69,78,31,200/-	10,41,72,451/-	Free Power
3.	Chamera-II (Himachal Pradesh)	47,84,64,000/-	7,14,13,920/-	Free Power
4.	Chamera-III (Himachal Pradesh)	68,75,33,800/-	10,26,19,436/-	Free Power
5.	Parbati-III (Himachal Pradesh)	48,67,97,600/-	7,27,41,005/-	Free Power
6.	Rangit (Sikkim)	16,81,60,500/-	2,51,48,151/-	Free Power
7.	Teesta-V (Sikkim)	98,71,08,900/-	14,74,00,722/-	Free Power
8.	Tanakpur (Uttarakhand)	15,75,63,300/-	2,35,77,053/-	Free Power
9.	Dhauliganga (Uttarakhand)	52,59,87,500/-	7,86,04,442/-	Free Power
10.	Lotak (Manipur)	27,14,46,800/-	4,05,73,914/-	Free Power
11.	TLDP-III (West Bengal)	4,61,95,800/-	69,06,270/-	Free Power
12.	TLDP-III (West Bengal)	2,21,82,000/-	3,31,70,88/-	Free Power
13.	Subansiri lower (Arunachal Pradesh/Assam)	7,21,48,700/-	1,08,22,306/-	Royalty on sand/ aggregate/boulder, etc.
	TOTAL		72,02,63,308/-	



4. In addition to the above, the Additional Director General of Goods and Services Tax Intelligence, Chandigarh, has on 21.2.2022 issued Pre-SCN demand intimation notice demanding GST of Rs. 1006.57 crore, plus interest and penalty on free power and water usage charges, payable by the Petitioner, for the period from 1.7.2017 to 21.3.2021, for its various generating stations, as detailed below.

Sl. No.	GST IN/State	Name of Power Station	Taxable Value (in Rs.)	GST (in Rs.)	Remarks
	02AAACN0149C1ZB (Himachal Pradesh)	Chamera-I Chamera-II Chamera –III Bairasiul & Parbati-III	649,76,63,733/-	116,95,79,472/--	Free Power
2.	14AAACN0149C1Z6 (Manipur)	Loktak	73,90,19,518/-	13,30,23,514/-	Free Power
3.	01AAACN0149C3ZB (UT Jammu & Kashmir)	Salal, Uri-I, Uri-II, Sewa- II, Dulhasti & Kishanganga	4098,99,56,910/-	737,81,92,244/-	Free Power and water usage
4.	38AAACN0149C1ZW (UT Ladakh)	Nimoo- Bazgo & Chutak	261,68,02,986/-	47,10,24,538/-	Free power and water usage
5.	05AAACN0149C4Z2 (Uttarakhand)	Tanakpur & Dhauliganga	182,07,18,978/-	32,77,29,416/-	Free Power
6.	11AAACN0149C1ZW (Sikkim)	Teesta-V & Rangit	302,93,43,579/-	54,52,81,846/-	Free Power
7.	19AAACN0149C1ZW (West Bengal)	TLDP-III TLDP-IV	22,72,02,202/-	4,08,96,396/-	Free Power
	Total			1006,57,27,426	

5. The Petitioner has stated that, against the said notice issued by the Tax Authorities, towards levy of GST (on free power and water usage charges) it has filed replies and the hearings of these cases, are pending before the said authorities. In the above background, the Petitioner has filed this petition seeking the following reliefs:



- (a) *Allow the Petitioner to represent the case at Appropriate Authority.*
- (b) *By exercising the inherent powers of the Commission under Regulation 54 &55 of CERC (Terms & Conditions of Tariff) Regulations, 2014 and Regulations 76 &77 of CERC (Terms & Conditions of Tariff) Regulations, 2019, and by implementing the provision of Change in law under Regulation 3(9) of CERC Tariff Regulations, 2014 and provision of Change in Law and Recovery of Statutory Charges under Regulation 3(10) and Regulation 56 of CERC Tariff Regulations,2019 allow recovery of service tax and GST on free power and water usage charges with interest and penalty thereon along with recovery of future tax also on concurrent basis, if levied, depending on the outcome of the case as under.*
- (c) *Allow recovery of demanded service tax on free power, along with interest and penalty, whenever paid after decision of Appropriate Authority for the period 01.04.2016 to 30.06.2017, from beneficiary DISCOMs. Allow recovery of demanded GST on free power, along with interest and penalty, whenever paid after decision of Appropriate Authority for the period 01.07.2017 to 31.03.2021, from beneficiary state(s) for the period 08.07.2017 to 31.03.2021, from beneficiary DISCOMs.*
- (d) *Allow recovery of demanded GST on water usage charges, along with interest and penalty, whenever paid after decision of Appropriate Authority, from beneficiary state(s) for the period 08.07.2017 to 31.03.2021, in proportion to supply of power.*
- (e) *Issue necessary amendment in CERC (Terms & Conditions of Tariff) Regulations, 2019 to incorporate recovery of Goods and Service Tax (GST) on free power and water usage charges from the beneficiaries.*
- (f) *Allow the Petitioner to recover the GST if levied on free power and water usage charges in future years without making an application.*
- (g) *Further, in case if any amount is required to be deposited by NHPC Limited at the time of filing Appeal before any Authority/ Court as pre- requisites for filing of Appeal in the present matter, Hon'ble Commission is requested to allow recovery of such amount from the beneficiaries after depositing the same with the department.*
- (h) *Allow the Petitioner to recover the Petition fee amounting to Rs. 3,00,000/- (Rs. Three Lakh only) from the Respondents.*
- (i) *Pass such other and further order/orders as are deemed fit and proper in the facts and circumstances of the case.*

Hearing dated 15.11.2022

6. During the hearing of the petition 'on admission', the learned counsel for the Petitioner made detailed oral submissions, mainly in line with its submissions made in the petition. The learned counsel, however, prayed that in case the Commission decides not to admit the petition, the Petitioner may be granted liberty to approach the Commission, in future, to seek appropriate reliefs, depending upon the outcome of the case pending before the Tax adjudication authorities. The learned counsel for the Respondent HPPC



submitted that the Commission may consider the grant of liberty as prayed for by the Petitioner. The Commission, after hearing the learned counsel of the parties, reserved its order in the petition.

Analysis and Decision

7. We have considered the submissions of the parties. The Petitioner is mainly aggrieved by the show cause cum demand notice dated 5.10.2021 issued by the DG, GST Intelligence Chandigarh, demanding Service Tax for Rs. 72.03 crore (plus interest and penalty) payable for the period from 1.4.2016 to 30.6.2017 and the Pre-SCN demand intimation notice dated 21.2.2022 issued by the Additional DG, GST Intelligence Chandigarh, demanding the GST of Rs. 1006.57 crore (plus interest and penalty on free power and water charges) payable for the period from 1.7.2017 to 31.3.2021. Against the aforesaid notices, the Petitioner has filed replies and is contesting these cases before the Tax adjudication authorities, which are pending. In view of this, the reliefs sought by the Petitioner, at this stage, are premature. However, the Petitioner, may approach the Commission in future, if at all required, to seek appropriate reliefs and the same shall be dealt in accordance with the applicable laws, rules and regulations.

8. Accordingly, Petition No.259/MP/2022 is disposed of at the admission stage.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I. S. Jha)
Member

