

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 135/MP/2023**

**Coram:**

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

**Date of Order: 10<sup>th</sup> July, 2023**

**In the matter of**

Petition under section 79(1)(a) and (f) of the Electricity Act, 2003 read with other applicable provisions of law for adjudication of dispute arising due to non-payment of income tax by beneficiaries which was paid by the Petitioner under Direct Tax Vivad Se Vishwas Act, 2020.

**And**

**In the matter of**

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

**...Petitioner**

1. Tamilnadu Generation and Distribution Corporation Limited,  
NPKRR Maaligai, 144, Anna Salai,  
Chennai – 600002.

2. Power Company of Karnataka Limited,  
KPTCL Complex, Kaveri Bhavan,  
Bangalore – 560009.

3. Bangalore Electricity Supply Company Limited,  
Krishna Rajendra Circle  
Bangalore - 560 001.

4. Chamundeshwari Electricity Supply Corporation Limited,  
Corporate Office No CA 29, Vijayanagar 2<sup>nd</sup> Stage  
Hinakal, Mysore, Karnataka – 570017.

5. Hubli Electricity Supply Company Limited,  
Corporate office, P.B.Road, Navanagar,  
Hubli, Karnataka - 580 025.



6. Kerala State Electricity Board Limited,  
Vaidyuthi Bhavanam, Pattom,  
Thiruvananthapuram, Kerala - 695004.

7. Andhra Pradesh Power Coordination Committee,  
Vidyuth Soudha, 48-12-4/1, Elluru Road,  
Gunadala, Vijayawada, A.P. - 520008.

8. Southern Power Distribution Company of A.P. Limited,  
D.NO:19-13-65/A, Srinivasapuram, Tiruchanoor Road,  
Tirupathi, Andhra Pradesh -517501.

9. Eastern Power Distribution Company of A.P. Limited,  
P&T Colony, Seyhyetammadhara,  
Vishakapatnam, Andhra Pradesh – 503013.

10. Central Power Distribution Corporation of A.P. Limited,  
Corporate Office, Beside Polytechnic College, ITI Road  
Vijayawada, Andhra Pradesh - 520 008.

11. Northern Power Distribution Company of Telangana Limited,  
H. No. 1 -1-504, Opp. NIT petrol Pump, Chaityanayapuri colony,  
Hanmkonda, Warangal, Telangana - 506 004.

12. Telangana State Power Coordination Committee,  
TSTRANSCO, Vidyut Soudha,  
Khairatabad, Hyderabad-500082.

13. Southern Power Distribution Company of Telangana Limited,  
Corporate Office: No. 6-1-50, Mint Compound,  
Hyderabad, Telangana - 500 063.

.... Respondents

**Parties Present:**

Shri Kulamani Biswal, Advocate, NLCIL  
Shri Mukesh Agarwal, NLCIL  
Shri S. Vallinayagam, Advocate, TANGEDCO  
Shri Prabhas Bajaj, Advocate, KSEB

**ORDER**

This Petition has been filed by the Petitioner, NLC India Limited, for adjudication of disputes due to non-payment of income tax by beneficiaries, which was paid by the Petitioner under the Direct Tax-Vivad Se Vishwas Scheme, 2020. Accordingly, the Petitioner has sought for the following relief(s):



- “1. Allow and admit the instant petition.*
- 2. Direct the Respondents to pay their respective tax liabilities immediately in one instalment;*
- 3. Allow to recover Late Payment Surcharge from the due date of bill raised by the petitioner till the date of actual payment made by the Respondents;*
- 4. Pass such further Order/Orders as this Hon'ble Commission may be deemed just and proper in the facts and circumstances of the case.”*

## **Submissions of the Petitioner**

2. The Petitioner, in the petition, has submitted the following:

- (a) The Petitioner charges the income tax based on the assessment in tariff as prescribed in the applicable Tariff Regulations prevailing at that point of time and as allowed by the Commission in various Tariff Regulations for treatment of income tax. The Petitioner faces challenge when a huge income tax liability is raised due to a wrong assessment by Assessing Officers, wherein, the authorities have disallowed various items such as depreciation, 80IA deduction, etc., and have raised huge demands which were not in line with the provisions of the Income Tax Act, 1961.
- (b) The Petitioner had two options, either to deposit the entire demand as per the respective assessment orders issued by Assessing officers and recover the amount from the beneficiaries as per applicable Tariff Regulations or contest the assessment orders for determining the appropriate tax liability of the respective years as per the provisions of the Income Tax Act, in the interest of the beneficiaries.
- (c) The Petitioner chose to challenge the various assessment orders in the interest of beneficiaries, by deploying its resources, and engaging advocates to safeguard the interests of beneficiaries in particular and consumers at large in general. The Petitioner has to suffer a huge loss in this process of litigation because it has made a pre-deposit of tax for admittance of appeals for the respective years using its own resources which has already resulted in a loss of time value of money.
- (d) The Petitioner has challenged every wrong assessment relating to the years from 2000-01 till 2016-17, which was not in the interest of beneficiaries, in various forums, viz., CIT(A), ITAT, the Hon'ble High Court and the Hon'ble Supreme Court of India. These cases are awaiting adjudication for many years, and the Petitioner has been disclosing the same under contingent liabilities and commitments under notes to financial statements in the annual report regularly.
- (e) The Government of India introduced the “Vivad se Vishwas Scheme” (in short 'the Scheme') in the Union Budget, 2020 to end all pending income



tax litigations, wherein, interest and penalty/ies were waived off, if disputed tax was paid. Additionally, relief was also provided in the scheme to reduce the disputed tax by 50% if cases of similar nature had been adjudicated in the Petitioner's favour in higher forums.

- (f) The Petitioner has opted for the above scheme on merit, and this has resulted in the settlement of the various long pending demands on a package basis, by paying tax to the tune of Rs.732 crores as per the said Scheme, which was less than the total demand of Rs 1082 crore. This has further resulted in the reduction of the liabilities of the beneficiaries against the payment of total demand. Also, huge interest thereof was avoided. However, no refund of tax has been received by the Petitioner towards the disputed tax. The Income Tax Department has also issued Form-5 for settlement of these cases, thereby freezing the tax amount and rate for the respective years.
- (g) Based on Form-5 issued by the Income Tax Department, the amount to be recovered from the respective Discoms has been worked out and duly certified by the statutory auditors of the Petitioner Company in line with the respective applicable Tariff Regulations. The various assessments which were decided in the said Scheme pertain to the period from 2000-01 to 2016-17, and therefore the share of liability was calculated in accordance with the provisions of the Tariff Regulations, notified by this Commission for the periods 2001-04, 2004-09, 2009-14, and 2014-19.
- (h) The Petitioner has calculated the liabilities on each beneficiary, after being duly certified by statutory auditors, and raised the bill for Rs.386.51 crore (against the payment of Rs 732 crore) on 27.12.2022, in line with the applicable regulations, and uploaded the same in the PRAAPTI Portal. The bills raised and the amount received as on the date of filing of this petition are as under:

<b>VSVS Debit Note</b>					
<b>S.N.</b>	<b>Discoms</b>	<b>Total (in crore)</b>	<b>Received amount</b>	<b>Remaining amount to be paid</b>	<b>Date of Receipt</b>
1	AP Discoms	19.54	-	19.54	
2	TG Discoms	22.84	-	22.84	
3	BESCOM	34.11	-	34.11	
4	MESCOM	6.44	6.32	0.12	28.12.2022
5	HESCOM	14.74	-	14.74	
6	CESC	7.14	-	7.14	
7	GESCOM	11.01	11.01	0.00	07.02.2023
8	TANGEDCO	184.71		184.71	
9	PED	16.32	6.00	10.32	10.03.2023
10	KSEB	41.99	6.96	35.03	10.03.2023
11	JVVNL	10.93	5.36	5.57	13.03.2023



12	AVVNL	7.88	3.98	3.90	13.03.2023
13	JDVVNL	8.85	4.40	4.46	13.03.2023
	<b>Total</b>	<b>386.51</b>	<b>44.03</b>	<b>342.49</b>	

- (i) KSEB has paid the amount of Rs.6.96 crore under protest and stated that future payments would be paid subject to verification of the claim and other legal outcomes in this regard. Puducherry Energy Department has made a part payment of Rs.6 crore and requested for 12 installments under liquidation scheme. The Rajasthan Discoms (JVVNL, AVVNL & JDVVNL) have settled the claims pertaining to the period 2009-14 and stated that the claim for the period 2014-19 would be settled after truing up of the said period.
- (j) The Respondents, vide their communications, have raised objections and have refused to liquidate the dues on the grounds that (i) no approval of the Commission for the Debit notes raised, (ii) Beneficiaries have not been previously intimated about pending cases in various forums (iii) No prior consent of beneficiaries has been obtained for settlement under the said Scheme, as it has huge financial implication for the beneficiaries; and (iv) additional tax claim through a debit note for the period 2001-19 is against the prevailing Tariff Regulations.
- (k) On uploading the invoices in the PRAAPTI portal by the Petitioner, Respondents KSEB and the Telangana Discoms raised disputes in the portal, stating that the claims are not supported by the Commission's order. The Petitioner clarified in the portal that the said claims have been made based on the Tariff Regulations of the Commission, as applicable from time to time. The Respondent, TANGEDCO, has returned the invoices, stating that the claim is not supported by the Commission's order
- (l) The Respondent, TANGEDCO, has filed a Writ Petition before the Hon'ble High Court of Madras for 'grant of stay' of curtailment of power in line with the MOP, GOI Rules, 2022. The Hon'ble Court has issued an interim order directing the 1<sup>st</sup> Respondent (MOP, GOI) not to suspend grid connectivity of TANGEDCO till the disposal of the said writ petition. TANGEDCO has uploaded the stay order in the PRAAPTI portal. Subsequently, the Respondents, AP Discoms, Telangana Discoms, BESCOM, CESCO, and HESCO, have raised disputes in the PRAAPTI Portal. NLCIL has sought to vacate the stay, and the same is under adjudication.
- (m) In view of the above, the Petitioner is left with no recourse after the negative responses from the Respondents and the stay order of the Hon'ble High Court of Madras other than to file this petition before this Commission for adjudication. The Petitioner has calculated the bills of income tax liability in accordance with the Tariff Regulations applicable for the respective periods,



based on Form-5 issued by the Income Tax Department, which is annexed as Annexure H to the petition.

- (n) Such acts by the Respondents are only to delay the legitimate claims of the Petitioner and to gain time for payment, thereby saving finance charges during the period of dispute, in turn, causing financial pressure on the Petitioner. The Commission has the jurisdiction to resolve the disputes between the parties under section 79(1)(f) of the Electricity Act, 2003 ('the Act') read with other applicable provisions of law.

### **Hearing dated 28.6.2023**

3. The matter was heard on 'admission' on 28.6.2023. During the hearing, the learned counsel for the Petitioner made oral submissions in line with the submissions made in the petition. On a specific query by the Commission, with regard to the cases filed by the Respondents before various High Courts, the learned counsel for the Petitioner clarified that while the present petition has been filed for adjudication of disputes between the parties, in terms of Section 79(1)(f) of the Act, the writ petitions filed by the Respondents relate to the Rules framed by the MOP, GOI in exercise of the powers under Section 176 of the Act. The learned counsel also submitted that some of the beneficiaries have made partial payments of the amounts claimed by the Petitioner. On a further query as to whether any interim orders have been passed in the pending writ petitions, the learned counsel submitted that the Hon'ble High Court of Kerala and the Hon'ble High Court of Karnataka have granted interim stay on the bills raised by the Petitioner on KSEBL and the Karnataka Escoms. He further submitted that the Hon'ble High Court of Madras and the Hon'ble High Court of Telangana have passed interim orders directing the Respondents therein, not to suspend grid connectivity to TANGEDCO and the Telangana Discoms. The learned counsel accordingly prayed that the present petition may be admitted and the Commission may adjudicate the matter.



4. In response, the learned counsel for the Respondent TANGEDCO raised objections on the 'maintainability' of the petition and submitted that there is no dispute to be adjudicated between the parties under Section 79(1)(f) of the Act, as the Respondent has paid the income tax claims of the Petitioner, in terms of the Tariff Regulations read with the Orders of this Commission. He also submitted that the Petitioner has not made available the details of the cases pending before the various forums (as in para 2(d) above) either in the petitions filed before this Commission for approval of tariffs for the relevant tariff periods or to the beneficiaries of the project. The learned counsel further submitted that since some of the Hon'ble High Courts have granted interim stay on the bills raised by the Petitioner, the present petition may not be entertained by this Commission. Accordingly, the learned counsel submitted that the present petition is presently not maintainable. The learned counsel for the Respondent KSEBL adopted the above submissions of the Respondent TANGEDCO. He, however, pointed out that the Hon'ble High Court of Kerala has stayed the recovery of the amounts raised by the Petitioner, through Debit notes, on the Respondent, and therefore the present petition, seeking recovery of the said amounts, is not maintainable. The learned counsels for both the Respondents, therefore, prayed that they may be permitted to file replies on the issue of 'maintainability' of the present petition, if so required.

### **Analysis and Decision**

5. We have considered the submissions of the learned counsel for the parties. As noted earlier, the Petitioner, in the present Petition, has sought direction on the Respondents Discoms to pay their respective tax liabilities (pertaining to income tax paid under the Vivad Se Vishwas Scheme) in one instalment. It is however noticed that in the Writ Petitions pending before the Hon'ble High Courts, the Respondents herein have mainly





sought a declaration that the debit notes generated by the Petitioner (pertaining to income tax paid under the 'Scheme') and the communications issued by the Petitioner herein, including the communication issued via the PRAAPTI portal, directing the Respondents to pay the said amounts, are arbitrary, illegal, and contrary to the 2014 Tariff Regulations, and to set aside the same. While the Hon'ble High Courts of Madras, Andhra Pradesh, and Telangana have passed interim orders directing the Respondents therein (MOP GOI, GCIL and SRLDC) not to suspend the grid connectivity of the Discoms pending consideration of the matters, the Hon'ble High Court of Kerala has passed an interim order, staying the recovery of the amounts on the basis of the debit notes. To extract, the Hon'ble High Court of Telangana on 12.6.2023 in IA No. 2/2023 in W.P No.14563/2023 (Telangana Discoms v UOI & 5 ors) has ordered as under:

*"It is brought to the notice of this Court by Shri A. Sanjeev Kumar, learned Special Government Pleader, representing learned Additional Advocate General, that the very same Debit Notes are challenged before the High Court of Andhra Pradesh and the High Court of Madras and in both cases interim orders have been granted directing respondent Nos.1, 5 and 6 therein, not to suspend the Grid connectivity of the Petitioners therein and matters are pending for consideration.*

*In view of the above, there shall be interim direction, as prayed for".*

6. The Hon'ble High Court of Kerala vide interim order dated 10.4.2023 in W.P.(C) No. 12620/2023 (KSEBL v UOI & 2 ors) has ordered the following:

*"Admit. Sri Suvin R. Menon takes notice for the respondents. There shall be an interim order, staying recovery of the amounts on the basis of Ext.P8 and P9 series debit notes for a period of two months. Post immediately after vacation.*

7. It is also noticed that the Hon'ble High Court of Karnataka vide its order dated 23.6.2023 in W.P. No.13036/2023 (Karnataka Escoms v MOP, GOI & 5 ors) has granted an interim order, as sought for by the Writ Petitioners, till the next date of hearing.

8. The interim orders of the Hon'ble High Courts, as aforesaid, are still continuing. Further, the main prayer of the Writ Petitioners, for a declaration that the debit notes generated by the Petitioner (pertaining to income tax paid under the Scheme) are





illegal and contrary to the 2014 Tariff Regulations, and to set aside the same, are pending consideration by the Hon'ble High Courts, as stated above. In this background, the prayer of the Petitioner, in the present Petition, seeking directions on the Respondent Discoms, to pay the respective income tax liability (raised as per debit notes), is, in our view, presently not maintainable, since the prayers in the petition cannot be adjudicated at this stage, Accordingly, we are inclined to dispose of the present petition. We, however, grant liberty to the Petitioner to approach this Commission for appropriate reliefs(s), on this count, after disposal of or any decision by the Hon'ble High Courts, in the writ petitions, as aforesaid, and the same will be considered in accordance with law. We also direct that the filing fees paid in respect of this Petition shall be adjusted against the Petition, if any, to be filed by the Petitioner, in terms of the liberty granted above.

9. Petition No.135/MP/2023 is disposed of in terms of the above, at the admission stage.

**Sd/-**  
**(Pravas Kumar Singh)**  
**Member**

**Sd/-**  
**(Arun Goyal)**  
**Member**

**Sd/-**  
**(I.S. Jha)**  
**Member**

**Sd/-**  
**(Jishnu Barua)**  
**Chairperson**

