

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 93/MP/2022

Coram:

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

Date of Order: 14th December, 2023

In the matter of:

Petition under section 79(1)(f) of the Electricity Act, 2003 read with Regulation 27 of the Central Electricity Regulation Commission (Conduct of Business) Regulations, 1999 and Regulation 56 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 seeking directions from this Commission to allow pass through in generation tariff, the interest levied on Electricity duty and Energy Development Cess paid by the Petitioner in respect of the energy supplied from its generating stations.

And

In the matter of:

NHDC Limited,
Regd Office: NHDC Parisar, Shyamla Hills,
Bhopal, Madhya Pradesh-462013

..... **Petitioner**

Vs

1. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Rampur, Jabalpur,
Madhya Pradesh-482008.

2. Narmada Valley Development Department,
Government of Madhya Pradesh, Mantralaya,
Bhopal, Madhya Pradesh-462004.

3. The Energy Department,
Government of Madhya Pradesh,
A-Wing, III-Floor Satpura Bhawan, Bhopal,
Madhya Pradesh.

... **Respondents**

Parties Present:

Ms. Suparna Srivastava, Advocate, NHDCL
Shri Tushar Mathur, Advocate, NHDCL



Ms. Aastha Jain, Advocate, NHDCL
Shri Naresh K. Chellani, NHDCL
Shri Anurag Seth, NHDCL
Shri Ashish Jain, NHDCL
Shri Ravi Sharma, Advocate, MPPMCL

ORDER

The Petitioner, NHDC Limited has filed this Petition, seeking the following relief(s):

(a) Declare that the Petitioner is entitled to reimbursement of interest amount of Rs.97,95,56,491/- paid by it on demand of Respondent No.3 towards electricity duty and energy development cess, more so in view of the clarification dated 23.1.2014 from the Energy Department, Government of Madhya Pradesh to the Petitioner that payment of electricity duty and energy development cess is to have no financial implication on the Petitioner so that the Petitioner is entitled to raise tariff bills as a pass through in tariff onto the Respondent No.1 as demanded by Respondent No.3;

(b) Direct the Respondent No.1 to pay to the Petitioner the sum of Rs.97,95,56,491/- under bills to be raised by the Petitioner for reimbursement of interest payment made by the Petitioner to Respondent No.3 towards electricity duty and energy development cess levied upon it in terms of Clause 7.2 of the tripartite Power Purchase Agreements dated 27.4.2007 executed between the Petitioner, Respondent No.1 and Respondent No.2; and

(c) Pass such further and other order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case.

2. The Petitioner, NHDC Limited is a joint venture company of NHPC Limited and the Government of Madhya Pradesh (GoMP) with an equity participation of 51% and 49% respectively. The Petitioner is operating two hydroelectric projects (HEPs or 'the Projects') in the State of Madhya Pradesh, namely,

- (a) Indira Sagar Project in District Khandwa having generating capacity of 1000 MW (8x125 MW); and*
- (b) Omkareshwar Project in District Khandwa having generation capacity of 520 MW (8x65 MW).*

3. The Respondent No.1 is the designated entity of the GoMP and through its predecessor Madhya Pradesh Power Trading Corporation Ltd. (MPPTCL), it has entered into Power Purchase Agreements (PPAs) with the Petitioner and has been purchasing power from the Projects in terms thereof. The Respondent No.2, Narmada



Valley Development Department, is a multi-disciplinary organization of the GoMP, having jurisdiction over major water resources development projects in the Narmada Basin falling in the State of Madhya Pradesh, wherein the Projects of the Petitioner are located. The Respondent No.3, Energy Department of the GoMP, through the Chief Engineer (Electrical Safety) and Chief Electrical Inspector is responsible for the levy and collection of Energy Development Cess and Electricity Duty leviable on the generating companies in the State of Madhya Pradesh. The entire power generated from the Projects of the Petitioner, as above, has been allocated to the State of Madhya Pradesh by the Ministry of Power (MOP), Government of India.

Background facts of the case

4. The background facts of the present case, as submitted by the Petitioner, is as under:

- (a) The date of commercial operation (COD) of Indira Sagar HEP and Omkareshwar HEP is 25.8.2005 and 15.11.2007 respectively. These Projects are Central Generating Stations and fall within the meaning of Section 2(k) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010. The generation tariff for the supply of power from these Projects are determined in accordance with the Tariff Regulations notified by this Commission from time to time, for the relevant tariff periods and in terms of the MoU dated 16.5.2000 read with the PPAs dated 27.4.2007. Pursuant to the COD, the generation tariff of the stations, were determined by this Commission as detailed below:

Indira Sagar HEP: *The Commission vide its order dated 13.6.2012 in Petition No.154/2010 had determined the tariff of the generating station for the period 2009-14. Thereafter, vide order dated 26.5.2016 in Petition No.461/GT/2014, the tariff of the generating station for the period 2009-14 was revised, after truing up. Thereafter, vide order dated 31.5.2016 in Petition No.265/GT/2014, the tariff of the generating station was determined for the period 2014-19, which was later revised vide order dated 6.1.2022 in Petition No.106/GT/2020 for the period 2014-19 after truing-up along with tariff approval for the period 2019-24.*

Omkareshwar HEP: *The Commission vide its order dated 9.5.2013 in Petition No.248/GT/2012, had determined the tariff of the generating station for the period 2009-14. Thereafter, vide order dated 10.5.2016 in Petition No.460/GT/2014, the tariff of the generating station for the period 2009-14 was revised after truing-up*



exercise. Subsequently, vide order dated 26.5.2016 in Petition No.264/GT/2014, the tariff of the generating station for the period 2014-19 was approved, which was later revised vide order dated 11.3.2022 in Petition No.107/GT/2020 for the period 2014-19 after truing-up along with the tariff approval for the period 2019-24.

(b) Power supply from the two projects (i.e. Indira Sagar HEP and Omkareshwar HEP) are being undertaken in terms of the tripartite PPAs dated 27.4.2007 executed by the Petitioner, with MPTTCL and the GoMP. Clause 7.1 of the above tripartite PPAs provides that the erstwhile MPTTCL is liable to pay to the Petitioner's tariff as determined by this Commission. However, Clause 7.2(iv) of the said PPAs, provides as under:

"7.2 (iv) The energy tariff set out above shall be exclusive of any tax, duty, cess, levy or any other imposition of fees or surcharges etc., that may be payable by NHDC in accordance with any law in force or as amended or imposed from time to time. MPTRADECO shall also be liable to pay to NHDC all payments made or payable by it on account of taxes/cess/levy/fee or other imposition etc. levied or to be levied in future as a new tax by any other Govt. or other authority in respect of generation, transmission and supply or energy including activities incidental and ancillary thereto. Such payments by the Bulk Power Customer shall be in addition to the charges payable by them in accordance with the energy tariff specified above and shall be payable along with monthly bills unless demanded earlier or otherwise by NHDC."

(c) Thus, the PPAs unequivocally provide that any tax, duty, cess, levy or any other imposition of fees or surcharges etc. payable or paid by the Petitioner under any law, is liable to be reimbursed by MPTTCL along with the energy tariff bills. As such, incidence of any liability tax, duty, cess, levy or any other imposition of fees or surcharges etc. has been agreed to be a pass through in the tariff payable to the Petitioner.

(d) On 10.4.2012, the GoMP, vide a Special Resolution, changed the name of MPTTCL to MP Power Management Company Ltd. (i.e. MPPMCL) i.e. Respondent No.1 herein, which is a power trading utility in terms of Section 2(71) of Electricity Act, 2003 [in short the "2003 Act"] owned by the GoMP.

(e) After the power station at Indira Sagar HEP became operational, the GoMP vide its letter dated 28.12.2005, intimated the Petitioner that it was liable for payment of '**Electricity Duty**' (ED) under the Madhya Pradesh Electricity Duty Act, 1949 [in short 'the 1949 ED Act'] and the '**Energy Development Cess**' (EDC) under the Madhya Pradesh Upkar Adhiniyam, 1981 [in short 'the 1981 EDC Adhiniyam']. GoMP also sought certain information with regard to the generation of electricity from the Projects of the Petitioner. This was followed by letters dated 21.11.2006, 2.12.2006 and similar other letters in which the demand for payment of Electricity Duty and Energy Development Cess was reiterated.

(f) Sections 3 and 3A of the 1949 ED Act provided as under:

"3. Levy of duty on sale or consumption of electrical energy. - (1) Subject to the exceptions specified in Section 3-A, every distributor of electrical energy



and every producer shall pay every month to the State Government at the prescribed time and in the prescribed manner a duty calculated at the rates specified in the table below on the units of electrical energy sold or supplied to a consumer or consumed by himself for his own purposes or for purposes of his township or colony, during the preceding month

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3A. Exceptions. - *Notwithstanding anything contained in Section 3, no duty shall be payable in respect of electrical energy-*

- (i) sold or supplied to the Government of India for consumption by that Government;*
- (ii) sold or supplied to the Government of India or a railway company for consumption in the construction, maintenance or operation of any railway administered by the Government of India;*
- (iii) sold or supplied to the State Government for consumption by that Government;*
- (iv) sold or supplied to any local authority for consumption in public street lamps or lamps in any market places or other places of public resort maintained by such authority;*
- (v) sold to or used by an agriculturist for consumption in pumping of water for irrigation of his land or in chaff cutting or in crushing or treating the produce of his hand.”*

(g) It is clear that while every producer of electricity in the State of Madhya Pradesh was obligated to pay ED to the GoMP, an exception was carved out for those power producers who were supplying electricity to the State Government. Since the Petitioner was supplying the entire power generated from its Projects to Respondent MPPMCL for consumption of power within the State, the Petitioner was exempted from any levy of electricity duty under Section 3A(iii) of the 1949 Act.

(h) Similarly, Section 3 of 1981 EDC Adhiniyam, provided as under:

“3. Levy of Energy Development Cess. - (1) Every distributor of electrical energy shall pay to the State Government at the prescribed time and in the prescribed manner an energy development cess at the rate of ten paise per unit on the total units of electrical energy sold or supplied to a consumer or consumed by himself or his employees during any month:

Provided that no cess shall be payable in respect of electric energy, -

- (i) (a) sold or supplied to the Government of India for consumption by that Government; or*
- (b) sold or supplied to the Government of India or a railway company for consumption in the construction, maintenance or operation of any railway administered by the Government of India;*
- (ii) sold or supplied in bulk to a Rural Electric Co-operative Society registered under the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961);*
- (iii) (a) sold or supplied to the Madhya Pradesh Power Trading Company Limited by the Madhya Pradesh Power Generating Company Limited, Jabalpur, registered under the Companies Act, 1956 (No. 1 of 1956);*
- (b) sold or supplied to the Madhya Pradesh Madhya Kshetra Vidyut Vitran Company Limited, Bhopal, the Madhya Pradesh Pashchim Kshetra Vidyut Vitran Company Limited, Indore and the Madhya Pradesh Purva Kshetra Vidyut Vitran*



Company Limited, Jabalpur by the Madhya Pradesh Power Trading Company Limited.”

(i) Since the Petitioner could not be termed as a “distributor of electrical energy”, there was no question of levy of any Energy Development Cess on the Petitioner under the 1981 EDC Adhinyam.

(j) The Indira Sagar HEP Project was initially conceived by the GoMP and later transferred to the Petitioner and the entire electricity being generated therefrom was being supplied to the erstwhile MPTTCL, a company wholly owned by the GoMP. As such, after examination of the provisions of the 1949 ED Act and the 1981 EDC Adhinyam, the Petitioner, vide letter dated 9.1.2007, informed the GoMP that since the Petitioner was a joint venture undertaking of NHPC and NVDD and was a Government Company, it was not liable to pay ED and EDC under the provisions of the 1949 ED Act and the 1981 EDC Adhinyam, based on the exceptions carved out under Section 3A of the 1949 ED Act and proviso to Section 3 of the 1981 EDC Adhinyam.

(k) The Petitioner also provided the information sought by GoMP, on the quantum of electricity generated and supplied by the Petitioner to the erstwhile MPTTCL. Further, by letter dated 15.3.2007, the Petitioner provided a copy of MoU dated 16.5.2000 and PPAs dated 19.2.2001 to demonstrate that it was a joint venture undertaking between NHPC and NVDD and that the entire power being generated from its Projects was being supplied to the State Government through MPPMCL and/or its predecessor MPTTCL.

(l) Despite the above clarification, GoMP vide its letter dated **24.5.2007**, once again demanded payment of ED and EDC from the Petitioner. The matter was discussed and deliberated between the Petitioner and GoMP and with no resolution in sight, the Petitioner, vide its letter dated **12.8.2008**, requested the intervention of Secretary (Energy) to the GoMP, so that the issue could be resolved. After the aforesaid letter, no demand or correspondence was received from GoMP for a period of almost five years.

(m) Meanwhile, GoMP on 10.8.2011, notified the Madhya Pradesh Upkar (Sanshodhan) Adhinyam, 2011 [in short, the ‘2011 EDC Adhinyam’] amending Section 3 of the 1981 EDC Adhinyam in the following manner:

“2. In Section 3 of the Madhya Pradesh Upkar Adhinyam, 1981 (No. 1 of 1982), for subsection (1), the following sub-section shall be substituted, namely: -

*“(l) Every Generating Company or any person owning or operating a captive generating plant shall pay to the State Government at the prescribed time and in the prescribed manner an energy development cess at the rate of fifteen paise per unit on the total units of electrical energy sold or supplied to a **distribution licensee or consumer** in the State of Madhya Pradesh or consumed by itself or its employees during prescribed period:*



Provided that no cess shall be payable in respect of electrical energy sold or supplied by any Generating Company in which the Government of Madhya Pradesh has fifty one percent or more equity.

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Explanation- For the purpose of this subsection "Generating Company", "Person", "Captive Generating Plant", "Distribution Licensee" and "consumer" shall have the same meaning as assigned to them in section 2 of the Electricity Act 2003. (No.36 of 2003)"

(n) Subsequently, the GoMP on 25.4.2012, repealed the 1949 ED Act and enacted the Madhya Pradesh Vidyut Shulk Adhiniyam, 2012 [in short, the "2012 ED Adhiniyam"] wherein, Section 3 provided as under:

"3.(1) Subject to the exceptions specified in section 4, every Distribution Licensee/ franchisee shall pay every month to the State Government at the prescribed time and in the prescribed manner a duty calculated at the rates specified in Part-A of the Schedule on the units of electricity sold or supplied to consumers.

(2) Every consumer consuming electricity obtained through open access from outside the state shall pay every month to the State Government at the prescribed time and in the prescribed manner a duty calculated at the rates specified in Part-B of the Schedule on the units of electricity consumed by him.

(3) Every Generating Company, Captive Generating Plant and producer shall pay every month to the State Government at the prescribed time and in the prescribed manner a duty calculated at the rates specified in Part-C of the Schedule on the units of electricity consumed by himself or sold to consumers within the State of Madhya Pradesh:

Provided that no duty shall be payable in respect of electricity sold/supplied or consumed by any Generating Company in which the Government of Madhya Pradesh has at least fifty one percent equity."

(o) On perusal of the 2011 EDC Adhiniyam and 2012 ED Adhiniyam, the necessity of remittance of ED and EDC was not found applicable on the Petitioner's generating stations on account of the following facts:

(a) as the power produced from the Projects was neither being supplied to the distribution licensees nor directly to the consumers in the State of Madhya Pradesh, hence electricity duty and energy development cess was not found applicable on the Petitioner's Projects, although the stake-holding of Respondent No.2 in the Petitioner Corporation was less than 51%; and

(b) as 100% power produced from the Projects was being supplied to the Home State, the imposition of electricity duty and energy development cess on the Petitioner's generating stations would have ultimately led to double taxation on the consumers of State of Madhya Pradesh i.e. taxation at the generating end and as well as at distribution end on the same electrical energy.

(p) However, GoMP vide its letter dated **3.8.2013**, informed the Petitioner that the Petitioner was liable to pay ED and EDC on the energy generated from the Petitioner's Projects within the provisions of amendments in the 2011 EDC Adhiniyam and the 2012 ED Adhiniyam, stating that the GoMP held only 49% equity in the Petitioner Company i.e. less than 51%.



(q) Petitioner reiterated that with the aforesaid amendment/repeal, ED and EDC was now liable to be paid by all electricity generating companies, except for those selling or supplying to the State Government for consumption by that Government. Since the Petitioner, being a joint venture corporation of NHPC and the GoMP, was supplying its entire (100%) power to the State of Madhya Pradesh, it was clearly a State-owned entity and hence, was exempted from payment of any ED and EDC so long as 100% power was being sold to the State of Madhya Pradesh (i.e. Respondent No.2).

(r) Further, Section 2(1) of the 2011 EDC Adhiniyam provided for levy of EDC on energy supplied by a generating company to a 'consumer' or a 'distribution licensee' and since the Petitioner was supplying power to MPTTCL which was a 'trading licensee', there was no question of levy of any EDC on the Petitioner. Thus, the imposition of ED and EDC on the Petitioner tantamount to double taxation on the consumers in the State of Madhya Pradesh in as much as while the Petitioner being a public utility would pay the charges to the State Government, at the same time, the said charges would also be recovered from Respondent MPPMCL, which was also a public utility of the State of Madhya Pradesh and ultimately be passed on to the consumers in the State.

(s) Accordingly, the Petitioner, vide its letter dated **13.9.2013** to GoMP and vide letter dated **18.9.2013** to the Respondent MPPMCL, clarified the above legal position in respect of non-applicability of ED and EDC on the generating stations of the Petitioner.

(t) The Petitioner vide letter dated **5.11.2013** also referred the matter to Shri. R. N. Singh, ex-Advocate General of the State of MP, seeking legal opinion in the matter who, vide his legal opinion dated **17.12.2013** opined as under:

“a. Neither Energy Development Cess nor Electrical Duty, is leviable from NHDC as 100% electricity generated from its generating stations is allocated by MoP, Govt to the home state i.e. Madhya Pradesh and the electricity so generated is not supplied directly to the distribution licensee so as to attract the charging section 3 (1) of the Adhiniyam of 1981.

b. However, section 5 of the Adhiniyam of 2012, the State Government is vested with the power to exempt the payment of duty. Hence, without admitting any liability, it would be just and proper to file an appropriate application to the State Government for expressly notifying NHDC as an exempted Generating utility”.

(u) Based on the legal opinion dated 17.12.2013, the Petitioner vide its letter dated **2.1.2014**, requested the Principal Secretary (Energy) in the GoMP to notify the Petitioner's company as an exempted generating utility under the provisions of the 2011 EDC Adhiniyam and the 2012 ED Adhiniyam.



(v) In response, the Officer on Special Duty, Energy Department in the GoMP vide its letter dated **23.1.2014**, clarified the matter as under:

*“Please refer to your letter under reference. As regard the issue raised in the letter, it is to clarify that under the existing provisions of the Acts applicable for charging Electricity duty & Cess, NHDC generating stations are required to pay these charges. **However, duty and cess charged on NHDC is a pass through having no financial implication on NHDC. This is for your information**”.*

(w) The aforesaid clarification remained silent over the legal applicability of ED and EDC on the energy generated from the Petitioner’s generating stations and sold to the beneficiary i.e. Respondent MPPMCL which was, as set out above, a trading utility. Thereafter, vide letter dated **10.2.2014**, the GoMP provided formats under which details were to be submitted by the Petitioner and the heads under which amounts towards ED and EDC were required to be deposited by the Petitioner.

(x) In the above circumstances, the Petitioner was constrained to deposit on **15.3.2014**, an amount of Rs.241.49 crore towards EDC (for the period 10.8.2011 to 28.2.2014) and ED (for the period 25.4.2012 to 28.2.2014) and intimated the same to GoMP vide letter dated 21.3.2014.

(y) Based on the clarification of Officer on Special Duty, Energy Department, GoMP vide letter dated 23.1.2014 and as per Clause 7.2 of PPAs and the 2014 Tariff Regulations, the Petitioner was entitled for recovery of statutory charges, including payment of any ED and EDC, from the Respondent MPPMCL. As such, the aforesaid sum of Rs.241.49 crore paid by the Petitioner on 15.3.2014, up to period ending on 28.2.2014 to GoMP was reimbursed by Respondent MPPMCL under the tariff bills raised onto it by Petitioner.

(z) Since then, the remittance of ED and EDC has been done by the Petitioner regularly on a monthly basis, for the period from 1.3.2014 onwards and the same is being reimbursed from Respondent MPPMCL, under the monthly bills raised onto it.

(aa) That, after four months from the aforesaid payment, the GoMP, vide its letter dated 21.7.2014, issued a demand notice to the Petitioner for payment of interest for Rs.64,08,28,348/- towards ED and EDC on the Rs 241.49 crore remitted on 15.3.2014. The said demand of interest was raised under the provisions of the Madhya Pradesh Electricity Duty Rules, 1949 and as such was a statutory levy.

(bb) In response, the Petitioner, vide its letter dated **19.8.2014**, clarified to GoMP that since there was no delay in the payment of ED and EDC (as it was paid within the stipulated period after receipt of letter dated 10.2.2014), the demand for interest was unjustified apart from being delayed. However, vide letter dated **26.8.2014**, the GoMP refused to withdraw/waive the interest levied on the Petitioner and demanded the payment of interest forthwith.



(cc) Being aggrieved by the aforesaid demand, the Petitioner vide its letter dated **10.9.2014**, requested the Principal Secretary (Energy), GoMP for his intervention and requested him to withdraw the aforesaid demand for interest considering that there was no delay on part of the Petitioner in payment of ED and EDC.

(dd) After several exchange of correspondences between the Petitioner and GoMP, on **24.5.2017**, the GoMP called for a meeting with regard to the payment of interest on ED and EDC. However, no fruitful outcome was derived out of the said meeting. However, on **31.3.2018**, the GoMP issued a 'show cause notice' and a reminder to the Petitioner for deposit of the interest amount. Similar notice and reminder were also issued by GoMP on **10.5.2018**.

(ee) On receipt of the said show cause notice and reminder, the Petitioner once again vide its letter dated **14.5.2018** disputed the payment of any interest on the ED and EDC paid by it and requested the GoMP to hold its demand until a decision was taken by the Principal Secretary (Energy), GoMP. However, the said request was also turned down by the GoMP vide letters dated **13.7.2018 and 8.8.2018** citing an imprecise reasoning that the Petitioner was a financially sound company and as such there could not be a justification to exempt the imposition of interest on ED and EDC, being statutory in nature.

(ff) Being constrained, the Petitioner vide its letter dated **18.2.2019**, requested the Secretary (Power), Government of India for his intervention in the matter and accordingly vide letter dated **27.3.2019**, the Secretary (Power), Government of India, requested the Chief Secretary of the GoMP for waiver of the aforesaid interest sought to be levied on the Petitioner.

(gg) Despite the above repeated requests of the Petitioner, the GoMP once again issued show cause notices dated **21.8.2019 and 1.11.2019** to the Petitioner demanding deposit of interest charges on the ED and EDC paid by it. However, the Petitioner deemed it appropriate to await the decision of the Chief Secretary, GoMP on the request made by Secretary (Power), GOI and as such, the payment of interest amount was kept on hold.

(hh) **On 28.1.2020**, the Secretary (Power), GOI, vide letter informed the Petitioner that it had been decided by the GoMP that interest charges, being statutory in nature, were liable to be paid by the Petitioner. Under the circumstances, the Petitioner deemed it appropriate that in order to resolve the issue amicably in the spirit of joint venture with the GoMP and to avoid dispute with own stakeholder having 49% equity in the Petitioner Company, it was proper to make the payment of Rs.64.08 crore (with certain minor reconciliation).

(ii) Accordingly, vide letter dated 11.8.2020, the Petitioner requested GoMP for reconciliation to enable the full and final settlement of the interest payment on the



ED and EDC of Rs 241.49 crore paid on 15.3.2014. However, GoMP instead of reconciliation of the interest amount, vide letter dated 31.8.2020 enhanced the demand from Rs.64.08 crore to Rs.120.10 crore. This enhanced demand of Rs.56.02 crore was inclusive of a fresh demand of Rs.18.50 crore towards principal amount of ED for the period from 10.8.2011 to 24.4.2012 and interest accrued thereupon up till 30.8.2020.

(jj) Clearly, the GoMP had acted arbitrarily as it never pointed out the applicability of ED for the said period i.e. 10.8.2011 to 24.4.2012 even while raising the demand of interest of Rs.64.08 crore vide letter dated 21.7.2014 towards ED and EDC of Rs.241.49 crore paid on 15.3.2014 for the period ending 28.2.2014. As such, the said demand towards Principal amount of ED for the aforesaid period i.e. 10.8.2011 to 24.4.2012 was itself pointed out by GoMP belatedly after a period of almost 8 years and that too with misplaced understanding of the provisions of the 2012 ED Adhiniyam and thus, no interest liability for any alleged default in payment of the said sum could ever be raised on the Petitioner.

(kk) Since the basis of increase in the demand was not made clear in the aforesaid letter dated 31.8.2020, the Petitioner, vide its letter dated 8.9.2020, once again requested the GoMP to furnish a full and final reconciliation statement for the said interest. The Petitioner also impressed upon GoMP that the demand on misplaced understanding of provisions of the 2012 ED Adhiniyam for Rs.18.50 crore towards Principal amount of ED for the period 10.8.2011 to 24.4.2012 and the interest accrued therein, could not be imposed inasmuch as the applicability of EDC w.e.f 10.8.2011 and ED w.e.f 25.4.2012 had always been reckoned i.e. w.e.f the respective date(s) of notification of the 2011 EDC Adhiniyam and the 2012 ED Adhiniyam. Simultaneously, vide another letter dated 10.9.2020, the Petitioner requested the Principal Secretary (Energy), GoMP for his intervention so that the ambiguity could be resolved.

(ll) Thereafter, despite several exchanges of correspondences between GoMP and the Petitioner, the issue regarding the payment of interest on ED and EDC paid by the Petitioner was not resolved. Meanwhile, in response to the letter dated 10.9.2020 of the Petitioner, the GoMP vide its letter dated 20.10.2020 requested the Petitioner for making payment as per demand dated 31.8.2020.

(mm) As such, the Petitioner was constrained to approach the Hon'ble High Court of Madhya Pradesh (Jabalpur Bench) by filing Writ Petition (C) No.2037/2021 seeking reliefs such as (i) direction holding that the generating stations of the Petitioner are not liable for imposition of ED and EDC and (ii) to quash all notices seeking payment of interest from the Petitioner etc. On 4.2.2021, the Hon'ble Court adjourned the matter for period of 6 weeks for the parties to make an endeavor for out of Court settlement with regard to waiver of interest.



(nn) Pursuant to the above order of the Hon'ble High Court, the Chief Secretary, GoMP convened a meeting on 16.2.2021, with the representatives of the Petitioner Corporation to make an endeavor for out-of-Court settlement between the Petitioner and GoMP wherein, it was discussed and decided that since the State of Madhya Pradesh only held 49% stake in the Petitioner Corporation, the same could not be considered to be a "State owned Power Generating Company" and as such, was not exempted from payment of ED and EDC. However, with regard to waiver of interest as per the order of the Hon'ble High Court of Madhya Pradesh, no decision was conveyed. Clearly, as per the said Order dated 4.2.2021 of Hon'ble High Court of Madhya Pradesh, the only dispute to be resolved was the waiver of interest accrued on payment of the principal sum of Rs 241.49 crore towards ED and EDC paid on 15.3.2014.

(oo) However, on a misplaced understanding of the grievance of the Petitioner, it was decided during the meeting convened on 16.2.2021 that the Petitioner was liable to pay ED for the period 10.8.2011 to 24.4.2012, as with 49% stake-holding of GoMP in the Petitioner Corporation, it was not a 'State-owned power generating company'. Notwithstanding and despite the Petitioner being a state-owned generating company within the provisions of the 2003 Act and the Companies Act 1956, the decision taken during the meeting was honoured by the Petitioner and payment of Rs.18.50 crore was made on 6.4.2021 towards ED corresponding to period 10.8.2011 to 24.4.2012 in the spirit of joint venture with GoMP to avoid dispute with stakeholder having 49% equity in the Petitioner Corporation.

(pp) That the minutes of the aforesaid meeting dated 16.2.2021 and Notification dated 13.7.2018 of the GoMP were placed on record before the Hon'ble High Court of Madhya Pradesh and by order dated 15.6.2021, the Hon'ble Court disposed off the said writ petition, directing the Petitioner to make a detailed representation, incorporating all the aforementioned facts and the arguments, to the Chief Secretary, Government of Madhya Pradesh, who shall consider the request of the Petitioner in the light of the aforesaid circular for reducing the rate of interest from 24% per annum to 12% per annum to settle the dispute between the parties herein and pass a speaking order within a period of three months from the date of receipt of such representation.

(qq) In terms of the aforesaid order, the Petitioner made a detailed written representation on 30.6.2021 to the Chief Secretary, GoMP along with working interest @ 12% per annum with a request to pass a suitable speaking order. GoMP vide letter dated 3.9.2021 convened a meeting on 7.9.2021 under the chairmanship of NVDD for considering the representation of the Petitioner. The GoMP circulated the record note of discussion vide letter dated 20.9.2021 wherein, the following was decided:

“(i) Reconciliation of amount of Electricity Duty and Energy Development Cess to be paid by M/s NHDC along with interest there upon shall be carried out jointly by



Chief Engineer (Electrical Safety) & Chief Electrical Inspector and the representatives of NHDC. The levy of interest shall be calculated as per the rates applicable in accordance to the Government notifications dated 22.07.1975 and 13.07.2018. Based on the above reconciliation, a demand note shall be issued by Chief Electrical Inspector to NHDC.

(ii) Necessary action regarding issuance of speaking order on the representation of M/s NHDC shall be taken in compliance to the order of Hon'ble High Court, Jabalpur dated 15.06.2021. NHDC will ensure payment of outstanding amount of Electricity Duty and Energy Development Cess along with the interest, as per the demand notice issued by Chief Electrical Inspector, for final settlement of the pending issue."

(rr) Further, during the meeting dated 7.9.2021, on request of the Petitioner for considering the passing of interest amount to be paid by the Petitioner through its generation tariff, it was informed that as the tariff of the Petitioner was being determined by this Commission, the issue could be taken up by the Petitioner with this Commission. Based on this assurance and subject to the adjudication by this Commission, the interest amount was reconciled between the Petitioner and GoMP and vide letter dated 9.9.2021, the demand towards interest on ED and EDC was revised to Rs.97,95,56,491/-. The same was followed by a speaking order dated 23.9.2021. In terms of the said order, the Petitioner on 25.11.2021 made a payment of Rs.97,95,56,491/- towards interest demand raised upon it by GoMP after reconciliation, so as to end the long pending dispute with the GoMP.

Submissions of the Petitioner

5. In the above background, the Petitioner has submitted the following:

(a) Before making any payment towards statutory levies/taxes etc., it is obligatory on part of the Petitioner, being a commercial organization, to establish the legal applicability of such statutory levies/taxes etc., and subsequently, claim the same from the beneficiary (i.e. Respondent MPPMCL) within the provisions of the PPAs for passing it through tariff as per norms specified by this Commission;

(b) Despite requests being made by the Petitioner seeking exemption under section 5 of the 2012 ED Adhinyam to declare NHDC as the exempted utility thereby seeking waiver of imposition of ED and EDC based on the legal opinion obtained by the Petitioner Corporation, GoMP refused to accept the same and has imposed the liability on the Petitioner which has been duly paid in the spirit of the joint venture relationship between the Petitioner and the State of Madhya Pradesh. The said payments accordingly, has also been reimbursed by Respondent MPPMCL

(c) Subsequent to the clarification dated 23.1.2014 of GoMP, that payment of ED and EDC shall have no financial implication on the Petitioner, the aforesaid



levy as well as any interest charges on it are statutory levies and hence, the Petitioner is entitled for reimbursement of the same from its beneficiary (i.e. Respondent MPPMCL) in terms of the Tariff Regulations of this Commission, more so when the levy of interest has not been on account of any default on the part of the Petitioner;

(d) The interest levied on the Petitioner for alleged delayed payments have not been on account of any actual delay, but rather on account of ensuing issues between the Petitioner and GoMP as regards the legality of such levy and the pending dispute / litigation between the parties before the Hon'ble High Court of Madhya Pradesh. The levy of such interest can in no manner be attributable to any apparent delay on part of the Petitioner. As such, payment made by the Petitioner qua the interest payments is also liable to be reimbursed by Respondent MPPMCL as a pass through in the generation tariff of the Petitioner;

(e) The GoMP during the meeting on 7.9.2021 had categorically consented to the Petitioner, claiming the interest amount to be a pass-through in its generation tariff by filing an appropriate Petition before this Commission. Accordingly, the Petitioner has filed the present Petition in terms of the agreed terms between the parties.

(f) Under the 2019 Tariff Regulations, a generating company is entitled for recovery of any statutory charges paid by it to the Central Government or the State Government in terms of Regulation 56 of the 2019 Tariff Regulations.

(g) The Respondent MPPMCL is liable to bear all statutory levies/taxes etc. paid or payable by the Petitioner in terms of Clause 7.2 of the PPAs. As such, since the aforesaid payment of Rs.97,95,56,491/- towards interest on ED and EDC made to GoMP tantamount to statutory interest charges levied by the GoMP, the same are recoverable under the tariff billing by the Petitioner.

(h) The Petitioner has duly discharged the Principal liability towards ED for Rs.48.13 crore and EDC for Rs.193.36 crore. for the period ending on 28.2.2014 and as soon as the position has been clarified by the GoMP vide its letters dated 23.1.2014 and 10.2.2014. Yet the Petitioner has been saddled with an interest liability of Rs.97,95,56,491/-. As is clear from the submissions made hereinabove, the said demand for payment of interest has been belatedly raised as under:

(i) A demand for Rs.64.08 crore was raised only on 21.7.2014 i.e. four months from the date of making the Principal payment on 15.3.2014, that too against payment of the Principal amount demand of which has itself been raised only in 2014 i.e. after 3 years of the period of levy;

(ii) The said demand was later enhanced on 31.8.2020 to Rs.120,10,73,056/- which includes an extremely belated demand of a sum of Rs.18.50 crore towards principal



amount of ED for the period 10.8.2011 to 24.4.2012 and the interest accrued thereupon for Rs.39.54 crore;

(iii) The aforesaid demand towards interest was disputed by the Petitioner strenuously by approaching the Hon'ble High Court of Madhya Pradesh at Jabalpur by filing a Writ Petition; and

(iv) Only on 7.9.2021, the demand towards interest has been reconciled by GoMP to a sum of Rs.97,95,56,491/- which has been duly discharged by the Petitioner, considering that the same has been based upon statutory provisions.

(i) It is clear from the above, that there has been no delay or default on part of the Petitioner in clearing either the Principal amount or the interest payment and as such, under Clause 7.2 of the PPAs read with Regulation 56 of the 2019 Tariff Regulations, the Petitioner is entitled to be reimbursed the said amount by Respondent MPPMCL. It is also a settled position of this Commission that statutory levies are pass through in tariff for generating companies.

(j) This Commission has the jurisdiction to adjudicate the present Petition in terms of Section 79(1)(f) of the 2003 Act.

Reply of the Respondent MPPMCL

6. The Respondent MPPCL vide its reply dated 9.11.2021, has mainly submitted the following:

(a) The Petition filed by Petitioner for reimbursement and passing off the penalty i.e. Penal interest which was imposed upon the Petitioner due to non-payment of ED and EDC in time, on the beneficiaries, is legally impermissible and hence, liable to be dismissed in limine.

(b) It is an admitted fact by the Petitioner that first time, GoMP has intimated the Petitioner vide letter dated 28.12.2005 that they are liable for payment of ED under the 1949 ED Act, and EDC under the 1981 EDC Adhinyam. However, sheer disregard to directions of the statutory authority, the Petitioner has deposited on 15.3.2014, an amount of Rs.241.49 crore towards ED and EDC. However, the Petitioner failed to give any logical explanation as to why it had failed to pay ED and EDC in time, under protest. If the Petitioner could have paid the ED and EDC which were levied on the Petitioner's power plant's i.e. Indira Sagar HEP from 25.8.2005 and Omkareshwar HEP from 15.11.2007 in time and kept on making its efforts to seek waivers, no penal interest would have been imposed and if Petitioner would have got the waiver from payments, GoMP would have returned the deposited amount with interest.

(c) Due to the aforesaid reason and failure on part of the Petitioner to deposit the ED and EDC since 2005, the GoMP, vide its letter dated 21.7.2014, issued a



demand notice to the Petitioner for payment of interest for Rs.64,08,28,348/- towards ED and EDC of Rs 241.49 crore which was remitted on 15.3.2014. The said demand has later been reconciled by the GoMP on 7.9.2021, towards interest for a sum of Rs.97,95,56,491/-.

(d) Regulation 31(3) of the 2019 Tariff Regulations, states that penalty imposed by statutory authorities for not making payments of taxes and levies, shall not be passed upon the end consumers.

(e) The term 'penalty' is neither defined in the 2003 Act, nor under the 2019 Tariff Regulations, and therefore, help of other statute and law laid down by hon'ble Supreme Court of India may be taken. The Oxford Dictionary provides the definition of Penalty as 'a loss, disability or disadvantage of some kind fixed by law for some offence'.

(f) The Hon'ble Supreme court has held that "Penalty is a liability composed as a punishment on the party committing the breach". The levy of penalty is intended to work as a deterrent in committing the act or compensatory for loss caused to revenue.

(g) In view of aforesaid facts and legal analysis, it can be firmly stated that Petitioner is seeking to pass on the penalty in the form of 'interest' imposed upon them by GoMP for not paying ED and EDC, in time, which is impermissible in law as well as the 2019 Tariff Regulations. Hence, the present Petition is liable to be dismissed with heavy cost.

(h) It is crystal clear that while enacting the 2011 EDC Adhinyam and the 2012 ED Adhinyam, the GoMP was having no doubt in placing the threshold norms of 51% shareholding by the State Govt. of MP to get the exemption from ED and EDC. Since, the "2011 EDC Adhinyam" and the "2012 ED Adhinyam" are laws enacted by the legislature of the GoMP which are within their jurisdiction in terms of List II of Constitution of India. Therefore, the contentions of the Petitioner that they are supplying 100% power to State of MP and hence, the criteria of 51% equity shareholding is not applicable to them is legally incorrect and attempt to challenge the vires of the "2011 EDC Adhinyam" and the "2012 ED Adhinyam" which is not permissible before this Commission, as it lacks the jurisdiction of judicial review of the laws enacted by the legislatures of State Governments.

Hearing dated 25.8.2022

7. During the hearing dated 25.8.2022, the Commission 'admitted' the Petition and ordered notice on the Respondents. The parties were also directed to complete pleadings in the matter.



Rejoinder of the Petitioner to the Reply of MPPMCL

8. The Petitioner vide its rejoinder dated 13.1.2023 to the reply above, has reiterated its submissions made in the petition, as above. The Petitioner has also submitted that the Respondent MPPMCL has failed to appreciate the nature and scope of the interest levied on the Petitioner and as such, has raised a misplaced contention of the said interest being 'penal' in nature. The Petitioner has stated that the interest levied on the Petitioner is in terms of Rule 5 of the Madhya Pradesh Electricity Duty Rules, 1949 which provides that where ED is not paid within the period specified under Rule 3, the same is required to be paid thereafter, with interest thereon, at a rate prescribed by the GoMP. Accordingly, the Petitioner has submitted that the said interest levied is therefore statutory in nature, to be paid in accordance with the said Rules, than a 'penalty' as contended by the Respondent MPPMCL. It has also submitted that the alleged delay in making payment of ED and EDC can ever be considered as an offence nor the levy of such statutory interest can be considered as a 'penalty' imposed on the Petitioner. Referring to the judgment of the Hon'ble Supreme Court in Alok Shankar Pandey Vs. UOI & ors [(2007) 3 SCC 545], the Petitioner has argued that the Hon'ble Court has drawn a distinction between 'interest' and 'penal interest' and has held that for an amount to be considered as 'penal interest', the commission of a wrongdoing is of a paramount importance. Also, the Hon'ble Supreme Court in Kanoria Chemicals and Industries Ltd. v UPSEB [(1997) 5 SCC 772] has held that the levy of late/delayed payment surcharge on account of payments that have been withheld bonafide during a period in controversy, cannot be considered as 'penal' in nature. Accordingly, the Petitioner has submitted that it has not committed any wrong or offence under the provisions of the 2011 EDC Adhiniyam and the 2012 ED Adhiniyam, as evident from the facts and the levy of interest has not



been classified as a penalty. The Petitioner has contended that the levy of interest on the Petitioner has not been on account of any default on part of the Petitioner but has been levied due to ambiguities surrounding the levy of ED and EDC and the delay in raising of the said demand for payment by the GoMP.

Hearing dated 19.1.2023

9. During the hearing of the Petition on 19.2.2023, the learned counsel for the Petitioner made detailed oral submissions in the matter. However, the learned counsel for the Respondent MPPMCL sought time to file written submissions along with the list of dates in the matter, which was permitted. The Commission after directing the parties to file certain additional information, adjourned the matter as part-heard.

Written submissions of the Petitioner and Respondent MPPCL

10. The Petitioner, in its written submissions dated 21.2.2023, and the Respondent MPPMCL vide its written submissions dated 13.2.2023, have reiterated their submissions made in their Petition/reply/rejoinder, and the same has not been repeated herein, for the sake of brevity.

Hearing dated 16.3.2023

11. The matter was heard on 16.3.2023 and the Commission after hearing the learned counsel for parties, reserved its order in the Petition. Taking into consideration the submissions of the parties and the documents on record, we proceed to examine the issue viz., *‘whether the Petitioner is entitled for reimbursement /pass through in tariff of the ‘interest’ amount of Rs.97,95,56,491/- paid by it in terms of Rule 5 of the Madhya Pradesh Electricity Duty Rules, 1949.’*



Analysis and Decision

12. The submissions of the parties have been considered. The Petitioner is mainly aggrieved by the imposition of 'interest' by the GoMP for Rs 97.96 crores, in respect of the generating stations of the Petitioner, in terms of the 2011 EDC and 2012 EDC Adhiniyam read with Rule 5 of the Madhya Pradesh Electricity Duty Rules, 1949, which had been paid by the Petitioner, pursuant to the speaking order of the Chief Secretary, GoMP, dated 23.9.2021 read with the Order of the Hon'ble High Court of Madhya Pradesh dated 15.6.2021. Relying upon Article 7.2(iv) of the PPA read with Regulation 56 of the 2019 Tariff Regulations, the Petitioner has contended that the imposition of 'interest' being statutory in nature, cannot be considered as a 'penalty' and is therefore reimbursable by the Respondent MPPMCL. *Per contra*, the Respondent MPPMCL has contended that the imposition of 'interest' by the GoMP, is on account of the non-payment of ED and EDC in terms of the provisions of the said Acts by the Petitioner, within the time line and is therefore 'penal' in nature and cannot be a pass through in tariff.

13. Article 7.2(iv) of the PPA provides as under:

"7.2 (iv) The energy tariff set out above shall be exclusive of any tax, duty, cess, levy or any other imposition of fees or surcharges etc., that may be payable by NHDC in accordance with any law in force or as amended or imposed from time to time. MPTRADECO shall also be liable to pay to NHDC all payments made or payable by it on account of taxes/cess/levy/fee or other imposition etc. levied or to be levied in future as a new tax by any other Govt. or other authority in respect of generation, transmission and supply or energy including activities incidental and ancillary thereto. Such payments by the Bulk Power Customer shall be in addition to the charges payable by them in accordance with the energy tariff specified above and shall be payable along with monthly bills unless demanded earlier or otherwise by NHDC."

14. Regulation 31(3) of the 2019 Tariff Regulations, provides as under:

"However, penalty, if any, arising on account of delay in deposit or short deposit of tax amount shall not be claimed by the generating company or the transmission licensee, as the case may be."

15. Similarly, Regulation 56 of the 2019 Tariff Regulations provides as under:



“56. Recovery of Statutory Charges: The generating company shall recover the statutory charges imposed by the State and Central Government such as electricity duty, water cess by considering normative parameters specified in these regulations. In case of the electricity duty is applied on the auxiliary energy consumption, such amount of electricity duty shall apply on normative auxiliary energy consumption of the generating station (excluding colony consumption) and apportioned to each of the beneficiaries in proportion to their schedule dispatch during the month.”

16. In the present case, the Petitioner, after COD of its generating stations viz., Indira Sagar HEP and Omkareshwar HEP (on 25.8.2005 and 15.11.2007 respectively), became liable to pay ED and EDC in terms of the 1949 ED Act and 1981 EDC Act, prevailing at that point in time. Though payments of ED and EDC, in terms of the said Acts, was demanded by the GoMP vide its letters dated 28.12.2005, 21.11.2006, 2.12.2006 and 24.5.2007, the Petitioner, in response, vide its letters dated 9.1.2007, 15.3.2007 and 12.8.2008, furnished certain clarifications to the GoMP. Consequent upon this, no demand or correspondences seeking recovery of ED and EDC from the Petitioner, was made by GoMP for a period of about 5 years. It was only pursuant to the amendment of the 1949 ED Act in 25.4.2012, that demands were raised by the GoMP for payment of a total amount of Rs 241.49 crores [EDC for Rs.193.36 crore (for the period 10.8.2011 to 28.2.2014) and ED for Rs.48.13 crore (for the period 25.4.2012 to 28.2.2014)], which was deposited by the Petitioner on 15.3.2014, after assurance that the same would be a pass through in tariff. As no demand for interest was raised on this amount, the same was not paid by the Petitioner. Hence, the contention of the Respondent MPPMCL that there has been delay in deposit of the amount by the Petitioner is not acceptable. The demand for payment of ‘interest’ of Rs 64.08 crore raised by the GoMP thereafter, on 21.7.2014, on the principal amount of (Rs 241.49 crore) paid by the Petitioner, establishes the fact that there was no liability for the Petitioner, to pay ED and EDC since 2005. It is also noticed that when the demand of interest was being contested by the Petitioner, the GoMP, after a lapse of



about 6 years, i.e, on 31.8.2020, had enhanced the demand from Rs. 64.10 crore to Rs. 120.10 crore, which comprised of a fresh demand for payment of principal amount of ED for Rs 18.50 crore (for the period from 10.8.2011 to 24.4.2012) along with interest for Rs 37.52 crore (calculated up to September, 2020). In the backdrop of GoMP itself delaying the raising of demand of this principal amount, it cannot be said that the Petitioner had delayed in making such payments. Further, the imposition of these levies was contested by the Petitioner before the Hon'ble High Court of Madhya Pradesh, Jabalpur Bench in W.P. No. 3037/2021 and it was under the orders of the Hon'ble High Court, the ED amount of Rs 18.50 crore was reconciled and paid to the GoMP. Also, in terms of the orders of the Hon'ble High Court dated 15.6.2021 directing the Petitioner to make detailed representation to the Chief Secretary, GoMP to pass speaking orders, with regard to the reduction of the interest rate, the Petitioner had made detailed representation on 30.6.2021. Thereafter, on reconciliation of the amounts already paid, during the meeting of the officials on 7.9.2021, the demand for payment of interest by the Petitioner was further revised from Rs.101.60 crore to Rs.97.96 crores. Subsequently, based on the speaking order dated 23.9.2021, of the Chief Secretary, GoMP, directing payment of the interest amount of Rs 97.96 crores, the same was deposited by the Petitioner on 25.11.2021, and accordingly the issue was settled.

17. It is evident from the above that there has been no delay on the part of the Petitioner in making payment of the principal amounts or the interest amounts, even after the same was contested before the Hon'ble High Court and having series of reconciliation with the GoMP. We notice, there has been delay on the part of the GoMP itself in raising the demands for ED and EDC and only thereafter, the demand for



interest, in terms of Rule 5 of the Madhya Pradesh Electricity Duty Rules, 1949, which provides that where ED is not paid within the period specified under Rule 3, the same is required to be paid thereafter, with interest, at the rate prescribed by GoMP, was made on the Petitioner. Consequent upon this, the Petitioner became liable to pay the principal amounts and the interest amounts, as demanded by the GoMP and had paid the same. Seen in this context, the levy of interest by GoMP on the Petitioner, is a 'statutory interest' and cannot be termed as a 'penalty,' as contended by the Respondent MPPMCL. As rightly pointed out by the Petitioner on the strength of the judgment of the Hon'ble Supreme Court in A.S. Pandey v UOI (2007) 3 SCC 545 and Central bank of India v Ravindra & ors (2002) 1 SCC 367, the penalty imposed in the present case, is the normal accretion to the capital and not in the nature of penalty. In this background, we hold that the levy of 'interest' paid by the Petitioner, is a statutory interest and cannot be termed as 'penalty' on the Petitioner. The contentions of the Respondent MPPMCL is therefore misconceived and not tenable. Accordingly, we hold that the Petitioner is entitled to reimbursement of the interest amount of Rs 97.96 crore paid by it, as stated above.

18. The Petitioner has also prayed for a direction on the Respondent MPPMCL, to reimburse the said interest amount of Rs 97.96 crore in terms of Article 7.2 of the PPA dated 27.4.2007. It is pertinent to note that the ED and EDC amounts levied by GoMP, in respect of the projects, have been paid by the Petitioner and the same was also reimbursed in tariff, by the Respondent MPPMCL. As stated above, the Petitioner, has also made payment of the said interest amount levied on it. Thus, the levy of interest due to alleged delay in payment of ED and EDC is no longer a matter of controversy between the parties. It is pointed out that in the reconciliation meeting between the



parties, on 7.9.2021, the GoMP, in response to the Petitioner's request for passing of the interest amount through tariff, had informed that since tariff of the Petitioner is being determined by this Commission, this issue may be taken up by the Petitioner with the Commission. We, however note that tariff of the aforesaid generating stations of the Petitioner have been determined by the Commission by its various orders, upto the period ending 31.3.2024. In view of this, we find no reason to allow the interest amount of Rs 97.96 crore, paid by the Petitioner, as a pass through in tariff. Article 7.2(iv) of the PPA provides that the Respondent MPPMCL is liable to pay to the Petitioner, all payments made or payable by it on account of taxes/cess/levy/fee or other imposition etc. levied or to be levied in future as a new tax by any other Govt. or other authority in respect of generation, transmission and supply of energy including activities incidental and ancillary thereto. Similarly, Regulation 56 of the 2019 Tariff Regulations permit the Petitioner to recover the statutory charges imposed by Central or State Government. We have, in this order, held that the levy of interest of Rs 97.96 crore by the GoMP and paid by the Petitioner, is the statutory interest in terms of Rule 5 of the Madhya Pradesh Electricity Duty Rules, 1949. Considering the aspects in totality, we direct the Respondent MPPMCL to reimburse the said amount of Rs 97.96 crore to the Petitioner, in ten (10) monthly installments, without interest. The first installment shall be paid within 15 days from the date of issue of this order. We decide accordingly.

19. The Respondent MPPMCL has also contended that the Petitioner has intentionally failed to disclose the fact that ED and EDC are also leviable on the auxiliary consumption of the Petitioner. Accordingly, it has prayed that the Petitioner may be directed to provide data on the auxiliary consumption and supply of power to



the Respondent, as it liable to pay the ED and EDC on the same. Per contra, the Petitioner has objected to the above stating that the scope of the present proceedings is restricted to the adjudication of the reimbursement of the interest amount paid to the GoMP and cannot therefore be enlarged. We agree with the submissions of the Petitioner. As the relief sought by the Petitioner in the present case, is only for the reimbursement of the interest amount levied by GoMP and paid by it, the same cannot be enlarged as sought for by the Respondent MPPMCL. In view of this, the submissions of the Respondent MPPMCL in this regard, cannot be entertained.

20. Petition No. 93/MP/2022 is disposed of in terms of the above discussions and findings.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I. S. Jha)
Member

