

CERC EXERCISES ITS POWERS TO RELAX AND REMOVE DIFFICULTIES TO ALLOW NHPC LIMITED TO RETROSPECTIVELY RECOVER ADDITIONAL INCOME TAX OF RS. 129.19 CRORES FROM ITS BENEFICIARIES



The Central Electricity Regulatory Commission (“CERC”), by its Order dated 30.11.2023, while adjudicating upon a Petition filed by NHPC Limited (“NHPC”), allowed NHPC to recover the additional income tax paid by it on account of Advance Against Depreciation (“AAD”) since 01.04.2009 from the beneficiaries of its 8 generating stations, retrospectively.

NHPC had filed the Petition seeking exercise of the CERC’s ‘power to relax’ and ‘power to remove difficulties’ under the Tariff Regulations to allow the recovery of income tax liability on account of AAD from the beneficiaries after grossing up with applicable/MAT tax rate of the year in which such recoveries were to be made through billing of sales in proportion to their capacity share allocation as on 31.03.2009 for their respective generating stations.

The Central Government, in 1997, had devised a mechanism, i.e., AAD, to help power generating companies to raise funds to meet loan repayments in time. On 23.05.1997, Central Government issued its tariff fixation notification under section 43-A of the Electricity (Supply) Act, 1948 whereby, for the first time, it permitted power generating companies to collect an amount before the years in which the normal depreciation (90% of the original cost of the Plant spread equally over the useful life of Plant) was otherwise allowed to be recovered, if the same was not sufficient to meet loan repayment schedule (capped at 1/12th of the original loan) of the generator. However, while issuing the Tariff Regulations for the Control Period of FY 2009-14 onwards, CERC discontinued the provision for AAD.

By its present order, the CERC, has held that the additional tax due to the reversal of AAD after 01.04.2009, as being claimed by NHPC, must be compensated to it to ensure justice, equity and restitution. CERC has further held that though the deferred tax liability with respect to the previous tariff period is covered, however, the tax on deferred income such as AAD is not specifically covered by the 2009, 2014, and 2019 tariff regulations. CERC further noted that the quantum of tax liability in question, was sub-judice for an extended period of time and the same has crystallised after the passage of the relevant control periods, thus the CERC observed that it has become imperative for it to deal with the issue by exercising its powers to ‘Power to Relax’ and ‘Power to Remove Difficulties’.

In view of the above, the CERC allowed the prayers sought by NHPC and directed that the arrears payments on account of the income tax liability of Rs. 129.19 Crores up to 31.03.2022, after grossing up with applicable/MAT tax rate is payable by the beneficiaries in six equal monthly instalments starting from December 2023.

NHPC was represented by SKV Law Offices’ team led by Mr. Shri Venkatesh (Managing Partner), Mr. Bharath Gangadharan (Senior Associate), Mr. Aashwyn Singh (Associate).

Click [here](#) to access the CERC’s order dated 30.11.2023 in Petition No. 304/MP/2023.