

**Jharkhand State Electricity Regulatory Commission
Ranchi**

FORM OF PROCEEDING

Case No. 15 of 2012

Jamshedpur Utilities & Services Co. Ltd. (JUSCO) Petitioner

Sl.No.	Date of proceeding	Proceedings of the Commission with signature	Office action taken with date
1	2	3	4
06	06.11.2012	<p style="text-align: center;"><u>ORDER</u></p> <p>The petitioner, Jamshedpur Utilities and Services Company Limited (hereinafter referred to as the petitioner or JUSCO) has filed a review petition Under Section 94 of the Electricity Act, 2003 read with Regulation 36 of Jharkhand State Electricity Regulatory Commission (Conduct of Business) Regulations 2011. The review petition has been filed against the tariff order for FY 2012-13 dated 15.06.2012 on the following two counts:-</p> <p>A. NON INCLUSION OF SURCHARGE ON ELECTRICITY DUTY.</p> <p>B. ASSESSABLE INCOME FOR COMPUTATION OF INCOME TAX FOR FY 2010-11.</p> <p>The petitioner was heard at length and the case was fixed for orders. Because of pre-occupation with certain other urgent matters, the order could not be passed earlier.</p> <p>Coming to the issues raised for review, as mentioned</p>	

earlier, only two issues have been raised which we will discuss one by one in the following paragraphs:-

A. NON INCLUSION OF SURCHARGE ON ELECTRICITY DUTY:-

The petitioner has submitted that for the FY 2010-11 surcharge on electricity duty amounting to Rs. 36.48 lakh has been paid by it and was included under the Power Purchase Cost in its Audited Accounts on the advice of the statutory Auditor. The petitioner explained that earlier surcharge on electricity duty was a part of the A&G expenses. Since, the surcharge of electricity duty has not been allowed under the Power Purchase Cost which has been duly paid, the petitioner prays that this expenditure for the FY 2010-11 be allowed. The petitioner has filed proof of payment as well.

Let us have a look at Para 5.28 of the tariff order of the petitioner for the FY 2012-13 which is reproduced below:

5.28 Further, as the petitioner has not submitted details of Electricity Duty separately, the Commission has not approved any amount under this head for FY 2010-11. Also Electricity Duty for power sector has been discontinued by State Government with effect from July 1st, 2011; thus no liability would arise in future under this head.

A perusal of the aforesaid para makes it clear that the petitioner has not submitted the details of the surcharge of electricity duty separately and as such it was not approved by

the Commission.

Now the petitioner explains that on the advice of the auditor they had included the surcharge on electricity duty in the Power Purchase Cost and not under the A&G expenses.

Be as it may, from the tariff order, it is clear that the surcharge on electricity duty for the FY 2010-11 was not allowed by the Commission for want of details. Since, now the petitioner has filed the proof of payment of surcharge on electricity duty, the Commission allows the same which comes to Rs. 36.48 lakhs. The petitioner is directed to reflect this amount in its ARR while filing the next tariff petition.

B. ASSESSABLE INCOME FOR COMPUTATION OF INCOME TAX FOR THE FY 2010-11:

The petitioner has submitted that it is a Public Limited Company registered under the Companies Act, 1956 and maintains the accounts as per the Company Law. The petitioner submitted that the Audited Accounts for JUSCO as a whole for the FY 2010-11 had negative profit before tax and based on which the Commission has not considered any income tax liability for the Power Business Division of the petitioner for the FY 2010-11. The petitioner submitted that the assessable income for computation of income tax is based on the provisions of the Income Tax Act and not on the basis of Company Law Accounts. According to the petitioner, it has assessable income for income tax purposes for the FY 2010-11

which works out to Rs. 6.30 crores. The petitioner pointed out that it has paid already Rs. 9.30 crores as income tax for its whole business for the FY 2010-11. The petitioner claims that Power Business Division is liable for income tax and the share of the Power Business Division comes to Rs. 1.87 for the period under reference.

Here it is relevant to refer to the tariff order for the petitioner for the FY 2012-13 in which the income tax liability of the petitioner has been considered. Para 5.68 of the aforesaid tariff order is reproduce below:-

5.68 The Commission in previous Tariff Order had approved normative income tax for the petitioner for FY 2009-10 as the audited accounts for the whole business of JUSCO for FY 2009-10 showed a positive Profit Before Tax (PBT). However in FY 2010-11, the audited accounts of the whole business of JUSCO for FY 2010-11 show a negative profit Before Tax (PBT) for the company. Thus the Commission is of the view that as the whole business of JUSCO has a negative PBT, there is no assessable income for computation of Income Tax during FY 2010-11. accordingly for FY 2010-11, the Commission has not considered any income tax for the Petitioner as there is no income tax liability ascertained for whole business of JUSCO. However, in case any income tax is actually paid by the Petitioner pertaining to FY 2010-11 in future years, the

Commission would allow as per the actual amount based on the supporting documents submitted by the Petitioner for the same.

A perusal of the aforesaid Para shows that at the time of issuing tariff order for the FY 2012-13, the Commission had come to the conclusion that there is no income tax liability of the petitioner for the FY 2010-11.

But the petitioner, as stated earlier, claims that it has Assessable Income for the aforesaid financial year and the share of the Power Business Division as income tax comes to Rs. 1.87 crores.

Let us examine the information submitted by the petitioner.

A perusal of the information submitted by the petitioner shows that an amount of Rs. 34.11 crores has been added back in the FY 2010-11 as “Unpaid provisions”. This unpaid provisions include leave salary, bonus, gratuity and superannuation fund. The petitioner claims that the amount of Rs. 34.11 crores which was to be paid for the said liabilities in FY 2010-11 could not be paid in that year and as such, has been added back in the FY 2010-11. The petitioner has not explained or clarified as to when there were provision for payment of the liabilities under consideration for the FY 2010-11, why these were not paid in that year. Secondly, if these were not paid in that year, then according to Accounting

Principles, these should have been carried forward to the next financial year i.e. 2011-12 instead of adding back in the year 2010-11. The Commission is not convinced about the methodology adopted by the petitioner and there is no logical explanation from the petitioner on adding back the amount of Rs. 34.11 crores in the year 2010-11. Had this amount been paid in FY 2010-11, the petitioner would have got a negative income of Rs.3.19 crores for the income tax purposes.

Another Rs. 13.61 crores has also been added back to the book losses in the FY 2010-11 by the petitioner. This amount relates to unpaid amount of other items under section 28 to 44 DA including warranty provision, provision for loss under AS-7 and provisions for IDT and LD. Since these items do not pertain to the Power Business Division specifically, these cannot be considered while allocating income tax liability of the regulated business of the petitioner.

In view of the aforesaid discussion, the Commission finds no reason for approving normative income tax for the FY 2010-11 for the regulated business of the petitioner and rejects the plea of the petitioner on this count.

The petition is accordingly disposed of.

Sd/-
Member (E)

Sd/-
Chairperson