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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment pronounced on:13.05.2025

+ **W.P.(C) 14299/2022, CM APPLs. 43654/2022, 43656/2022**

TATA POWER DELHI DISTRIBUTION LIMITED Petitioner
Through: Mr. Sandeep Sethi, Sr. Adv. along
with Mr. Anupam Varma, Mr. Nikhil
Sharma and Ms. S. Akshata, Advs.
versus

MUNICIPAL CORPORATION OF DELHI & ANR. Respondents
Through: Mr. Sanjay Poddar, Sr. Adv. along
with Mr. Sidhanth Nath (SC for
MCD), Mr. Govind Kumar, Mr. R. R.
Panda, Mr. Saksham Kaushik, Mr.
Bhavishya Makhija and Mr. Shivam
Sharma, Advs. for R-1/MCD.
Mr. Sanjeev Mahajan and Mr. Pranjal
Tandon, Advs. for R-2.

**CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA**

JUDGMENT

1. The present petition has been filed under Article 226 of the Constitution of India seeking the following prayers –

“(a) *Quash and set-aside:*

(i) *MCD's communication dated 29.09.2022 bearing No.EE(E)/MCD/Planning/2022-23/103 issued by the Assistant Engineer (Electrical), Planning Division, MCD to Tata Power Delhi Distribution Ltd.*

(ii) *Letter dated 20.09.2022 bearing No.EE/(E)/MCD /Planning/2022-23/102 issued by the Assistant Engineer (Electrical), Planning Division, MCD to Tata Power Delhi Distribution Ltd.*



(iii) Notice of Demand bearing No.EE(E)/MCD/Planning/2022-23/73 dated 31.08.2022 issued by the Assistant Engineer (Electrical), Planning Division, MCD to TPDDL under Section 154 of the DMC Act to the Tata Power Delhi Distribution Ltd.

(iv) Letter dated 10.08.2022 bearing no.EE(E) /MCD /Planning/2022-23/65 issued by Assistant Engineer (Electrical), Planning Division, MCD to Tata Power Delhi Distribution Ltd.

(b) Direct the MCD not to raise any Demand of Interest/LPSC collected by the Petitioner on delayed payment of Electricity Tax by Petitioner's Consumers; and

(c) Pass any other orders or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

2. The petitioner (Tata Power Delhi Distribution Limited) is an electricity distribution licensee engaged in retail distribution of electricity to consumers in North and North-Western regions of the National Capital Territory of Delhi. The petitioner took over from the Delhi Vidyut Board in 2002 and has since been collecting charges from consumers for retail supply of electricity.

3. By way of the impugned demand notice dated 31.08.2022 (hereinafter '*the impugned demand notice*') issued by the Assistant Engineer (Electrical), Planning Division, Municipal Corporation of Delhi [MCD / respondent no.1] under Section 154 of the Delhi Municipal Corporation Act, 1957 (hereinafter '*the DMC Act*'), the respondent no.1 has raised a demand for recovery of Rs. 15.06 crores towards the Late Payment Surcharge (hereinafter '*LPSC*') levied by the petitioner on the outstanding arrears of electricity tax collected by the petitioner from retail consumers of electricity in the period between 01.07.2002 and 31.03.2022. The said impugned demand notice reads as under –



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“MUNCIPAL CORPORATION OF DELHI
OFFICE OF THE ASSISTANT ENGINEER (ELECTRICAL)
ROOM NO.30, 1ST FLOOR, AMBEDKAR STADIUM
NEW DELHI 110002

No.EE(E)/MCD/Planning/2022-23/73

Date: 31.08.2022

NOTICE OF DEMAND

Chief Executive Officer,
TATA Power Delhi Distribution Ltd.,
NDPL House, Hudson Lines Kingsway Camp,
New Delhi-110009.

Notice of Demand under Section 154 of DMC Act-1957

Please take notice that the Commissioner demands from TATA Power Delhi Distribution Limited, the sum of Rs.15,06,00,000 (Fifteen Crores Six Lakhs only) due from TATA Power Delhi Distribution Limited on account of Late Payment Surcharge on electricity tax recovered by it, from the consumers of its licensed area (Copy of letter dated 10.08.2022 enclosed), for the period July 2002 to March 2022, commencing on the 1st day of July 2002 and ending on 31st day of March 2022, and that if, within thirty days from the service of this notice, the said sum is not paid to the Commissioner at 9th Floor, SPM Civic Centre, New Delhi or sufficient cause for non-payment is not shown to the satisfaction of the Commissioner a warrant of distress or attachment will be issued for the recovery of the same with costs.

Dated this 31st day of August, 2022.

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Assistant Engineer (Electrical)
Planning Division MCD,
Municipal Corporation of Delhi,
Email id-shashank.gupta@mcd.nic.in”

4. In the present case, it is not disputed that –
- (i) Electricity tax is levied on retail consumers of electricity in Delhi under Section 113(2)(d) of the DMC Act.
 - (ii) The task of collection of electricity tax from retail consumers is entrusted to the petitioner / distribution licensee by the Municipal



Corporation of Delhi in terms of the Delhi Municipal Corporation (Assessment and Collection of Tax on the Consumption, Sale or Supply of Electricity) Bye-Laws, 1962.

- (iii) The amount collected as electricity tax by the petitioner from retail consumers in terms of the Delhi Municipal Corporation (Assessment and Collection of Tax on the Consumption, Sale or Supply of Electricity) Bye-Laws, 1962 is required to be passed on to the MCD/respondent no.1.
- (iv) In addition to collection of electricity tax and the charges for supply of electricity to retail consumers, the petitioner also collects a 'Late Payment Surcharge' (LPSC) on account of delayed payment of the bill/s. The amount of LPSC charged in the bill/s also includes LPSC on the electricity tax component as well.

5. By way of the impugned demand notice, the respondent no.1 has sought to recover the aforesaid 'LPSC on the electricity tax' which has been collected by the petitioner from retail consumers.

6. In the aforesaid conspectus, the question that falls for the consideration of this Court is whether the 'LPSC on electricity tax' is required to be refunded to the MCD (along with the principal amount of electricity tax collected on behalf of the MCD) or whether it is permissible for the petitioner to retain the same.

SUBMISSIONS ON BEHALF OF THE PETITIONER

7. Learned senior counsel for the petitioner has contended that the MCD has no statutory right to seek refund of a part of the LPSC collected by the petitioner from its consumers. It is submitted that LPSC, collected by the



petitioner from its consumers is not a statutory levy under the Delhi Municipal Corporation Act, 1957 (DMC Act) or under the Delhi Municipal Corporation (Assessment and Collection of Tax on consumption, Sale or Supply of Electricity) Bye-Laws, 1962 (DMC E-Tax Bye-Laws).

8. It is submitted that the MCD is only entitled to levy a “tax on the consumption, sale or supply of electricity” in terms of Section 113(2)(d) of the DMC Act, 1957 and in the absence of a specific provision for the levy of interest / LPSC on the delayed payment of electricity tax, the MCD cannot be permitted to raise a demand for LPSC on the electricity tax component, by implication. The petitioner has also relied upon the judgment of the Supreme Court in *V.V.S. Sugars v. Government of A.P. & Ors.* 1999 4 SCC 192 to contend that interest can be levied and charged on the delayed payment of tax only if the statute that levies and charges the tax also contains a substantive provision in this behalf.

9. It is submitted that the Delhi Municipal Corporation (Assessment and Collection of Tax on the Consumption, Sale or Supply of Electricity) Bye-Laws, 1962 also does not envisage any provision by which the MCD is entitled to levy interest / LPSC on the electricity tax component.

10. It is further contended that till date, the MCD has not provided/prescribed any rate for levy of interest / LPSC on the delayed payment of electricity tax. Reliance in this regard is placed on the judgment dated 04.04.2018 being W.P.(C) 1461/2013 titled *Power Grid Corporation of India vs. EDMC* to contend that since the charging and computing provisions together form an integrated code, a levy cannot be imposed in the absence thereof. In the context of the present case, it is contended that since



the DMC (Assessment and Collection of Tax on the Consumption, Sale or Supply of Electricity) Bye-Laws, 1962 do not specifically provide for levy of interest / LPSC on delayed payment of electricity tax nor fixes any rate of interest on delayed payment of electricity tax, the same cannot be levied thereunder.

11. It is submitted that Section 155 of the DMC Act, 1957, which entitles the MCD to levy a penalty not exceeding 20% in case of a default in payment of a tax, is also not applicable to the present case inasmuch as the same is in the nature of a one-time levy and is not in the nature of a recurring levy.

12. Next, it has been contended that the collection of LPSC on the electricity tax component recovered by the petitioner from its consumers, cannot be construed to be “*a mode of recovery of electricity dues*” and as such, the same does not fall within the purview of Bye-Law 7(6) of the Delhi Municipal Corporation (Assessment and Collection of Tax on consumption, Sale or Supply of Electricity) Bye-Laws, 1962.¹

13. It is submitted that the levy of LPSC by the petitioner is regulated under the provisions of the Electricity Act, 2003 read with the Delhi Electricity Regulatory Commission (Supply Code and Performance Standards) Regulations, 2017 [hereinafter ‘*the DERC Supply Code*’] and the tariff orders passed by the Delhi Electricity Regulatory Commission (DERC). It is submitted that pursuant to Regulation 42, 46 and 48 of the DERC Supply Code 2017, the consumer is required to deposit the entire

¹ “7. Time and manner of collection and payment –

(6) If the electricity tax is not paid within the prescribed period, the licensee may take such further action for the recovery of the same as it is empowered to take for the recovery of its own dues on account of electricity charges.”



amount of the bill raised by the petitioner and upon failure to do so within the stipulated time period / due date, the petitioner would be entitled to charge the LPSC on the said unpaid dues. It is submitted that the LPSC levied by the petitioner is defined under Section 2(37) DERC Supply Code, 2017² as a monetary charge raised by the petitioner against its consumers for delayed payment of electricity dues beyond the due date, in terms of the Tariff Orders passed by the Hon'ble DERC. In the present case, the quantum / rate of LPSC has been determined by the DERC as 1.5% per month. The levy of LPSC will be proportionate to the number of days for which the bill amount continues to remain outstanding beyond the due date. The payments received from the consumer shall be adjusted towards the dues in the order of, first, the arrears of electricity charges and corresponding arrears of electricity duty/tax followed by the current electricity charges and corresponding current electricity duty/tax, then the miscellaneous charges and finally the late payment surcharge.

14. As such, it is submitted that the LPSC collected by the petitioner is construed as the petitioner's non-tariff income and a part of the financing cost incurred by the petitioner in the tariff collected from the consumers. Further, the petitioner submits that it transfers the benefit of collecting LPSC to its consumers by reducing the Aggregate Revenue Requirement (ARR). It is submitted that the levy as well as apportionment of the LPSC levied and collected by the petitioner is strictly in terms of the Regulations issued by the DERC and therefore there arises no occasion for the MCD to raise a claim as regards a portion of such LPSC. Furthermore, the petitioner has

²“Late Payment Surcharge (LPSC)” means the monetary charge levied as per provisions of the Tariff Orders, on a consumer, for the period of delay in payment of its bills beyond due date.



neither been directed by the DERC to deposit the LPSC collected from consumers on delayed payment of electricity tax nor is the petitioner required to show bifurcation of the LPSC collected by it. Reliance in this regard is placed on the judgment dated 30.10.2010 of the Appellate Tribunal for Electricity in *NDPL v. DERC* in Appeal No. 153/2009.

15. Furthermore, the petitioner relies on the judgement of the Supreme Court in *K.C. Ninan v. Kerala State Electricity Board & Ors.* [Civil Appeal No. 2109-2110 of 2004] to contend that LPSC is not a mode of recovery of electricity dues for the petitioner as there are other modes of recovery provided under Section 56 Electricity Act read with the Regulation 46, 50 and 51 of the DERC Supply Code. On this basis, it is submitted that collection of LPSC is in terms of the Electricity Act, 2003 and the DERC Supply Code 2017 and the regulatory treatment of the said amount is in terms of the DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017 as well as the tariff orders passed by the DERC. The petitioner does not collect LPSC in the capacity of an agent of the MCD but as an electricity distribution licensee in terms of its distribution license issued by the DERC.

16. Lastly it is submitted that the demand raised by the respondent no.1 for LPSC on the electricity tax component is barred by limitation pursuant to Section 455 DMC Act, 1957 inasmuch as the impugned demand relates to LPSC levied on electricity tax for the past 20 years i.e. from 01.07.2002 to 31.03.2022 whereas the period of limitation provided under Section 455 DMC Act for raising a demand thereunder is only for 3 years.

17. It is further submitted that the MCD has failed to place on record any document which shows that the MCD came to know of the LPSC being



levied on the electricity tax component by the petitioner only on 10.08.2022, as alleged by it. Reliance in this regard is placed on the judgment in ***Bharat Singh v. State of Haryana (1988) 4 SCC 534.***

18. In this regard, the petitioner further submits that the demand for the LPSC on the electricity tax component is arbitrary and without any factual basis inasmuch as pursuant to Section 153 of the DMC Act, the MCD is required to raise a bill when any tax has become due, however, the MCD has failed to raise any such bill in terms thereof or quantify the alleged amount due on the basis of any rational justification. Instead, the MCD has arbitrarily assessed the quantum of the amount due towards LPSC on the electricity tax component as a *pro-rata* percentage of 4% of the total LPSC collected by the petitioner.

SUBMISSIONS BY THE MCD/RESPONDENT NO.1

19. Mr. Sanjay Poddar, learned senior counsel for the respondent no.1/MCD contends that MCD is entitled to raise a demand towards the LPSC levied by the petitioner. It is pointed out that LPSC is levied, *inter alia*, on the outstanding arrears of electricity tax.

20. It is submitted that the MCD is entitled to levy and collect electricity tax on sale and supply of electricity under Section 113 of the DMC Act to the extent of charging the rate of 5% as fixed vide an MCD Resolution dated 30.06.1992 pursuant to Section 150 of the DMC Act.

21. It is submitted that since it was not feasible for the MCD to collect electricity tax from lakhs of consumers by presenting a bill under Section 153 of the DMC Act, the Delhi Municipal Corporation (Assessment and



Collection of Tax on the Consumption, Sale or Supply of Electricity) Bye-Laws 1962 were framed and pursuant to which, the power to collect the same was delegated to the distribution licensees such as the petitioner.

22. It is contended that as per Bye-law 3(2) of the Delhi Municipal Corporation (Assessment and Collection of Tax on Consumption, Sale or Supply of Electricity) Bye-Laws, 1962, the respondent no.1/MCD has the first charge on the electricity tax collected and the same is in the nature of a debt due to the MCD. It is emphasized that the petitioner is an agent of the respondent no.1, by operation of law, and this legal relationship of principal and agent is still continuing.

23. It is submitted that the collection of LPSC is a step taken pursuant to authorization conferred by Bye-law 7(6) of the DMC E-Tax Bye Laws, in terms whereof, if the tax is not paid within the period fixed by the licensee, the licensee is required to take such further action for recovery of the tax dues as it is empowered to take, to recover its own dues on account of electricity charges.

24. It is submitted that in terms of the Electricity Act, 2003 read with the DERC Supply Code, 2017, the petitioner is entitled to undertake the following actions –

(a) To charge LPSC as defined in the Regulations 2 (37), 42 and 46 of the said Supply Code.

(b) Issue Notice, under section 56(1) of the said Act and Chapter 6 of the DERC Supply Code, and disconnection of electricity supply thereafter.

25. It is submitted that the petitioner being the agent of the MCD has been empowered to collect either LPSC and/or to disconnect the electricity supply for non-payment of electricity tax. The respondent no.1 refutes the



submission that the petitioner is not empowered to collect LPSC on electricity tax under the DMC Act 1957 or the Delhi Municipal Corporation (Assessment and Collection of Tax on the Consumption, Sale or Supply of Electricity) Bye Laws 1962 and that instead, it is empowered to collect LPSC on electricity tax in terms of the Electricity Act 2003 read with the DERC Supply Code 2017. In this regard, a three-fold submission is made which is as under –

- i. Firstly, it is submitted that the amount collected by the petitioner as electricity tax as well as the LPSC on electricity tax belongs to the MCD despite the same being collected by the petitioner. Upon receiving the said monies, the petitioner is required to return the same to the MCD and not hold it for its own use. It is contended that in terms of settled law, an agent merely holds the money on behalf of the principal in trust and is bound to return the same to the principal (MCD). The use of such monies is also to be done only in terms of the authority and directions of the principal on whose behalf such monies are collected.
- ii. Secondly, it is submitted that the interpretation of Bye Law 7(6), as propounded by the petitioner, if accepted, would render the said provision nugatory and would militate against the settled proposition that no word or provision of a statute should be considered as redundant or superfluous. Furthermore, it is submitted that the aforesaid Bye Law is applicable only where there is a delay in making payment by the consumer and the petitioner has been unable to clarify as to what else was required to be undertaken by the petitioner under the said provision apart from collecting LPSC on electricity tax.



iii. Thirdly, it is submitted that the petitioner's contention is not only dishonest but also contrary to the petitioner's duty as an agent of the MCD (principal) in terms of Section 218 of the Indian Contract Act.

26. It is submitted that the contention that the LPSC collected by the petitioner has been adjusted as non-tariff income in the Aggregate Revenue Requirement (ARR) of the petitioner is liable to be rejected for the following reasons:

a. Admittedly the petitioner collected the said LPSC on electricity tax on behalf of the MCD and has not separately accounted for the same till it was detected on or around 10.8.2022.

b. Admittedly, this was also not disclosed to the DERC at any point of time or at the time of including the same in the alleged Aggregate Revenue Requirement (ARR).

c. Admittedly, this amount has been allegedly included by the Petitioner in ARR without any directions/authority from the MCD.

27. It is submitted that on account of non-disclosure of the levy of LPSC on electricity tax by the petitioner, the DERC has considered a consolidated amount of LPSC in the tariff order after deducting the financing cost of LPSC. Furthermore, the petitioner has wrongly factored LPSC as non-tariff income in the ARR of the petitioner in the previous years to be adjustable in the ARRs of subsequent years. The petitioner as an agent of the MCD was not entitled to use or appropriate funds without the authority of the principal.

28. The respondent has also refuted that the demand of LPSC collected by the petitioner on the electricity tax component on behalf of the MCD, is



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barred by limitation. Reliance in this regard is placed on Article 4 to the Schedule of the Limitation Act, 1963.³

29. It is submitted that the impugned demand made by the MCD (principal) against the petitioner (agent) for the funds collected by the petitioner towards LPSC on electricity tax was made only after the MCD came to know of such funds being collected in August, 2022. It is submitted that LPSC was never demanded and refused prior to 10.08.2022. Furthermore, the fact that a levy was being made by the petitioner on the electricity tax was not disclosed specifically to any other agency and was in fact suppressed by the petitioner from being detected. In the cases covered by Article 4 to the Schedule of the Limitation Act, the limitation period would start from the date on which the negligence or the misconduct of the agent is discovered. It is submitted that in terms of Article 4 to the Schedule of the Limitation Act, the knowledge of the “plaintiff” must be actual knowledge of the MCD as to the collection and retention of the LPSC on electricity tax by the petitioner, and as per the MCD, the date on which the MCD got actual knowledge of such an amount being collected by the petitioner is 10.08.2022. Reliance in this regard is placed on a catena of judgments including *K.N. Rao & Anr. v. Composite Securities Ltd. & Ors.* 2022 SCC OnLine Delhi 292, *Sankaranarayana Ayyar v. Trichender Dharampalipana SA Kthithara Bhajanaisabha through its Secretary, Thomman Theresia v. Pothan Chako* AIR 1957 Kerala 155, *Kishori Lal*

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4. Other suits by principals against agents for neglect or misconduct. Three years

When the neglect or misconduct becomes known to the plaintiff.



Makundi Lal Jauhari Mal & Ors. AIR 1927 All 436, *Jaganji v. Bandan* AIR 1930 All 397, *A.C. Mukherji v. Municipal Board of Benares* and *Daulat Ram v. Bharat National Bank Ltd.* (2) (1894) 1 Ch. 617, 638.

30. It is further submitted that even assuming that non-disclosure as regards collection of LPSC on electricity tax was on account of a mistake on the part of the petitioner, in such a case, the provision of Section 17 of Limitation Act would apply and the limitation would start when the mistake is discovered. In this regard reliance is placed on the judgment of the Supreme Court in *Assistant Engineer (D 1) Ajmer Vidyut Vitaran Ltd. & Ors. Versus Rahumutullah Khan @ Rahamutuallah Khan* [SLP (Civil) No.5190/2019] which has been followed in *Prem v. Uttar Haryana VijliVitrان Nigam Ltd. & Ors.* 2021 SCC OnLine SC 870.

31. It is submitted that the petitioner after collecting the LPSC on electricity tax from the consumers has been withholding the same from the MCD. The petitioner has unjustly enriched itself at the cost of the MCD, which is not permissible in law. Thus, the MCD is entitled to invoke the special provisions of Section 154 of the DMC Act which has been enacted for speedy recovery of government dues, without taking recourse to the ordinary process of recovery proceedings, which can be undertaken only when the MCD is unable to effect recovery by such special provisions.

SUBMISSIONS BY DERC/RESPONDENT NO.2

32. Learned counsel for the respondent no. 2/DERC made the following submissions –



- i. It is submitted that pursuant to Section 61 of the Electricity Act, 2003, the DERC is conferred with the power to specify the terms and conditions for determination of tariff. In terms of Section 86 of the Electricity Act, 2003, the DERC is vested with the powers to inter alia determine tariff for generation, supply, transmission, wheeling of electricity, wholesale, bulk or retail sale within the State pursuant to the process for determination of tariff as provided under Section 62 and 64 of the Electricity Act, 2003. Pursuant to Section 45 of the Electricity Act, the price to be charged by the distribution licensee for the supply of electricity by it in accordance with Section 43 of the Electricity Act shall be as per the tariff which is fixed from time to time.
- ii. It is submitted that LPSC is defined under Regulation 2(37) of the DERC Supply Code as a monetary charge as per provisions of the tariff orders and under Regulation 42 of the DERC Supply Code, recovery of arrears can be made along with an interest / LPSC. Section 56 of the Electricity Act, 2003 provides for the disconnection of electricity supply upon default of payment of arrears of electricity charges and does not bear any mention of electricity tax.
- iii. It is submitted that the tariff orders as referred to in Regulation 2(37) of the DERC Supply Code are also passed in context of electricity tariff and do not relate to electricity tax, which is entirely within the domain of the DMC Act.
- iv. It is submitted that the DERC discharges its functions in terms of the Electricity Act read with the DERC Supply Code and does not have



the jurisdiction or the authority to deal with electricity tax which is entirely regulated under the DMC Act.

- v. It is submitted that the power of the distribution licensees to recover electricity tax is derived from Section 113 of the DMC Act read with the DMC E-Tax Bye Laws and the same is not derived from the Electricity Act or the Regulations made thereunder. The distribution licensee only acts as a collection agency of electricity tax on behalf of the MCD and the levy, assessment and collection of electricity tax would necessarily fall under the DMC Act. Accordingly, any payment collected towards the late payment of electricity tax would necessarily have to be dealt with under the DMC Act itself.
- vi. It is submitted that LPSC levied on tariff as provided under the electricity bill payable by the consumers cannot be equated with the LPSC levied on electricity tax inasmuch as the former is entirely covered under the Electricity Act read with the regulations made thereunder whereas the latter is entirely covered under the DMC Act.
- vii. It is submitted that the DERC has not dealt with the issue of collection of LPSC charges on the electricity tax component as the same was never submitted before the respondent no. 2 in such a form.

REASONING & CONCLUSION

33. The first question that arises for consideration is whether Tata Power Delhi Distribution Ltd. (petitioner) can retain with itself any amount collected towards LPSC on electricity tax (whether collected in the past or for the future) as 'non-tariff income' in terms of the Electricity Act, 2003



read with the DERC Supply Code.

34. This issue has been amply clarified by the Delhi Electricity Regulatory Commission (hereinafter '*the DERC*') in its counter-affidavit dated 20.09.2023 and its written submissions. In the said counter-affidavit, filed on behalf of the DERC, it has been categorically stated as under:

“7. That while the respondent no.2 discharges the function in terms of Electricity Act, 2003, it however does not deal or regulate the levy of Electricity Tax as the same fall in the domain of the Municipal Authorities. As such Electricity Tax levy and collection is not under the purview of the respondent no.2.

8. That since the Respondent No.2 does not deal with the or regulate the levy of Electricity Tax as such none of regulations framed under Section 181 of the 2003 Act deal with the Electricity Tax or late payment surcharge upon the same. It is for this reason that DERC Supply Code, Business Regulation issued from time to time or Tariff order does not deal with late Payment surcharge on Municipal Tax.

9. That in term of Section 45 of Electricity Act, 2003 price to be charged by the distribution licence for the supply of electricity by him in pursuance to Section 43 shall be in accordance with such tariff fixed from time to time.

10. That in pursuance to the same, the Respondent No.2 has issued DERC Supply Code, 2017. Regulation 2(3) of the said Code deals with Late Payment Surcharge (LPSC). The same reads as under:

***Late Payment Surcharge (LPSC)** means the monetary charge levied as per provisions of the Tariff orders/ on a consumer, for the period of delay in payment of its bills beyond due date*

11. That the said late Payment Surcharge is towards delay in payment of Tariff which the consumer is required to pay as per the Electricity Bill raised by the Transmission Company. Since the Respondent No.2 does not have the jurisdiction to fix or regulate Electricity Tax as such there is no provision for levy of LPSC on delayed payment of Electricity Tax in the DERC Supply Code or any other regulation of DERC.

12. That in respect of the Electricity Tax, the Petitioner, as a distribution licensee, acts only as a collection agency for the MCD and is required to collect the Electricity Tax as per the provision of DMC E-Tax Bye-laws.



The role of the petitioner in respect of Electricity Tax is limited to that only.

13. That the Respondent No.2 has not dealt with the issue of Late Payment Surcharge upon Electricity Tax collected by Petitioner as the same were never submitted by the petitioner in the said form. The petitioner had been submitting the LPSC charges upon the Electricity Bill and not furnishing LPSC charges upon the Electricity Tax and therefore LPSC charges were approved on the premise that the same were in term of Regulation 2 (37) of DERC Supply Code.

14. That since the levy, assessment and collection of Electricity Tax falls under provision of DMC Act as such any payment collected towards late payment of the same would also have to be dealt with in accordance with Delhi Municipal Act, 1957.

15. That the contention of the Petitioner that Respondent No.2 has not directed the Petitioner to deposit the LPSC collected on delayed payment of E-Tax from consumer with the MCD is not a correct statement of fact. It is submitted that the Petitioner has never submitted the LPSC collected on Municipal Tax as a separate item and therefore there was no occasion for the Respondent No.2 to deal with the same and consequently no directions have been passed either to retain or to deposit the same with MCD.

As submitted hereinabove, the respondent no.2 has no jurisdiction to fix or regulate the Electricity Tax and therefore would have no jurisdiction to deal with late payment surcharge on the same and the same have to be dealt in accordance with Delhi Municipal Act, 1957.

16. That Respondent No.2 submits that LPSC levied and collected on tariff provided in Electricity Bill cannot be equated with the LPSC levied on Electricity Tax as the first one is covered under the Electricity Act,2003 and Regulation framed thereunder and Electricity Tax is covered under Delhi Municipal Act,1957.

17. That in view the above, the respondent no.2 submits that reliance of the petitioner upon the Tariff Code, 2017, Regulation or Tariff Order is of no consequence as the same does not deal with levy, assessment and collection of Municipal Tax or collection of late payment surcharge on Municipal Tax.”

35. Thus, it has been clearly brought out that the DERC has not sanctioned or permitted the petitioner to collect ‘LPSC on electricity tax’



from retail consumers inasmuch as the same is beyond the remit of the DERC. The petitioner has only been authorised to collect LPSC on the delayed payment of bills raised by it for supply of electricity to retail consumers. The same is evident from a perusal of the DERC Supply Code, 2017 which has been framed pursuant to Section 50 of the Electricity Act, 2003. Regulation 46(2) of the DERC Supply Code specifically provides that the petitioner (distribution licensee) is entitled to charge LPSC on the outstanding amount of the bill in terms of “the rates notified by the Commission in applicable tariff order”.⁴

36. Since the DERC is not concerned with and has no jurisdiction over the electricity tax collected by the petitioner, there is no question of any tariff order issued by the DERC being construed as contemplating or authorising recovery / collection of ‘LPSC on electricity tax’.

37. There is no manner of doubt that the collection of ‘LPSC on electricity tax’ is not authorized under the DERC Supply Code, 2017 or under any tariff order, issued by the DERC.

38. The petitioner has also not been authorized to retain ‘LPSC on electricity tax’ by any other law.

39. As such, under any circumstance, there can be no question of the petitioner being allowed to retain the ‘LPSC on electricity tax’. There is no question of the petitioner treating such amount/s as part of its ‘non-tariff income’ for the purpose of working out its Aggregate Revenue Requirement (ARR) for any tariff year. If the same has been done by the petitioner in any

⁴ 46. Payment of bills and charges for delayed payments:-

....

(2) Subject to Regulation 45 (5), if the consumer fails to remit the bill amount on or before the due date, the Licensee shall be entitled to recover Late Payment Surcharge on the outstanding amount of the bill at the rates notified by the Commission in applicable Tariff Order.



previous tariff year, the same is erroneous. It is incumbent on the DERC to take note of the same and pass appropriate order/s.

40. Once it is held that it is impermissible for the petitioner to retain any part of the 'LPSC on electricity tax' with itself, the next question that arises for consideration is whether the same is required to be passed on / refunded to the MCD (for past and future period), or whether the same be refunded to the consumers from whom it was collected (since, in any event, the petitioner cannot be allowed to retain the same).

41. In this regard, it is necessary, at the outset, to consider the legislative scheme pursuant to which the petitioner has been authorised to levy and collect electricity tax from consumers on behalf of the MCD.

42. Under Section 113 of the DMC Act, 1957, the MCD is entitled to impose certain taxes which are set out therein. The said provision reads as under:-

"113. Taxes to be imposed by the Corporation under this Act.—(1) The Corporation shall, for the purposes of this Act, levy the following taxes, namely:—

(a) property taxes;

(b) a tax on vehicles and animals;

(c) a theatre tax;

(d) [* *]*

(e) a duty on the transfer of property; and

220(f) a tax on building applications payable along with the application for sanction of the building plan.

(2) In addition to the taxes specified in sub-section (1), the Corporation may, for the purposes of this Act, levy any of the following taxes, namely:—

(a) an education cess;

(b) a local rate on land revenues;

(c) a tax on professions, trades, callings and employments;

(d) a tax on the consumption, 221[sale or supply] of electricity;

(e) a betterment tax on the increase in urban land values caused by the execution of any development or improvement work;

(f) a tax on boats; and



(g) tolls.

(3) *The taxes specified in sub-section (1) and sub-section (2) shall be levied, assessed and collected in accordance with the provisions of this Act and the bye-laws made thereunder.*”

43. In terms of Section 113(3), levy, collection and assessment of electricity tax is to be carried out in terms of the provisions of DMC Act and the Bye laws made thereunder.

44. For the purpose of assessment and collection of tax on the consumption, sale or supply of electricity, the MCD has framed Delhi Municipal Corporation (Assessment and Collection of Tax on the Consumption, Sale or Supply of Electricity) Bye-Laws, 1962 (hereinafter “DMC E-Tax Bye-Laws”). The purport of the same is to regulate the assessment and collection of electricity tax.

45. By virtue of Bye-Law 3(1)(b)⁵ of the DMC E-Tax Bye Laws, the distribution licensee (petitioner) is authorised to collect electricity tax on behalf of the MCD. This provision is the only basis for the distribution licensee (petitioner) to collect electricity tax from the consumers.

46. Bye-Law 3(2) of the DMC E-Tax Bye-Laws⁶ provides that the MCD electricity tax shall be the first charge on the amount recoverable by the distribution licensee (petitioner) for the electricity supplied by it to the retail consumers and the same shall be a debt due by the distribution licensee

⁵ 3.Collection of Electricity Tax (1) Where within the limits of the Corporation:

(b) electricity is supplied by any licensee other than the Delhi Electricity supply undertaking, the electricity tax shall be collected by that licensee on behalf of the Corporation.

⁶ 3. Collection of electricity Tax. (2) The licensee who collects any tax under sub-clause (b) of Clause (1) shall pay the tax so collected to the General Manager (Electricity) within such time and in such manner as prescribed in these by-laws. The tax so paid shall be a first charge on the amount recoverable by the licensee for the electricity supplied by him and shall be a debt due by him to the Corporation.

Provided that the licensee shall not be liable to pay the tax in respect of any electricity supplied by him for which he has been proved to be unable to recover his own charges.



(petitioner) to the MCD.

47. Bye-Law 7(1) of the DMC E-Tax Bye-Laws⁷ provides that the distribution licensee (petitioner) shall recover the electricity tax along with its own charges for supply of electricity as a separate item in the bill of charges for electricity supplied to the retail consumers. Additionally, the distribution licensee (petitioner) shall pay to the MCD the electricity tax so collected by it, within a period of 40 days from the expiry of the month for which it the electricity tax was levied (prescribed period).

48. Bye-Law 7(6) of the DMC E-Tax Bye Laws⁸ contemplates that if the electricity tax is not paid within the prescribed period as stated in terms of Bye Law 7(1), the distribution licensee (petitioner) may take such further action for recovery of the same as it is empowered to take for recovery of its own dues on account of electricity charges.

49. The central issue now is whether levy of ‘LPSC on electricity tax’ can be construed to be “an action for recovery of its own dues on account of electricity charges” in terms of Bye-Law 7(6) of the DMC E-Tax Bye Laws.

50. In this regard, it is pertinent to consider the statutory scheme under

⁷ 7. Time and manner of collection and payment. – (1) A licensee operating within the limits of the Corporation shall include the electricity tax leviable under the Act as a separate item the bill of charges for the electricity supplied by him and shall recover the same from the consumer along with his own charges for the supply of such electricity. The consumer shall pay the tax payable by him to the licensee within the period fixed by the licensee for recovery of his own charges. A licensee other than the Delhi Electric Supply Undertaking shall pay the tax so collected within 40 days after the expiry of the month for which it is levied to the General Manager (Electricity).

Provided that, without prejudice to any other obligations imposed upon him by these bye-laws, the licensee may himself pay the tax instead of recovering the same from the consumer.

⁸ 7. Time and manner of collection and payment –

...

(6) If the electricity tax is not paid within the prescribed period, the licensee may take such further action for the recovery of the same as it is empowered to take for the recovery of its own dues on account of electricity charges.



the Electricity Act. The power to recover charges and expenditure incurred by the distribution licensee for supply of electricity is provided under Section 45 and 46 of the Electricity Act, 2003 respectively.⁹ Under Section 50 of the Electricity Act,¹⁰ it is provided that an electricity supply code shall be framed to govern, *inter alia*, the recovery of electricity charges by the distribution licensee.

51. To this effect, the DERC Supply Code has been framed by the Delhi Electricity Regulatory Commission (DERC - State Commission / respondent no.2) under Section 181 read with 46, 50 and 57 of the Electricity Act. The framework of the DERC Supply Code is as follows -

- (i) Under Regulation 38 of the DERC Supply Code, the licensee is entitled to raise bills upon the consumer for the consumption of

⁹ 45. Power to recover charges. —

(1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.

(2) The charges for electricity supplied by a distribution licensee shall be—

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission;

(b) published in such manner so as to give adequate publicity for such charges and prices.

(3) The charges for electricity supplied by a distribution licensee may include—

(a) a fixed charge in addition to the charge for the actual electricity supplied;

(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.

(4) Subject to the provisions of section 62, in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.

(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.

46. Power to recover expenditure. — The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.

¹⁰50. The Electricity supply code.—The State Commission shall specify an electricity supply code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.



electricity for every billing cycle based on actual meter readings.

- (ii) Under Regulation 46(1) of the DERC Supply Code, the full amount of the outstanding bill is required to be paid by the consumer on or before the due date.
- (iii) If the bill remains outstanding even after the due date has passed, pursuant to Regulation 46(2), the licensee is entitled to recover arrears from the consumer by charging a 'late payment surcharge'¹¹ on the outstanding amount of the bill as per the rates notified in the applicable tariff orders issued by the DERC. Regulation 46(2) of the DERC Supply Code reads as under-

“46. Payment of bills and charges for delayed payments:-

(1) The consumer shall pay to the Licensee the full amount of the bill on or before the due date indicated therein, for which the Licensee shall issue a receipt.

(2) Subject to Regulation 45(5), if the consumer fails to remit the bill amount on or before the due date, the Licensee shall be entitled to recover Late Payment Surcharge on the outstanding amount of the bill at the rates notified by the Commission in applicable Tariff Order.

(3) The Late Payment Surcharge shall be charged proportional to the number of days of delay in receiving payment from consumers by the distribution Licensee. Any adjustment on account of Late Payment Surcharge shall be done in the next bill.

(4) If the consumer fails to remit the amount within due date, the Licensee may disconnect the supply in accordance with the procedure specified in the Regulations.

Provided that the licensee may permit the consumer to remit the

¹¹Regulation 2 (37) -

Late Payment Surcharge (LPSC)” means the monetary charge levied as per provisions of the Tariff Orders, on a consumer, for the period of delay in payment of its bills beyond due date;



amount of bill with the Late Payment Surcharge as specified in the sub-regulation (2) above within an extended period of thirty days from the due date specified in the bill.”

- (iv) If the arrears of the licensee remain outstanding even after levy of LPSC, under Regulation 46(4) read with Regulation 42(4) of the DERC Supply Code¹² and Section 56(2) of the Electricity Act, the licensee is entitled to disconnect the supply of electricity of the consumer and initiate recovery proceedings against the said defaulting consumer.

52. A perusal of the above statutory framework reveals that the dispensation for levy of ‘late payment surcharge’ has been created with a view to ensure “payment of bills and charges for delayed payments”, as is evident from the very caption of Regulation 46 itself. In terms thereof, the distribution licensee (petitioner) can effect recovery of its own dues towards electricity charges in terms of the provisions of the Electricity Act, 2003 read with the DERC Supply Code by resorting to the following measures:-

- (i) levy LPSC, i.e. a monetary charge for the delay in payment of a

¹² **42. Recovery of Arrears –**

(4) Subject to Section 56 (2) of the Act, if the consumer fails to remit the amount of arrears with interest or Late Payment Surcharge, as the case may be, by the due date indicated in the bill or in the demand notice, the Licensee may disconnect the supply of electricity after giving notice and initiate proceedings for the recovery of the arrears in accordance with the relevant legal provisions.

46. Payment of bills and charges for delayed payments –

.....

(4) If the consumer fails to remit the amount within due date, the Licensee may disconnect the supply in accordance with the procedure specified in the Regulations. Provided that the licensee may permit the consumer to remit the amount of the bill with Late Payment Surcharge as specified in the sub-regulation (2) above within an extended period of thirty days from the due date specified in the bill.

56. Disconnection of supply in default of payment: -

.....

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.



bill beyond the due date;

(ii) if the arrears remain outstanding even thereafter, the distribution licensee is entitled to disconnect the electricity supply to the defaulting consumer and initiate recovery proceedings against the defaulting consumer for the outstanding dues.

53. By virtue of Bye-Law 7(6) of DMC E-Tax Bye-Laws, 1962, the aforesaid regime has to be followed by the distribution licensee (petitioner) for recovery of the MCD electricity tax as well.

54. The levy of LPSC is a step in aid of recovery of the principal amount of electricity charges due to the distribution licensee (petitioner). Just as the distribution licensee (petitioner) imposes LPSC as a means to secure payment of its dues, equally, even for the recovery of the MCD electricity tax, the petitioner is bound to impose LPSC for recovery of outstanding dues towards MCD electricity tax, payable by defaulting consumers.

55. The purport of Bye-Law 7(6) of the DMC E-Tax Bye Laws is clearly to ensure that the distribution licensee (petitioner) follows an identical regime for recovery of MCD Electricity Tax as it follows for the recovery of its own dues towards its dues. The same will be wholly defeated if the distribution licensee (petitioner) is held entitled to levy LPSC in respect of its own dues, but not in respect of the MCD electricity tax. Moreover, Bye-Law 7(6) does not contemplate any differential treatment as regards collection of 'LPSC on electricity tax' *vis-a-vis* collection of LPSC on dues of the petitioner.

56. In fact, it is the case of the petitioner itself that it has been collecting LPSC on the outstanding arrears of MCD electricity tax. The purport thereof could not possibly have been to illegally misappropriate the said amount



since the petitioner is, in any event, not entitled to retain the same with itself or appropriate it as part of its income. The same was obviously collected since the petitioner is obliged to accord similar treatment for the purpose of realization of MCD electricity tax *vis-à-vis* for realization of its own dues. There is, therefore, no scope for the petitioner to resist refund of the same to MCD, or to contend that collection of LPSC on electricity tax is outside the purview of bye-law 7(6).

57. The matter can be looked at from another angle as well. The distribution licensee (petitioner) is authorized to collect “late payment surcharge (LPSC)” under the DERC Supply Code. By definition, surcharge is referable to the levy/tax which is required to be collected. Black’s Law Dictionary (9th Edition) defines “surcharge” as under:-

“An additional tax, charge, or cost, usu. one that is excessive.”

58. Thus, the nature of a surcharge is indistinguishable from the underlying levy/tax, on which, the same is collected. It would be quite incongruous to accept the petitioner’s contention that while on one hand, it is bound to pass on/refund the principal amount of electricity tax to the MCD, on the other hand, it would be entitled to itself pocket the “surcharge” levied on the outstanding arrears of electricity tax collected by it. Such a contention can never be accepted inasmuch as it would tantamount to sanctioning an expropriation by the petitioner *dehors* any authority under law.

59. There is also merit in the contention of the MCD that for the purpose of collection of MCD electricity tax as also LPSC thereon, the distribution licensee (petitioner) acts as an agent of the MCD. It is settled law that every agent merely holds the money collected by it on behalf of the principal and



is bound to render the amount for the collection so made by it.¹³

60. An agent is required to apply the money so collected as per the instructions and directions of the principal and is not entitled to retain or apply the same contrary to the directions of the principal. The principal is entitled to recover such money and/or also recover any loss suffered by it on account of any act or omissions and commissions of the agent.

61. Thus, the monies collected by the distribution licensee (petitioner) towards electricity tax and 'LPSC on electricity tax', belongs to the MCD, although it was collected by the petitioner. It is the obligation of the petitioner to return the same to the MCD.

62. Thus, for the aforesaid multiple reasons, the conclusion is irresistible that the amount collected by the petitioner towards "LPSC on outstanding arrears of MCD electricity tax" is liable to be refunded to the MCD.

DEMAND NOTICE DATED 31.08.2022

63. The impugned demand notice dated 31.08.2022 issued under Section 154 of the DMC Act, 1957 reads as under:-

"MUNICIPAL CORPORATION OF DELHI
OFFICE OF THE ASSISTANT ENGINEER (ELECTRICAL)
ROOM NO. 30, 1ST FLOOR, AMEDKAR STADIUM
NEW DELHI 110002

No. EE(E)/MCD/Planning/2022-23/73 Date: 31.08.2022

NOTICE OF DEMAND

*Chief Executive Officer,
TATA Power Delhi Distribution Ltd.,
NDPL House, Hudson Lines Kingsway Camp,
New Delhi-110009.*

¹³ Section 218 Indian Contract Act, 1872 - Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.



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Notice of Demand under Section 154 of the DMC Act-1957

Please take notice that the Commissioner demands from TATA Power Delhi Distribution Limited, the sum of Rs. 15,06,00,000 (Fifteen Crores Six Lakhs only) due from TATA Power Delhi Distribution Limited on account of Late Payment Surcharge on electricity tax recovered by it, from the consumers of its licensed area (Copy of letter dated 10.08.2022 enclosed), for the period July 2002 to March 2022, commencing on the 1st day of July 2002 and ending on the 31st day of March 2022, and that if, within thirty days from the service of this notice, the said sum is not paid to the Commissioner at 9th Floor, SPM Civic Centre, New Delhi or sufficient cause of non-payment is not shown to the satisfaction of the Commissioner a warrant of distress or attachment will be issued for the recovery of the same with costs.

Dated this 31st day of August, 2022.

-sd-

Assistant Engineer (Electrical),
Planning Division MCD,
Municipal Corporation of Delhi,
Email Id- shashank.gupta@mcd.nic.in”

64. A perusal of the letter dated 20.09.2022 (appended as Annexure P/2 to the present petition) reveals that the impugned amount has been assessed by the MCD on the basis of “data available in the DERC Tariff order” for Tata Power Delhi Distribution Limited (TPDDL / petitioner). The said letter dated 20.09.2022 also observes that the actual amount can be verified from the “billing and collection data” available with the petitioner. The said communication reads as under –

“MUNICIPAL CORPORATION OF DELHI
OFFICE OF THE ASSISTANT ENGINEER (ELECTRICAL)
ROOM NO. 30, 1ST FLOOR, AMEDKAR STADIUM
NEW DELHI 110002

No. EE(E)/MCD/Planning/2022-23/102 Date: 20.09.2022

Chief Executive Officer,
TATA Power Delhi Distribution Ltd.,



NDPL House, Hudson Lines Kingsway Camp,
New Delhi-110009.

Sub: Payment of Late Payment Surcharge Levied & Collected on Electricity Tax by TATA Power Delhi Distribution Limited regarding.

Dear Sir,

This is with reference to your letter no. TPDDL/Regulatory/2022-23/PMG/380 dated 14.09.2022 and in continuation to our earlier letter dated 10.08.2022 and 31.08.2022 regarding payment of late payment surcharge levied and collected on electricity tax by TPDDL.

In this regard, we would like to mention that, electricity tax is an item of electricity bill raised by TPDDL to its consumer under bye-law 7(1) of Delhi Municipal Corporation (Assessment and Collection of Tax on Consumption, Sale or Supply of Electricity) Bye-Laws, 1962, which is reproduced below.

“A licensee operating within the limit of the Corporation shall include the electricity tax leviable under the Act as a separate item the bill of charges for the electricity supplied by him and shall recover the same from the consumer alongwith his own charges for the supply of such electricity. The consumer shall pay the tax payable by him to the licensee within the period fixed by the licensee for recovery of his own charges. The licensee other than the Delhi Electricity Supply Undertaking shall pay the tax so collected within 40 days after the expiry of the month for which it is levied to the General Manager (Electricity).

Provided that, without prejudice to any other obligations imposed upon him by these bye-laws, the licensee may himself if pay the tax instead of recovering the same from the consumer.

However, TPDDL is depositing only the electricity tax, collected by it to Municipal Corporation of Delhi, excluding the part of Late Payment Surcharges levied on Electricity Tax, when a consumer pays after the due date. The Late Payment Surcharge levied on Electricity Tax is a part of the Electricity Tax/Statutory Levy.

We would also like to mention that, Notice of Demand had been issued to the Distribution Licensees, BSES Rajdhani Power Limited and BSES Yamuna Power Limited, operating within the limits of the Corporation to deposit the late payment surcharge levied and collected by them on electricity tax. The same has been deposited by both the Distribution Licensees.



We have assessed the Late Payment Surcharge Levied and Collected on electricity tax by TPDDL for the Period July-2002 to March-2022 as R.s15,06,00,000/- (Rupees Fifteen Crores Six Lakhs Only) on the basis of the data available in the DERC-Tariff Orders for TPDDL. The same may be calculated on actual basis from the billing and collection data available within TPDDL.

As this is a statutory levy and you have already collected it from various consumers, we advise you to deposit the same to the Corporation, failing which we will have no other option but to proceed under the provisions of the Act.

-sd-

Assistant Engineer (Electrical),
Planning Division MCD,
Municipal Corporation of Delhi”

65. Vide order dated 13.05.2024 in the present writ petition, it was, *inter alia*, directed as under:-

“3. In the meantime, the petitioner is directed to file an affidavit setting out the total amount of LPSC on electricity tax collected for the period July 2002 till March 2022. Let the same be filed before the next date of hearing.”

66. Pursuant to the above directions, an affidavit has been filed on behalf of the petitioner, *inter alia*, stating as under:

“10. As the law does not require the Petitioner to maintain separate accounting records for LPSC on delayed payment of E-Tax from the Petitioner’s Consumers and LPSC on other dues, the Petitioner does not maintain the data with respect to bifurcation of the total amount of LPSC collected by it. The Petitioner has notionally computed the LPSC on Electricity Tax collected by it on account of delayed payment of E-Tax by the Petitioner’s Consumers. It is respectfully submitted that:-

(a) An aggregate amount of Rs.353.82 Crores was recovered by the Petitioner as the LPSC from 01.07.2002 to 31.03.2022.

(b) The ratio of the Electricity Tax collected by the Petitioner vis-à-vis the Total Sales for a Financial Year is considered as the ratio of LPSC on delayed payment of Electricity Tax by the consumer vis-à-vis the total LPSC collected in the year.

(c) Based on the above assumption, an amount of Rs.14.63 Crores has



been computed by the Petitioner towards the LPSC on delayed payment of E-Tax by consumers for the period 01.07.2002 to 31.03.2022. Since this is a provisional/notional assessment, the Petitioner be not bound by these figures. It is respectfully submitted that the present Affidavit and the submission of the notional amounts may kindly not be treated as an admission of any obligation or liability and is not concession. That the computation of the notional LPSC collected by the Petitioner on delayed payment of Electricity Tax by the electricity consumers is notional and based on the assumption and basis as detailed in Annexure A/1. Though sincere efforts have been made to ensure the correctness of the computation, however, the notional computation may not be accurate to give the exact amount of LPSC collected by the petitioner on delayed payment of Electricity Tax by the electricity consumers. If any unintentional errors or omissions are discovered, they will be promptly addressed and corrected and the same might result in variation in the notional computation. A detailed computation of the notional amount of LPSC on delayed payment of E-Tax from the petitioner's consumers is annexed hereto and marked as Annexure A/1."

67. It is evident from the perusal of the letter dated 20.09.2022 as also from the above extracted portion of the affidavit filed by the petitioner in compliance of the directions contained in the order dated 13.05.2024 passed by this Court, that the exercise for verifying the actual amount of LPSC on electricity tax liable to be refunded to the MCD has not yet been conducted in accordance with the scheme of the DMC E-Tax Bye-Laws, 1962.
68. In this regard, the DMC E-Tax Bye-Laws contain the following provisions:-

"4. Obligations to keep books of account and submit returns.- (a) Every licensee other than the Delhi Electric Supply Undertaking, and every person liable to pay electricity tax under Clause (3) of Bye-Law 3, shall keep books of account in the forms prescribed in these bye-laws and shall submit to the General manager (Electricity) returns in such forms and within such time as are prescribed in these bye-laws, showing the units of energy supplied, generated or consumed by him, as the case may be, and the amount of tax payable thereon and recovered or paid by him under bye-law 3.

8. Keeping of books of accounts. - The books of account to be kept under Bye-law 4 shall include the following particulars :
(i) Name of consumer;



- (ii) Address of consumer's premises with a brief description thereof;
- (iii) Number of units of electricity supplied;
- (iv) Period of supply; and
- (v) Amount of electricity tax chargeable.

Provided that the Commissioner may, for reasons to be recorded in writing, exempt any person from maintaining separate account books and allow him to add necessary columns in his existing books of account for purpose of making necessary entries about demand and collection of electricity tax.

10. Inspection of books of accounts. - The Commissioner or the General Manager (Electricity) or such other officer as maybe appointed by the Commissioner or General Manager (Electricity) as an inspecting officer may, at any time, require a licensee to produce for inspection at the registered or other office of the licensee such books and record in his possession or control as may be necessary for ascertaining or verifying the amount of electricity tax leviable under the Act.

11. Power of entry of inspecting officers. - The Commissioner, the General Manager (Electricity) or an inspecting officer appointed under bye-law 10 may enter any premises where electricity is, or is believed to be, supplied by a licensee or is generated by a person other than a licensee, for the purpose of:

- (i) verifying the statements made in the books or account kept and returns submitted by the licensee or such person;
- (ii) verifying the reading of meters; or
- (iii) verifying particulars or ascertaining information required in connection with the levy of electricity tax.”

69. In the circumstances, it would be apposite for the MCD to conduct a fresh exercise for an assessment of the actual amount of LPSC on the outstanding arrears of electricity tax collected by the petitioner on the basis of an inspection of the books of accounts which the petitioner is obliged to maintain under Bye-Law 4 and 8 of the DMC E-tax Bye-Laws, 1962. The MCD shall be entitled to issue a fresh demand notice on the basis thereof.

70. In the circumstances, while holding that the petitioner is obliged to refund to the MCD, the LPSC collected by it on “electricity tax”, the impugned demand notice bearing no.No.EE (E)/MCD/Planning/2022-23/73



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dated 31.08.2022 is quashed with liberty to the MCD to issue a fresh demand notice after inspecting the relevant records in terms of the Delhi Municipal Corporation (Assessment and Collection of Tax on the Consumption, Sale or Supply of Electricity) Bye-Laws, 1962, particularly, Bye-Law 4, 8 and 10 thereof.

71. The petitioner is directed to make its books of accounts available for inspection by the MCD, as and when required, for the purpose of the aforesaid exercise.

72. Furthermore, on conclusion of the said exercise, the MCD shall be at liberty to issue a fresh demand notice under Section 154 of the DMC Act, 1957. The said demand notice shall set out the amount recoverable from the petitioner together with the year-wise calculation thereof. The said demand notice shall also incorporate reasons/rationale in respect of the period for which the recovery is sought to be made, particularly in light of the fact that MCD intends to effect recovery of LPSC levied on the electricity tax since 01.07.2002.

73. It is clarified that an opportunity of hearing shall also be afforded to the petitioner prior to issuance of the fresh demand notice under Section 154 of the DMC Act. The fresh demand notice that may be issued, shall be accompanied by a reasoned order, dealing with the objections that may be raised by the petitioner.

74. For the current and future tariff period/s, the petitioner is directed to ensure that MCD electricity tax as also LPSC collected thereon, is passed on/refunded to the MCD within a period contemplated under Bye-Law 7 of the DMC E-Tax Bye-Laws, 1962.

75. The present petition is disposed of in the above terms. Pending



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applications also stand disposed of.

MAY 13, 2025/dn, at

SACHIN DATTA, J