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Compliance Audit
Power Sector PSUs

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Compliance Audit

2. POWER SECTOR PSUs

Andhra Pradesh Power Development Company Limited (Company)

2.1 Payment of price variation to the Contractor

The Company paid ₹ 12.90 crore towards price variation for the period of delay attributable to the contractor, contrary to Clause 13 of the contract which stipulated that no price variation will be allowed for materials and labour. This led to extending of undue benefit to the Contractor.

Andhra Pradesh Power Development Company Limited (Company) awarded (March 2012) the work of construction of integrated township and infrastructural works⁴³ at its Thermal Power Station⁴⁴ in Nellore to the Contractor⁴⁵ for an amount of ₹ 124.96 crore⁴⁶. The period of contract was 18 months from the date of handing over of site. Land admeasuring 67 acres was handed over to the Contractor in different stretches⁴⁷ till October 2012. Due to inundation on account of rains in 11 acres of land, which was handed over in September 2012 for construction of school and hospital, the Company was to substitute with another piece of land. The Company, however, did not give any alternate land and decided to take up the construction of school and hospital within 25 acre land, which had been handed over in the first stretch on 27 April 2012. Thus, the total land handed over was 56 acres⁴⁸. The due date of completion of work was October 2013.

As per Clause 13 of the agreement, no price variation was to be allowed for materials and labour. The prices quoted by the Contractor were firm and binding upon the Contractor, till the work was completed. Further, as per Clause 15 of the agreement conditions, if, on any account, the work is dislocated due to site being not available for work or due to any other reason, it was not binding on the Company to pay any compensation, but the corresponding extension of time was to be granted.

The Contractor requested (3 October 2013) for extension of time due to delay in handing over of the lands by the Company. The time for completion of work was extended from original schedule of October 2013 to December 2014, without liquidated damages. As against this revised scheduled date of completion, the Contractor completed the work in November 2016, with a delay of one year and eleven months. The Contractor also requested (October 2013) for payment of price variation citing delay in handing over the site on one stretch by the Company.

⁴³ Construction of staff quarters, club house, hospital, school, auditorium, overhead tanks etc.

⁴⁴ Sri Damodaram Sanjeevaiah Thermal Power Station, Nelatur Village, Muthukur Mandal, Nellore.

⁴⁵ M/s GKC-SRR Joint Venture.

⁴⁶ Contract value as per the Letter of Intent was ₹ 112.34 crore without statutory levies.

⁴⁷ 25 acres (27 April 2012); 6 acres (5 September 2012); 11 acres (15 September 2012) and 25 acres (12 October 2012).

⁴⁸ 67 acres - 11 acres = 56 acres.

The agreement conditions did not envisage any price variation. The Company, however, constituted (February 2014) a Committee⁴⁹ to examine the admissibility of price variation claimed by the Contractor. The Committee recommended (April 2014) for admitting price variation for 11 months delay⁵⁰ in handing over the entire site by the Company i.e., from April 2012 to February 2013. The Company also referred this issue to its legal counsel for opinion, who stated (September 2015) that the recommendations of the Committee shall be taken into consideration and decision taken accordingly, as the Committee was constituted specifically to examine the price variation claimed by the Contractor. Notwithstanding the recommendations of the Committee and the legal opinion, Company in the absence of provision for price variation had rejected (September 2015) the price variation claim. The Company reconsidered (April 2016) the claim and allowed price variation up to April 2016.

It was observed that as per the agreement terms and conditions, the Company was under no obligation to accept the price variation claim, even if there was delay in handing over of the part site by the Company. Audit further observed that even though the Committee recommended to allow price variation for 11 months' delay on the part of the Company in handing over the land, the Company paid price variation amounting to ₹ 16.48 crore upto April 2016. The amount of price variation for 11 months delay works out to ₹ 3.58 crore and for the remaining period upto April 2016 i.e., for the delay on the part of the Contractor works out to ₹ 12.90 crore. Audit observed that there was no justification on record for allowing this price variation upto April 2016.

Thus, payment of price variation for the delay attributable to the Contractor, resulted in undue benefit to the Contractor to the extent of ₹ 12.90 crore (₹ 16.48 crore - ₹ 3.58 crore).

Government, in its reply, stated (November 2018) that the contractor had quoted 12.60 *per cent* less than the estimated cost which was prepared based on Standard Schedule of Rates (SSR) for 2011-12, whereas the works were carried out between 2013-16 and hence the funds inflow from Company to the Contractor were not commensurate with the actual expenditure and the works came to stand still.

Reply of Government was not acceptable because the price variation stipulations in the agreement are precisely meant for such risks in work situations and it was not legally binding on the Company to pay any compensation if the work was dislocated for any reason while the corresponding extension of time only was to be granted. Further, Company, by compensating for the delay attributable to the contractor, gave undue benefit to the contractor.

⁴⁹ Comprising Director (Projects), Andhra Pradesh Power Generation Corporation Limited (APGENCO) and Chief Engineer (Civil)/ Thermal Projects and Operations & Maintenance-II, APGENCO.

⁵⁰ Upto handing over of the alternate 11 acres land on 26 February 2013.

Eastern Power Distribution Company of Andhra Pradesh Limited
Southern Power Distribution Company of Andhra Pradesh Limited

2.2 Non-effecting of Tax Deducted at Source (TDS) on terminal benefits paid to retired employees

Non-effecting of TDS resulted in short remittance of tax by the Companies to the Government of India to the extent of ₹ 77.50 crore and extending undue benefit to the retired officials.

Government of Andhra Pradesh enacted AP Electricity Reforms Act, 1998 under which Andhra Pradesh State Electricity Board (APSEB) was unbundled into two separate companies viz., Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) and Andhra Pradesh Power Generation Corporation Limited (APGENCO), which became operational from 1 February 1999. Further through second transfer scheme, four power distribution companies⁵¹ were formed (31 March 2000) by transfer of power distribution activities from APTRANSCO. After unbundling of APSEB, the personnel ceased to be in the service of the Board and cannot assert or claim any benefit of service under the State Government or the Board.

As per Section 192 of the Income Tax Act, 1961 (IT Act), any person responsible for paying any income chargeable under the head “Salaries” shall deduct income-tax on the estimated income of the assessee under the head "Salaries". Salary *inter alia* includes retirement benefits viz. pension, gratuity and payments in respect of encashment of leave.

As per section 10 (10) of IT Act, gratuity in respect of employees Non-Central/ State Governments is exempted from tax subject to a maximum of ₹ 10 lakh.

As per section 10(10AA) (i) of IT Act, any payment received as cash equivalent of the leave salary in respect of the period of earned leave at his/her credit at the time of retirement of an employee Non- Central/ State Government is exempted from tax, subject to a maximum of ₹ 3 lakh.

As per section 10(10A) of the IT Act, any commuted pension by a Government employee is fully exempt from tax. In case of a non-Government employee, one third of commuted value if the employee receives gratuity, is exempted from tax.

Scrutiny (July 2017) of records of corporate offices of the Companies relating to payment of terminal benefits revealed that TDS was not effected on retirement benefits as per the provisions of IT Act. Audit observed that non-recovery of TDS from retired officials on retirement benefits (retired between

⁵¹ Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL), Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL), Northern Power Distribution Company of Andhra Pradesh Limited (APNPDCL) and Central Power Distribution Company of Andhra Pradesh Limited (APCPDCL). After bifurcation of the State, erstwhile APNPDCL & APCPDCL, having operations entirely in Telangana State became Companies of Telangana Government.

April 2013 and August 2017) has resulted in non-recovery of taxes amounting to ₹ 77.50 crore as detailed below.

1. Exemption of tax on gratuity in excess of the prescribed limit

The Gratuity paid by the Companies to 948 employees⁵² was more than ₹ 10 lakh in each case. The Companies did not effect TDS on the Gratuity amount in excess of ₹ 10 lakh. The total amount of TDS not effected was ₹ 5.38 crore.

2. Exemption of tax on terminal leave encashment in excess of the prescribed limit

Leave encashment paid by the Companies to 1585 employees⁵³ was more than ₹ 3 lakh in each case. The Companies, however, did not effect TDS on the Leave encashment amount in excess of ₹ 3 lakh. The total amount of TDS not effected was ₹ 27.37 crore.

3. Exemption of tax on commutation of pension in excess of the prescribed limit

Companies paid commuted value of the pension to 1,594⁵⁴ employees. The Companies, however, did not effect TDS on two-thirds of the commuted value of the pension. The total amount of TDS not effected was ₹ 44.75 crore.

Thus, due to non-effecting of TDS on the retirement benefits in excess of the ceiling prescribed by the IT Act there was short remittance of tax amount to the extent of ₹ 77.50 crore to the Government of India. This also led to extending undue benefit to the retired employees.

APEPDCL in reply stated (8 November 2018) that it is fully owned by the GoAP and terminal benefits such as gratuity, commutation of pension and leave encashment is being done as per Government orders. The service conditions of the employees prior to 1999 and post 1999 i.e., in erstwhile APSEB and APEPDCL are same in terms of Tripartite Agreement between GoAP and APSEB employees association/unions. The period of service of the employees under APSEB and under new entities shall be treated as continuous service for the purpose of all service benefits and terminal benefits.

APSPDCL in its reply stated (12 April 2018) that the status of Electricity Employees even in the present set up after unbundling of APSEB remains the same since the Rules and Regulations for payment of terminal benefits are sanctioned similar to and on par with Government employees. Therefore, the exemption from taxation under section 10 of Income Tax Act, 1961 is applicable to the employees of Power Distribution Companies on par with State Government employees.

Reply of APEPDCL and APSPDCL is not acceptable. Consequent to unbundling of APSEB, four power companies were created under Companies

⁵² APSPDCL- 743 employees, APEPDCL- 205 employees.

⁵³ APSPDCL- 1259 employees, APEPDCL- 326 employees.

⁵⁴ APSPDCL- 1223 employees, APEPDCL- 371 employees.

Act. The scales of the employees of the APEPDCL and APSPDCL are finalised upon negotiations between the employees Union and are different from Government Scales. There is no provision in the IT Act under which the employees of State/Central PSUs are treated on par with employees of the Government for the purpose of exemption of income tax on the terminal benefits. The Income Tax Act doesn't empower State Government to extend any exemptions on tax to employees of State PSUs. Further as per AP Electricity Reform Rules, 1999 after unbundling of APSEB, the personnel shall cease to be in the service of the Board and shall not assert or claim any benefit of service under the State Government or the Board.

Though information was sought for, APGENCO and APTRANSCO have not furnished the information on the terminal benefits and TDS effected thereon in respect of their employees.

Reply of the Government is awaited.

Andhra Pradesh Power Generation Corporation Limited

2.3 Irregular increase in Service Tax amount after awarding of contract

Company had worked out the Service Tax of ₹ 76.17 lakh as per Rule 2A (i) based on the detailed estimates. Company, however, revised the Service Tax amount by applying the Rule 2A (ii)(A) after eight months from the award of the contract. This led to irregular increase of Service Tax amount by ₹ 99.52 lakh resulting in additional financial burden to the Company.

Andhra Pradesh Power Generation Corporation Limited (Company) invited (July 2014) tender for the work of strengthening of Ash Pond Bund No.II, at its Thermal Power Station⁵⁵. The estimated contract value was ₹ 29.02 crore. The contract was awarded (February 2015) to M/s.AMR-KCL-RVR Joint Venture (Contractor) for an amount of ₹ 30.21 crore. Clause 1.12 under special conditions of tender stipulated that Service Tax would be reimbursed up to a maximum of ₹ 76.17 lakh, subject to production of proof. The Company computed this amount of Service Tax at 12.36 per cent on the labour component amount of ₹ 6.15 crore⁵⁶.

As per Rule 2A(i) of Service Tax (Determination of Value) Rules, 2006 (Rules), value of the service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract, less the value of the property in goods transferred in the execution of the said works contract. Where the value has not been determined as per Rule 2A(i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the Service Tax (ST) payable as per Rule 2A(ii)(A) at 40 per

⁵⁵ Dr. Narla Tata Rao Thermal Power Station (Dr.NTTPS), Ibrahimpatnam, Krishna District, Andhra Pradesh.

⁵⁶ ₹ 6.15 crore includes ₹ 0.94 crore towards EPF and ESI @ 18.36 per cent on labour component of ₹ 5.21 crore.

cent of the total amount charged for the works contract in case of works contracts entered into for execution of original works⁵⁷.

In December 2015 i.e., nine months after awarding the contract, however, the field Unit⁵⁸ sent a proposal to Corporate Office for enhancement of ST amount to ₹ 175.21 lakh. It was stated in the proposal that the subject work is under work contract service and the value cannot be ascertained as per Sub-Rule (i) of Rule 2A of the Rules. It was further stated in the proposal that, as the value of the transfer of property in goods (value of material portion) cannot be separated in each item of the agreement, the ST has to be paid as per Sub-Rule (ii). The field Unit revised the amount of ST to ₹ 175.21 lakh⁵⁹ as per Sub-Rule (ii) by computing @ 14.50 per cent⁶⁰ (including cess). The proposal was approved (January 2016) by the Corporate Office and ST amount was increased to ₹ 188.88 lakh⁶¹ after taking into account the EPF and ESI components.

Audit observed that the Company had worked out the ST of ₹ 76.17 lakh based on the detailed estimates containing specific amounts towards labour charges for each item of the work and the same was incorporated in the tender document. Therefore, it is clear that the Rule 2A(i) was applied at the time of estimates, as the labour component was ascertainable. Accordingly, maximum ST reimbursement was specifically mentioned in the tender conditions. The Company, however, had revised the ST amount applying the Rule 2A (ii)(A) after nine months from the award of the contract based on the proposal from the field Unit, which was not warranted, leading to an additional financial burden of ₹ 99.52 lakh to the Company.

Government in reply (August 2018) stated that the estimate for the work was sanctioned duly making provision for ST of ₹ 76.17 lakh @ 12.36 per cent on 40 per cent of estimated contract value and the same was indicated in the tender document. It also stated that during the execution of work, the field unit requested for amendment of ST as the value of labour portion cannot be ascertained in line with Sub-Rule (i) of Rule 2A of Service Tax Rules and also on the grounds that it was not possible to identify the value of transfer of property in goods and hence the ST was enhanced considering 40 per cent of the contract value as the value of labour portion.

⁵⁷ As per explanation given in the Service Tax Rules, Original Works means (i) all new constructions (ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable (iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise. As in the instant case, the work was strengthening of Ash Pond Bund of the Thermal Plant, the same is considered as original work, within the explanation.

⁵⁸ Chief Engineer, O&M, Dr.NTTPS, Ibrahimpatnam.

⁵⁹ @ 14.50 per cent on 40 per cent of the contract value of ₹ 30,20,82,408.80.

⁶⁰ The rate of 14.50 per cent was prevailing at the time of proposal submitted by Field Unit to the Corporate Office.

⁶¹ The enhanced ST amount computed by the Field Unit of the Company was @ 14.50 per cent on 40 per cent of the contract value of ₹ 30,20,82,408.80. The Corporate Office of the Company computed the enhanced ST after adding EPF and ESI components also to the labour portion mentioned in the tender document. Hence, there is difference in the enhanced ST proposed by the field unit and that computed by Corporate Office.

The reply was not acceptable as the Company had computed ST on a fixed value of labour portion i.e., ₹ 6.15 crore and indicated the amount in the tender document. Therefore, the contention that the value of labour portion and the value of transfer of goods were not ascertainable was incorrect. Thus, enhancement and reimbursement of ST after award of contract, considering 40 *per cent* of the contract value as labour portion, was irregular and extra burden to the Company.