Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. NO.182-183 of 2010 in Appeal No. 132 of 2010

and

I.A. NO.184-185 of 2010 in Appeal No. 133 OF 2010

Dated: 05-01-2011

Present: Hon'ble Justice Mr. M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member

In the matter of :

Tamil Nadu Electricity Board (TNEB)
144, Anna Salai
Chennai-600010 .....Applicant/Appellant

Vs.

1.Neyveli Lignite Corporation Limited
Neyveli House, 135-E.V.R. Periyar Road
Kilpauk,Chennai-600010

2. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building
36, Janpath
New Delhi-11000 ....Respondents

Counsel for Appellant(s): Mr. Pravin H. Parekh Sr.Adv.
Mr. E.R. Kumar
Ms Debojyoti Bhattacharya
Mr. Shashank Kumar
Mr. Shewta Sharma and
Mr. Vishal Prasad

Counsel for Respondent(s): Mr. N.A.K. Sarma
Mr. Sivesh for NLC
Mr.R.S. Prashantha
Mr. N. Rathinasabapathy
Mr. Suresh

JUDGMENT

PER HON'BLE JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON

Tamil Nadu Electricity Board (TNEB) is the Appellant. Neyveli Lignite Corporation Limited(NIL) is the first Respondent, Central Electricity Regulatory Commission (Central Commission) is the 2nd Respondent.

2. The Tamil Nadu Electricity Board has filed these two Appeals Nos.132/2010 and 133/2010 against the impugned orders dated 19.10.2005 and 14.9.2006 respectively, passed by the Central Commission. Even though the impugned orders were passed on 19.10.2005 and 14.9.2006, the Appellant had not chosen to file the Appeals as against those orders within 45 days as prescribed in Section 111 of the Electricity Act, 2003 but has now chosen to file these Appeals as against those orders on 14.5.2010 i.e. nearly after 4 or 5 years

3. Since there is a long delay, the Appellant has filed two separate applications to condone the delay in filing these two Appeals. As far as the Appeal No.132/2010 is concerned, there is a delay

of 1668 days in filing the appeal. Therefore, the Appellant has filed I.A. No.182 of 2010 to condone the said delay of 1668 days in filing the Appeal as against the Order dated 19.10.2005 passed by the Central Commission.

4. As far as the Appeal No.133/2010 is concerned, there is a delay of 1338 days in filing the said Appeal. So, the Appellant has filed I.A. No.184 of 2010 to condone the said delay of 1338 days in filing the Appeal as against the order dated 14.9.2006 passed by the Central Commission.

5. Before entertaining these Appeals, we have to consider these two Applications to condone the delay in filing these Appeals to examine the

question as to whether this delay, which is inordinate could be condoned.

6. Both the parties have been heard in detail in these applications to condone the delay. The Neyveli Lignite Corporation Limited, 1st Respondent herein has vehemently opposed these Applications to condone the delay in both the Appeals on the ground that there is no sufficient cause shown to condone such a huge delay. In view of this strong objection, we are called upon to consider the question as to whether a case has been made out by the Appellant to condone the long delay in filing these two Appeals, by showing the circumstances indicating the sufficient cause to condone the delay. Since the issue with regard to the explanation with regard to the condonation

of delay in both the Appeals are more or less the same, the Common Order is being passed in both these Applications filed along with the two Appeals.

7. Before examining this issue in both the Applications, it is necessary to refer to the basic facts and background of the case. They are as follows:

(i) The Appellant Tamil Nadu Electricity Board (TNEB) is the Distribution Licensee. The 1st Respondent Neyveli Lignite Corporation (NLC) is owning generating stations at Neyveli in Tamil Nadu.

(ii) There were several Agreements between them for the purchase and supply of power. As per these Agreements, the Appellant as a

purchaser had to make due payments to the Respondent NLC through irrevocable Letter of Credit (LC). These Agreements also provided that the Respondent NLC was to allow a rebate of 2.5% on the amount of the bill if the payment was made within three working days from the date of receipt of the bills even without opening of Letter of Credit. If the payment was made through a mode other than the Letter of Credit, the rebate of 1% should be allowed if the payment was made within one month.

(iii) On 5.6.2003, the Respondent NLC wrote a letter to the Appellant with a request to settle the arrears accrued after 1.10.2001 together with surcharge as agreed. With regard to this issue, a meeting between

the parties was held. In the said meeting, the parties had agreed that the total outstanding amount payable by the Appellant was Rs.191.62 crores which was payable over 10 equal monthly installments from January, 2004.

(iv) On 26.10.2004, the Respondent NLC sent a letter to the Appellant informing them that the rebate from 1.4.2004 shall be retrospectively adjusted and requesting the Appellant for the refund of the excess amount paid.

(v) There was no response to this letter. Under those circumstances, the Respondent NLC on 9.8.2005 filed a petition before the Central Commission in Petition No.97 of 2005 praying for

direction to the Appellant to refund to the Respondent, NLC the entire rebate amount deducted over and above 1% contravening the Central Commission's Regulation from 1.4.2001 onwards.

(vi) On 19.10.2005, the Central Commission, after hearing the parties, allowed the petition No.97 of 2005 directing the Appellant, Electricity Board for the refund of excess rebate to the Respondent, holding that the Appellant could claim rebate only after opening of the Letter of Credit in line with the Regulation 2001 and not otherwise. This order dated 19.10.2005 had not been challenged by the Appellant before the Appellate Forum. On the other hand, on the request of the

Appellant, meetings were convened and held between the Respondent and Appellant. In those meetings, the Respondent NLC advised the Appellant that in the case of payment of all the bills was made, the proposal of the Electricity Board to open the back-up Letter of Credit was acceptable to the Respondent NLC provided the payment is made immediately on presentation of the bills. Despite this advice, there was no response from the Appellant. Hence the Respondent NLC on 17.3.2006 filed 2nd petition before the Central Commission in Petition No.17 of 2006 seeking for the direction for the refund of excess rebate as per the Central

Commission's earlier order dated 19.10.2005.

(vii) On 14.9.2006, the Central Commission, after hearing both the parties allowed the petition No.17 of 2006 holding that the Appellant was entitled only to 1% rebate till such time it opens LC and directed the Appellant to refund or adjust the entire excess rebate amount in compliance with the orders passed by the Central Commission on 19.10.2005. Even this order was not challenged by the Appellant. However, on 31.12.2007, the Appellant opened a revolving back-up Letter of Credit thereby, the Appellant from then onwards has been availing the benefit of 2% rebate upon making payment of bills

on the date of presentation of the bill itself. Despite this, the amount of arrears towards excess rebate prior to 31.12.2007 was not refunded as per the earlier Orders of the Central Commission.

(viii) Hence the Respondent NLC filed another petition (3rd petition) No.163 of 2008 on 23.12.2008 for a direction to the Appellant to refund the excess rebate availed to the tune of Rs.79.52 crores being the entire arrears as on 31.12.2007.

(ix) On 31.3.2009, the Central Commission, again heard the parties and allowed the said Petition No.163/2008 directing the Appellant to refund excess rebate of Rs.79.52 crores. Challenging the said order dated 31.3.2009, the Appellant filed

Appeal No.78 of 2009 before this Tribunal. At that stage, the Appellant thought it fit to file two more appeals as against the earlier orders dated 19.10.2005 and 14.09.2006. Accordingly, the Appellant filed the Appeals 79 and 80 of 2009 challenging the earlier orders passed by the Central Commission dated 19.10.2005 and dated 14.9.2006 respectively. When these Appeals were taken up together for admission by this Tribunal, the Appellant, without pursuing the said Appeal Nos.79 of 2009 and 80 of 2009 sought permission to withdraw those two Appeals in order to file the Review Petitions before the Central Commission as against those earlier orders dated 19.10.2005 and 14.9.2006.

(x) Accordingly, those appeals were dismissed as withdrawn by order dated 20.5.2009.

(xi) So far as Appeal No.78 of 2009 as against the order in Petition No.163/2008 passed on 31.3.2009 is concerned, this Tribunal entertained this Appeal and heard the parties.

(xii) After hearing the parties, the Tribunal allowed the said Appeal No.78/2009 and remanded the matter to the Central Commission for fresh consideration on the ground that one of the Members of the Central Commission who passed the impugned order happened to be the Chairman of the NLC, who was a party to the correspondence exchanged, between

the Respondent NLC and the Appellant herein by the order dated 20.5.2009.

(xiii) In pursuance of the Remand Order, a fresh Bench was constituted by the Central Commission and the Petition No.163 of 2008 was restored and heard. After hearing the parties, the Central Commission passed the order dated 7.2.2010 allowed the said Petition in favour of the NLC and rejected the contention of the Appellant.

(xiv) In the meantime, after the withdrawal of the other Appeals Nos.79 and 80 of 2009, the Appellant filed the Review Petitions as against the Orders dated 19.10.2005 and 14.9.2006 before the Central Commission.

The Central Commission after hearing the parties dismissed those Review Petitions on 17.12.2009.

Against this order dismissing the review Petitions, the Appellant filed Appeal No.50 of 2010 before this Tribunal on 25.1.2010. This Tribunal after hearing the parties dismissed the Appeal by the Order dated 24.5.2010 on the ground that the said Appeal as against the rejection of the Review Petition was not maintainable. At that stage, the Appellant has filed the present fresh Appeals in Appeal Nos.132 and 133 of 2010 challenging the earlier impugned orders dated 19.10.2005 and 14.9.2006 respectively passed by the Central Commission eventhough the

earlier Appeals filed against those Impugned Orders were withdrawn. Thus there was a delay of 1668 days in filing the Appeal No.132/2010 as against order dated 19.10.2005 and there was a delay of 1338 days in filing Appeal No.133/2010 as against the order dated 14.9.2006.

(xv) Hence, the Appellants have filed these `two separate applications in IA No.182/2010 in Appeal No.132 of 2010 and I.A. No.184 of 2010 in Appeal No.133 of 2010 seeking for the condonation of the said delay in filing those Appeals.

8. According to the Appellant, though there was a long delay, proper explanation has been offered to condone the delay and hence delay may be

condoned and the Appeals may be admitted. According to the Respondent, these applications have to be dismissed as there is no sufficient cause shown in their explanation and consequently, the two Appeals also have to be dismissed.

9. In view of the said objection, we will now refer to the details of the explanation offered by the Appellant to condone the delay of 1668 days and 1338 days in filing these two Appeals respectively. The said explanation is as follows:

"(a) The period of delay calculated from the passing of the order dated 19.10.2005 in the Petition No.97 of 2005 and the order dated 14.9.2006 passed in petition No.17 of 2006 in

filing the present Appeals Nos.132 and 134 of 2010 can be divided into two parts, namely,

(i) The 1st part relating to the period from 19.10.2005 and 14.9.2006 till the filing of Petition No.163/2008 filed by the Respondent NLC before the Central Commission on 23.12.2008. Immediately after the order 1st impugned order was passed on 19.10.2005 directing the refund of excess rebate, officials of the Appellant held discussion with the officers of the Respondent in this regard and requested the Respondent to drop the issue as the refund would be objected to by the internal auditors/Accountant General (Audit). On the basis of the request, the assurance was given by the Respondent NLC to the

Appellant that if the payment was made subsequently within a period of one month, the Appellant would be eligible for 1% rebate in accordance with the Central Commission Regulations. Contrary to the said assurance, the Respondent NLC filed another petition before the Central Commission in Petition No.17 of 2006 seeking direction for the payment of the bills in accordance with the earlier order dated 19.10.2005 and to refund the excess rebate. Accordingly, the Central Commission allowed the petition on 14.9.2006 reiterating that the Appellant was entitled to claim only 1% rebate till such time the Appellant opens Letter of Credit and directing the Appellant to refund the excess amount. Even after this, there were

negotiations. NLC agreed that they would not raise the issue of refund if a back-up Letter of Credit was opened. On the basis of this proposal by the NLC, the Appellant opened a back-up LC from 31.12.2007 onwards. There was high level talks during this period to sort out the outstanding disputes. As there were continuous negotiations, no appeals were filed against these orders in time.

(b) The other period relating to the period from 23.12.2008 when the 3rd petition No.163 of 2008 was filed by the NLC to 14.5.2010 when the present Appeals were filed. Even during this period re-negotiations were held and both the parties participated. Despite taking part

in these negotiations held between the parties and its correspondence, the Respondent NLC filed another Petition No.163 of 2008 on 23.12.2008 before the Central Commission for the direction for the refund of the excess rebate as directed by the Central Commission in the earlier orders. On 31.3.2009, the Petition No.163/2008, filed by the Respondent NLC was allowed by Central Commission giving the similar direction to the Appellant. Thereupon, the Appellant filed Appeal Nos.78, 79 and 80 of 2009 as against all the earlier orders dated 31.3.2009, 14.9.2006 and 19.10.2005. This Tribunal took up Appeal No.78 of 2009 as against Order dated 31.3.2009 separately and heard the parties. During the hearing, it was pointed out by the

Appellant that the impugned order was not valid since one of the Members of the Central Commission who happened to be the NLC Chairman during that period, had been a party to the correspondence exchanged between the Appellant and the Respondent NLC. On this ground, the Tribunal set aside the order dated 31.3.2009 and remanded the matter to the Central Commission for fresh consideration.

(c) As far as other Appeals filed by the Appellant before the Tribunal in appeal No.79 of 2009 and 80 of 2009 in May, 2009 as against the orders dated 19.10.2005 and 14.9.2006 are concerned, the Appellants were advised to withdraw those Appeals with a liberty to approach the Central Commission for filing Review Petition as against these orders.

Accordingly, the Tribunal on 6.5.2009 dismissed the Appeals as withdrawn. Thereupon, on 19.5.2009, the Appellant filed Review Petitions Nos. 98/1999 and 99/1999 before the Central Commission mainly on the basis of 3 documents dated 5.6.2003, 22.12.2003 and 26.10.2004 which would show that there was a consent on the part of the NLC for giving the rebate and those documents were not produced earlier by the Appellant as they were not within its knowledge during the proceedings resulting in the earlier orders and, therefore, the earlier orders dated 19.10.2005 and 14.5.2006 have to be reviewed on the basis of the said documents. However, the Central Commission passed an order dismissing the said Review Petitions by the

order dated 17.12.2009 after rejecting their contentions.

10. As against the dismissal order of the Review Petition, the Appellant filed an Appeal in Appeal No.50/2010 before his Tribunal on 25.1.2010. The said Appeal was dismissed as not maintainable by this Tribunal on 4.5.2010. That was how the delay was caused in filing these Appeals Nos.132/2010 and 133/2010.

11. On the basis of these details of the explanation for the delay the Learned Counsel for the Appellant would make the following submissions to show that there is sufficient cause to consider the delay.

(a) The Appellant took every possible steps available to have its grievance redressed.

Thus, the delay caused in the meantime cannot be said to be a deliberate delay.

(b) When the Respondent NLC filed the Petitions in Petition No.97/2005 and the Petition No.17/2006 for giving direction to the Appellant to refund the excess rebate, the said matter was handled by the Planning Department of the Appellant. The Planning Department was not aware of these 3 documents dated 5.6.2003, 22.12.2003 and 26.10.2004 as, at that time, they were with the Department of Finance & Accounts. When the petition No.163/2008 was filed by the NLC, the responsibility to handle the case was handed over to the Department of Finance & Accounts of the TNEB (Electricity Board), Appellant herein. While preparing the reply to

the said petition, the Department of Finance & Accounts of the Electricity Board came across the aforementioned three documents available with them. Then, the Appellant produced those documents before the Central Commission along with the Appellant's reply dated 2.3.2009 as defence to show that the claim of the Respondent was not valid. However, the Central Commission without considering those documents, allowed the Petition No.163/2009 in favour of the Respondent NLC by the Order dated 31.3.2009. If the Appellant came to know of those documents earlier, it would have filed the Appeals in time. Only after it came to know about the existence of those documents, the Appellant decided to file these Appeals on

the basis of those documents before the Tribunal. Accordingly, 3 separate Appeals were filed in Appeal Nos.78, 79 and 80 of 2009 as against orders dated 31.3.2009, 19.10.2005 and 14.9.2006 respectively.

(c) As indicated above, Appeal No.79/2009 and 80/2009 had been withdrawn to approach the Central Commission in order to file review of the earlier orders in the light of the fresh documents dated 5.6.2003, 22.12.2003 and 26.10.2004. Then they approached the Central Commission and filed the Review Petitions.

(d) After the rejection of the said Review Petition the Appellant filed an Appeal as against the said order in Appeal No. 50 of 2010. That Appeal was dismissed as not maintainable by

the Tribunal. Then only the Appellants were advised to file the Appeals as against the earlier impugned orders dated 19.10.2005 and 14.9.2006 in Petition Nos.97/2005 and 17/2006. Accordingly, the two Appeals have been filed with the delay. As the delay is *bona fide*, the same may be condoned.

12. In addition to these explanations which are referred to in paragraphs supra, the Appellant raised various other issues, as well on the merits of the Appeals. They are as follows:

(A) Since this Tribunal while disposing the Appeal No.49/2010 remanded the matter in Petition No.163/2008 to be considered afresh by the Central Commission for the entire period commencing from 1.4.2001 to 31.12.2007,

these impugned orders dated 19.10.2005 and 14.9.2006 are void, nullity and nonest.

(B) The original claim made by the Respondent NLC, through these two petitions, namely, No.97/2005 and 17/2006 which resulted in the orders dated 19.10.2005 and 14.9.2006, were barred by time, delay and latches. The Tariff Regulations 2001 came into force on 1.4.2001 and it was for a period of 3 years from 1.4.2001 to 31.3.2004. The Respondent NLC did not raise any objection during the period when the Regulations 2001 were in force. Respondent NLC made the claim for the refund of the rebate for the first time in their Petition No.97/2005 filed by them in August, 2005. Therefore, the Central Commission did

not have jurisdiction to entertain a time-barred claim.

(C) When the Respondent NLC filed a petition in Petition No.97/2005 and 17/2006, NLC did not produce material documents dated 5.6.2003, 22.12.2003 and 26.10.2004 showing the consent of NLC for the rebate and as such the same were concealed deliberately since those documents produced would have had a huge bearing on the outcome of the claim of the NLC. Thus, there is non-disclosure of material facts and documents.

(D) As per the Agreement between NLC and Electricity Board (TNEB), the Appellant has made payment within 3 working days from presentation of the Appeal. NLC by virtue of the said agreement had allowed

2.5%/2.25%/2% rebate on such payment. If the payments were not to get the rebate of 2.5%/2.25%/2% but only 1% rebate as per the Regulation, then the Appellant would have made the payment to the NLC on the 30th day as per the Regulations instead of making payment within 3 working days as agreed to under the Agreement. By this process, NLC had the use of money for 27 days, every time the Appellant made the payment within 3 working days of the presentation of the bills. Consequently, the Appellant had been deprived of the use of the money for the period of 27 days. This is unjust enrichment on the part of the Respondent.

(E) Even assuming that the Agreement between NLC and TNEB is contrary to the Regulations,

even then NLC is liable to restore the benefit which has accrued to it under the said void contract as provided under Section 65 of the Indian Contract Act.

(F) Prior to the commencement of Regulation 2001, the Respondent and the Appellant had entered into various agreements, namely, Bulk Power Supply Agreement dated 18.2.1999 and the Bulk Power Supply Agreement dated 9.3.2001. Under the relevant clause of the Agreement, the parties agreed that a payment made within 3 working days from the date of the presentation would entitle the Appellant maximum rebate, namely, 2.5%. This Agreement also had a clause that even after the expiry of the contract, the terms and conditions mentioned in the Agreement would

continue till such time it was formally renewed or replaced. Thus, the said arrangement was continued between the parties even after coming into force of the Regulations 2001 and 2004.

(G) The fact that it is open to the parties to come to agreed terms which are different from the Regulations is evident from the order dated 31.8.2004 passed by the Central Commission in Petition No.33 of 2004 filed by NLC whereby the Central Commission permitted determination of tariff for the period 1.4.2002 to 31.3.2004 as per the norms contained in the expired Bulk Power Supply Agreement entered into between the Appellant and the Respondent. This shows that it is open to the parties to actually deviate from the

Regulations and to agree to the terms & conditions different from the Regulations. Therefore, the claim for refund of the rebate contrary to the Agreement cannot be said to be valid.

13. In order to substantiate these points the learned Counsel for the Appellant, has cited the following authorities:

(1) 2000 (2) SCC 628 – Corporation Bank and Anr. Vs. Nabim Shah

(2) 1998 (4) SCC 100 – Municipal Corporation of Greater Bombay Vs. Bombay Towers International Ltd & ors.

(3) 2007 (9 SCC 274 – Shiv Das Vs. UOI

(4) 2007 (10) SCC 296 – Ansuie & ors Vs. Pervadni Amrendra

(5) 2008 (14) SCC 445 – Manohar Lal Vs. District Cooperative Central Bank Ltd.

(6) 2009 (6) SCC 235 – UV Power Corpn Vs. Thermal Power Corpn

(7) 1994 (1) SCC 1 – SP Jung Vs. Jagamath

(8) 2006 (7) SCC 416 – Hamja Haji Vs. State of Kerala

(9) 1998 (3) SCC 471 – Tarsem Singh Vs. Sukhminder Singh

14. In reply to the above submissions made by the Appellant, the learned counsel for the Neyveli Lignite Corporation made the following submissions:

(i) There are 3 spells of delay, namely —

- **1st spell is the period between 19.10.2005 and 14.9.2006 the dates of the impugned orders and 26.4.2009 on which day the 1st time the Appeals were filed along with applications for condoning the delay. In those Appeal Nos.79 and 80 of 2009, the Appellant instead of justifying the delay in filing**

those Appeals, had taken evasive route of withdrawing the Appeals. Having done so, it does not now lie with the Appellant to assume as if the Tribunal had condoned the delay till 26.4.2009.

- **2nd spell of delay is from 19.5.2009 to 17.12.2009 during which Review Petition Nos.98 and 99 of 2009 were pending before the Central Commission. These Review Petitions were rejected on 17.12.2009. There is no explanation as to why the Review Petition was not filed before filing the two Appeal Nos.79 and 80 of 2009 in April, 2009.**

- **3rd spell of delay is from 17.12.2009, i.e. the date of dismissal of the Review Petition till 14.5.2010 when the**

Appellant filed these Appeals Nos.132 and 133 of 2010.

(ii) The 3rd spell of delay of 5 months would establish that the Appellant was not keen to pursue the matter by filing the Appeals. Thus, there is neither diligence nor vigilance on the part of the Appellant.

(iii) The grounds on the basis of which the letters dated 5.6.2003, 26.10.2004 and 22.12.2003 cannot now be raised in these Appeals as those three documents did not form part of the proceedings leading to the impugned orders dated 19.10.2005 and 14.9.2006. The grounds which were not raised before the Central Commission relating to the waiver and unjust enrichment and Section 65 of the Contract Act, 1872 cannot be allowed to be

raised before this Tribunal in these Appeals, that too, in the application to condone the inordinate delay. Hence, the application to condone the delay in filing these 2 Appeals have got to be dismissed.

15. In order to support their reply submissions, the learned counsel for the Respondent has cited the following authorities:

1) **2008 (5) CTC 663 – Pundlik Jalam Patil by LRs Vs. Exe. Eng. Jalgaon Medium Project**
2) **2010 ELR (APTEL) 0232 – M.D. Bescom Vs. Chief Manager SBI & anr.**
3) **2010 ELR (APTEL) 0216 – Konkan Synthetic Fibres Processed Yarn Unit Vs. Maharashtra Electricity Regulatory Commission.**
4) **2010 ELR (APTEL) 0234 – Mula Parvara Electricity Coop. Society Vs. Maharashtra ERC**

5) 2010 ELR (APTEL) 0418 – Shrishrimal Plantation Ltd. Vs. Chhattisgarh State Power Distribution Co. Ltd.

6) 2010 ELR (APTEL) 0350 – Maharashtra Jeevan Pradhikaran Vs. Maharashtra State Electricity Distribution Co. Ltd. & anr.

7) 2007 (8) SCC 197 – Central Power Distribution Company

8) 1985 (2) SCC 116 – K. Ramanathan Vs. State of TN

9) AIR 1964 SC 743 – Central Bank of India Vs. Rajagopalan

10) 2010 ELR (APTEL) 0099 – Damodar Valley corpn Ltd Vs. BSES Rajdhani Power Ltd

11) (2008) 2 SCC 507 – Ajay Mohan Vs. H.N. Rai & ors.

16. In the light of rival contentions urged by the learned Counsel for the parties, the only question to be decided in these Appeals is as follows:

"Whether the delay of 1668 days in filing the Appeal No.132 of 2010 as against the orders dated 19.10.2005 and the delay of 1338 days in filing the Appeal No.133 of 2010 as against the order dated 14.9.2006, passed by the Central Commission, has been properly explained by showing the sufficient cause to condone the said delay in both the said applications?"

17. While dealing with this question, we are to remind ourselves about principles the laid down with regard to the question as to whether we can enter into the merits of the Appeal at this stage. Hon'ble Supreme Court in 2008 (14) SCC 445 – Manohar Lal Verma Vs. District Cooperative Central Bank Ltd. Jagdalpur has decided the following ratio:

"Now limitation goes to the root of the matter. If an Appeal or Application is barred by limitation, a court or adjudicating authority has no jurisdiction, power or authority to entertain such a Suit, Appeal or Application and to decide it on merits."

18. In view of the above ratio decided by the Hon'ble Supreme Count, the question of limitation has got to be gone into first as laid down by the Hon'ble Supreme Court without going into the merits of the Appeals. In view of the matter, we will now quote the relevant decisions rendered by the Tribunal and the Hon'ble Supreme Court wherein the principles have been laid down to consider the condonation of delay.

(A) In 2008 (5) CTC 663, Pundlik Jalam Patil (D) by LRs Vs. Executive Engineer Jalgaon Medium Project, the Hon'ble Supreme Court observed as follows:

"The jurisdiction vested in the Courts to consider whether any sufficient cause has been shown to condone delay is no doubt discretionary but the discretion must be exercised judicially and not in any arbitrary manner."

(B). In 1981 (1) SCC 495 – "Ajit Singh Thakur Singh & anr. Vs. State of Gujarat", the Hon'ble Supreme Court observed as follows:

"It is true that a party is entitled to wait until the last day of limitation for filing an Appeal

but when it allows the limitation to expire and pleads sufficient cause for not filing Appeal earlier, the sufficient cause must establish that because of some event or circumstances arising before the limitation expires, it was not possible to file the Appeal within time. No event or circumstances arising after the expiry of limitation can constitute sufficient cause."

(C) In 1998 (7) SCC 123 – "N. Balakrishnan Vs. M. Krishnamurthy", the length of delay is no matter, acceptability of explanation is the only criteria. If the explanation offered does not smack of mala-fide or it is not put forth as part of the dilatory tactics, the Court must show utmost consideration. The law of limitation fixes the life span for every legal

remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to the unending uncertainty. The Rules of Limitation are not meant to destroy the rights of the parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that even legislative remedy must be kept alive for a legislatively fixed period of time."

19. In AIR 1962 SC 361 – "Ram Lal & ors. Vs. Rewa Coalfields Ltd, the Hon'ble Supreme Court has observed as follows:

"It is relevant to bear in mind two important considerations — the 1st consideration is that the expiration of the period of limitation

prescribed for making an Appeal gives rise to right in favor of the decree holder to treat the decree as biding between the parties and this legal right which has accrued to the decree holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause of excusing the delay is shown, the discretion is given to the Court to condone the delay and admit the Appeal. Even if the sufficient cause has been shown, a party is not entitled to the condonation of delay in question as a matter of right. The proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by Section 5 of the Limitation Act."

20. In 1973 (2) SCC 705 – "Rajender Singh & Ors. Vs. Shanta Singh, the Hon'ble Supreme Court has observed as follows:

> **"The object of Law of Limitation is to prevent disturbance and deprivation of what may have been acquired in equity and justice by allowing enjoyment or what may have been lost by a party's own inaction, negligence or laches."**

21. In 2005 (3) SCC 752 – "State of Nagaland Vs. Lipok AO & ors.", The Hon'ble Supreme Court has observed as under:

> **"Proof of sufficient cause is a condition precedent for the exercise of the extraordinary discretion vested in Courts by Section 5 of the Limitation Act. What counts is not the length**

of time but the sufficiency of the cause. Shortness of delay is another circumstances to be taken into account in using discretion."

22. In 2010 ELR (APTEL) 216 – "Konkan Synthetic Fibres Processed Yarn Unit (Prof. Century Enka Ltd) Vs. Maharashtra Electricity Regulatory Commission & Anr., this tribunal has observed as follows:

"The Applicant has not only to prove the time spent in preceding fora without jurisdiction but also that such proceedings were taken on a bona-fide belief that the fora did have the jurisdiction to decide the issue."

23. In 1992 Suppl. (2) SCC 128 – "State of Punjab Vs. Raj Kumar", the Hon'ble Supreme Court has held as follows:

"In this case, the delay is sought to be explained only by stating "due exchange of correspondence between different Departments of the State and Advocates for the Petitioner regarding swearing of the Affidavit etc by the concerned officer. This explanation does not show the sufficient cause."

24. The Hon'ble Surpeme Court in 1994 Supp (2) SCC 696 – Union of India & ors. Vs. Vidarbha Venaer Industries" has rejected the prayer for condonation of delay made by the Union of India holding that delay cannot be explained by pleading that the relevant file was misplaced. In this case, the Hon'ble Supreme Court observed that no action had, however, been taken to identify the

person responsible for the lapse and to fix responsibility for the same. The Supreme Court further said that a mere statement that the relevant file was lost in some office cannot be treated as sufficient cause for condonation of inordinate delay.

25. The gist of the guidelines laid down in the above authorities can be culled out in the following paragraphs:

1. The jurisdiction vested in the Courts to consider the question as to whether any sufficient cause has been shown to condone the delay is discretionary. However, the said discretion must be exercised judicially and not in an arbitrary manner.

2. The law of limitation fixes the life span for over legal remedy for the redress of the legal injury suffered. An unending period for launching the remedy may lead to the unending uncertainty. The rules are not meant to destroy the rights of the parties. They are meant to see that the parties do not resort to dialatory tactics but to seek their remedy promptly.

3. The length of delay is no matter. The acceptability of the explanation is the only criteria. If explanation offered does not reflect malafide and if it does not purforth the dilutary tactics, the Court must show utmost consideration.

4. There are two important considerations which have to be borne in mind while considering the condonation of delay:

(i) The expiration of the period of limitation gives rise to the legal rights in favour of the decree holder to treat the decree passed in their favour as binding between the parties. Legal right which is accrued to the decree holder by lapse of time should not be lightly disturbed.

(ii) If sufficient cause for execution of delay is shown, then the discretion is given to the Court to condone the delay and admit the Appeal. Even if sufficient cause has been shown, the party is not entitled for the condonation of delay in question as a matter of right. Proof of sufficient cause is a condition precedent in the

exercise of the discretionary jurisdiction.

5. **The Application for the condonation of delay is not only to prove the time spent in the proceedings before some other Forum without jurisdiction but also to prove that such proceedings were taken before that Forum with the bonafide belief that the said Forum did have the jurisdiction to decide the issue.**

6. **The delay cannot be explained by merely pleading that the relevant documents were misplaced. If no action had been taken to identify the person responsible for the lapse and to fix responsibility for the same, the mere statement that the relevant documents were lost in some other office cannot be**

treated as sufficient cause for condonation of delay; especially when the delay is inordinate.

26. In the light of the above guidelines, laid down by the Tribunal and Hon'ble Supreme Count let us go into the explanation offered by the Appellant in order to find out whether there is sufficient cause to condone the delay.

27. As indicated above, the Appellant/Applicant has filed the Appeal No. 132 of 2010 as against the order dated 19.10.2005 and filed the Appeal No. 133 of 2010 as against the order dated 14.09.2006. Since there was delay of 1668 days and 1338 days in filing both the Appeals respectively, the Appellant filed IA 182 of 2010 and IA 184 of 2010 to condone the said delay.

28. Though the Impugned Order in question were passed on 19.5.2005, and 14.09.2006 the Appellant has filed these Appeals only on 14.05.2010.

29. There are 3 spells of delays. The 1st spell of delay is the period between 19.10.2005 on which date, the 1st Impugned Order was passed and 26.4.2009 when Appeal No.79/2009 was presented for the first time before this Tribunal as against the said Impugned Order dated 19.10.2005.

30. Similarly, the 2nd spell of delay is the period between 14.9.2006 on which date, the 2nd impugned order was passed till 26.4.2009 when the Appeal No.80/2009 was filed for the first time as against the said order dated 14.9.2006.

Admittedly, these two Appeals had been withdrawn on 6.5.2009. The Appellant thereupon filed the Review Petition No.98/2009 and 99/2009 on 19.5.2009 before the Central Commission.

These Review Petitions were rejected by the Central Commission by order dated 17.12.2009.

31. The Appellant, thereupon on 14.5.2010 filed the present Appeal Nos.132 and 133 of 2010 on 14.5.2010. Thus, there is a 3rd spell of delay between 17.12.2009 when the Review Petition was dismissed and 14.5.2010 when the Appellant has filed these present Appeals.

32. There is no dispute whatsoever in the fact that Review Application Nos.98 and 99 of 1999 were pending before the Central Commission during the

period between 19.5.1999 and 17.12.2009. Therefore, except this period, the other period during the 1st spell of delay and the 3rd spell of delay has to be properly explained by the Appellant.

33. According to the Respondent NLC, even though the impugned order passed on 19.10.2005 in Petition No.97/2005 directing the Appellant to refund the excess rebate to the Respondent, the Appellant did not either choose to comply with the orders nor to file Review before the Central Commission nor to file the Appeal before the Tribunal within time.

34. The several letters, i.e., dated 3.11.2004, 7.1.2005, 17.1.2005, 21.2.2005 and 2.5.2005 sent

by the Respondent NLC to the Appellant to comply with the order passed by the Central Commission dated 19.10.2005 were never responded to. However, on 1.3.2006, the Appellant wrote a letter to Respondent NLC requesting the Respondent not to insist for the refund of excess rebate for the period prior to 1.4.2004. This letter would make it clear that the Appellant though accepted the liability for the period prior to April, 2004 simply requested the Respondent NLC to be let off from liability.

35. Thus, it is evident that the Appellant at that stage had decided not to file the Appeal as against the order dated 19.10.2005. On the other hand, it made a request to the Respondent NLC not to insist for the refund of the excess rebate as per the

order dated 19.10.2005 Even thereafter, several letters were sent by the Respondent to the Appellant requesting the Appellant to comply with the order dated 19.5.2005. Despite the receipt of these letters, the Appellant did not respond. Therefore, the Respondent NLC had to file Petition NO.17/2006 (2nd Petition) complaining to the Central Commission that the Appellant did not comply with the order dated 19.10.2005 and seeking for another direction to the Appellant to comply with the order dated 19.10.2005 and refund the excess rebate availed earlier and to avail rebate in future as per the Central Commission's Regulation.

36. Even then, the Appellant did not choose to file any Appeal as against the first Impugned Order

dated 19.10.2005, nor to make a reply in the said Petition giving reason as to why they have not filed the Appeal against the Ist Impugned Order. On the other hand, the Appellant contested the Petition No.17/2006 which was filed by the Respondent taking the defence plea on the basis of BSP Agreement entered into between the parties earlier. Ultimately, rejecting the plea of the Appellant, the Central Commission allowed the petition filed by the Respondent on 14.9.2006 directing the Appellant to refund the excess rebate availed earlier in line with earlier order passed by the Central Commission on 19.10.2005.

37. Even then, the aforesaid orders were not complied with by the Appellant nor the Review or Appeal were filed by the Appellant as against

those orders either before the Central Commission or the Tribunal respectively. In the meantime, the Respondent sent several reminders to the Appellant requesting it to comply with both the orders expressing the hope that the undertaking given by the Appellant in the letter dated 1.3.2006 to open back-up LC would be fulfilled. The Respondent waited for the reply till 31.12.2009. Despite this, there was no response.

38. In that situation, the Respondent NLC filed 3rd application in Petition No.163/2008 praying for the refund of the rebate deducted till date. This petition was contested by the Appellant on the fresh ground, raised for the first time that there was mutual agreement between the parties with regard to the rebate and there was a consent

by the Respondent for the rebate on the basis of the 3 documents, namely, the letter dated 5.6.2003, MOM dated 22.12.2003 and letter dated 26.10.2004. However, this fresh plea on the basis of the new documents, Ist time introduced by the Appellant was not accepted by the Central Commission and the Petition No.163/2008 filed by NLC was allowed in favour of the Respondent by the order dated 31.03.2009.

39. Only thereafter the Appellant decided to file the Appeals as against all the three Impugned Orders dated 31.03.2005, 19.05.2006 and 14.09.2006 and accordingly the Appellant filed 3 Appeals, namely Appeal Nos.78, 79 and 80 of 2009. However, as mentioned above Appeals Nos.79 and 80 of 2009 relating to the Ist and 2nd

Impugned Orders dated 19.10.2005 and 14.9.2006 were withdrawn on 6.5.2009 to enable the Appellant to approach the Central Commission for Review.

40. The above facts which are not disputed would make it clear that the Appellant had not made any attempt either to file a Review before the Central Commission nor to file any Appeal before the Tribunal as against the Ist Impugned Order dated 19.10.2005 immediately after the order was passed.

41. Similarly, even as against the 2nd impugned order dated 14.9.2006, passed by the Central Commission reiterating the direction given on 19.10.2005, the Appellant did not take steps

either to file Review before the Central Commission or to file any Appeal before the Tribunal immediately thereafter. No reasons have been given for sleeping over the rights of the Appellant for such a long period of time without filing the Appeals.

42. The Appellant chose to file the Appeals for the first time as against the first two impugned orders after a long delay. The, Appeal No.79/2009 was filed as against the Ist Impugned Order dated 19.05.2005 only on 26.4.2009. Similarly, the Appeal No. 80 of 2009 was filed as against the order dated 14.9.2006 was challenged only on 26.4.2009. Both these Appeals were withdrawn on 6.5.2009. This also would make it evident that the period between 19.5.2005/14.9.2006 and

6.5.2009, as indicated above has not at all been explained.

43. The Appellant admittedly filed the Review Applications before Central Commission only on 19.5.2009 as against the orders dated 19.10.2005 and 14.9.2006. Here also, there is no explanation given as to why they had filed the Review Petition only on 19.5.2009 even though the orders had been passed as early as on 19.10.2005 and 14.9.2006. The only ground urged for condonation of delay was that only during the pendency of the Petition No.163/2008 filed by the Respondent as against the Appellant, the Appellant came to know about the existence of the 3 documents which would show that the rebate was permitted to be allowed by the Respondent

NLC and that the same was availed by the Appellant with the consent of the Respondent NLC and thus, there was delay.

44. According to the Appellant, the Appellant came to know about the said material documents only in March, 2009 and thereafter, they decided to file the Appeal first before the Tribunal and then Review Petition before the Central Commission. Even then, there is no explanation as to why the Appellant had not chosen to file either the Review or the Appeals as against the orders dated 19.10.2005 and 14.9.2006 during the period of pendency of Petition No.163/2008 before the Central Commission, in spite of the fact that the Appellant came to know about these 3 alleged materials documents in March, 2009 itself.

45. Similarly, the Appeals, for the 1st time were filed against those two orders dated 19.10.2005 and 14.9.2006 only on 26.4.2009, instead of filing Review Application before the Central Commission, the moment they came to know the new documents to enable them to make a fresh plea to review the matter on the basis of those documents before the Central Commission on the other hand, they filed those Appeals with long delay that too after the disposal of the Petition No. 163/2008..

46. There is no explanation as to why the Appellant had to file the Appeals without choosing to file Review before the Central Commission on the basis of the new documents. Similarly, there

is no valid explanation for withdrawing the Appeals with a liberty approach the Central Commission for availing Review remedy. Thus, it is clear for the period from 19.10.2005/14.09.2006 up to 19.5.2009 on which date the Review Petitions were filed, before the Central Commission there is no explanation at all for not having filed Appeals in time. This aspect should be viewed from yet another angle as well.

47. Originally, these orders dated 19.10.2005 and 14.9.2006 were challenged in the Appeals earlier filed in Appeal Nos.79 and 80 of 2009. As noted above, the above Appeals were withdrawn and thereupon Review Petition had been filed before the Central Commission which ultimately dismissed the same on 17.12.2009. Challenging

the said orders in Review Petition, the Appellant filed Appeal N0.50/2010 as against the Review Order dated 17.12.2009 without considering the settled position of law that Appeal against the order of rejection of Review is not maintainable in view of the bar contained under Order XLVII Rule 7 Code of Civil Procedure. On the said ground, the said Appeal NO.50/2010 was dismissed by Order dated 24.5.2010. There is no explanation as to why such Appeal was filed even though the Appellant know the position of law. At this stage, Appeal Nos.132 and 133 of 2010 have been presented before this Tribunal along with application to condone the delay of 1668 days and 1338 days respectively.

48. In these Appeals, the Appellant has relied upon 3 documents dated 5.6.2003, 22.12.2003 and 26.10.2004 to contend that there was understanding between the parties by which Respondent NLC agreed to allow full rebate even without opening Letter of Credit. Admittedly, these documents were not placed before the Central Commission either in the proceedings in petition No.97/2005 which resulted in dismissal of the same on 19.10.2005 or in Petition No.17/2006 which resulted in dismissal by the Central Commission on 14.9.2006. For the first time, these documents were attempted to be introduced by the Appellant that too in the reply filed by them to the 3rd Petition i.e. 163 of 2008 filed by the Respondent NLC in order to defend their plea that the Respondent NLC agreed to allow full

rebate without opening Letter of Credit. It was vehemently argued by the Respondent that these documents could not be relied upon the Appellant in this Tribunal in those Appeals as they were not made available before the Central Commission during the earlier two proceedings referred to above.

49. We find force in the objection raised by the Respondent NLC with reference to admissibility of these documents. However, it would be worthwhile to consider the merits of the explanation given by the Appellant as to why the same were not produced before the Central Commission in the earlier proceedings. According to the Appellant the moment they came to know about these documents, they filed the Appeals

along with the Petition to condone the delay which was caused due to the fact that they were not aware of the existence of the documents earlier. According to the Respondent NLC, this explanation given for condoning the period of delay cannot be accepted since the said explanation given by the Appellant taking different stand from the earlier stand taken by the Appellant and as such the same has to be rejected as false explanation.

50. Let us now look into this aspect with reference to the explanation given by the Appellant to condone the delay which is said to be false.

51. According to the Appellant in these Appeals, during the course of the proceedings before the

Central Commission in Petition Nos.97/2005 and 17/2006, the case was handled by the officials of the Planning Department of the Appellant and during that period the documents dated 5.6.2003, 22.12.2003 and 26.10.2004 were with the Accounts Department of the Electricity Board and as such the same were not within the knowledge of the Planning Department of the Electricity Board and hence the said documents could not be brought on record of the Central Commission at the time of hearing of the petition. As pointed out by the Respondent that this stand taken by the Appellant in this Appeal is not consistent with the other records as could be seen on perusal. In order to show that there is no consistency in the stand taken by the Appellant we would now refer to the statement as regards this statement made

by the Appellant in the main Appeal No.132/2010 as under:

> ***"The officials of the Planning Department handling the case were not aware of the existence of the said documents. Hence they could not produce the same. The officials of the Accounts Department came to know of the said documents while preparing the reply to Petition No.163/2008 when some papers were called from the Accounts Department. Accordingly, the said documents were annexed to the reply to the said petition No.163/2008."***

52. This statement would indicate that originally the case was handled by the Planning Department

and during the proceedings in Petition No.163/2008 the case was being handed over to the Accounts Department of the Electricity Board and the Planning Department while handling the earlier case was not aware of the existence of the said documents. This is mentioned in the Affidavit also filed by the Appellant in I.A. No.182/2010 for condonation of delay of 1669 days. The relevant averment is as follows:

> ***"that as the matter was handled by the Planning Department of TNEB and as the aforementioned letters dated 5.6.2003, 26.10.2004 and 22.12.2003 were with the Accounts Department of TNEB, the same were not within the knowledge of the Planning Department of the TNEB and hence could not be brought on record of***

the Commission at the time of hearing of the petition."

53. In the very same Affidavit, the Appellant has stated in para 15 as follows:

"It is submitted that those two orders have been obtained by NLC by suppressing material documents which TNEB came to know from its Finance Department only at the preparation of the reply to be filed in Petition No.163/2008."

54. But in the written statement filed by the Appellant on 22.10.2010, the Appellant has taken a different stand as follows:

"The aforesaid documents were in possession of the Planning Department."

55. The above statements made by the Appellant at different places would reveal that the Appellant has stated in one place that Planning Department which was handling the case was not aware of the existence of the said documents and in another place, it has stated that the said documents were with the Accounts Department of the TNEB and yet in another place it has stated that the Appellant came to know about the existence of these documents from Finance Department only at the time of preparation of reply to be filed in Petition No.163/2008.

56. It cannot be disputed that Planning Department, Accounts Department and the Finance Department were part of the Appellant Electricity Board (TNEB). It cannot be disputed that these Departments are apparently working under the same officials, namely, Financial Controller of the Appellant. The various statements made in the Affidavit of the Appeal grounds talking different stand creates confusion as to which Department was dealing with the case and as to which Department was in possession of those documents.

57. As per the Appeal Grounds, neither the officials of the Planning Department nor the officials of the Accounts Department had knowledge of the said 3 documents dated

5.6.2003, 22.12.2003 and 26.10.2004 till at the time of preparation of reply to Petition No.163/2008, that is to say, till 2.3.2009. When such being the case, it is inconceivable to conclude that either in 2003 or in 2004 or at any time subsequent thereto till March, 2009, the Appellant could claim that there was any Agreement between the Respondent and the Appellant with respect to allowing the excess rebate on the basis of these documents. If both the Planning Department and the Accounts Department did not have knowledge of the 3 documents till March, 2009, it implies that both these Departments could not have acted on the basis of any inference based on the contents of these 3 documents.

58. That apart, no Affidavit has been filed from the Planning Department as to the diligence exercised by them while filing the counter affidavit dated 23.9.2005 in Petition No.97/2005. Similarly, no such Affidavit has been filed by the officials concerned with respect to the said position while preparing the counter affidavit dated 21.4.2006 which was filed in Petition No.17/2006.

59. In the same way, the Accounts Department also has not chosen to file any Affidavit to explain as to how and why the existence of these 3 documents remained unknown to them till the preparation of counter affidavit in Petition No.163/2008 in March, 2009. Similarly, no Affidavit has been filed by the concerned officials

of the Appellant as to whether higher management of the Appellant had considered the option of filing an Appeal after the Central Commission has passed orders in Petition No.97/2005 on 19.10.2005 and in Petition 17 of 2006 on 14.09.2006.

60. In other words, in the absence of any thing to the contrary, in can be concluded that the Appellant had decided not to file any Appeal against the impugned order dated 19.10.2005 in Petition No.97/2005. Similarly, even after the receiving the 2nd impugned order dated 14.9.2006 in Petition No.17/2006, the Appellant decided not to file an Appeal, as the Appellant has not shown anything to indicate that the Appellant had at all considered the option of filing of Appeals.

61. The fact that no Appeal was filed even after the 2nd Impugned Order dated 14.9.2006 amply demonstrates that the decision of the Appellant not to file an Appeal was based on clear understanding of the Appellant that the Appellant accepted the impugned orders as valid. As a matter of fact, even before filing Petition No.97/2005, Respondent NLC had called upon the Appellant to refund the excess rebate through the letters dated 3.11.2004, 7.1.2005, 17.1.2005, 21.2.2005 and 2.5.2005. There was no response. Likewise, even after the order that was passed on 19.10.2005, Respondent NLC had called upon the Appellant to refund the excess amount and also called upon the Appellant to open the Letter of Credit as per the ist Impugned Order. There was

no reply from the Appellant indicating that there was understanding about the rebate.

62. Thus, it is clear that till the Appellant filed the counter affidavit in Petition No.163/2008, i.e., on 2.3.2009, the Appellant never took the stand that there was any agreement between the Appellant and the Respondent with reference to the allowing of excess rebate. Only for the first time on 12.3.2009 the Appellant had taken a new stand on the basis of new documents which were not referred to either in the earlier proceedings or referred to in their reply letters sent to Respondent NLC. These things would make it explicit that there is no proper explanation at all between 19.5.2005/14.09.2006 till the date of

filing of the earlier Appeal in Appeal Nos.79 and 80 of 1990.

63. Similarly, there is no proper explanation with regard to the delay from 17.12.2009 when the Review Petition was rejected till 14.5.2010 when the Appellant filed the present Appeal Nos.132 and 133 of 2010 before this Tribunal; Even when the Review Petitions were rejected on 17.12.2009, the Appellant did not choose to file the Appeals as against the main order but engaged itself in vague pursuit of filing the Appeal against the rejection of the Review Petition even though it is settled law which the Appellant knew that such an Appeal was not maintainable.

64. Thus, at every stage, there is neither diligence nor vigilance on the part of the Appellant to file the appeal before this Tribunal.

65. Alternatively, the Appellant has now sought for a liberty to the Appellant to raise the issue in respect of the entire period from 2001 till 30th November, 2007 and prayed for the direction to the Central Commission to decide the Petition No.163/2008 which was remanded earlier in respect of the entire subject matter from 1.4.2010 till 31.12.2007 on its merit.

66. At this stage, we may point out that already we have given direction while remanding the matter in Appeal No.49/2010 after setting aside the orders passed in Petition No.163/2008 to allow

the Appellant to make his submissions with regard to the documents referred to in the reply filed in Petition No.163/2008. The relevant direction is as follows:

> ***"We make it clear that we are not expressing any opinion on the points urged by the learned counsel for the Appellant on this issue on the strength of various documents produced before this Tribunal as we are of the considered view that it is for the Central Commission to consider those documents and submissions made by the parties and to decide the said issue."***

67. As pointed out by the learned Counsel for the Appellant, the Respondent has mentioned in its

Written Submission dated 29.9.2010 stating that the Appellant Tamil Nadu Electricity Board is at liberty to raise the grounds of waiver and unjust enrichment in the remand proceedings and as such the Appellant does not require any more direction or grant of liberty to raise these grounds In view of the same, we are not inclined to give any more direction to the Central Commission.

68. It is made clear that the Central Commission is open to decide the relevant issue in the Petition No.163/2008 based on the materials placed by the parties in that proceedings and the submissions of the parties thereto in accordance with law. We reiterate that we do not enter into the merits of the matter as we are concerned only with reference to the prayer to condone the inordinate

delay of 1668 days and 1338 days in filing the Appeals.

69. In the above circumstances, the Appellant may approach the Central Commission and make submissions on the basis of the new documents introduced by the Appellant through his reply in Petition No.163/2008 as directed earlier and to raise only the relevant issue as mentioned above.

70. As we are of the opinion that the delay of 1668 days in filing the Appeal in Appeal No.132/2010 as against the Order dated 19.10.2005 as well as the delay of 1338 days in fling the Appeal No.133/2010 as against the impugned order dated 14.9.2006 have not been properly explained to establish that there was sufficient cause to condone the delay, we deem it fit to reject the

both the Applications/IA 182,184/2010 to condone the enormous and unexplained delay. Accordingly, both these Applications are dismissed. Consequently, both the Appeals are also dismissed. No orders as to cost.

(Rakesh Nath) (Justice M. Karpaga Vinayagam)
Technical Member Chairperson

Dated: 05.01.2011

REPORTABLE/NON-REPORTABLE