

F. No. 09/01/2023-RCM
Government of India
Ministry of Power
(RCM Section)

Shram Shakti Bhawan, Rafi Marg,
New Delhi, Dated 25th October 2023

CIRCULAR

Subject: Imposition of Charges by various State Governments on various forms of generation of electricity - from Hydropower/ Renewables/ Thermal etc.

It has come to the notice of the Government of India that some State Governments have imposed additional charges on generation of electricity from various sources under the guise of development fee/ charges/ fund. Such additional charges/ fees in the form of any tax/ duty on generation of electricity, which encompasses all types of generation viz. Thermal, Hydro, Wind, Solar, Nuclear, etc. is illegal and unconstitutional.

2. The Ministry, vide letter No. 15/27/2023-Hydel-II (MoP) dated 25th April 2023, (copy enclosed) had clarified the above legal position with respect to the instances of imposition of water tax/ cess by some of the States. The Constitutional provisions in this regard are again reiterated below:

- (i). The powers to levy taxes/ duties are specifically stated in the VII Schedule. List-II of the VII Schedule lists the powers of levying of taxes/ duties by the States in entries-45 to 63. No taxes/ duties which have not been specifically mentioned in this list can be levied by the State Governments under any guise whatsoever - as Residuary powers are with the Central Government.
- (ii). Entry-53 of List-II (State List) authorizes the States to levy taxes on consumption or sale of electricity in its jurisdiction. This does not include the power to impose any tax or duty on the generation of electricity. This is because electricity generated within the territory of one State may be consumed in other States and no State has the power to levy taxes/ duties on residents of other States.
- (iii). Article-286 of the Constitution explicitly prohibits States from imposing any taxes/ duties on supply of goods or services or on both, where the supply takes place outside the State.

(iv). Articles-287 and 288 prohibit the imposition of taxes on consumption or sale of electricity consumed by the Central Government or sold to the Central Government for consumption by the Government or its agencies.

3. In light of the above-mentioned constitutional provisions, no taxes/ duties can be levied by any State on generation or inter-State supply of electricity under the guise of additional charges/ fee on generation of electricity from any source - Thermal/ Hydro/ Renewables etc.

4. In view of the above, States are advised to promptly remove any kind of tax/ duty/ cess levied in the guise of development fee/ charges/ fund on generation of electricity from any sources – including Thermal/ Hydro/ Renewables.

Encl: As above

A. Suresh, 25/10/23

(Suresh Annepu)
Director

Tel.: 011-2371 7737

File No. 15/27/2023-Hydel-II (MoP)
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,
New Delhi, Dated 25th April, 2023

To

The Chief Secretaries – All the State Governments & UTs

Subject: Imposition of Water Tax / Cess by various State Government on HEPs – reg.

Sir,

It has come to the notice of the Government of India (GoI) that some State Governments have imposed taxes / duties on generation of electricity. This is illegal and unconstitutional. Any tax / duty on generation of electricity, which encompasses all types of generation viz. Thermal, Hydro, Wind, Solar, Nuclear, etc. is illegal and unconstitutional. The Constitutional provisions are as follows:

- (i) The powers to levy taxes / duties are specifically stated in the VII Schedule. List –II of the VII Schedule lists the powers of levying of taxes / duties by the States in entries-45 to 63. No taxes / duties which have not been specifically mentioned in this list can be levied by the State Governments under any guise whatsoever – as Residuary powers are with the Central Government.
- (ii) Entry-53 of List-II (State List) authorizes the States to put taxes on consumption or sale of electricity in its jurisdiction. This does not include the power to impose any tax or duty on the generation of electricity. This is because electricity generated within the territory of one State may be consumed in other States and no State has the power to levy taxes / duties on residents of other States.
- (iii) Some States have imposed taxes / duties on generation of electricity under the guise of levying a cess on the use of water for generating electricity. However, though the State may call it a water cess, it is actually a tax on the generation of electricity – the tax is to be collected from the consumers of electricity who may happen to be residents in other State.
- (iv) Article -286 of the Constitution explicitly prohibits States from imposing any taxes / duties on supply of goods or services or on both where the supply takes place outside the State.
- (v) Articles-287 and 288 prohibit the imposition of taxes on consumption or sale of electricity consumed by the Central Government or sold to the Central Government for consumption by the Government or its agencies.
- (vi) As per Entry-56 of the Union List of the Constitution of India, regulations of issues related to Inter-State Rivers come under the purview of the Centre. Most of the Hydro-Electric Plants in the States are located / proposed to be developed on Inter-State Rivers. Any imposition of tax on the non-consumptive use of water of these rivers for electricity generation is in violation of provisions of the Constitution of India.

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(vii) Hydro Power Projects do not consume water to produce electricity. Electricity is generated by directing the flow of water through a turbine which generates electricity – on the same principle as electricity from wind projects where wind is utilized to turn the turbine to produce electricity. Therefore, there is no rationale for levy of “water cess” or “air cess”.

(viii) The levy of water cess is against the provisions of the Constitution. Entry-17 of List-II, does not authorize the State to levy any tax or duty on water.

2. In light of the above constitutional provisions, no taxes / duties may be levied by any State under any guise on generation of electricity and if any taxes / duties have been so levied, it may be promptly withdrawn.

This has the approval of the Hon'ble Union Minister of Power and New & Renewable Energy.

Yours sincerely,



(R.P. Pradhan)

Director

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