

Chapter-4

**Compliance Audit Observations
Relating to Public Sector
Undertakings**

CHAPTER-4

COMPLIANCE AUDIT OBSERVATIONS RELATING TO PUBLIC SECTOR UNDERTAKINGS

DEPARTMENT OF ENERGY

4.1 Accumulation of over dues due to sale through a defaulting entity

Uttarakhand Power Corporation Limited repeatedly renewed its power sale agreements with the firm which had been defaulting in its payments, which resulted in accumulation of over dues of ₹ 52.94 crore.

Uttarakhand Power Corporation Limited (UPCL) is a State electricity distribution utility. After meeting the demand of the State, UPCL sells the surplus power, as and when available, through a licensed power trader at Energy Exchanges.

During the scrutiny of records (August 2020) of UPCL and further information collected, it was noticed that for sale of surplus power, UPCL had been entering into agreements, as detailed below in **Table-4.1.1**, with M/s Kreate Energy (I) Private Limited [formerly known as M/s Mittal Processor (P) Limited (firm)], as UPCL did not have membership for trading of power through any of the energy exchanges.

Table-4.1.1: Details of agreements with the firm

Sl. No.	Agreement Date	Period of Agreement	Outstanding dues at the time of entering new agreement (₹ in lakh)	Due date of payment as per agreement ('T' represent trading day)
1	28/09/2016	28/09/2016 to 30/09/2017	Initial agreement	T+5
2	28/09/ 2017 (Supplementary Agreement)	01/10/2017 to 31/12/2017	81.99	T+5
3	29/12/2017	01/01/2018 to 31/12/2018	122.42	T+3
4	26 /12/ 2018 (Supplementary Agreement)	01/01/2019 to 31/12/2019	53.01	T+3
5	28/12/2019	01/01/2020 to 31/12/2021	09.04	T+3

The agreements provided that the unpaid bill amount after due date¹ will attract Late Payment Surcharge (LPS) at the rate of 15 per cent per annum calculated daily for the number of days of delay beyond the due date. A Contract Performance Guarantee (CPG) of ₹ 10 lakh was also obtained from the firm.

It was noticed that the firm was not making timely payments to UPCL for power sold through energy exchange as per agreement since 09 November 2016. The dues increased to ₹ 75.74 crore during the period 27 March 2020 to 21 June 2020. Despite delayed

¹ The 'Due Date' is the payment date of the bills by firm which is five/three days after the trading day (T+5/3). All payments by the firm were to be made by RTGS/NEFT mode only.

payment by the firm, the Standing Committee of UPCL while evaluating the tenders for work awarded on 29 December 2017 and 28 December 2019 had not considered the firm's performance and default in payment and work was awarded based on lowest offer of trading margin.

On being pointed out by Audit, a committee² was constituted (09 September 2020) by Secretary (Energy) for settlement of pending dues against the firm. The Committee confirmed the dues of ₹ 75.74 crore (Principal amount: ₹ 54.77 crore + LPS: ₹ 20.97 crore) as on 11 September 2020 and stated (18 September 2020) that the firm had not been paying the amount in full against the electricity sold and had released only *ad-hoc* payments on different dates which on many dates were lesser than the actual amount due. The principal amount, therefore, remained unpaid by the firm on several dates which resulted in claim of LPS at the rate of 15 *per cent* per annum chargeable on daily basis against the firm. The outstanding dues were subject to change on daily basis due to continuing applicability of LPS chargeable on daily basis and, therefore, should be treated as provisional.

After pursuance by UPCL, the firm paid only ₹ 27.35 crore during 11 September 2020 to 30 June 2021 and UPCL recovered (December 2021) ₹ 10 lakh by forfeiting the CPG submitted by the firm. The firm also submitted (March 2021) five Post Dated Cheques (PDCs) amounting to ₹ 25 crore. However, these PDCs were dishonored, and legal notices were issued (July 2021) by UPCL. As on December 2021, principal amount of ₹ 27.32 crore and LPS of ₹ 25.62 crore are receivable from the firm.

Thus, despite irregular payments by the firm, since inception of first agreement, UPCL continued awarding the work to the same firm without assessing its performance, indicating that the firm was unduly benefited by UPCL.

It is also pertinent to mention here that Indian Energy Exchange Limited (IEX) had been paying the amount for power sold by UPCL to this firm on regular basis and no payment was pending with IEX. Despite this, the firm either delayed the payment of power sold on due dates or short deposited against the actual dues to UPCL which implies that the firm was diverting money and was an intentional defaulter.

The Government accepted the Audit observation and stated (February 2022) that the firm was selected after following due tender procedure and no undue advantage was granted to it. In respect of five dishonored Cheques amounting to ₹ 25.00 crore, legal action has been initiated against the firm under Section 138 of the Negotiable Instrument Act, 1881. The Honorable Court issued (08 December 2021) bailable warrant against Managing Director of the defaulter firm.

Although the reply of the Government corroborates audit findings, but it is silent in respect of realisation of LPS amounting ₹ 25.62 crore.

² Committee comprised of Director (Finance) of all three power sector entities of the State (UPCL, UJVNL & PTCUL) and headed by Additional Secretary (Finance/ Energy), GoU.

Negligence in assessing the performance of the firm and monitoring of outstanding dues on the part of UPCL, therefore, resulted in accumulation of overdues of ₹ 52.94 crore (principal amounting to ₹ 27.32 crore³ and unrealised LPS of ₹ 25.62 crore upto December 2021).

UJVN LIMITED

4.2 Avoidable payment of interest on Income Tax

Failure of the UJVN Limited in estimating its income for depositing Advance Tax as per statutory requirements resulted in an avoidable payment of interest of ₹ 3.50 crore.

As per the provisions of Section 208 of the Income Tax Act, 1961 (Act), Advance Tax is payable during a financial year in every case where the amount of such tax payable by the assessee during that year exceeds ₹ 10,000. Section 234(B) of the Act stipulates that if the advance tax paid is less than 90 per cent of the assessed tax, simple interest at the rate of one per cent is leviable for every month or part thereof, from first April of the assessment year to the date of determination of income under the Act, on the amount by which the advance income tax paid falls short of the assessed tax.

Further Section 234(C) of the Act provides for payment of interest at the rate of one per cent on the amount of short payment of instalment⁴ of advance tax for a period of three months in case of default made in payment of first, second and third instalment and for one month in case of short fall in payment of last instalment.

During the audit (November 2019/January 2021) of UJVN Limited (Company), it was observed that the Company failed to assess/estimate its income for working out the amount of Advance Income Tax payable during the financial years 2015-16 to 2018-19. As a result, the Company delayed the payment of Advance Tax and eventually had to pay interest of ₹ 3.50 crore under Section 234(B) and Section 234(C) as detailed in **Table-4.2.1** below.

Table-4.2.1: Detail of interest paid

Financial Year	2015-16	2016-17	2017-18	2018-19	Total
Section 234 (B)	1.12	0.12	0.17	0.06	1.47
Section 234 (C)	1.71	0.14	0.14	0.04	2.03
Total	2.83	0.26	0.31	0.10	3.50

(₹ in crore)

³ Total principal amount outstanding ₹ 61.25 crore – recovered amount ₹ 33.73 crore = Amount to be recovered ₹ 27.52 crore (upto September 2022).

⁴

Due date	Advance tax payable
On or before 15 th June of the previous year	Not less than 15 per cent of Advance tax payable
On or before 15 th September of the previous year	Not less than 45 per cent of Advance tax payable
On or before 15 th December of the previous year	Not less than 75 per cent of Advance tax payable
On or before 15 th March of the previous year	Not less than 100 per cent of Advance tax payable

Analysis of reasons for major interest payment (₹ 2.83 crore) to Income Tax Department for the year 2015-16 revealed that Uttarakhand Electricity Regulatory Commission (UERC) allowed (April 2015) the Company to receive the long pending Capacity Charges (CC) and Capacity Index Incentive (CII) from UPCL in 18 equal monthly instalments. Resultantly ₹ 102.21 crore became receivable from UPCL by the company on account of CC and CII pertaining to financial years 2004-05 to 2012-13. Although provisional reconciliation in respect of amount receivable was finalised with UPCL in August 2015, but same was not considered while assessing the advance tax liability. The Company paid the tax due at the time of final assessment of tax (July 2016) which attracted interest under Section 234(B) and 234(C). This resulted in income tax liability of ₹ 51.40 crore and interest thereon of ₹ 2.83 crore.

It was further noticed that for the years 2016-17 and 2017-18 the Company failed to deposit the first installment of advance tax (15 *per cent* of the total advance tax) on due date i.e by 15 June of respective year. Further, during the year 2018-19, the Company did not pay any advance tax and tax was deposited in the form of TDS⁵ only.

The Government stated (February 2022) that the Company has to comply the provisions of Minimum Alternate Tax under Section 115 JB of the Income Tax Act, calculated on the book profits as shown in the final Balance Sheet of the Company; (ii) for the year 2015-16, it paid interest under Section 234 B and 234 C which was due to income of ₹ 102.21 crore arrived out of order of Income Tax Department at the year end on 17 March 2016; (iii) Revenue of the Company depends on hydrology and availability of machines which cannot be estimated exactly. Also, regulatory adjustments and different amendments, order and provisions issued by different statutory bodies leads to variation in profit of the Company. The expenditure for the year is considered on estimation basis while the actual expenditure may be different than estimation; and (iv) The Company claimed deduction under Section 80 IA of the Income Tax Act for profit of Maneri Bhali II (MB II) project.

The contentions of the Government are not tenable as all companies including companies assessed under Section 115 JB of the Act are required to assess income in advance and pay applicable advance tax which should not be less than 90 *per cent* of assessed tax; (ii) with respect to the income of ₹ 102.21 crore for the year 2015-16, the liability arose on account of CC and CII for which the Company had sufficient time to assess the advance tax liability as the orders of UERC in this regard were issued in April 2015 which was provisionally settled with UPCL in August 2015. On this ground the Income Tax Department allowed (March 2016) assessment of past period income as 2015-16 income; (iii) The generation of hydro power is the core activity of the Company, and the daily generation of power is recorded by its all-power projects on daily basis and the

⁵ TDS was ₹ 34.01 lakh which was 28.79 *per cent* of total tax liability.

variation in expenditure is a general phenomenon. However, no specific data in support of variation was furnished which had impacted the assessment of advance tax; and (iv) The generation of all the projects of the Company including MB II is recorded on daily basis and tariff is also approved by UERC well in advance, therefore, the statement of the Company on the profit of MB II is also not relevant. Further the Company has never taken up the issue of difficulty in estimating the income in advance with Income Tax department for availing waiver in payment of interest.

Thus, failure on the part of the Company in estimating income on quarterly basis resulted in avoidable payment of interest of ₹ 3.50 crore under Section 234(B) and 234(C) of the Income Tax Act.

STATE TRANSPORT DEPARTMENT

4.3 Avoidable liability of Service Tax, penalty and interest.

Uttarakhand Parivahan Nigam delayed the issue of order for levy and collection of Service Tax from passengers of AC buses due to which Service Tax amounting to ₹ 54.46 lakh was neither recovered nor deposited with Service Tax Department. This resulted in avoidable liability for Service Tax of ₹ 54.46 lakh and penalty of ₹ 27.23 lakh and interest of ₹ 28.46 lakh thereon.

The service of transportation of passengers by Air Conditioned (AC) Stage Carriage (Bus) was included in the Service Tax ambit vide Notification No.9/2016-Service Tax dated 01 March 2016 issued by Government of India, Ministry of Finance. Accordingly, the State Transport Corporations were required to levy and collect Service Tax from the passengers of such AC state carriages (hired AC buses) and deposit the same with the Government. The Service Tax was applicable on 40 per cent of gross amount received by the Corporation in respect of revenue from AC buses with effect from 1 June 2016.

Section 76 of Chapter V of Finance Act, 1994 (Act) provides that failure to pay Service Tax attracts penalty which shall not be less than one hundred rupees for every day during which such failure continues or at the rate of two per cent of such tax, per month, whichever is higher, provided that the total amount of penalty shall not exceed 50 per cent of the Service Tax payable. Also, Section 75 of the Act provides that every person, liable to pay the tax and failing to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below 10 per cent and not exceeding 36 per cent per annum.

During scrutiny of records (December 2020) of Uttarakhand Parivahan Nigam (Corporation), it was observed that the Corporation obtained opinion from a Chartered Accountant regarding applicability of Service Tax, who clarified (10 May 2016) that Service Tax on AC buses is applicable *w.e.f.* 01 June 2016 as per Notification No. 9/2016 dated 01 March 2016. Despite the clarification, the proposal for increasing fare to

recover applicable Service Tax was initiated only on 5 July 2016 *i.e.* after a delay of more than 35 days. The proposal was finally approved by Managing Director of the Corporation on 14 July 2016 and the order for increase in fare was issued on 15 July 2016. Thus, Service Tax from passengers of AC buses could be recovered *w.e.f.* 16 July 2016 only *i.e.* after a delay of 45 days from the date of applicability of Service Tax.

Belated action of the Corporation, to levy and collect the Service Tax resulted in avoidable liability of Service Tax amounting to ₹ 54.46 lakh and interest thereon as detailed in **Table-4.3.1**.

Table-4.3.1: Detail of Service Tax liability and interest thereon

Month and Year	Delay in Months	Amount on which Service Tax is payable (in ₹)	Amount of Service Tax (15 per cent of 40 per cent of column 3 (in ₹))	Penalty ⁶ due (@ one per cent of column-4 x column-2) (in ₹)		Interest ⁷ under section 75 of the Act (in ₹)	Total (in ₹)
				5	6 ⁸		
1	2	3	4	5	6 ⁸	7	8=(6+7)
July 2016 to September 2021	63	6,54,45,121	39,26,707	24,73,825	19,63,354	20,61,521	40,24,875
August 2016 to September 2021	62	2,53,17,452	15,19,047	9,41,809	7,59,524	7,84,841	15,44,365
Total			54,45,754		27,22,878	28,46,362	55,69,240

In this regard, the Corporation also received two demand cum show cause notices⁹ from Director General of Goods and Service Tax Intelligence in April 2019 which *inter-alia* included demand on account of short deposit of Service Tax on AC buses. The Corporation filed appeal with Principal Commissioner, Central Goods and Services Tax (Appeals) in November 2020 against this demand, which was rejected (May 2021) by the Appellate Authority for Dehradun Region. Decision on the appeal for Kathgodam Region was pending (November 2021). In the appeal also the Corporation accepted the demand.

The Management accepted (October 2021) the facts and stated that matter for levy of Service Tax on AC buses was approved by the Managing Director for implementation *w.e.f.* from 16 July 2016 and it has filed appeal with office of Commissioner, Service Tax, Dehradun and Delhi, which was pending.

⁶ The calculation of penalty is in accordance to the illustration given under Section 76 of Finance Act, 1994.

⁷ Column 4 x 10 per cent x column 2/12.

⁸ As per section 76 of Finance Act. 1994, the penalty is limited to 50 per cent of service tax.


⁹ Notice no. 376 and 372 dated 18.04.2019 for Kathgodam Region (covering Tanakpur Division) and Dehradun Region (covering Headquarter and Dehradun division) which *inter-alia* included demand of ₹ 8.84 lakh for Kathgodam Region and ₹ 25.27 lakh for Dehradun Region on account of short deposit of service tax on AC Buses for the period from June 2016 to June 2017. However, the total demand was raised for ₹ 1.45 crore and ₹ 1.82 crore respectively on various services attracting service tax.

The reply of the Management that matter is pending in appeal is not acceptable as liability of Service Tax has already been accepted by the Corporation in appeal with Principal Commissioner, Dehradun. The matter is pending with regard to gross value (inclusive of Service Tax) considered for working out the liability of Service Tax by the assessing officer. However, Audit has worked out actual liability of Service Tax due on collection made during that period.

Thus, delay in issuing orders for increase in fares for collection of Service Tax from the passengers of AC buses by the Corporation resulted in avoidable liability of Service Tax of ₹ 54.46 lakh, penalty of ₹ 27.23 lakh and interest of ₹ 28.46 lakh thereon.


The matter was referred to the Government (November 2021); Reply is awaited (September 2022).

Dehradun
The 08 December 2022


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Countersigned

New Delhi
The 14 December 2022


(GIRISH CHANDRA MURMU)
Comptroller and Auditor General of India

