IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 48 of 2020
APPEAL No. 82 of 2020

Dated : 3rd November, 2025

Present: Hon'ble Ms. Seema Gupta, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

APPEAL No. 48 of 2020

Kanan Devan Hills Plantations Company Ltd.
KDHP House, Munnar – 685612, Kerala
Represented by its Executive Director
Mr. P.M. Sri krishnan … Appellant

Versus

1. **Kerala State Electricity Regulatory Commission**
Through by its Secretary,
C. V. Raman Pillai Road,
Vellayambalam, Thiruvananthapuram – 695010
Kerala

2. **M/s. Kerala State Electricity Board Ltd.**
Represented by its Secretary,
Kerala State Electricity Board Ltd
Vydyuthi Bhavnam, Pattom Palace, P.O.
Thiruvananthapuram – 695004
Kerala … Respondent (s)

Counsel for the Appellant(s) : M.P. Vinod

Atul Shankar Vinod for App. 1

Counsel for the Respondent(s) : M.T. George for Res. 1

Subhash Chandran K.R
Krishna L.R for Res. 2

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(s)

Counsel for the Appellant(s) : M.P. Vinod
Atul Shankar
Abraham Joseph Markos for App. 1

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<u>J U D G M E N T</u>

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. Both these appeals involve identical issues and are stated to be covered by previous judgement of this Tribunal in Appeal No. 93 of 2011 decided on 27th April, 2012. Hence, we take up both the appeals for disposal vide this common judgement.

2. In both the appeals, the Appellant is M/s. Kanan Devan Hills Plantations Company Pvt. Ltd. which is engaged in the business of planting in Munnar, Idukki District, Kerala. The Appellant is also the licensee with respect to supply of electricity in Kanan Devan hills area of Munnar. The Appellant procures electricity from the 2nd Respondent – Kerala State Electricity Board Limited for supply to its consumers as well as for its own consumption and also for supply to several consumers of the KSEB Ltd. residing in the nearby area of its supply.

3. In Appeal No. 82 of 2020, the Appellant has assailed the order dated 5th September, 2018 of the 1st Respondent – Kerala State Electricity Regulatory Commission (hereinafter referred to as "the

Commission") which was in respect of the truing up of the accounts of the Appellant for the year 2016-17.

4. In Appeal No. 48 of 2020, assail is to the order dated 12th November, 2019 passed by the Commission with respect to the truing up of the accounts of the Appellant for the subsequent year 2017-18.

5. The main grievance of the Appellant in both the appeals is that the Commission has erred in levying notional interest on non-existent/disputed surplus.

6. During the course of arguments in the two appeals, it came out that in the truing up petitions filed by M/s Tata tea Limited (the predecessor-in-interest of the Appellant) for the years 2005-06 and 2006-07, the Commission has determined artificial surplus of Rs.622.43 lakhs in the hands of the Appellant. This was challenged by the Appellant before this tribunal by way of Appeal No. 93 of 2011 which came to be dismissed vide order dated 27th April, 2012. The Appellant has assailed the said order dated 27th April, 2012 of this tribunal before the Hon'ble Supreme Court by Civil Appeal No. 5122 of 2012 which is stated to be still pending disposal. However, concededly no interim

orders have been passed by the Hon'ble Supreme Court in the said Civil Appeal.

7. In Appeal No. 93 of 2011, this Tribunal had framed various issues for its consideration. Issue No. (d) & (e) are material for the purposes of these two appeals are extracted herein below :-

> d) Was the Commission justified in determining artificial surplus in the hands of the first appellant?
>
> e) Is the method adopted and the conclusions arrived at by the Commission in the impugned order dated 26.4.2011 correct and justified?

8. This Tribunal vide judgement dated 27th April, 2012 answered both these issues against the Appellant. The relevant portion of the said judgement on these two issues is extracted hereinbelow:-

> *"13. With respect to Issue No. d) & e), it has been contended by the appellants but without supporting materials that the truing up of the financials of the second appellant for the Financial Year 2005-06 and 2006-07 were illegal or bad in law, except the points advanced above by the appellant and which we have traversed.*

In this appeal, the second appellant also did not challenge the actual accounts furnished by the first appellant for the purpose of truing up which shows that the accounts provided by the first appellant for the two periods in question were correct. The argument of learned Counsel for the first Appellant that since the second appellant had run the electricity operations as an integral part of its plantation operations most of the expenses, relating to the operations were absorbed by the tea operations cannot be accepted. As the other business of the second Appellant cannot be intermingled with the erstwhile business of distribution of the second Appellant till the date of transfer of assets, similarly the other business of the first Appellant has also to be dealt with separately from the distribution business. Thus, the activities of distribution business and other sorts of business have to be treated separately and any loss on account of distribution business has to be compensated accordingly to law. The contention of the first appellant that the labourers engaged in other business of the first appellant will be affected cannot be accepted. The contention of the first appellant that it has been carrying on other business and the entire labour force of 13,000 workers being share holders and the resources are available with *the first appellant are very meagre is beside the point. It is not the case of the first appellant that after the transfer of business, the second appellant has been carrying on similar and parallel distribution business so that two businesses were different. It is difficult to accept the argument that the determination of surplus from electricity distribution operations through truing up exercise beyond the actual surplus would have to be funded out of the first appellant's plantation operations would be highly detrimental to the alleged viability of the plantation operations and interest of the workers in as much as the true up proceedings were carried out only in respect of the distribution business of the first appellant and the said true up proceedings followed the orders passed on the ARR & ERC petitions filed by the first appellant only in respect of that business and the other business of the first appellant has no concern in the matter in question. The very argument of the Appellant No.1 that the alleged surplus found in respect of the second appellant' tenure could not be accounted for legally in the business of the first Appellant after the true up proceedings of the second Appellant is in view of the analysis made above untenable in law. As pointed out earlier, the second appellant cannot run away with the surplus since orders are* *passed upon ARR and ERC filed by the distribution companies and the true up proceedings are drawn up with reference to those ARR and ERC petitions filed by them and in the interest of the consumers the transactions of accounts have to be reckoned with continuously and as a ongoing process. Since the license has been transferred, the first appellant is responsible legally with respect to the surplus arrived at after the truing up processes for the period prior to the take over and the surplus available with the transferor over and above the return on equity and the return on equity allowable has to be ploughed back to the business for the benefit of the consumers. Again, it is difficult to agree with the appellant that the surplus of Rs450.52lakh has been arrived at by the Commission by arbitrarily altering the figures especially with respect to the own consumption of the second appellant. It cannot be gainsaid that the tariff applicable to the different categories of consumers does have nexus with surplus or deficit. The grievance of the first appellant that before 1st of April, 2007 surplus, if any, of the second appellant should have been discovered by the Commission so that the first appellant could not be put to prejudice is misnomer on the premise advanced above. It does not appear that the regulatory principles followed* *in the normal course of business have not been followed. It has been unsuccessfully argued by the learned Counsel for the appellant that the method adopted and the conclusions arrived at by the Commission in the impugned order dated 26.4.2011 was not correct and justified as the argument is not backed by any earthly reason. The Issue No. d) & e) are answered against the Appellants."*

9. It was submitted by Learned Counsels for both the sides that as of now the issues which have been raised in these two appeals are entirely covered by the said judgement of this Tribunal dated 27th April, 2012 in appeal No. 93 of 2011 and these issues would be finally resolved by the Hon'ble Supreme Court in civil Appeal No. 5122 of 2012.

10. We have considered the rival submissions of the parties and have gone through the judgement dated 27th April, 2012 in Appeal No. 93 of 2011. We entirely agree with the reasoning given by this Tribunal in the said judgement in deciding the claims of the appellant with regards to the dispute surplus and do not see any reason to take a different view.

11. Hence, we do not find any merit in both the appeals and the same are hereby dismissed.

Pronounced in the open court on this 3rd day of November, 2025.

(Virender Bhat)	(Seema Gupta)
Judicial Member	Technical Member (Electricity)

REPORTABLE / NON REPORTABLE

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