

Levy of Cess on sea/river water used for power generation of & cooling purposes

(i) Water used to generate Hydro Power

Pollution Control Board raise demand of cess from Hydro Power Stations, under subsection (i) of Section 16 of water (Prevention and control of Pollution cess) Act 1977 on the ground that water drawn from river for Hydro generation is consumed in the station and that in the process river water is polluted. NHPC, BBMB and others challenged this order in the Himachal Pradesh High Court in 1997 & 1998 Contending that water drawn from sea/river are not consumed in the power generation process but is returned to the river or sea. There is also no increase in pollution level.

Hon'ble High Court gave judgment in favour of the Power Utilities.

(ii) Payment of Cess to Pollution Control Board for Sea/River Water used for cooling purpose.

Cess on water consumed by thermal power stations for cooling purposes as per provisions of Sec 3 of water (Prevention and control of Pollution) cess Act of 1977 which lays down that cess is to be levied on the basis of water consumed by the industry at rates not exceeding the rates given in Col-2 of Schedule-II of the Act as per table given below:

1	2	3
Purpose for which water is consumed	Maximum rate under sub section 2 of section 3 (w. e. f. 6-5-2003)	Maximum rate under sub section 2 of section 3 (w. e. f. 6-5-2003)
1. Industrial cooling spraying in mine pits or boiler feeds.	5 Paise per kilolitre (w. e. f. 26-1-92 to 5-5-2003@1.5 paise per KL)	10 Paise per kilolitre (w. e. f. 26-1-92 to 5-5-2003 @2.25 paise per KL)
2&3		
4. Processing whereby water gets polluted & pollutants are not easily biodegradable and an toxic	15 Paise per kilolitre (w. e. f. 26-1-92 to 5-5-2003 @ 5 paise per KL)	10 Paise per kilolitre (w. e. f. 26-1-92 to 5-5-2003 @ 9.5 paise per KL)

From this schedule it may be seen that there are two purposes for which water is consumed and cess is levied for such consumption e.g. (i) Boiler feed (ii) processing whereby water gets polluted and pollutants are not easily biodegradable and toxic.

Thermal stations take cooling water from Sea/River and rates of cess are determined on the entire quantity of water drawn. As a result the utilities are heavily burdened financially.

There are two purposes for which water is "consumed" and cess is levied for such consumption e.g. (i) Boiler feed (ii) processing whereby water gets polluted and pollutants are not easily biodegradable and toxic.

Electricity Boards like Tamil Nadu, Maharashtra, Gujarat and Punjab have been representing to CPU from time to time that:-

- (i) The stations do not consume the entire water drawn from sea/river but throw back almost the entire quantity to the source and as such levy of cess on the entire quantity is totally unjustified and an may have to be discontinued.**
- (ii) The temp difference of the water drawn and that thrown back into the source is within the permissible limit of 5°C and there is no pollution added in the thrown back water because the water drawn is entirely used for cooling purposes and also there is no environmental danger to the sea creatures like fish, because of temperature rise. As such levy of cess at higher rate is not justified and may have, therefore, to be discontinued.**

Different power generating utilities took up the matter with Central/State Pollution Control Boards to exempt them from payment of cess on the water drawn from sea/river or recover cess for the quantity of the water actually used. Pollution Control Boards replied by telling that cess is to be paid for the entire quantity of water drawn by power stations for cooling purpose. Council of Power Utilities (CPU) also took up the matter with the Ministry of Environment & Forests and Ministry of Power to get exemption of this payment of cess but without any result.

The Delhi Electricity Supply Undertaking took up the matter in the Supreme Court of India for a decision. The Division Bench of the Supreme Court with Hon'ble Justices Kuldip Singh, B.P. Jeevan Reddy and S.P. Bharucha passed a judgment in March 1994 where it was directed that the water drawn from the river for the purpose of cooling in condenser was to be construed as consumption and they also noted that they see no ground to interfere with the conclusions reached by the Appellate Authority which was upheld by the High Court in this matter.

In view of the position indicated above thermal power generating utilities are left with no other alternative but to make payment of cess resulting in very heavy burden on their financial resources.

In this connection it may be mentioned that CPU also made reference to some of the international thermal power-generating agencies using seawater for cooling purpose to ascertain whether they have to pay any tax levied by local authorities. From the reply received we understand that in Japan "there is no levy of cess on river/sea water used for cooling etc. in Thermal Stations. Local governments do not charge any cess on the entire quantity of water drawn to thermal generating units from river/sea. Japan uses considerable Seawater for pumped storage stations, Thermal Stations etc.

In Hong Kong CLP Power operates three power stations, two of which are major central thermal power station design utilizing seawater as cooling medium for their condensers. Seawater is pumped to their units via submerged intake culverts and discharge back to sea directly, i. e. in the once through cooling system manner. There is no such stipulated charge from the local pollution control authority in Hong Kong for the consumption of seawater for cooling purpose as in the case in India.

To our knowledge there appears to be no international practice for levying any cess.