

**IN THE HIGH COURT OF SIKKIM
CIVIL EXTRA ORDINARY JURISDICTION**

W. P. (C) No. 37 OF 2016

National Hydroelectric Power Corporation Ltd.,
Presently known as N. H. P. C. Limited,
Sector – 33 Faridabad,
Haryana – 121 003.
Through,
It's authorized representative,
Shri A. K. Yadav,
Senior Manager (Commercial). ----- Petitioner.

-VERSUS-

1. State of Sikkim
Through
The Chief Secretary,
Government of Sikkim.
2. The Secretary,
Energy & Power Department
Government of Sikkim,
Kazi Road, Gangtok, East Sikkim.

3. The Principal Secretary,
Forest, Environment and Wildlife
Management Department,
Forest Secretariat,
Government of Sikkim,
Deorali, Gangtok, East Sikkim.

4. Conservator of Forest Territorial Circle,
Forest, Environment and Wildlife
Management Department,
Forest Secretariat,
Government of Sikkim,
Deorali, Gangtok, East Sikkim. ----- Respondents.

PETITIONER

ADVOCATE (S)

FOR ----- Mr. A. K. Upadhyaya, Sr. Advocate with Ms. Binita
Chhetri, Mr. Thupden G. Bhutia and Ms. Aruna
Chhetri.

RESPONDENT

ADVOCATE (S)

FOR ----- Mr. J. B. Pradhan, Addl. Advocate General,
Mr. Karma Thinlay, Sr. Govt. Advocate, Mr. Santosh
K. Chhetri and Ms. Pollin Rai Asst. Govt. Advocate.

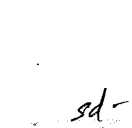
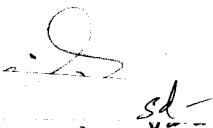
Case No.

Serial No.	Date	Order (s) with Signature (s)
1	2	3
		W.P. (C) No. 37/2016 National Hydroelectric Power Corporation Ltd. (NHPC Ltd.) vs. State of Sikkim & Ors. BEFORE MR. JUSTICE SATISH K. AGNIHOTRI, ACJ. & MRS. JUSTICE MEENAKSHI MADAN RAI, J. 01. 09.09.16 Present: Mr. A. K. Upadhyaya, Senior Advocate with (Agnihotri, ACJ) Ms. Aruna Chettri, Advocate for the Petitioner. Mr. J. B. Pradhan, Addl. Advocate General and Mr. Karma Thinlay, Senior Government Advocate with Mr. S. K. Chettri and Ms. Pollin Rai, Assistant Government Advocates for the State-Respondents. Mr. N. T. Bhutia, PCE-cum-Secretary in person. The facts, as projected by Mr. A. K. Upadhyaya, Learned Senior Counsel for the Petitioner, are that the Petitioner is a Central Public Sector Undertaking, engaged in generation of electricity. As per the Agreement, the Power Project has been established at Teesta and Rangit River. Under Memorandum of Understanding, since the power is generated within the State of Sikkim, the State of Sikkim is entitled to 12% free electricity. It is further contended that since the generation of power is on the inter-state river and also free electricity to the extent of 12% is given to the State, the State is not competent to impose any tax, cess on consumption of water.

Case No.....

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1	2	3
		Referring to Entry 56 of Union List and Entry 17 of the State List under Schedule 7 of the Constitution of India, Mr. Upadhyaya further contended that the State of Sikkim is not competent to impose water tax. Mr. A. K. Upadhyaya further submits that imposition of natural water tax does not find place in any of the Lists, and as such, it comes under residuary power under Union List. Thus, the Central Government alone is competent to impose the tax. On the other hand, Mr. J. B. Pradhan, Learned Additional Advocate General, urges that the State Legislature, having competence, has framed "The Sikkim Forests, Water Courses and Road Reserve (Preservation and Protection) Act, 1988". Section 31 read with Sub-Section (1) of Section 83 of the said Act, 1988, confers power on the State Government to frame Rules. Accordingly, Sikkim Forest Levy of Natural Water Tax Rules, 2015 (for short "Rules of 2015"), imposing water tax on use and consumption of water are framed. Issue Notice. Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Government Advocates assisting Mr. J. B. Pradhan, Learned Additional Advocate General and Mr. Karma Thinlay Namgyal, Senior Government Advocate, accept

Case No.

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1	2	3
		notice on behalf of the Respondents and are granted three weeks' time to file reply. Call on 18-10-2016.  Judge 09.09.2016  Acting Chief Justice 09.09.2016

pm/ds Index : Yes / No
Internet : Yes / No