



03 JUL, 2025

## Apex court rules TNB's power business falls under utility, so it can't claim manufacturing tax breaks

The Edge CEO Morning Brief, Malaysia



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PUTRAJAYA (July 2): A five-member Federal Court bench on Wednesday ruled that the Court of Appeal was wrong to rule that Tenaga Nasional Bhd (KL:TENAGA) is in the business of manufacturing electricity when it should actually have been considered a utility company under Schedule 7B of the Income Tax Act 1967 (ITA).

Following that, the bench, led by President of the Court of Appeal Tan Sri Abang Iskandar Abang Hashim, ruled that TNB's application for a reinvestment allowance (RA) in seeking tax relief under Schedule 7A was wrong, as it should have been done under Section 7B that specifically relates to utilities entities approved by the Finance Minister where it could apply for investment allowance.

Federal Court judge Datuk Rhodzhariah Bujang who read the unanimous decision said that even if the bench agreed that TNB is in the business of manufacturing electricity, nevertheless, electricity is indisputably considered a form of utility.

Citing Schedule 7B of the ITA, Rhodzhariah said the law provides investment allowance incentives specifically for companies involved in the service sector, including transportation, communication, utilities and other sub-sectors approved by the Minister of Finance.

That schedule (Schedule 7B), the judge said, was introduced to encourage investments in infrastructure and services that are essential for public welfare and economic development, which in the court's view, is helpful to promote the growth of the service sectors by allowing incentives to service sector companies for their capital expenditures in approved service projects.

Rhodzhariah said TNB cannot be blamed for filing its claim for RA under Schedule 7A based on its stand that it

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**TNB should have applied for investment allowance, not reinvestment allowance in tax break – apex court**

qualifies for it because it manufactures electricity.

“However, making that choice does not mean that the Inland Revenue Board (IRB) has no option but to accede to it.

“That is the same for any other ap-

plicant of a statutory claim, for it is the approving authority which must decide whether an approval be granted for such a claim; and of course, if not, the aggrieved party has the legal right in an appropriate factual and legal circumstance to question that decision in court,” she said.

The apex court was asked on the question of whether the appellate court was correct in its determination of TNB's activities being that of manufacturing under Schedule 7A of the ITA, based on the cases of Majlis Perbandaran Seberang Perai vs TNB and IRB director-general vs Success Electronics & Transformer Manufacturer Sdn Bhd, without regard to the real intention of the Parliament in enacting Schedule 7B of the ITA which applies to the utility sector.

To that question, Rhodzhariah said the answer to it is in the negative, and the bench did not make an order as to costs.

Besides Abang Iskandar and Rhodzhariah, the other Federal Court judges were Tan Sri Nallini Pathmanathan, Datuk Zariah Mohd Yusof, and Datuk Abu Bakar Jais.

### Notice of additional assessment issued to a sum of RM1.81 bil

The case arose when, on July 3, 2020, the IRB through a letter informed TNB that the RA that it had claimed for the year of assessment 2018 was disallowed and then issued a notice of additional assessment on July 7, 2020, to the amount of RM1,812,506,384.64.

Following that, TNB filed a judicial review that same year over the imposition of the RM1.812 billion as an additional assessment to be paid by the national utility company.

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However, this sum has been reduced to RM1.25 billion at a discounted rate.

At the High Court in 2022, Judge Datuk Noorin Badaruddin (now a Court of Appeal judge) allowed TNB's judicial review, saying that TNB's business relates to the manufacturing of electrical energy and that the generation of electricity is considered a manufacturing activity.

"TNB has particularised its project to be a transmission project consisting of installation of new lines and reinforcement of existing lines to facilitate the increase in transmission of electricity to new development areas, as well as increasing efficiency

and reducing interruption during the transmission. The distribution project consists of installation of new lines and substations to increase the capacity for distribution to new areas.

"TNB cannot be said to be a utility or service provider company per se. It has expanded and diversified its business activity into manufacturing, for it has to, otherwise, the distribution of electrical supply in this country will never attain efficiency," said Noorin.

The Court of Appeal on May 18, last year, upheld Noorin's decision and dismissed IRB's appeal to claim the additional assessment of RM1.25 billion.

The three-member COA bench ruled the High Court was right in allowing the judicial review sought by TNB and the bench agreed that the expenses run by the company from 2003 to the year of assessment of 2018 amounted to the manufacturing of energy and thus the RA is applicable.

IRB was represented by Datuk Dr Cyrus Das and senior revenue counsels Ashrina Ramzan Ali, Zaleha Adam and Surani Che Ismail while TNB was represented by Datuk DP Naban and S Saravana Kumar.

It is understood that TNB will issue a statement on this case.