



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

I.A.No. 1 of 2017
in
O.P.No. 1 of 2013
Dated: 25-02-2017

Present
Sri Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member

Between:

M/s. Sundaram Alloys Limited ... Applicant / Petitioner
A N D
Eastern Power Distribution Company of ... Respondent
Andhra Pradesh Limited

This Interlocutory Application has come up for hearing finally on 18-02-2017 in the presence of Sri Challa Gunaranjan, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondent. After carefully considering the material available on record and after hearing the arguments of the learned counsel, the Commission passed the following:

ORDER

A petition to declare the demand for deemed consumption charges by the respondent for the FY 2014-15 to be contrary to the tariff order dated 30-03-2013 in O.P.No.1 of 2013 and set aside the demand raised by the respondent on the petitioner.

2. The petitioner's case is that it is availing power supply under HT Category 1 (B) with H.T. Service Connection No.VSP-1205 for its Ferro Alloys Manufacturing Unit at Atchutapuram. It entered into an agreement with the respondent with a CMD of 11000 kVA to meet its requirement of continuous and uninterrupted power supply. The power intensive industry was fixed tariff on the premise that there would be continuous and uninterrupted supply. From the Financial Year 2009-10, the format was changed stating that energy falling short of 6701 kVA units per annum will be billed as deemed consumption charges in such cases. In the tariff order for the Financial Year 2013-14, which was also made applicable for the Financial Year 2014-15, the Commission observed that the consumers/Ferro Alloy units pay for 6701 units per kVA during the year whether they consume the power or not. The initial power cuts in the Financial Year 2012-13 were later the subject of restrictions imposed by the

Commission from 12-09-2012 by order dated 07-09-2012. The said order in Clause 12 (b) directed that no deemed consumption charges should be levied by Discoms during the R & C measures. The restriction measures were continued upto 31-03-2013 initially and later by different orders extended till the billing date of September, 2013. The restrictions were suddenly removed by an order of the Commission dated 31-07-2013 with effect from 01-08-2013. The respondent did not stick to the scheduled and unscheduled outages and did not adhere to the permitted hours of load shedding. The sudden lifting of restrictions from 01-08-2013 impacted the inventory management and work force alignment. In fact, unscheduled load shedding has increased after withdrawal of R & C measures and the hours of supply were varied as per the choice and convenience of the respondent, while retaining the obligation to pay 85% load factor with the consumer. A huge demand was raised by the respondent purportedly towards deemed consumption charges for the Financial Year 2014-15 threatening disconnection in case of non-payment and the said demand is contrary to the tariff order. The tariff order was passed on terms of continuous, uninterrupted power supply, which changed with the passing and enforcement of Restriction & Control orders/load shedding. The compulsion to pay for 85% load factor should have been cancelled when the tariff order could not be adhered to and when the outages and unscheduled load shedding continued even after the R & C measures were annulled. Ferro Alloy units were placed in a separate HT 1B category from 2002-03 and on a formula stipulated, any consumption below 6701 kWh/kVA on an annual basis was billed as deemed consumption. For April to June, 2013, the Commission itself ordered that no deemed consumption charges should be levied and the formula arrived on an annual basis cannot be applied for the remaining period of the financial year. The R & C measures extended from time to time continued upto 31-07-2014 and the respondent was not in a position to supply full and continuous power throughout the financial year 2013-14 and the financial year 2014-15. The records of the respondent show emergency load relief and load relief and weekly power holidays were also imposed and whatever power could not be consumed by the petitioner was sold to others in a power deficit situation avoiding any loss to the respondent. Power is a major input for the Ferro Alloy industry with a power cut even for a single day in a week hampering the entire load factor as the furnace takes two days to reach optimum levels. The petitioner was disabled from booking export orders in advance and planning and procuring imported raw material to enable it to operate in full

capacity in view of the uncertain power situations and penalty of deemed consumption charges should not be imposed on the petitioner under the circumstances.

3. The respondent did not file any formal counter and the arguments of Sri Challa Gunaranjan, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondent are heard.

4. The point for consideration is whether the respondent cannot enforce the demand for deemed consumption charges against the petitioner for the relevant period.

5. It is not seriously in dispute, if not admitted that the subject matter of the present petition is identical to the fact situation dealt with in the orders dated 06-04-2016 in I.A.No.1 of 2016 in O.P.No.4 of 2011, I.A.No.21 of 2015 in O.P.No.1 of 2012, I.A.No.22 of 2015 in O.P.No.1 of 2013, I.A.No.23 of 2015 in O.P.No.3 of 2012 & I.A.No.24 of 2015 in O.P.No.2 of 2013. Therein also, the Ferro Alloys Producers Association as well as individual Ferro Alloys Producers approached this Commission against the demand by the two distribution companies of the State respectively for deemed consumption charges for the financial years 2011-12, 2012-13 and 2013-14 respectively. The contentions of the petitioners therein are identical to the contentions of the petitioner herein. The distribution companies contested the said applications and a verification of the power supply position to Ferro Alloy units during non R & C periods of the financial years 2012-13 and 2013-14 showed that there were considerable interruptions in the power supply for some days which even went upto 67% and deficit power supply was found to be significant during the relevant periods.

6. The situation was compared with the facts forming the subject of *Amalgamated Electricity Company Limited vs. The Jalgaon Borough Municipality (1975) 2 SCC 508* which presented a converse situation and it was observed that if the basic premise of readiness to supply energy is absent, as a logical and consequence, the person receiving energy may not be liable to be burdened with an obligation of paying any minimum charges. After a detailed analysis of the admitted factual scenario, the petitioners therein were found to be justified in resisting the demands for deemed consumption charges during the relevant periods. The success of the petitioners therein in denying any liability to pay any deemed consumption charges to the distribution companies during the relevant periods has been stated to have been not

questioned before the Hon'ble Appellate Tribunal for Electricity or any other Forum and the said orders have become final. The present Interlocutory Application relating to the financial year 2014-15 covers an identical situation and is claimed to be contrary to the tariff order dated 30-03-2013 in O.P.No.1 of 2013 of the then Commission for the financial year 2013-14. As the proceedings of the then Andhra Pradesh Electricity Regulatory Commission in Proceedings No.504/Secy/EAS/S-96/2014 dated 29-03-2014 directed that the existing tariffs shall continue from 01-04-2014 until further orders, the tariff order that can be taken as a benchmark for compliance or violation is the tariff order of the Commission for the financial year 2013-14. The letter from the Superintending Engineer, Operation Circle, Eastern Power Distribution Company of Andhra Pradesh Limited, Visakhapatnam dated 24-04-2015 to the petitioner itself refers to the demand taking into consideration the R & C period and power interruption. Similarly, the letter from the same officer dated 22-03-2016 to the petitioner also refers to taking into consideration power interruptions communicated earlier in August and October, 2015 and also exempting Hud Hud cyclone period. The statement accompanying the letter for the period from 01-04-2014 to 31-03-2015 itself shows that days of power cuts as per DE/AKP & MRI report are 126 leaving the days to be reviewed for deemed consumption at 239. If that is the factual situation, the principle of the order dated 06-04-2016 of this Commission squarely applies to this Interlocutory Application and in the absence of any contradictory pleading, the contention of the petitioner has to be accepted.

Therefore, the Interlocutory Application is allowed. No costs.

This order is corrected and signed on this the 25th day of February, 2017.

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman