



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

I.A.No. 21 of 2017

O.P.No. 3 of 2011

Date: 02-06-2018

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

Between:

M/s. Metkore Alloys & Industries Ltd
(Formerly known as Cronimet Alloys Ltd /
GMR Vasavi Industries Ltd.)
Regd. Office: Street No.1, Plot No.18
Sagar Society, Road No.2, Banjara Hills, Hyderabad

... Applicant

A N D

Eastern Power Distribution Company of Andhra Pradesh Limited

... Respondent

This Interlocutory Application has come up for hearing finally on 19-05-2018 in the presence of Sri N. Phanindra, learned counsel representing Sri Challa Gunaranjan, learned counsel for the applicant 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 for both parties, the Commission passed the following:

ORDER

A petition under Section 62 read with Section 86 of the Electricity Act, 2003, to declare the demand for deemed consumption charges from the petitioner by the respondent for FY 2011-12 to be unenforceable and consequently set aside the demand made through letter dated 23-04-2012 by the respondent.

2. The petitioner's case is that it is availing power supply from the respondent under Service Connection bearing S.C.No.SKL-082 under a HT agreement with

contracted maximum demand of 13500 KVA from 1987. The Ferro Alloy unit is highly power intensive with energy being 40 to 70% of the manufacturing cost. From FY 2009-10 as per the tariff orders, the formula is to have Guaranteed Energy Off-take at 6701 units per KVA per annum (at 85% annual load factor) on Average Contracted Maximum Demand or Average Actual Demand whichever is higher and the energy falling short of 6701 units per KVA per annum will be billed as deemed consumption. During the FY 2011-12, power cuts were imposed by the respondent from December, 2011 to March, 2012 and restriction and control measures were imposed by the Commission under Section 23 of the Electricity Act, 2003 during the next year. The respondent deviated even from the specified supply hours concerning number of scheduled and unscheduled outages resulting in huge commercial losses and still the respondent is demanding the petitioner to pay deemed consumption charges by a letter dated 23-04-2012. The petitioner replied vide letter dated 30-04-2012 informing that from September, 2011 to March, 2012, the power restrictions imposed by the licensee should result in excluding restricted period, while the average load factor even then for FY 2011-12 being 92.51%. The Commission in its tariff order dated 30-03-2011 clearly stated that the licensees shall exclude the period of power cuts in calculating deemed energy consumption. The petitioner requested the Commission also to issue necessary directions. The Commission set aside similar demand by an order dated 06-04-2016 and the assumption of continuous availability of power supply having failed, the premise on which the tariff order was passed was removed and the respondent did not suffer any loss for non-consumption of any power. Hence, the petition.

3. The respondent in its counter affidavit stated that the deemed consumption charges were specified by the Commission in its tariff orders and the Commission

ordered that no deemed consumption charges should be billed during the restriction and control period for HT-I (B) category in its orders dated 07-09-2012 for FY 2012-13. The Commission passed orders in I.A.No.1 of 2016 and batch on 06-04-2016 under which deemed consumption charges need not be paid for only 2012-13 and 2013-14 and not for FY 2011-12. Load utilization instructions given to the consumer from September, 2011 to March, 2012 were not followed and the petitioner availed 97% of the load during that period and hence the petitioner is liable to pay deemed consumption charges and hence the petition be dismissed with costs.

4. The point for consideration is whether the petitioner is entitled to resist the demand made by the respondent for payment of deemed consumption charges for FY 2011-12 ?

5. In the common order on I.A.No.1 of 2016 in O.P.No.4 of 2011 and batch dated 06-04-2016, this Commission dealt with the issue of deemed consumption charges for FY 2011-12 to FY 2013-14 in respect of consumers in the business of manufacture of Ferro Alloys. The power intensive nature of Ferro Alloy industry being admitted, it was recognized that R & C periods had to be excluded while calculating the deemed consumption charges as the imposition of deemed consumption charges was on the premise of the industry consuming power continuously. The Commission concluded that if the period of R & C measures is excluded and if the power holidays / power cuts / load reliefs which are admitted are taken into account, the basis for imposition of any deemed consumption charges ceased to exist. As the distribution licensees could not supply power for significant periods during the relevant periods and as the formula on which the Commission based the imposition of deemed consumption charges is dependent on consumption

of power for 8760 hours, it was concluded that the distribution licensees cannot claim to be deprived of any maintenance expenditure during the relevant periods due to nonpayment of the deemed consumption charges. As no loss due to non-consumption of energy was proved and as the actual charges were admittedly paid, the petitioners therein were declared not liable to pay any deemed consumption charges during the relevant periods.

6. Again in the order on I.A.No.1 of 2017 in O.P.No.1 of 2013 dated 25-02-2017 relating to FY 2014-15 dealing with an identical fact situation, it was found that interruptions and deficiencies in power supply were considerable and significant during the relevant periods and the decision of the Hon'ble Supreme Court in Amalgamated Electricity Company Limited Vs The Jalgaon Borough Municipality (1975) 2 SCC 508 holding that if the basic premise of readiness to supply energy is absent, as a logical consequence, the person receiving energy may not be liable to be burdened with an obligation of paying any minimum charges was followed and the consumer therein who was shown to have faced a similar situation in FY 2014-15 was held entitled to demand non-liability for payment of deemed consumption charges. Again, the order dated 26-08-2017 in I.A.No.7 of 2017 in O.P.Nos.1 & 2 of 2013 also reiterated the same conclusion in respect of a relief prayed for regarding FY 2014-15.

7. The very demand dated 23-04-2012 is based on short fall of energy to be billed in respect of which the deemed consumption charges were levied for FY 2011-12 and the figures shown in the letter dated 23-04-2012 as minimum annual energy to be billed and the actually recorded energy consumption do not suggest any questionable availment of power by the petitioner. Even any violation of any notices issued by the respondent during September, 2011 to March, 2012 as

alleged in the counter affidavit or any instructions said to have been issued by the respondent being not violated are not placed before the Commission through any relevant documentary evidence. The counter affidavit itself admits that Ferro Alloy industry is a highly power intensive industry and as per the orders of the Commission, no deemed consumption charges shall be billed during the restriction and control period. If the counter affidavit itself admits September, 2011 to March, 2012 being R & C period and if 97% power consumption was there in those months also, the deficit in consumption could not have been to the extents specified in the demand notice. In fact the petitioner's contention is that the average load factor achieved by it will not give rise to any demand for deemed consumption charges and as the respondent is not in a position to supply power as contracted, it should suffer the same result as in the earlier three contested orders. The orders dated 06-04-2016, 25-02-2017 and 26-08-2017 have admittedly become final in the absence of any challenge by the parties before the Hon'ble Appellate Tribunal for Electricity or any other Forum and the conclusions thereof should squarely apply to the facts of the present case. Consequently the Interlocutory Application has to be allowed and the petitioner has to be granted relief.

8. Accordingly, the Interlocutory Application is allowed. No costs.

This order is corrected and signed on this the **2nd day of June, 2018.**

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman