

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 76 of 2010

Dated : 19th April, 2011

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. V.J. Talwar, Technical Member**

NTPC Ltd. ... Appellant(s)

Versus

C.E.R.C & Ors.Respondent(s)

Counsel for the Appellant(s): Mr. M.G. Ramachandran, Mr. Anand K. Ganesan
Ms. Sneha Venkataramani

Counsel for the Respondent(s): Mr. S. Vallinayagam for R.7

JUDGMENT

The following issues have been raised by the Appellant in this Appeal;

- a) Exclusion of part of the capital expenditure validly incurred but pending actual disbursement/payment from the capital cost for the purposes of tariff.
- b) Equating depreciation with normative loan repayment.

- c) Disallowance of cost of maintenance spares;
- d) Disallowance of interest during construction;
and
- e) De-capitalisation of capital spares and minor items and excluding them from capital base even when capitalization of substituted components is not allowed.

It is submitted by the learned counsel for the Appellant that Issue No.1 is covered and decided in favour of the Appellant by Judgment of this Court in Appeal Nos. 133, 135 etc. of 2008 (***NTPC Vs. CERC& Ors – 2009 ELR (APTEL) 337***), dated 16.03.09 and Appeal Nos. 151 & 152 of 2007 (***NTPC Vs. CERC& Ors – 2008 ELR (APTEL) 916***) dated 10.12.2008.

With regard to Issue No.2, the same is covered and decided in favour of the Appellant by Judgment of this Court in Appeal Nos. 133, 135 etc. of 2008 (***NTPC Vs.***

CERC& Ors – 2009 ELR (APTEL) 337), dated 16.03.09 and Appeal Nos. 139, 140 etc. of 2006 dated 13.06.2007.

With regard to Issue No.3, the same is covered and decided in favour of the Appellant by Judgment of this Court in Appeal Nos. 139, 140 etc. of 2006, dated 13.06.07 and Appeal No. 54 of 2009 (**NTPC Vs. CERC& Ors – 2009 ELR (APTEL) 705**), dated 21.08.2009.

With regard to issue No. 4, the same is covered and decided in favour of the Appellant by Judgment of this Court in Appeal Nos. 133, 135 etc. of 2008 (**NTPC Vs. CERC& Ors – 2009 ELR (APTEL) 337**), dated 16.03.09 and Appeal Nos. 151 & 152 of 2007 (**NTPC Vs. CERC& Ors – 2008 ELR (APTEL) 916**) dated 10.12.2008.

With regard to issue No. 5, the same is covered and decided against the Appellant by Judgment of this Court in Appeal No. 92 of 2010 (**NTPC Vs. CERC**) dated 04.02.2011.

We have heard the learned counsel for the parties.

It is submitted by the learned counsel for the Respondent that in respect of some of the issues namely (a) consequences of refinancing of loan (b) treating depreciation available as deemed repayment of loan (c) cost of maintenance of spares related to additional capitalization (d) depreciation availability up to 90% in the event of disincentive; & (e) impact of decapitalisation of assets on cumulative loan repayment, already an undertaking has been given by the Appellant before the Hon'ble Supreme Court in Civil Appeal No. 5434 of 2007 to the effect that the above issues would not be pressed for fresh determination and therefore, now the learned counsel cannot press these issues in this Appeal.

On the other hand, the learned counsel for the Appellant would bring to our notice the Judgment of the Hon'ble Supreme Court in **CHAMUNDI MOPEDS LIMITED Vs. CHURCH OF SOUTH INDIA TRUST** (1992 (3) SCC 1) to the effect that the said argument would not apply to the

present case. He has also cited the Judgment of this Tribunal in Appeal No. 92 of 2010 dated 04.02.2011 reported in 2011 ELR (APTEL) 224, and contended that these issues have been considered and the finding has been rendered in favour of the Appellant on the basis of the earlier Judgment of this Tribunal.

We have gone through the Judgments of the Hon'ble Supreme Court as well as the Judgment of this Tribunal reported in 2011 ELR (APTEL) 224 and in the light of the view taken by us earlier, we are unable to accept the objection raised by the Respondent.

This Appeal is allowed in respect of the above issues raised in this Appeal, in terms of the Judgments referred to above by the learned counsel for the Appellant. No order as to costs.

(V.J. Talwar)
Technical Member

(Justice M. KarpagaVinayagam)
Chairperson

Ts/ks