

**BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

IA Nos. 22 & 23 of 2008 in A. No. 214/2006

Dated : 01st April, '08

**Present : Hon'ble Mr. A. A. Khan, Technical Member
Hon'ble Mrs. Justice Manju Goel, Judicial Member**

1. M/s. Shree Dhanvarsha Steels (Pvt.) Ltd.

Industrial Area,
Jasodharpur, Kotdwar,
District Pauri Garhwal

2. M/s. Poddar Alloys (Pvt.) Ltd.

Industrial Area,
Jasodharpur, Kotdwar,
District Pauri Garhwal

... Applicant(s)

Versus

1. Uttaranchal Electricity Regulatory Commission

80, Vasant Vihar, Phase-I,
Dehradun

2. Uttaranchal Power Corporation Limited

Urja Bhawan, Kanwali Road,
Dehradun.

...Respondent(s)

Counsel for the Applicant(s) : Mr. M. L. Lahoty and
Mr. Paban K. Sharma

Counsel for the Respondent(s) : Mr. N. K. Sahoo and
Mr. Pranab K. Jha for UERC

Mr. Anand K. Ganesan and
Ms. Swapna Seshadri for UPCL

J U D G M E N T

Ms. Justice Manju Geol, Judicial Member,

IA No. 22 of 2008

IA No. 22 of 2008 is for exemption from filing certified copy of the order dated 06.06.07. The application is allowed.

IA No. 23 of 2008

1) The IA arises out of a judgment of this Tribunal dated 06.06.07 in appeal No. 214 of 2006. Vide this judgment we remitted the tariff computation for the period 2006-07 in line with our observations made in the judgment. We also directed that on redetermination of tariff of steel units the excess amount recovered should be adjusted in the bills in the following six months. The present IA, inter alia, prays for implementation of order dated 06.06.07. At the time of hearing, on 27.03.08, the parties submitted that the order has since been implemented and the new tariff has been passed although the learned counsel for the appellant/applicant reserves his right to challenge the tariff order in case the appellant has any further grievance left about it.

2) However, the application has a surviving prayer namely the prayer for interest @ 15% p.a. on the amount which the appellant is entitled by way of refund of excess payment.

3) The application is opposed, inter alia, on the ground that no prayer for interest has been actually made in the appeal.

4) We have heard the counsel for all the parties. It is true that in appeal there is no prayer for interest. However, the appeal actually challenged the tariff order and submitted that the tariff leviable on the appellant was much less. Although no prayer for interest therein was made in so many words there was no bar on passing a direction for refund with interest. This Tribunal did not make any remark to disentitle the appellant from interest on the excess refundable to it.

5) In *South Eastern Coalfields Ltd. Vs. State of M.P. and Others (2003) 8 SCC 648*, the Supreme Court considered the nature of the claim towards interest. The Supreme Court held that *the successful party finally held entitled to a relief assessable in terms of money at the end of litigation, is entitled to be compensated by award of interest at a suitable reasonable rate*. The Supreme Court also held that *the doctrine of restitution is attracted and that interest is a normal relief to be given in restitution*. In view of this the appellant who has successfully challenged the tariff order and has been found entitled to refund of the amount recovered from him in excess of the legitimate tariff, that it is liable to pay, is entitled to interest.

6) We hasten to add that this claim for interest is not in terms of section 62(6) of the Electricity Act 2003 which requires a licensee to refund any amount recovered in excess of the tariff with interest at bank rate. Since the utility in the present case has recovered only the amount as per the tariff order, the provisions of section 62(6) of the Electricity Act 2003 are not attracted.

7) Finally, the question of rate. The appellant/applicant has asked for interest @ 15% p.a. However, the appellant is not insistent on interest @ 15% p.a. The Civil Procedure Code provides for 6% interest on a money decree. This is generally acceptable to all parties appearing before us. Accordingly, it will be appropriate to award interest @ 6% p.a.

8) On the above discussion, we allow the IA No. 22 of 2008 and direct that while refunding the excess amount to the appellant in terms of our judgment dated 06.06.07 the respondent No.2 shall pay to the appellant interest @ 6% per annum.

9) Pronounced in open court on this **01st day of April, 2008.**

(Justice Manju Goel)
Judicial Member

(A. A. Khan)
Technical Member

The End