

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY,
AT NEW DELHI
(APPELLATE JURISDICTION)

APPEAL NO. 29 OF 2016

Dated: 7th September, 2016

Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member

In the matter of:-

Tata Steel Limited,
Sakchi Boulevard Road, Bistupur
Northern Town,
Jamshedpur-831001

...Appellant

Versus

Jharkhand State Electricity Regulatory Commission,
2nd Floor, Rajendra Jawan Bhawan-cum-Sainik Bazar,
Main Road, Ranchi-834001.

...Respondent

Counsel for the Appellant(s) : Mr. M.G. Ramachandran
Mr. Ankit Parhar
Mr. Ankit Jain

Counsel for the Respondent(s) : Mr. Farrukh Rasheed

JUDGEMENT

PER HON'BLE MR. I.J. KAPOOR, TECHNICAL MEMBER

The present Appeal is filed by M/s. Tata Steel Limited (hereinafter referred to as "**Appellant**") under Section 111 of the Electricity Act,

2003, against the Impugned Order dated 31.05.2015 passed in the Case No. 23 of 2014 by the Jharkhand State Electricity Regulatory Commission (hereinafter referred to as “**State Commission**”) whereby the State Commission has decided

- (i) True up for the FY 2013-14
- (ii) Annual Performance Review (“**APR**”) for FY 2014-15;
and
- (iii) Revised Annual Revenue Requirements (“**ARR**”) and tariff for FY 2015-16

2. The Appellant is an integrated steel manufacturing company registered under the provisions of the Companies Act, 1956 having its premises at Jamshedpur in the State of Jharkhand and has a largest integrated steel manufacturing plant at Jamshedpur having a capacity of over 9.7 million tonnes of hot and cold rolled flat and long products.
3. The Respondent in the present Appeal is the State Commission for the State of Jharkhand exercising powers and discharging functions under the provisions of the Electricity Act, 2003.
4. The Appellant has been managing the power distribution system in Jamshedpur area since 1923 in accordance with the then prevailing

Electricity Act, 1910 which was repealed after the enactment of Electricity Act, 2003.

5. The State Commission by its order dated 24.03.2004 permitted the Appellant to continue to operate in Jamshedpur area in compliance of Section 14 read with Section 172 of the Electricity Act, 2003.
6. Pursuant to notification of the State Commission's Regulations, 2003, the Appellant again initiated the process for grant of distribution license which was granted on 12.01.2006 w.e.f. 24.03.2004.
7. The Appellant provides and maintains basic civil amenities in the city of Jamshedpur primarily through its 100% subsidiary JUSCO, including the maintenance of electricity distribution services in its licensed area.
8. The Appellant had earlier filed Appeal No. 203 of 2014 before this Tribunal against the Tariff Order dated 04.06.2014 passed by the State Commission. The Appellant had raised the following three specific issues on the Tariff Order dated 04.06.2014 passed by the State Commission
 - (a) Distribution losses to be allowed:
 - (b) Carrying cost to be allowed:
 - (c) Tax pass through to be considered:

As regards the first issue in respect of distribution loss level, this Tribunal vide its judgment dated 19.02.2016 in Appeal No. 203 of 2014 decided the distribution loss level to be considered should be the normative one and the actual one and should be strictly in accordance with the relevant provisions contained in the prevailing Tariff Regulations as notified by the State Commission.

On the second issue of carrying cost, this Tribunal vide its judgment dated 19.02.2016 in Appeal No. 203 of 2014 directed the State Commission to allow the Appellant the carrying cost for the prior period as claimed by the Appellant.

On the third issue raised by the Appellant regarding Income Tax pass through, this Tribunal vide its judgment dated 19.02.2016 in Appeal No. 203 of 2014 had observed without expressing any opinion on merits of this claim being raised that the Appellant can urge these aspects in the relevant years in future for consideration by the State Commission.

9. Facts of the Appeal

- a) The Appellant filed its petition before the State Commission in November, 2014 for
 - (i) True-up for FY 2013-14

- (ii) APR of FY 2014-15; and
 - (iii) Revised ARR and Tariff for FY 2015-16
- b) On 31.05.2015 the State Commission passed the order in Case No. 23 of 2014.
- c) As per Appellant, the State Commission wrongly redetermined the revenue gap and carrying cost for the period up to FY 2012-13 despite the same having being determined and approved and tried up by the State Commission 2014 Tariff Order.
- d) As a consequence of the wrongful redetermination of the revenue gap by the State Commission for the period up to FY 2012-13, the calculation of revenue gap and carrying cost for the period up to FY 2015-16 has also been wrongly redetermined. Table No. 41 of the Impugned Tariff Order is reproduced hereunder;

Figures in Rs. Crores

Particulars	FY-14	FY-16	FY-16
Opening Revenue gap as on 1 st April	95.73	483.35	687.21
Revenue gap created during the year	348.60	123.46	113.81
Closing gap at the end of the year	444.33	606.81	801.02
Rate of Interest – SBI PLR as on 1 st April	14.45%	14.75%	14.75%
Carrying Cost on opening balance	13.83	71.29	101.36
Carrying cost on	25.19	9.11	-

additional gap created during the year			
Total carrying cost	39.02	80.40	101.36
Total revenue gap including carrying cost:	483.35	687.21	902.38

It has been submitted by the Appellant that only by correcting the opening revenue gap as on 01.04.2013, Table No. 41 would be revised as under:

Particulars	FY-14	FY-16	FY-16
Opening Revenue gap as on 1 st April	237.09	645.14	872.86
Revenue gap created during the year	348.60	123.46	113.81
Closing gap at the end of the year	585.69	768.60	986.67
Rate of Interest – SBI PLR as on 1 st April	14.45%	14.75%	14.75%
Carrying Cost on opening balance	34.26	95.16	128.75
Carrying cost on additional gap created during the year	25.19	9.11	0.00
Total carrying cost	59.45	104.26	128.75
Total revenue gap including carrying cost:	645.14	872.86	1115.42

The Appellant submits that the Clause 6.41 of the Regulations provides that the trajectory for distribution losses is specified in Clause 5.23 of the Regulations and the Clause 5.23 of the Regulations

provides the distribution loss and collection efficiency targets to be met by various Licensees during the Tariff Period and Clause 5.33 to 5.35 provide for incentive or penalty on actual distribution losses.

The target distribution losses for FY 2013-14 for the Appellant have been fixed at 6.0% under Clause 5.23 of the Regulations. The actual distribution losses achieved by the Appellant for the FY 2013-14 are at 4.72%.

10. Aggrieved by the Impugned Order dated 31.05.2015 passed by the State Commission, the Appellant has preferred the present Appeal before this Tribunal.
11. As per the Appellant, the following questions of law arise in the present Appeal;
 - a) **Whether the State Commission is justified in redetermining the revenue gap and carrying cost for the period upto FY 2012-13 despite the same having been determined, approved and trued-up by the State Commission in the 2014 Tariff Order?**
 - b) **Whether the State Commission erred in failing to observe that if in future, Appellant would make profit in excess of 15.5% return on equity, the benefit of tax on income shall not be restricted**

despite acknowledging that the Appellant has incurred losses from the business?

12. We have heard Mr. M.G. Ramachandran, learned Counsel for the Appellant and Mr. Farrukh Rasheed, learned Counsel for the State Commission and considered their submissions and the arguments put forth during the hearing before us. Gist of the same is discussed hereunder;
- i) This Tribunal vide its judgment dated 19.02.2016 disposed of the earlier Appeal No. 203 of 2014 filed against Tariff Order dated 04.06.2014 interalia raising the same issues as being raised in the present Appeal and remanded the matter to the State Commission for deciding the issues relating to the allowance of the Distribution losses and Carrying cost afresh and granted the Appellant liberty to raise the issue relating to Income tax pass through in the future.
 - ii) The present Appeal has been filed against the subsequent Tariff Order dated 31.05.2015 (which follows the Tariff Order dated 04.06.2014) interalia raising issues relating to;
 - (a) Distribution losses to be allowed:
 - (b) Tax pass through to be considered:

Additionally the Appellant had raised the issue relating redetermination of revenue gap for the tariff upto FY 2012-13 despite the same having being determined and approved and trued-up in the previous Tariff Order dated 04.06.2014.

- iii) The learned Counsel for the parties agreed before us on the issues relating to the allowance of the Distribution losses and Income tax pass through as raised in the present Appeal are already covered by our judgment dated 19.02.2016 in Appeal No. 203 of 2014 and the same may be disposed of in terms thereof.
- iv) Further in view of the remand of the Appeal No. 203 of 2014 to the State Commission on the issue of carrying cost, the revenue gap for the period upto FY 2012-13 is anyway being redetermined by the State Commission.
- v) Accordingly, as far as the revenue gap for the period upto FY 2012-13 is concerned, in terms of the judgment dated 19.02.2016 of this Tribunal in Appeal No. 203 of 2014, the matter merits remanding to the State Commission for fresh determination with liberty to the Appellant to urge the grounds raised in the present Appeal.

13. In light of the above and the fact that the similar issues raised in Appeal No. 203 of 2014 had been decided by this Tribunal vide its judgment dated 19.02.2016, we are remanding the matter to the State Commission for fresh determination as per our judgment dated 19.02.2016 in Appeal No. 203 of 2014 with liberty to the Appellant to urge the grounds raised in the present Appeal.

14. Pronounced in the open court on this 7th day of September, 2016.

(I.J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

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REPORTABLE/~~NON-REPORTABLE~~
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