

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No.13 of 2008

Dated: May 04 , 2009.

**Present: - Hon'ble Mrs. Justice Manju Goel, Judicial Member
Hon'ble Shri H.L. Bajaj, Technical Member**

1. Indian Tea Association
(A Society registered under the
West Bengal Societies Registration
Act, 1961)
No. 6, Netaji Subhas Road
Kolkata-700001
 2. Tata Tea Ltd.
(A company incorporated under
the Companies Act, 1956)
1, Bishop Lefroy Road
Kolkata-700020
 3. Gillanders Arbuthnot & Co. Ltd.
(A company incorporated under the
Companies Act, 1956)
No. A1 Gillander House
8, Netaji Subhash Road
Kolkata-700001
 4. Goodricke Group Ltd.
(A company incorporated under the
Companies Act, 1956)
Camellia House, 14, Gurusaday House
Kolkata-700019
-Appellants

Versus

1. Assam Electricity Regulatory Commission
(Through its Secretary)
A.S.E.B. Campus
Dwarandhar, G.S.Road
Sixth Mile
Guwahati-781022
 2. Lower Assam Electricity Distribution Co. Ltd.
Bijulee Bhavan
Guwahati-781001
Assam
 3. Central Assam Electricity Distribution Co. Ltd.
Bijulee Bhavan
Guwahati
Assam-781001
 4. Uppar Assam Electricity Distribution Co. Ltd.
Bijulee Bhavan
Guwahati
Assam-781001
 5. State of Assam, represented by Secretary
Department of Power,
Dispur,
Guwahati-781006
-Respondents

Counsel for the appellant:

Mr. D. Bhattacharya, Sr.Advocate
Ms Amita Rajora, Mr. K.P.Ray
Mr. Arijit Raha, Addl. Secy. ITA
Mr. Rohit Chowdhuri Sr.counsel
Mr. P.K. Ray, Consultant

Counsel for the respondents: Mr. Ranjan Mazumdar for
Resp.No.5
Mr. Manish Goswami
Mr. B.M. Saikia for Resp. 2 to 4
Ms Poonam Verma for AERC
Mr. Mohit Jolly for AERC
Mr. Mansoor Ali for AERC
Mr. Avijit Ray
Mr. Amit Kapur
Mr. Anupam Varma

JUDGMENT

Per Hon'ble Member Mr. H.L. Bajaj

This appeal challenges order dated October 26, 2007 passed by the Assam Electricity Regulatory Commission (AERC or the Commission in short). Relevant facts of the case leading to this appeal are briefly stated below:

2. AERC issued the tariff order for the year 2004-05 on July 21, 2004 and for the year 2005-06 on May 27, 2005. The tariff order dated May 27, 2005 was challenged in Appeal No. 3 of 2005 and order was passed by this Tribunal on March 14, 2006 wherein specific directions, inter alia as under were issued:

- (a) AERC to lay down principle and procedure for the future in stipulating fixed cost and to determine fixed charges of the supplier which are to be recovered from the various class of consumers.
- (b) Target availability seems to have been chosen arbitrarily as, neither it is defined in the Regulations nor has it been discussed/deliberated in the tariff proceedings. For the year 2005-06 a methodology be evolved.
- (c) AERC should clearly define availability of the quality of supply.
- (d) The disparities in availability based fixed charges as provided in Tariff Order for the year 2005-06 and those computed based on Electricity Supply Code and Related Matters- Regulations are to be reconciled and benefits be extended to the cases which qualify as per the provisions of the Regulations.

3. The tariff order issued by AERC on July 21, 2004 was challenged in Appeal No. 126 of 2005 and order was passed by this Tribunal on April 21, 2006 wherein specific directions, inter alia as under were issued:

- (i) On the basis of actual data or near actual data truing up exercise must be undertaken by the Commission expeditiously and shall be concluded within a period of three months.
- (ii) Examine the submissions and contentions of appellants with reference to earlier order dated March 14, 2006 in appeal No. 3 of 2005 and in accordance with law.

4. Thereafter, the appellants brought various issues before the AERC, inter alia including:

- (a) Issue 1: Tariff increase not consistent with declared increase as per order of the Commission.
- (b) Issue No. 2: Violation of provision of The Electricity Act, 2003.
- (c) Issue No. 3: Discrepancy in tariff determination and tariff design enunciated in the order of the Commission.
- (d) Issue No. 4: Cross subsidy
- (e) Issue No. 5: Fixed Charges
- (f) Issue No. 6: Irrational and irregular method of determining Contract Demand
- (g) Issue No. 7: Transmission and Distribution Loss.

5. In view of certain difficulties in ascertaining the category wise revenue demand and collection with regard to tariff order for 2004-05, the Commission directed all DISCOMS to maintain records of revenue demand and collection for all components of tariff and also to prepare financial documents showing the approved categories in respective Tariff Orders in future. The Commission also directed the ASEB to submit detailed break-up of collection from all components of tariff for tea, coffee and rubber for FY 2004-05 to ascertain recovery of charges from the different components within a period of 30 days from this order.

6. AERC passed an order on May 18, 2007 supplementary to its order dated August 18, 2006, undertaking the truing up exercise for FY 2004-05; for which purpose the available data was compared with respect to tariff order 2004-05 and preliminary finding in the exercise. This Tribunal set aside the order dated May 18, 2007 on September 18, 2007 in appeal No. 264 of 2006 as the same had been passed without hearing the appellants. The AERC was directed to issue fresh final order in accordance

with directions contained in orders dated March 14, 2006 and April 21, 2006 on or before November 03, 2007. This Tribunal directed the Commission to re-hear the parties as per order passed by Commission on May 18, 2007. The appellants submitted before AERC the same set of documents, as were submitted before the Tribunal and prayed the following:

- a) Non-permissibility of Changed Audited Statement of Accounts on the basis of figures presented by the Board which is yet to be audited in view of finality of the accounts.
- b) The demand component in terms of fixed charge provides an increase of more than Rs. 22 crores during the whole year.
- c) The energy component has to be appropriately considered in accordance with the audited figures as presented in the Audited Statement of Accounts.
- d) The amount due to the tea category on the basis of per unit be refunded and instructions issued to effect the refund within a reasonable time.

7. AERC passed an order on October 26, 2007 as a follow up action in terms of this Tribunal order dated September 18, 2007 in appeal No. 264 of 2006. A summary of the follow up action by the AERC inter alia is extracted below from the Commission's impugned order dated October 26, 2007:

1. Regarding laying down principle and procedure for future in stipulating the fixed cost and to determine fixed charge of the supplier to be recovered from the various classes of consumers, the AERC has notified the Tariff Order for 2006-07 wherein a model of 'cost of supply' was adopted for the purpose of determination of different charges for different categories of consumers.

2. Regarding target availability and evolving of methodology, the Commission has notified the Supply Code and Related Matter Regulations. Specifically, Clause 7.5 of the regulations stipulates that in case the distribution licensee is unable to supply power to the consumer who is not otherwise defaulter, disconnected or unconnected for a period of 240 hours or more in a calendar month, the distribution licensee shall charge the consumer applicable fixed charges if any on a pro rata basis for the hours power was available. The said provision of the regulation is applicable since 2005-06.

3. With regard to defining availability considering the quality of supply, the Commission has issued AERC distribution licensee standard of Performance Regulations (February 04, 2005); AERC guidelines of Consumer Grievance Regulation (May 07, 2004) which takes care of the quality of service and performance of licensees, as they lay down guaranteed minimum standards of performance and stipulate penalty for

non-performance which should be awarded to aggrieved consumer after due verification of claims.

4. Regarding disparities in availability based fixed charges as provided in tariff order 2005-06 and those computed based on the Electricity Supply Code and Related Matters Regulations, instructions had been issued to utilities vide letter dated April 26, 2006 to reconcile the fixed charge for 2005-06 on a case by case basis.

5. With regard to truing up exercise to be undertaken on the basis of actual data or near actual data, the Commission has issued notice to parties to appear before it and provide the actual data. It was noted in the Audited Annual Financial Statement of ASEB for 2004-05 that an amount of Rs. 5704.68 crores has been shown as deficit in balance sheet and Rs. 1011.27 crores in revenue account as on March 31, 2005. In this connection, regulatory accounts are different from the Profit and Loss (P&L) Account and the balance sheet. The Commission determined the deficit/surplus only for the regulated business of the ASEB. The regulatory accounts, accordingly, relate to only the regulated business in contrast to the Profit and Loss (P&L) accounts which cover the total business of the ASEB in the sense that these also include items relating to income and expenditure, not approved/regulated by the AERC. With this distinction, the Commission proceeded with the truing up operation. The review exercise of 2004-05 with reference to the Audited Annual Statement of Accounts 2004-05 of the ASEB revealed that there is an overall revenue deficit of Rs. 21.7 crores.

It was found that the data in the Audited Financial Statement is erroneous because of substantial difference of the amount calculated on the basis of tariff fixed by the AERC. ASEB (Discoms) was directed to find out the detailed break up of the current revenue demand from different components of tariff for Tea, Coffee and Rubber category to ascertain the reasons of deviation of figures in the financial

statement with that of calculated figure vide order dated August 18, 2006.

The utilities submitted relevant information before the Commission and after examination of the materials it was found that the figure of current revenue demand against the category shown in the Audited Financial Statement for FY 2004-05 was in fact wrong. As per the submission, the figure should have been Rs. 151.33 crores. It was submitted that the error was caused due to inclusion of Rs. 15.75 crores from arrear demand in that (current demand) account. It was brought to the notice of the Commission that the concerned utility under whose area the revenue unit now falls after reorganization of ASEB into five successor entities, has taken necessary steps to make correction though audit note in the financial statement for the subsequent year i.e 2005-06.

Deviation noticed in the Audited Financial Statement for 2004-05 was found to be a reality after the exercise of verification of data and studying the same from a different angle. The Audited Financial Statement for 2004-05 was the last consolidated financial statement of ASEB.

The errors in the financial statement are to be duly taken care of by inserting appropriate audit note in the subsequent financial statement of concerned utility. Further, there exists provision for correction of such error in the financial rule, and waited for the Audited Financial Statements of utilities for 2005-06 which are financial statement of the utilities for first year of operation after unbundling from erstwhile ASEB.

6. Regarding discrepancy in tariff determination and tariff design- The concept of availability based fixed charge was first introduced as a component of tariff design in Tariff Order 2004-05. In that order, a graded scale for fixed charge was introduced which increased with higher availability of power to the consumer's premises and reduced with lower availability. In Tariff Order 2005-06 after reviewing the

arrangement, the AERC decided to set aside the incentive provided to the supplier for higher availability but allowed full benefit to the consumers in case the supplier failed to supply power at least for 70% of the time within a month.

The quality of service and performance of licensees are guided by AERC guidelines for Consumer Grievances Redressal and Distribution Performance Standard Regulations. The said regulations have laid down guaranteed minimum standard of performance and has stipulated penalty for non performance which should be awarded by the AERC after due verification of claims. Similarly, AERC Supply Code Regulations also stipulates the manner in which fixed charges are to be recovered as per availability of power to a consumer.

The AERC decided not to continue with the arrangement of availability linked fixed charge as a component of tariff for further period as the spirit of the arrangement initiated by the AERC in Tariff Order 2004-05 has been taken care of by the successive regulations. Accordingly, AERC has addressed this issue in the Tariff Order 2006-07 as per direction of this Tribunal in its order dated March 16, 2006. Instruction has also been issued to the utilities vide letter No. AERC/277/226/19 dated April 26, 2006 to reconcile the fixed charge for 2005-06 on case to case basis.

7. With regard to cross subsidy- The AERC observed that as the Tariff Order was issued during transitional period, all provisions of The Electricity Act might not have been considered. In subsequent Tariff Orders for 2005-06, 2006-07 and 2007-08 this matter was considered to the extent possible. Accordingly, no increase in tariff was made in Tariff Order 2005-06 and there was rationalization of the availability based fixed charge rates for this category. The AERC decided to set aside the incentive provided to the supplier for higher availability but continued to allow full benefit to the consumers in case the supplier failed to supply

power at least for 70% of the time within a month. In Tariff Order 2006-07 and 2007-08, only a nominal increase of energy rate was made with rationalization of other components of tariff keeping in mind the need for gradual reduction of cross subsidy.

8. Following paras are extracted from the order of the Commission dated October 26, 2007:

33.....although accounts were closed for the year 2004-05 after being submitted by the CAG, necessary entry was passed in the accounts of UAEDCL in the year 2005-06. Such an action in the light of Accounting Standard (AS) issued by the Institute of Chartered Accounts of India is whether can be treated as re-opening of accounts. The ASEB counsel in his submission further stated that an act or representation made through an innocent mistake is not a ground for invoking the equitable doctrine of estoppel. Having support from other decisions i.e. Udayan Chinubhai v/s Commissioner of Income Tax AIR 1967 SC 762 and Burmah Shell Refineries Ltd. V/s G.B. Chand (1966) 61 ITR 493 and H.A. Shah and Co. v/s CIT (1956) 30 ITR 618, the respondents have submitted that an earlier decision can be re-opened if that decision is based on the true facts and/or fresh facts are placed before the authority. It is further said that unless the contrary is proved, there is always a presumption in favour of the administration/authority that it exercises its power in good faith and for public interest.

34. In our considered view, the cases cited by the parties and the Hon'ble Courts decisions do not have direct bearing in the present case. There is an apprehension of the appellant and their associates that the ASEB has collected more revenue by passing the

Tariff Order of the Commission for 2004-05. This Tariff Order was passed on July 21, 2004 making it effective from August 01, 2004, with a schedule of tariff therein. The utility raised bill as per the schedule of tariff and incidently demand has been created for payment. Tariff has been schedule on estimation to recover amount from various groups of consumers. But on scrutiny, it revealed that actual revenue from Tea, Coffee and Rubber category have been extensively deviated from the estimate. This fact came to light only during the proceeding pending before the Tribunal in appeal No. 126 of 2005.

35. In this connection the Tribunal order dated April 21, 2006 is pertinent which runs as follows:

“It appears that AERC did not undertake truing up exercise close to the end of the period in question for which tariff was fixed. In order to point out the importance of truing up exercise, we would like to state one of the grievances of the applicants. It is pointed out on behalf of the appellants that the tariff was fixed by AERC on the basis of projected sale of 353 million units of electricity, while allegedly 173 million units were sold. It is claimed by the appellants that as a result of this, the Board was able to collect more tariff than what was entitled to collect as per law”.

The above observation was the sole basis of taking up the truing up exercise and the direction of the Tribunal to that regard.

36. The order of the Tribunal, in our view, hs not stood as an estoppel to carry out the exercise and arrive at a just and reasonable finding. The Commission has been directed by the Tribunal to reveal the real data and

facts. The finding is supposed to reflect the true position of the accounts of the utilities so that the decision/direction of the Commission is impartial and transparent. The very phase of “re-opening” in our view is in a broader perspective and not meant for the limited exercise and decision taken by the Commission in the instant case.

37. But at the same time, the Commission is concerned about the mistake reportedly made by the ASEB. The UAEDCL as successor of ASEB is now liable on the affairs of the area where the error was made, by adjustment to be made as ‘prior period adjustment’. Although the Commission has considered the unintended mistake, the utility is cautioned against any such mistake in future. The Commission also viewed with grave concern that the utilities till day have failed to complete the accounts of the subsequent period. Therefore, the ‘prior period’ adjustments referred to in this order to the tune of Rs. 15.75 crores will become effective only after due approval of the Comptroller and Auditor General of India in the audited statement of accounts for FY 2005-06.

38. Having considered all aspects of the matter concerning the legal aspect, it is now necessary to give effect to the truing up exercise and the audited statement of accounts of subsequent period with appropriate note showing the amount needs to be notified. The Commission shall consider the effect of the same in the subsequent tariff revision process of the utilities after receipt of the relevant supporting documents specifically the Audited Statement of Account for 2005-06.

39. So far, in the matter of adjustment of fixed charge for 2005-06 recovered as per Tariff Order and as per clause 7.5 of the Supply Code Regulation, the consumer

may place claim before the concerned Utility and the Utilities are directed to dispose of the claims within 30 days from the date of receipt of the claim. The utilities are directed to give notifications to this effect.

9. Aggrieved by the impugned order of the Commission dated October 26, 2007, the appellants have filed this appeal and sought the following relief:

- i) The impugned order dated October 26, 2007 be set aside.
- ii) All relief which the Tribunal may deem fit be granted.

10. UAEDCL's Annual Report and Accounts were tendered by the Board on May 31, 2008 containing the CAG's Supplementary Audit Report dated May 13, 2008 accompanying the statutory auditor's report as also Schedule 24 of the Annual Accounts specifically rectifying the error on account of 'prior period items'.

11. Having heard contentions of rival parties and considered their submissions, we now proceed to discuss, analyse and decide each of the main issues raised by the appellant.

Issue No. 1: Fixed Charges

Issue No. 2: Target Availability

Issue No. 3: Defining availability considering the quality of supply.

Issue No. 4: Disparities in respect of applicability of Fixed Charge as Provided in the Tariff Order of AERC for the year 2005-06 and those based on Electricity Supply Code.

Issue No. 5: Determination of collection of more revenue by the Board than it was entitled to collect and the truing up Exercise thereof.

Issue No. 1: Fixed Charges.

12. As per order of this Tribunal dated March 14, 2006, the Commission was to lay down principle and procedure, for the future, in stipulating the fixed cost and to determine fixed charges of the supplier which is to be recovered from the various class of consumers. In this regard the Commission has notified the Tariff Order for 2006-07 wherein a model of 'cost of supply' is adopted for the purpose of determination of different charges for different categories of consumers.

13. Learned counsel Mr. D. Bhattacharya appearing for the appellant contended that there is no regulation so far made laying down the principle and procedure, for the future, in stipulating the Fixed Charge as also to determine fixed charge of the supplier and that the Commission favours discontinuance of Availability Based Fixed Charge which is in fact a deliberate non-compliance of directions of this Tribunal.

14. On the other hand it is contended by Shri Amit Kapoor, Learned Counsel appearing for the Commission that in Tariff Order for 2006-07 AERC has adopted a principle of 'Cost of Supply' for determining the various component of tariff. Therefore, this is as per the direction of this Tribunal in its order in Appeal No. 3 of 2005 i.e. to follow the Section 62(3) of the Act. After notification of AERC Standard of Performance for distribution licensee, the availability to recover 100% fixed charge has been stipulated in Clause 7.5 of the regulation. Accordingly,

the Tariff Order(s) subsequent to this regulation is following the principle stipulated in the Regulation.

Analysis and Decision

15. This Tribunal, in its judgment dated March 14, 2006 in Appeal No. 3 of 2005 has inter alia required AERC to lay down principle and procedure for future in stipulating the fixed cost and to determine Fixed Charges of the supplier which is to be recovered from the various classes of consumers and that the cost of supply of electricity must be determined in accordance with the principle laid down in the Act.

16. The Commission has clearly stipulated how the fixed charges will be recovered and has also adopted the principle of “Cost of Supply” for determining the various components of tariff. Therefore, in this view of the matter we hold that the Commission has complied with the directions of the Tribunal.

Issue No. 2: Target Availability.

17. The appellant has contended before us that the Commission has not indicated target availability in the regulations nor has it

taken any appropriate steps to evolve methodology for the purpose of fixed target availability for the FY 2005-06.

18. Learned counsel for the Commission contended that as per order dated March 14, 2006 of this Tribunal a methodology for determining target availability was to be evolved by the Commission for the year 2005-06 as the same was neither defined in the Regulations nor it was discussed in the tariff proceedings. The Commission has notified the Supply Code and Related Matters Regulations. Specifically, clause 7.5 of the regulations stipulates that in case the distribution licensee is unable to supply power to the consumer who is not otherwise defaulter, disconnected or unconnected for a period of 240 hours or more in a calendar month, the distribution licensee shall charge the consumer applicable fixed charges if any on a pro rata basis for the hours power was available. The said provision of the regulation is applicable since 2005-06.

19. The Commission holds that as stipulated in the Supply Code Regulation, the 66.6% availability in a month is the targeted availability which is considered for 100% recovery of fixed charge and below this the recovery of fixed charge is on pro rata basis of availability.

Analysis and Decision

20. As the Commission has stipulated in Supply Code Regulations the target availability for 100% recovery of fixed charge and pro rata recovery below this bench mark, we are satisfied that directions of this Tribunal have been followed by the Commission. In this view of the matter we, therefore, do not wish to interfere with the decision of the Commission.

Issue No. 3: Defining availability considering the quality of supply.

21. As per directions of this Tribunal the Commission was required to clearly define availability considering the quality of supply. The Commission has issued AERC Distribution licensee standard of Performance Regulations (February 04, 2005) AERC

guidelines of Consumer Grievance Regulation (May 07, 2004) which take care of the quality of service and performance of licensees, as they lay down guaranteed minimum standards of performance and stipulate penalty for non-performance which should be awarded to aggrieved consumer after due verification of claims.

22. The appellant conceded that Regulations referred to in the Impugned Order amount to the same as directions of the Tribunal. The Commission informed that follow up action of revising the recovery of fixed charge in Tariff Order 2005-06 has been carried out as per direction of the Commission and the same is followed for all subsequent Tariff Orders.

23. In view of the foregoing we do not wish to interfere with the decision of the Commission.

Issue No. 4: Disparities in respect of applicability of fixed charge as Provided in the Tariff Order of AERC for the year 2005-06 and those fixed on Electricity Supply Code.

24. The Tribunal had directed that Disparities in Availability Based Fixed Charges as provided in Tariff Order for the year 2005-06 and those computed based on Electricity Supply Code and Related Matters-Regulations are to be reconciled and benefits be extended to the cases which qualify as per the provisions of the regulations. In this regard the Commission has issued instructions to the utilities vide letter dated April 26, 2006 to reconcile the fixed charges for the FY 2005-06 on a case by case basis.

25. It is contended by the appellant that the Commission has not reconciled fixed charges for the purpose of settlement of claim. AERC has not defined the availability nor has it been able to give a clear direction on which the percentage availability is to be fixed.

26. Per contra on behalf of the Commission we are informed that reconciliations are being made by the utilities as per available field data and benefit has been reportedly granted for eligible cases on case to case basis. Availability has been defined in the AERC Standard of Performance for distribution licensee. Moreover, range of parameters (Voltage, frequency etc) of supply are also stipulated in the regulation and consumers may lodge complain before the appropriate authority in case of deviations for corrective measures.

27. In view of the above report of the Commission, the appellant is free to seek its own remedies.

Issue No. 5: Determination of collection of more revenue by the Board than it was entitled to collect and truing up exercise thereof.

28. This Tribunal has directed in its order dated March 14,2006 that on the basis of actual data or near actual data truing up exercise must be undertaken by the Commission

expeditiously and shall be concluded within a period of three months.

29. Learned counsel for the Commission has informed that the Commission had issued notice to parties to appear before it and provide the actual data. It was noted in the Audited Annual Financial Statement of ASEB for 2004-05 that an amount of Rs. 5704.68 crores has been shown as deficit in Balance Sheet and Rs. 1011.27 crores in Revenue Account as on March 31, 2005. In this connection, regulatory accounts are different from the Profit and Loss (P&L) account and the Balance Sheet. The AERC determined the deficit/surplus only for the regulated business of the ASEB. The regulatory accounts, accordingly, relate to only the regulated business in contrast to the P&L accounts which cover the total business of the ASEB in the sense that these also include items relating to income and expenditure, not approved/regulated by the AERC. With this clearcut distinction, the AERC proceeded with the truing up operation. The review exercise of 2004-05 with reference to the audited

Annual Statement of Accounts 2004-05 of the ASEB revealed that there is an overall revenue deficit of Rs. 21.7 crores.

30. It was found by the Commission that the data in the Audited Financial Statement is erroneous because of substantial difference of the amount calculated on the basis of tariff fixed by the AERC. ASEB (Discoms) was directed to find out the detailed break up of the current revenue demand from different components of tariff for Tea, Coffee and Rubber category to ascertain the reasons of deviation of figures in the Financial Statement with that of calculated figure vide order dated August 18, 2006. The utilities submitted all relevant information before the AERC and after examination of the materials it was found that the figure of current revenue demand against the category shown in the Audited Financial Statement for FY 2004-05 was in fact wrong. As per the submission, the figure should have been Rs. 151.33 crores. It was submitted that the error was caused due to inclusion of Rs. 15.75 crores from arrear demand in that account. It was brought to the notice of the AERC that the

concerned utility under whose area the revenue unit now falls after reorganization of ASEB into five successor entities, has taken necessary steps to make correction though audit note in the financial statement for the subsequent year i.e. 2005-06.

31. Learned Counsel brought to our notice that the actual revenue is far less than expected increase. The deviation noticed in the Audited Financial Statement for 2004-05 was found to be a reality after the exercise of verification of data and studying the same from a different angle. The Audited Financial Statement for 2004-05 was the last consolidated financial statement of ASEB. The errors in the financial statement are to be duly taken care of by inserting appropriate audit note in the subsequent financial statement of concerned utility. The AERC was not inclined to pass the final order of truing up exercise merely on the basis of Audited Financial Statement which appears to be erroneous due to some unnoticed human error. Further, as there exists provision for correction of such error in the financial rules it waited for the Audited Financial Statements of utilities for 2005-

06 which are financial statement of the utilities for first year of operation after unbundling from erstwhile ASEB.

32. Learned counsel for the appellant contended that truing up exercise should have been carried out in respect of revenue earning of the Board so as to arrive at excess amount collected from tea-gardens. There was no need of bringing up P&L account in connection with the truing up exercise. AERC has carried out a subjective analysis without judicial application of mind by taking into account the certified audited statement according to which it is not possible to arrive at a conclusion regarding the tally of actual and near actual data.

33. On the other hand, learned counsel appearing for the Commission stated that as detailed in the order of the Commission on the orders of this Tribunal in appeal No. 264 of 2006 dated September 18, 2007, that the apparent error (the revenue collected was not in conformity of energy sale) in the Annual Financial Statement of ASEB for 2004-05, has now been

admitted and recognized as appropriate audit note in the Annual Financial Statement of UAEDCL under whose jurisdiction the mistake was detected.

Analysis and Decision

34. We agree with the contention of the Commission that the Audited Figures which have been duly checked by the Comptroller and Auditor General of India have to be admitted by the Commission as the correct figures. Adjustment for the prior period is to be admitted as Accounting Standard 5 provides for adjustment for “Prior Period Items” (PPI). In this context the following elements of Accounting Standard 5 are noteworthy.

“(a) Prior Period Items are incomes or expenses, which arise, in current period as a result of error or omission in the preparation of financial statement of one or more period.

(b) Nature and amount of prior period has to be separately disclosed in the statement of Profit & Loss Account in a manner that their impact on current profit or loss can be perceived”.

35. One has to reorganize that the office of the Comptroller & Auditor General of India (CAG) is a constitutional position functioning in terms of Chapter V of Part V of the Constitution of India (Articles 148 to 151). The duties and powers of the CAG have been prescribed by the Comptroller & Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 ("CAG Act") enacted by the Union Parliament in terms of Article 149 of the Constitution of India.

36. Chapter III of the CAG Act (Sections 10 to 20) describes the duties and powers of CAG which, inter alia, include the following:-

(a) Compiling of accounts of the Union and the State Governments (Section 10)

(b) Audit of and submitting reports on all expenditure from, receipts and transactions relating to the Consolidated Funds and the Public Accounts of India and each of the States and Union territories (Sections 12,12,16 & 17)

- (c) Audit of and submitting reports on all trading, manufacturing, profit and loss accounts, balance sheet and other subsidiary accounts kept in any department of the Union and all States (Section 13)
- (d) Audit of and submitting reports of all receipts and expenditure of bodies or authorities substantially financed from the Union and State revenues (Section 14)
- (e) Audit of and submitting reports on the accounts of Government Companies in accordance with the Companies Act, 1956 (Sections 19)1) & 19-A)
- (f) Audit of and submitting reports on the accounts of statutory corporations in accordance with the provisions of the relevant legislation. (Sections 19(2) &(3), 19-A & 20).

37. The above said reports submitted by the CAG to the authority concerned are laid before the legislature concerned. It is mandatory for the Commission to follow and adopt the financial statements duly audited by the CAG. In view of this we are inclined not to interfere with the order of the Commission in this regard.

38. In conclusion, the order of the Commission does not require to be interfered with and, therefore, the appeal is dismissed.

39. No order as to costs.

40. Pronounced in the open court on 4th day of May, 2009.

(H.L. Bajaj)
Technical Member

(Mrs. Justice Manju Goel)
Judicial Member