TELANGANA STATE ELECTRICITY REGULATORY COMMISSION

5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

I. A. (SR) No. 28 of 2019

in

O. P. No. 21 of 2017

Dated 28.09.2022

Present

Sri T. Sriranga Rao, Chairman

Sri M. D. Manohar Raju, Member (Technical)

Sri Bandaru Krishnaiah, Member (Finance)

Between:

M/s VBC Ferro Alloys Limited,
R/o 6-2-913/914, 3rd Floor,
Progressive Towers, Khairatabad,
Hyderabad 500 082. ... Applicant

AND

1. Southern Power Distribution Company of Telangana Limited,
   Corporate Office, # 6-1-50, Mint Compound,
   Hyderabad-500 063. ... Respondent No.1/Petitioner

2. The Superintending Engineer,
   Operation Circle, Sangareddy, Medak. … Respondent No.2

The application came up for virtual hearing through video conference on 11.02.2021, 22.02.2021, 15.03.2021, 09.06.2021, 15.07.2021, 11.08.2021, 06.09.2021, 25.10.2021 and 15.11.2021 and physical hearing on 13.12.2021, 03.01.2022 and 02.02.2022. The appearance of Advocate/representative of the applicant and respondents is as given below:

Date	Applicant	Respondents
11.02.2021 09.06.2021, 06.09.2021, 25.10.2021	Sri. Deepak Chowdary, Advocate representing Sri. Challa Gunaranjan, Advocate	Sri. Mohammad Bande Ali, Law Attaché
22.02.2021, 15.07.2021, 11.08.2021, 15.11.2021	Sri M.Sridhar, Advocate representing Sri Challa Gunaranjan, Advocate	Sri Mohammad Bande Ali, Law Attaché
15.03.2021, 03.01.2022, 02.02.2022	Sri. Challa Gunaranjan, Advocate	Sri. Mohammad Bande Ali, Law Attaché
13.12.2021	No representation	Sri M.Eshwar Das, DE(IPC) TSSPDCL

The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s VBC Ferro Alloys Limited (applicant) has filed an interlocutory application on 09.07.2019 under Section 62 read with Section 86 of the Electricity Act, 2003 (Act, 2003), seeking revisiting the conditions stipulated in the retail supply tariff order for FY 2018-19 passed by the Commission by order dated 27.03.2018 in O. P. No. 21 of 2017 more particularly in respect of consumer category of HT–I(B) ‘Ferro Alloy Units’.

2. The averments of the application are extracted below:

a. The applicant stated that it is a company incorporated under the Companies Act, 1956, engaged in the business of manufacture and sale of ferro alloys in the State of Telangana and had been availing of power from the erstwhile Central Power Distribution Company of Andhra Pradesh Limited (APCPDCL) was the licensee for the area in which its unit was located that is Sangareddy District. Due to unfavourable market conditions and power holidays imposed by the erstwhile APCPDCL, it has had to close down their unit, however, it has over last year invested substantial amounts to refurbish the unit and has sought reconnection

from respondent No.1 (Southern Power Distribution Company of Telangana Limited, TSSPDCL).

b. It is stated that for manufacturing of ferro alloys, electricity is a major input as the industry is highly power intensive and electricity constitutes around 40-70% of the manufacturing cost. Initially it was drawing power from National Thermal Power Corporation (NTPC) and Andhra Pradesh Gas Power Corporation (APGPCL) and only from the financial year 2002-03, it has been drawing the power from Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) and presently from respondent No. 1. The erstwhile Andhra Pradesh Electricity Regulatory Commission (APERC) by orders dated 26.09.2002 in I. A. No.10 / 2002 in O. P. No. 29-33 / 2002 fixed the tariff for the ferro alloys units as a separate category by itself without demand and minimum charges subject to the condition that the ferro alloy units draw their entire requirement of power from the DISCOMs alone and surrender their other sources of cheaper power from NTPC and APGPCL and also maintain a minimum load factor of 85% on an annual basis. In case the annual load factor is less than 85% the units have to pay deemed consumption charges to the extent of shortfall.

c. It is stated that the erstwhile APERC continued with the same formula and determined the tariff to these units till the financial year 2008–09. From the financial year 2009-10, though the erstwhile APERC retained the very same formula, it had issued a clarification which reads as under:

> *"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. The energy falling short of 6701 units per kVA per annum will be billed as deemed consumption."*

d. It is stated that even subsequently for the financial year 2010-11 and up to 2013-14, a similar condition had been stipulated by the erstwhile APERC. In the tariff order dated 2013-14, the erstwhile APERC had made the following decision:

> *"If the licensees' proposal is approved, the tariff applicable for HT-I (A): Industry will be applicable for Ferro Alloy units also. At*

present, Ferro Alloy Units are covered under HT–I(B) category with specific tariff conditions, viz. minimum off take of 6701 kVAh per kVA/annum (at 85% load factor per annum), no demand charges, no ToD tariff and energy charges less by Rs.0.32/kVAh compared with HT–I(A): Industry General. The consumers, whether they consume or not, pay for 6701 units per kVA during year. Accordingly these consumers have no choice in energy usage unlike other consumers and also assure revenue to licensees. The Commission has not seen any merits in licensees' proposal and hence not accepted the proposal of merging HT–I(B) Ferro Alloy units with HT-I(A) Industry."

e. It is stated that during the financial year 2012-13, the erstwhile APCPDCL initially had imposed power cuts on intimation to it and subsequently when the difference between demand and supply was increasing, the erstwhile APCPDCL approached the erstwhile APERC and requested to impose restrictions under sec 23 of the Act, 2003. Accordingly, the erstwhile APERC imposed restrictions from 12.09.2012 onwards by its order dated 07.09.2012. Subsequently, the same were extended by orders dated 17.04.2013, 15.06.2013 and 02.07.2013. By order dated 15.06.2013, the erstwhile APERC extended the restriction and control measures upto the billing date of September, 2013. However, when the DISCOM represented to the erstwhile APERC to lift the restrictions in view of the availability of power from the hydel stations from 31.07.2013, the erstwhile APERC by order dated 31.07.2013 removed the same with effect from 01.08.2013. As per Clause 12 (b) of the said order, no deemed consumption charges was to be levied by the DISCOM during the R & C measures.

f. It is stated that the basic premise on which the tariff order was passed is that the ferro alloy consumers, whether they consume or not, pay for 6701 units per kVA during the year, accordingly, these consumers have no choice in energy usage unlike other consumers and this also assures revenue to the DISCOM. However, the APCPDCL deviated from the supply hours (number of scheduled and unscheduled outages), as a

result of which it, being a ferro alloy unit and being consumer of the TSSPDCL situated in the State of Telangana, suffered commercial loss.

g. It is stated that the APCPDCL had imposed power holidays of 2 days each week from February, 2012 onwards. It being a ferro alloy unit which requires constant uninterrupted power, therefore proposed to the APCPDCL that they were willing to operate their unit at a reduced load for all 7 days a week and also informed the APCPDCL that power holiday were causing losses to it. By July, 2012, the APCPDCL was imposing power holidays of 3 days each week. However, by this time, the APCPDCL had already issued a demand notice to it in lieu of it consuming less than 60% load, was suffering heavy losses and had temporarily shut down operations by 15.07.2012. It attempted to restart its unit in February, 2013, but due to the constant power interruptions, could not function efficiently, and closed again in June, 2013. Its power connection was disconnected by the DISCOM on 17.06.2013.

h. It is stated that even when the R & C measures were withdrawn, the APCPDCL had not given up the unscheduled load shedding. In fact, the load shedding increased and went unregulated after the R & C measures were withdrawn. In sum, the hours of supply were varied as per the choice and convenience of the APCPDCL, however, the obligation to pay for the 85% load factor remains fastened on the ferro alloys producers.

i. It is stated that after the bifurcation of the states of Telangana and Andhra Pradesh, the TSSPDCL, now being the licensee of its factory area that is Patancheru Mandal, Sangareddy District, has raised huge demands on it purported to be on account of deemed consumption charges for the financial years 2012-13 and 2013-14.

j. It is stated that it being desirous to restart its unit after refurbishing it, as the same had been lying idle for the past few years and has spent significant amounts to restart the same. Aggrieved by the huge demands raised by the APCPDCL and now the TSSPDCL, it had filed interlocutory applications in O.P.Nos.4 of 2012 and 2013 before the Commission, which are pending for adjudication as on date.

k. It is stated that the Government of Telangana (GoTS) had vide letter No. 582 / PR. A2 / 2018 dated 04.09.2018 considered the request of the ferro alloy industry in the State and had intimated the TSSPDCL that the Government would reimburse certain dues of the ferro alloy units, including development charges and that the issue of deemed consumption charges were pending before the Commission. Further, the TSSPDCL was directed to restore power supply to the ferro alloy units upon the payment of an initial consumption deposit. Accordingly, the TSSPDCL in its meeting held on 26.09.2018 had agreed to let it construct a 132 kV feeder and a dedicated line to its factory. It had requested for 33 MVA to operate both its furnaces in its factory. In the meantime, a load of 1 MVA was sanctioned immediately on the existing line, which was connected on 05.11.2018. Subsequently, a H.T. agreement dated 17.01.2019 was entered between it and the TSSPDCL for its service connection SGR-129 for a contracted load of an additional 19 MVA for a minimum period of 1 year. Further, vide Memo No. CGM(Comml) / SE (C) / DE (C) / ADE-III / D. No. 2356/2018-19, dated 11.01.2019, the TSSPDCL had approved reconnection of additional 19 MVA. The remaining 13 MVA was agreed to be reconnected after the payment of the development charges.

l. It is stated that as such the respondents had raised monthly CC bills for the months of December, 2018 to March, 2019. The applicant had been using this power for testing and commissioning its equipment as the applicant's plant had been under shutdown for the past 7 years.

m. It is stated that it was surprised to receive a demand notice vide Lr. No. SE / OP / SGR / SAO / HT / D. No.157 / 2019 dated 17.06.2019 from the TSSPDCL demanding to pay deemed consumption charges of Rs. 5,87,10,600/- for FY 2018-19 within 15 days failing which disconnection was threatened. It is stated that the demand was being levied for the entirety of FY 2018-19 from December, 2018 to March, 2019 despite the fact that a power of 1 MVA was only reconnected on 05.11.2018 and 19 MVA was reconnected only on 19.01.2019. The TSSPDCL has misinterpreted the condition of tariff order without appreciating the rationale and object in framing the same.

n. It is stated that the relevant Clause of the retail supply tariff order for the FY 2018-19 in O.P.No.21/2017 reads as follows:

*"**HT-1(B): Ferro Alloy***

7.131. Guaranteed energy off-take at 6,701 kVAh per kVA per annum on average contracted maximum demand or average actual demand, whichever is higher. The energy falling short of 6,701 kVAh per kVA per annum will be billed as deemed consumption. This shall be calculated on an annual basis and not on a monthly basis and disconnection periods shall be exempted while computing the minimum off-take energy."

o. It is stated that from FY 2002-03 onwards the ferro alloy units were placed into a separate category HT-1 (B) and the tariff stipulated for this category was based on the formula:

1 kVA x 365 days x 24 hrs x 85% LF x 0.9 PF = 6701 kWh per kVA.

Any shortfall in the consumption below the 6701 kWh/kVA on an annual basis was to be billed as deemed consumption.

The amendment to the tariff for was passed by the then Commission in O. P. Nos. 29-33 of 2002, I.A.No.10/2002 and it was subjected to the condition that:

i. That the ferro alloy units draw their entire requirement of power from DISCOMs only.

ii. Maintain on an annual basis a load factor of 85%.

iii. In case the annual load factor is less than 85%, the deemed consumption charges amounting to the shortfall shall be paid to the DISCOMs.

p. It is stated that the above formula has been continued from time to time specifying the deemed consumption charges to be arrived at an annual basis. The formula itself has been worked out taking entire year as a unit, therefore when its factory has availed of power only from the dates of reconnection i.e., 05.11.2018 and 19.01.2019, the formula cannot be applied partly for the said remaining period of the financial year. If it were to be applied for the said period, the very rationale and object of arriving at the formula would be defeated. The above calculation of the load factor is to be arrived at on an annual basis when full (100%) and

continuous power is made available by the TSSPDCL for all the 24 hrs and 365 days so that the stipulated consumption could actually take place and any shortfall in consumption in any period can be covered up in the subsequent period thereafter. If after having provided full and continuous power, the consumer fails to achieve the stipulated consumption, the short fall units were to be billed as deemed consumption. This principle and practice has been retained in all the subsequent tariff orders. The erstwhile APERC itself has in its orders stipulated that no deemed consumption charges should be levied by taking a few months of continuous power supply and levying deemed consumption charges on those months alone.

q. It is stated that even during the short period after the power supply was reconnected, the units not consumed by it have already been sold and sued by others in a power deficit situation and revenue for the same has already been realised by the TSSPDCL. Therefore, there is no consequential loss to the TSSPDCL by non consumption of the said units. It will therefore not be equitable, proper or just to try to earn further revenue by charging the deemed consumption charges.

r. It is stated that the principle of continuous supply of power throughout the year for entitlement to deemed consumption is a prerequisite, is also recognised by the erstwhile APERC as during the R&C measures, it exempted the ferro alloy unit from levy of the deemed consumption.

s. It is stated that the erstwhile APERC had further clarified in R. P. (SR) No. 78 of 2013 in O. P. No. 1 of 2013 that "*this deemed consumption is a penal provision and it is estimated quantity and hence there is no loss of revenue."* A penal provision can be invoked only when the non defaulting (other) party has fulfilled its part completely. But in this case, there was never a supply of 100% and continuous power to the unit throughout the year and therefore, the TSSPDCL is not entitled to claim the deemed consumption charges.

t. It is stated that it had made a representation to the TSSPDCL dated 01.07.2019 vide letter No. VBCFAL / TSSPDCL / 766 requesting that the deemed consumption charges be waived off until 31.03.2019 and had brought to the notice of the TSSPDCL that the power consumed was

only used for testing purposes of pre-heating its furnaces and start-up operations and not for any production for sale.

u. It is stated that as stated above, in view of uncertain power supply situation in FY 2012-13 and FY 2013-14, it was forced to shut down operations. Now, it is seeking to commence operations again at their plant by investing substantial amounts, these demands of the TSSPDCL will only make sure that it can never again commence operations. The imposition of deemed consumption charges will only result in a death blow and the very existence of the industry is under jeopardy. All those dependants on the industry including workers and their families and those indirectly dependant would be affected. It, after recommencing operations, will contribute crores of rupees towards duties, taxes and other levies to the State and Central exchequers, so there would be severe loss as well. It has a good case on merits and has all chances of succeeding in the present matter. If the annual guaranteed charges are made to be paid before disposal of the case, the very purpose of filing of this case would be rendered infructuous.

3. The applicant has sought the following prayer in the petition.

"Revisit the terms and conditions of the HT Tariff as mentioned in Clause 7.131 (category wise specific conditions of HT Tariff-HT-I (B) ferro alloy) and consequently declare that the action of the respondent in demanding deemed consumption charges from the petitioner in pursuance to the guaranteed energy off-take at 6701 kVAh per kVA per annum on contracted maximum demand for the financial year 2018-19, despite the fact that the petitioner's unit was reconnected only on 05.11.2018 for 1 MVA and on 18.01.2019 for additional 19 MVA, as contrary to the tariff order dated 27.03.2018 passed by this Commission in O.P.No.21/2017 for the financial year 2018-19 as being illegal and unenforceable and consequently set-aside the demands raised by the respondents on the applicant."

4. The respondents have filed counter affidavit to the application and the averments of it are extracted below:

a. It is stated that the power supply to the applicant was disconnected on 19.06.2013 due to non-payment of regular CC bills. Subsequently, the HT agreement was terminated on 19.10.2013. Later, power supply to the applicant was restored on 05.11.2018 on receipt of a letter from GoTS vide letter No.582/PR.A2/2018 dated 04.09.2018 to the effect that surcharge on pending arrears would be reimbursed by the GoTS except 85% deemed energy charges. Initially CMD of 1 MVA was released on 05.11.2018 and additional CMD of 19 MVA was released on 19.01.2019 totalling to 20 MVA. Subsequently, the power supply to the applicant was disconnected on 10.10.l2019 for non-payment of regular CC charges.

b. It is stated that the supply to the ferro alloy industries/units is being extended at concessional tariff that is with lesser energy charges, no demand charges and no minimum charges when compared to that of all other HT industrial units with effect from November 2002 as per the orders of the Commission from time to time. Hence, the condition of maintaining 85% annual load factor has been fixed and the demand notices for payment of 85% deemed/guaranteed energy charges are being issued every financial year. The same formula continued till 2008-09 financial year and from 2009-10 financial year, the Commission added the following Clause.

> *"Guaranteed energy off-take at 6,701 kVAh per kVA per annum on Average Contracted Maximum Demand or average actual demand, whichever is higher. The energy falling short of 6,701 kVAh per kVA per annum will be billed as deemed consumption."*

The above Clause is subject to the condition that ferro alloy units drawing the entire power from DISCOMs. Moreover the ferro alloy units are not eligible for HT-I(A) load factor incentive. As per the above Clause, notices for payment of deemed energy charges are being issued to ferro alloy units every financial year including the applicant.

c. It is stated that TSSPDCL has been issuing demand notices for payment of deemed energy charges by the ferro alloy units every year as per the tariff regulations issued by the Commission from time to time. During the financial year 2012-13, erstwhile APERC issued R&C measures for the period from 12.09.2012 to 31.07.2013 vide letter dated 07.09.2012 as

there was shortage of power supply when compared to demand. During the period in which the R&C measures were in force, the ferro alloy units were exempted from payment of 85% deemed energy charges. Accordingly, the R&C period was excluded while arriving at the deemed energy charges while issuing demand notice dated 09.01.2015 for an amount of Rs.12,32,61,984/- payable by the applicant for the FY 2012-13 towards short fall amount of 85% load factor. Further, it is stated that the DISCOMs proposal for merging of HT-I(B) ferro alloys units with HT-I(A) industry has been negative as the ferro alloy units are covered under special category with no demand charges, no minimum charges etc. Hence, the levy of deemed energy charges for ferro alloy unit is justifiable.

d. It is stated that it is a fact that the Commission has issued orders imposing R & C measures during the FY 2012-13 with a Clause 12 (b) stating that the 85% deemed energy charges should not be levied to ferro alloy units during the R & C period. TSSPDCL has strictly followed the said Clause while issuing notice dated 09.01.2015 to the applicant for payment of deemed energy charges as acknowledged by the applicant in para 4 of the affidavit.

e. It is stated that the Clause of billing for 6701 units per kVA in respect of ferro alloy units was stipulated by the Commission because of the concessions/relief extended to the ferro alloys units in the tariff orders by way of concessional tariff that is with lesser energy charges, no demand charges and no minimum charges when compared to that of all other HT industrial units. Hence, the contention of the applicant that the billing of 6701 units per kVA ensures revenue to the DISCOM is not tenable as the DISCOM is simultaneously loosing revenue due from the other part of tariff by way of minimum charges, lesser energy charges and demand charges. Further, it is stated that no deemed energy charges were levied beyond 31.07.2013 as per Clause 12(b) of the Commission order dated 07.09.2012.

f. It is stated that the demand notices for payment of deemed energy charges have been issued to the applicant duly excluding the R&C period that is from 12.09.2012 to 31.07.2013 in which the applicant

demand was restricted to less than 85% of CMD due to R&C measures. Hence, the contention of the applicant that deemed energy charges should not be levied when the demand is restricted to less than 85% is not correct as the deemed energy charges are calculated for the period in which the power supply was in full without any R&C measures in force. Hence, the applicant is liable to pay the deemed energy charges as arrived at by the respondent. The exemption of 85% deemed energy charges for disconnection period has been approved by the Commission with effect from the FY 2016-17.

g. It is stated that the contention of the applicant that the DISCOM on one hand is imposing R & C measures restricting the demand to less than 85% and on the other hand is levying deemed energy charges for the shortfall amount less than 85% of CMD is not tenable as the deemed energy charges are not levied to the applicant during the R&C period in which the demand is restricted to less than 85% of CMD, on the contrary deemed energy charges are calculated for the period in which R&C measures were not in force during the FY 2012-13 and the respondent was supplying 100% power to the applicant without any restrictions.

h. It is further stated that counter affidavit/written statements have already been submitted to the Commission in the Interlocutory Applications filed by the applicant in O.P.No.4 of 2013 and the same are pending for adjudication before the Commission.

i. It is stated that the power supply to the applicant was disconnected on 19.06.2013 due to non-payment of regular CC bills. Subsequently, the HT agreement was terminated on 19.10.2013. Later, power supply to the applicant was restored on 05.11.2018 on receipt of a letter from GoTS vide letter No.582 / PR. A2 / 2018 dated 04.09.2018 to the effect that surcharge on pending arrears would be reimbursed by the GoTS except 85% deemed energy charges. Initially I MVA has been released on 05.11.2018 and 19 MVA was released on 19.01.2019 totalling to 20 MVA.

j. It is stated that deemed energy charges are levied on the HT-I(B) Industries (Ferro Alloys Units) as per the tariff regulations issued by the

Commission for the FY 2018-19. The Clause relating to levy of 85% deemed energy charges reads as follows.

> *"Guaranteed energy off-take at 6,701 kVAh per kVA per annum on Average Contracted Maximum Demand or average actual demand, whichever is higher. The energy falling short of 6,701 kVAh per kVA per annum will be billed as deemed consumption. This shall be calculated on an annual basis and not on a monthly basis and disconnection periods shall be exempted while computing the minimum off-take energy."*

k. It is stated that as per the above Clause 85% deemed energy charges re levied for the financial year 2018-19 at the end of March, 2019 for the actual number of days to the end of 31.03.2019 as a uniform policy to all the similar category of HT consumers. Accordingly, all other HT consumers have paid 85% deemed energy charges except the applicant. It is further stated that the supply to the ferro alloy industries/units is being extended at concessional tariff that is with lesser energy charges, no demand charges and no minimum charges when compared to that of all other HT industrial units with effect from November, 2002 as per the orders of the Commission from time to time. Hence, the condition of maintaining 85% annual load factor has been fixed and the demand notices for payment of 85% deemed/guaranteed energy charges are being issued every financial year. Accordingly, the 85% deemed energy charges are calculated for the FY 2018-19 to the end of 31.03.2019 and notice was issued for payment of Rs. 5,87,10,600/-.

l. It is stated that the guaranteed (85% load factor) energy charges towards short of 6701 units per kVA per annum are calculated proportionately for the actual working days during the period from 05.11.2018 to 31.03.2019 by considering the average CMD of the applicant HT service SGR 129 and demand notice was issued for payment of Rs. 5,87,10,600/- vide letter dated 17.06.2019 based on the following tariff condition as a uniform policy in the respondent.

> *"Guaranteed energy off-take at 6,701 kVAh per kVA per annum on Average Contracted Maximum Demand or average actual*

demand, whichever is higher. The energy falling short of 6,701 kVAh per kVA per annum will be billed as deemed consumption. This shall be calculated on an annual basis and not on a monthly basis and disconnection periods shall be exempted while computing the minimum off-take energy."

m. It is stated that the respondent cannot deviate the tariff conditions approved by the Commission in regard to calculation of 85% deemed energy charges in respect of HT ferro alloy units.

n. It is stated that the GoTS vide letter dated 04.09.2018 has issued orders to reimburse the surcharge on the arrears pending as on date of issue of the said orders pertaining to ferro alloy units. The total arrears pending as on date would be allowed by the 2nd respondent in 24 interest free monthly instalments with a moratorium period of one year, the first instalment falling due on 01.09.2019. The surcharge on instalments will also be reimbursed by the Industries Department, GoTS. As far as the deemed energy charges are concerned, since the Government has already referred the matter to the Commission vide their letter dated 06.06.2018, the applicant shall abide by the orders of the Commission. Subsequently, the Commission has passed the orders leaving the matter of waiver of deemed energy charges to the DISCOM in the event of GoTS reimbursing the said charges. Based on the above grounds, power supply to the applicant has been restored on 05.11.2018 with a CMD of 1 MVA initially which was enhanced to 20 MVA on 19.01.2019 after entering into HT agreement for the additional CMD of 19 MVA. Hence, the contention of the applicant that the respondents have misinterpreted the condition of tariff order is not tenable as the deemed energy charges have been levied strictly as per the tariff regulations without any deviation.

o. It is stated that the respondents have issued a demand notice dated 17.06.2019 for payment of deemed energy charges as per the tariff regulations issued by the Commission for FY 2018-19 leaving the disconnection period as the power supply was restored to the applicant on 05.11.2018. The Clause relating to the levy of deemed energy charges reads as follows:

"Guaranteed energy off-take at 6,701 kVAh per kVA per annum on Average Contracted Maximum Demand or average actual demand, whichever is higher. The energy falling short of 6,701 kVAh per kVA per annum will be billed as deemed consumption. This shall be calculated on an annual basis and not on a monthly basis and disconnection periods shall be exempted while computing the minimum off-take energy."

p. It is stated that the Clause stipulates levy of deemed energy charges which is arrived at by taking the difference between the actual billed units and 6701 kVAh per kVA per annum on average contracted maximum demand or average actual demand, whichever is higher. The short fall units so arrived at will be billed as per the rate specified in the tariff order. It is pertinent to note here that the deemed energy charges are levied annually by taking the annual consumption. It does not contemplate that the deemed energy charges should not be levied if the power supply is restored in the middle of the financial year. The short fall units as noted above are arrived at proportionately for the financial year based on the consumption during that year and deemed energy charges are calculated accordingly. In the instant case since the power supply was restored on 05.11.2018, deemed energy charges are calculated proportionately for the number of days for which the applicant has availed power supply as per the tariff conditions at the end of March, 2019 and demand notice dated 17.06.2019 has been issued to the applicant for payment of the same. Further, the deemed energy charges are calculated proportionately for 1 MVA and 19 MVA from the dates from which the said CMD is released. Hence, the respondent has not deviated the tariff order as contended by the applicant. Hence, the contention made by the applicant is not tenable as the applicant is trying to misinterpret the tariff order, thereby misleading this Commission to derive undue advantage.

q. It is stated that the contention of the applicant that the units not consumed by the applicant have already been sold and used by others in a power deficit situation and revenue for the same has already been realized by the DISCOM is not tenable as there is no power deficit and

the respondent is providing 24 hours power supply to the consumers including the applicant without any restrictions. Further, the Commission in the tariff order for FY 2018-19 has empowered the respondent to collect deemed energy charges for the shortfall units arrived at by taking the difference between actual consumption and 6701 kVAh per kVA on average contracted maximum demand or average actual demand whichever is higher. As per the provisions of the tariff order, the applicant is liable to pay deemed energy charges without any exception as is being done in respect of the other ferro alloy units which are availing power from the respondent.

r. It is stated that the contention of the applicant that the principle of continuous power supply throughout the year for entitlement to deemed energy charges is a prerequisite is not correct as the same has not been mentioned anywhere in the tariff regulations. Further, the clarification issued by the erstwhile APERC in R.P.(SR) No.78 of 2013 in O.P.No.1 of 2013 pertains to levy of deemed energy charges during R&C period. As clarified by the erstwhile APERC deemed energy charges may not be levied if there was no 100% and continuous power supply. The said clarification cannot be applied to the present case as the power is being supplied to the applicant without any restriction. Hence, the contention of the applicant that the respondent is not entitled to claim the deemed energy charges is not tenable.

s. It is stated that aggrieved by the demand notice dated 17.06.2019 issued by the respondent the applicant submitted a representation dated 01.07.2019 to the respondent requesting to waive off the deemed energy charges until 31.03.2019. Subsequently, the applicant approached the Hon'ble High Court and filed a Writ Petition No.14612 of 2019. The Hon'ble High Court has disposed of the writ petition vide order dated 16.07.2019 with a direction to the respondent to dispose of the representation of the applicant dated 01.07.2019 within two weeks after issuing a notice to the applicant and granting opportunity of hearing to him. Accordingly, the respondent has addressed a letter dated 27.07.2019 to attend the personal hearing on 02.08.2019 at 3 pm in the chambers of the Chairman & Managing Director of the respondent. The

applicant attended the personal hearing on 06.08.2019 in the chambers of the Chairman and Managing Director of the respondent. After thorough discussions the Chairman and Managing Director of the respondent has confirmed that the request of the applicant for waiver of deemed energy charges cannot be considered as it deviates the provisions of the tariff order issued by the Commission. Further, the respondent has informed the applicant to submit a representation to examine the possibility of granting of instalments for payment of the said deemed energy charges of Rs.5,87,10,600/-. But the applicant has not submitted any representation till date.

t. It is stated that subsequently the respondent has issued a speaking order dated 13.08.2019 duly disposing off the applicant's representation dated 01.07.2019, 25.07.2019, 30.07.2019, 06.08.2019 and 08.08.2019 in the light of the judgment of the Hon'ble High Court dated 16.07.2019 in W.P.No.14612 of 2019. Aggrieved by the speaking order dated 13.08.2019 issued by the respondent, the applicant has filed another Writ Petition No.17927 of 2019 before the Hon'ble High Court and the same is pending for hearing on the file of the Hon'ble High Court.

u. It is further stated that since the power supply was restored to the applicant, regular monthly CC bills were issued to the applicant as per the rates prevailing in the tariff regulations for the FY 2018-19. The contention of the applicant that the power was used for testing and commissioning of equipment in the initial 3 months period and hence the levy of deemed energy charges is not justifiable is not tenable as the bills were issued as per the existing tariff rates for the actual consumption irrespective of the purpose (testing and commissioning of equipment) as no such differentiation is mentioned in the tariff order. Since the applicant has utilized the power supply for the period from 05.11.2018 to 31.03.2019, deemed energy charges are calculated proportionately for the FY 2018-19 and demand notice dated 17.06.2019 has been issued accordingly for payment of Rs.5,87,10,600/-.

v. It is stated that the 85% deemed energy charges are levied to the applicant as per the tariff regulations issued by the Commission for the FY 2018-19. The respondent has issued similar notices to the other ferro

alloy units for which payment has been received by the respondent. Since, the respondent has demanded the 85% deemed energy charges strictly as per the tariff provisions of the tariff conditions issued by the Commission, the applicant is liable to pay the same.

w. It is stated that in view of the above submission, the respondents pray the Commission to set aside the interlocutory application filed by the applicant and allow the TSSPDCL to collect the deemed energy charges along with applicable surcharge for the delay in payment as per the provisions of tariff order issued for FY 2018-19 or else TSSPDCL would be put to severe financial loss.

5. The respondents have filed additional counter affidavit to the application and the averments of it are extracted below:

a. It is stated that the applicant has filed an Interlocutory Application vide I. A. (SR) No. 28 of 2019 in O. P. No. 21 of 2017 on 09.07.2019 praying for revisit the terms and conditions of HT Tariff as mentioned in clauses 7.131 (category wise specific condition of HT Tariff – HT-I(B) Ferro Alloys)

b. It is stated that the Act 2003 and Regulation No.2 of 2015 do not speak about the relief of revisiting the orders of the Commission. In fact, the applicant seeks review of the orders of the Commission. Such review petition is required to be filed within 75 days from the date of order.

c. It is stated that Clause 32 of (Conduct of Business) Regulation No.2 of 2015 provides 75 days for review of any order, direction or decision approved by the Commission. The said Clause is reproduced below for perusal please.

"(1) The Commission may on its own motion or on the application of any person or parties concerned, within 75 days of any decision, or order, review such decision, direction or order as the case may be and pass such appropriate orders as the Commission thinks fit.

Provided that the commission may allow on production of sufficient cause to the petitioner a further period not exceeding 30

days for filing the review petition on such terms and conditions as may be appropriate"

d. It is stated that in the instant case the applicant has filed the interlocutory application on 09.07.2019 after about 23 months (682) days for review/revisiting of the conditions of tariff order pertaining to 2017-18 which was issued by the Commission on 26.08.2017.

e. It is stated that the review petition filed by the applicant dated 09.07.2019 is liable to be dismissed since it is barred by limitation.

6. The applicant has filed rejoinder to the counter affidavit and the averments of it are extracted as below:

a. It is stated that the main contention raised by the respondents in their additional counter is that the present applicant is filed for revisiting of terms and conditions of HT Tariff is in the nature of review in as much as Clause 32 provides for limitation of 75 days with further period of 30 days for condonation, the present application is barred by limitation is totally misconceived. The applicant has not filed any review and the nature of application before this Commission is revisiting of the terms and conditions of tariff which is well within the powers of this Commission.

b. It is stated that the tariff was determined by erstwhile Commission and so far as HT-I(B) category consumers were concerned, the following conditions were imposed:

"Guaranteed Energy off-take at 6701 kVAh per kVA per annum on Average Contracted Demand or Average Actual Demand whichever is higher. The energy falling short of 6701 kVAh or kVA per annum will be billed as deemed consumption.

c. It is stated that the above condition presupposes that the licensee shall supply power for the entire year uninterruptedly and consequently, the consumer was obligated to meet the minimum of 85% of demand worked out on annual basis. The intention of the Commission in specifying the above Clause is very clear that 85% of the demand has to be worked out only on annual basis and not for period lesser than the same.

d. It is further stated that the respondents had come up with request for imposition of R & C measures, sometime in September, 2012 in the

midst of tariff year, which culminated into issuance of orders restricting supply. The orders dated 07.09.2012 were extended on 14.09.2012, 01.11.2012, 17.04.2013 and finally restrictions were called off by order dated 31.07.2013. The above periodical intensions indicate that respondents were not clear and no plan of action to supply enough power and this uncertainty forced the applicants to close down the plants. Besides these subsequent events after issuance of tariff order made things detrimental to the consumers who are power intensive. In this situation and coupled with the orders passed by APERC revisiting of the very same conditions. The present application has to be considered exercising the inherent powers of the Commission and cannot be treated as one that of a review. Therefore Clause 32 has no application and the petition is very much within the powers of the Commission for revisiting of the conditions.

e. It is stated that the respondents in the counter had primarily contended that deemed consumption charges were not to be imposed during R & C period from 12.09.2012 to 31.07.2013, ignoring the fact that the said charges could have been levied and computed on annual basis but not on staggered periods excluding R & C. Therefore, these charges are to be excluded from the FY 2011-12, FY 2012-13 and FY 2013-14 during which period admittedly R & C was implemented. Besides it is also an admitted fact that even beyond 31.07.0213, there was severe power shortage resulting in un-scheduled outages in the entire composite State which has been accepted and judicial notice has been taken by APERC in its order dated 06.04.2016 in I. A. No. 1 / 2016 in O. P. No. 4 / 2011, I. A. No. 21 / 2015 in O. P. No. 1 / 2012, I. A. No. 22 / 2015 in O. P. No. 1 / 2013, I. A. No. 23 / 2015 in O. P. No. 3 / 2012 and l. A. No. 24 / 2015 in O. P. No. 2 / 2013. The respondents have not disputed that said factual position, except stating that there was a continuous supply. In the erstwhile State all the power procurement for four DISCOMs was done by APPCC and the same was allocated proportionately, therefore, when there is a shortage of power, two DISCOMs falling within Andhra Pradesh, the respondents herein obviously would be on the same footing as that of other DISCOMs and it is futile to contend otherwise.

f. Further, the APERC had considered this factual position in its order dated 06.04.2016, to which APSPDCL was a party, part of which was then in the distribution area of APCPDCL, presently TSSPDCL, which is extracted hereunder:

"10. The respondents have made available the power supply position to Ferro Alloys units during the non R&C periods of FYs 2012-13 and 2013-14 which details show that the percentage of days with interruptions in supply went even up to 67% of the period and varying periods of interruptions show that except in respect of three services, there were considerable interruptions in the supply. The petitioners filed similar details furnished by Load Monitoring Cell for 2013-14 and other statements furnished by the respondents show that the deficit power supply was significant during the relevant periods."

g. It is stated that the respondents had contended that they would be losing revenue on account of removal of this deemed consumption, which is also factually in-correct. The position at the relevant period of time was that was inadequate power and when DISCOMs are unable to make available the required demand, any revenue loss projected by them would result only in case of availability of excess power. Even this aspect of the matter, the APERC had given specific finding which is extracted hereunder:

"Apart from the distribution companies not projecting or proving any actual loss due to non-consumption of energy by the petitioners during the relevant periods and when the distribution companies realized actual consumption charges for the power supplied to the petitioners even during the relevant periods, the deemed consumption charges ought not to have been imposed and collected from the petitioners.

h. It is stated that the applicant and its association has brought this to the notice of State Government, which in turn in order to review the industry, responded in a positive and pragmatic consideration and has addressed letter dated 06.06.2018 to the Commission requesting to consider the issue in the light of order passed by APERC and conditions then

prevailing, this application is concerned only with deemed consumption for the year mentioned and has nothing to do with other charges such as consumption charges, minimum charges etc, which the applicant are not in issue in the present application. Therefore, respondents' contention that the DISCOMs would suffer revenue losses is misconceived. In fact, applicant and similarly situated industries are in the process of reviving the industries by paying the outstanding arrears besides furnishing required security deposit. The applicant had paid an amount of Rs.3,00,00,000/- towards Initial consumption deposit and due to unforeseen events, the plant has to shut down and intending to reopen.

i. It is stated that it is a matter of fact and does not traverse any specific reply and the reason for non-payment of CC charges was on account of the R & C measures imposed by the respondent, which forced most of the units under the said industry to shut down.

j. It is stated that the respondents reiterate the conditions of the tariff orders on which the concept of demand on 85% load factor was introduced in the year 2009-10 and condition precedent to is that the respondents supply continuous un-interrupted power to the high tension scheduled consumers such as applicant herein.

k. It is stated that for the above reasons and for such further reasons and submissions that may be made in the course of the proceedings and/or at the hearing, the applicant prays the Commission to allow the petition as prayed for.

7. The Commission has heard the parties at length and also perused the material placed before it including the judgments rendered by the Hon'ble Supreme Court. The submission made by the counsel/representative for the parties are briefly extracted herein below:

Record of proceedings dated 11.02.2021:

"… … The counsel for the applicant stated that the matter relates to the issue of clarification of the tariff order for FY 2018-19 insofar as conditions stipulated in the order. The representative of the respondents stated that the counter affidavit has been filed in the matter. The counsel for applicant stated that he is not in receipt of the counter affidavit. The representative of the respondents

agreed to provide a copy of the same immediately to the applicant by email. Accordingly, the matter is adjourned."

Record of proceedings dated 22.02.2021:

"… … The counsel for the applicant stated that he has received counter affidavit in the matter and he is required to file rejoinder against the said counter affidavit. He needs two weeks time to file the same. The representative for respondents has no objection for the same. Accordingly, the applicant shall file rejoinder on or before 08.03.2021 duly serving a copy of the same to the respondents through email or in physical form. Accordingly, the matter is adjourned."

Record of proceedings dated 15.03.2021:

"… … The counsel for the applicant stated that he needs further time to file rejoinder in the matter for a period of two weeks. The representative of the respondents required them to serve a copy of the same as and when it is filed. Accordingly, the matter is adjourned."

Record of proceedings dated 09.06.2021:

"… … The counsel for the applicant stated that he needs further time to file rejoinder in the matter for a period of two weeks. The representative of the respondents required them to serve a copy of the same as and when it is filed. The rejoinder shall invariably the filed on or before the next date of hearing duly obtaining acknowledgement of service to the respondents and filing the same before the Commission. Th counsel for the petitioner shall inform the Commission and file a memo about continuing the proceedings before this Commission or the Hon'ble High Court where similar relief is sought in a writ petition by the applicant, by next date of hearing. Accordingly, the matter is adjourned."

Record of proceedings dated 15.07.2021:

"… … The counsel for the petitioner sought further time to file the rejoinder in the matter. He stated that the authorized signatory is unwell and therefore, the company is assigning the task to another person and therefore he requires three weeks more time. The representative of the respondents stated that the respondents have filed their counter affidavit long back. In the circumstances, the matter is adjourned."

Record of proceedings dated 11.08.2021:

"… … The advocate representing the counsel for applicant has sought further time for filing the rejoinder, as the authorized person has been changed and the new person has already completed the task, as such the same will be filed immediately. The Commission observed that the applicant took time for filing rejoinder on several occasions and as such, the matter has been posted today for final hearing including filing of rejoinder. However, the advocate persisted with the request and stated that the rejoinder will be filed by tomorrow itself. Having regard to the request of the counsel for the applicant, the matter is adjourned on the condition that the rejoinder shall be filed immediately duly making available a copy of the same to the respondents, either physically or by email and no further adjournment will be granted in the matter, as it will be heard finally."

Record of proceedings dated 06.09.2021:

"… … The advocate representing the counsel for applicant has sought further time to make submissions in the matter, as the pleadings have already been completed with the filing of common rejoinder on 04.09.2021. The representative of the respondents also sought time to make submissions in the matter, as he has received the rejoinder only the other day. Accordingly, the matter is adjourned but it is made clear that no further adjournment will be given in the matter."

Record of proceedings dated 25.10.2021:

"… … The advocate representing the counsel for applicant has sought further adjournment in the matter, as the counsel for the petitioner is engaged elsewhere and would definitely argue the matter on the next date of hearing. The representative of the respondents has no objection. Accordingly, the matter is adjourned."

Record of proceedings dated 15.11.2021:

"… … The advocate representing the counsel for applicant stated that the application is old one and need to be heard. However, he sought time to make submissions in the matter on any other date. The representative of the respondents has no objection. Accordingly, the matter is adjourned."

Record of proceedings dated 13.12.2021:

"… … The representative of the respondents stated that the regular representative for the respondents is unable to attend the hearing today due to

personal inconvenience. Therefore, he sought short adjournment of the matter. Accordingly, the matter is adjourned."

Record of proceedings dated 03.01.2022:

"… … The counsel for petitioner stated that the office file has been misplaced in his office, though he is ready to argue the matter. To trace the record and submit the arguments in the matter, he has sought short adjournment. The representative of the respondents stated that it is an old matter. In view of the request of the counsel for petitioner, the matter is adjourned."

Record of proceedings dated 02.02.2022:

"… … The counsel for applicant stated that the prayer in this petition is prima facie with regard to revisiting the tariff order for the year 2018-19 in respect of deemed consumption by the ferro alloys units as specified therein in terms of the earlier orders. The petitioner stopped the unit during R&C Measures and during 2018 it made efforts to revive the unit. Accordingly it requested the release of power supply and initially 1 MVA released for restoration of supply and after obtaining the necessary approvals another 19 MVA has been released. The total availed in January 2019 after payment of all the charges that is security deposit etc., in 20 MVA.

The counsel for petitioner stated that the unit started functioning in January 2019 and earlier efforts were made to get waiver of earlier deemed consumption charges as well as security deposit. Representation was made to the Government which in turn referred the matter to the Commission. The consumer requested the licensee to waive of the earlier demands made towards deemed consumption and other charges and the licensee replied that the matter is before the Government and the Commission, as such action will be taken based on decision of the Government and the Commission.

The petitioner had approached the Hon'ble High Court questioning the demand made by the licensee for arrears. The Hon'ble High Court disposed of the writ petition requiring the petitioner to make representation and the same to the disposed of by the licensee. Subsequently after restoration of power supply, the licensee sought to disconnect it due to non-payment of the earlier demands. Again the petitioner approached the Hon'ble High Court to stop disconnection of power supply. The issue before the Hon'ble High Court and the present application are different. The present application is limited to calculation of

deemed consumption charges by the licensee duly taking into account the period to be considered in terms of the order of the Commission as also modifying the tariff order applicable for FY 2018-19.

The Commission, in the relevant tariff order, had imposed condition of drawing atleast 85% after energy demand at 6701 kVAh per kVA of demand. The applicant during the years 2012, 2013 being constrained to function under the restriction and control measure conditions had closed the unit, since the equipment was required to run on continuous power supply for 365 days in a year. If the machinery is stopped, it will take about two days to restore normalcy, which is detrimental to the functioning of the applicant.

The counsel for applicant emphasized the provisions of the Electricity Act, 2003 as also the Conduct of Business Regulation, 2015. It is his case that the Commission has ample power to revisit the order passed by it at any point of time to mitigate the difficulty caused to any of the stakeholders. Particular reference has been drawn to section 62 (4) of the Act, 2003 and Clauses 38 (1) and (3) of the Conduct of Business Regulation, 2015. He has brought to the notice of the Commission during the financial years 2012-13 and 2013-14 only two ferro alloys units functioned and all other units were closed as they existed in the combined state at that time.

The counsel for applicant has also drawn attention the communication made by the Government with regard to consideration of the issue by the Commission towards restoration of power supply and waving of the charges for the relevant period as also subsequently any penalties. It is stated that the Commission refused to dwell into the issue and relegated the matter to be decided between the licensee and the Government. On further pursuance of the matter, the Commission only clarified that the issue will be examined on a case to case basis, if at all, they approach the Commission.

The counsel for applicant stated that the applicant made efforts to revive the unit, but was stuck with the levy of charges for the period and also penalties due to non-consumption of the energy. As stated earlier the unit was revived and became functional in January 2019 and thereafter the licensee proceeded to levy deemed consumption charges for the period January to March 2019 instead of taking one complete year of 365 days as per the formula ordered by

the Commission and thus demanded payment of amount for deemed consumption charges for 2 months 11 days only.

The counsel for the applicant stated that the Commission provided in its orders that the deemed consumption charges shall be calculated in respect of ferro alloys units on an annual basis and not for the financial year. Therefore, the petitioner is entitle to the same benefit of calculating deemed consumption at the 85% of the load for the total period of one year instead of 3 months as has been done by the licensee. The applicant therefore is before the Commission seeking modification of the tariff order by revisiting the same.

The representative of the respondents stated that non-levy of penalties or deemed consumption charges is applicable only to restriction and control measure period and it cannot be waved of unless suitable assistance is received from the Government. The licensee had no support from the Government despite explaining the status of the licensees as well as that of the consumers. Even otherwise, they cannot seek revisiting of an order passed determining the tariff as it anyway would constitute reviewing the order, which is not permissible under the Act, 2003 and the regulation thereof. The amendment of the order once passed by the Commission determining the tariff is subject to the discretion of the Commission as the provision employs the word 'may' and not 'shall'.

The representative of the respondents further stated that the licensees have acted in accordance with the directions of the Commission with regard to levy or exemption of the deemed consumption charges as well as penalty thereof. If the petitioner is seeking to wave of the amounts, the licensee should be suitably compensated. The calculations made by the licensee in respect of levy are in accordance with the orders of the Commission. The Commission has already decided the issue, when it has replied to the Government, as such there remains nothing to be decided by the Commission.

The representative of the respondent stated that the applicant approached the Hon'ble High Court in two writ petitions on the same issue in W.P.Nos.14612 and 17927 of 2019. Both the writ petitions are pending consideration before the Hon'ble High Court. The issue raised therein is substantially similar to the issue in the application. Therefore, the present application cannot be considered. It is also stated that the conditions imposed in the tariff order are applicable for

the relevant tariff year and not for the subsequent period. Therefore, the licensee appropriately billed the petitioner for the period of 2 months 11 days only for that financial year for applying the principle of deemed consumption for one year. The contention of the applicant is not correct and it is inappropriate to take a full year of 365 days. Accordingly the action of the licensee for FY 2018-19 is in accordance with the order of the Commission.

The counsel for applicant while rebutting the contentions of the licensee, pointed out that the licensee cannot blow hot and cold in the matter. The issue is not generic to all industrial consumers, but is specific to ferro alloys units, as the Commission had imposed specific condition with regard to off take of energy. He has placed reliance on the judgment of the Hon'ble Supreme Court reported in 1975 (2) SCC 508 being Amalgamated Electricity Company Limited against Jalgaon Borough Municipality, wherein the Hon'ble Supreme Court considered the issue of minimum guarantee and minimum consumption. The present case also is on similar lines, which may be considered."

Facts in Brief

8. From the pleadings and on perusal of material on record it is understood that –

a) The applicant is engaged in the business of manufacture and sale of ferro alloys, a power intensive industry, in the Telangana State and had been availing power supply with a contracted demand of 20 MVA from the respondents (TSSPDCL) in whose area of supply the applicant Ferro Alloy Unit [HTSCNo.SGR129] was located i.e., at Rudraram (V), Patancheru (M) in Sangareddy District.

b) That the applicant sought to revive its Ferro Alloy Unit HTSCNo.SGR129 *[whose power supply with contracted demand of 20 MVA was disconnected by the respondent No.2 on 19.06.2013 due to non-payment of regular CC bills and subsequently the HT agreement was terminated on 19.10.2013]* and had approached the Government of Telangana (GoTS) through their Association viz., Telangana State Ferro Alloys Producers Association vide their representation dated 02.08.2017 for suitable relief.

c) The GoTS had by its letter dated 04.09.2018 addressed to the respondent No.1 has granted certain reliefs, which are as below:

"i. Government will reimburse an amount of Rs.44,08,76,490/- towards surcharge on actual dues, surcharge on FSA, minimum charges, development charges from the incentive budget of Industries and Commerce Department.

ii. An amount of Rs.52,74,23,410/- towards actual C.C. charges, FSA charges is to be provided with 24 interest free monthly instalments with one year moratorium. The interest on this will also be reimbursed by the Industries Department from the incentive budget.

iii. In respect of 85% deemed energy charges of Rs.85,26,24,587/- and surcharge on 85% deemed charges of Rs.46,34,94,118/-, as the issue is pending before TSERC, the units of M/s GSN Ferro Alloy and M/s. VBC Ferro Alloys shall abide by the orders of the TSERC.

iv. The above units shall pay initial consumption deposit of Rs. 10,94,91,000/- before restoration of supply and after which, the TSSPDCL immediately restore power supply to the (1) M/s Sri Shiva Spinning Mills Pvt. Ltd. (YDD087), (2) M/s Sri Shiva Spinning Mills Pvt. Ltd. (RJN383), (3) M/s Mahaveer Ferro Alloys (MBN630), (4) M/s Shivam Smelters Pvt. Ltd. (SDP815), (5) M/s GSN Ferro Alloys Pvt. Ltd. (MDK923), & (6) VBC Ferro Alloys (SGR129)."

d) Pursuant to the Government of Telangana communication to the respondent No. 1, the applicant initially sought for releasing of 1 MVA power supply for refurbishing and testing the unit and the same was released by the respondent No.2 under HT-I (B) 'Ferro Alloy Units' category of supply to the applicant on 05.11.2018. Later on, the applicant sought for availing additional power supply of 19 MVA totalling to contracted demand of 20 MVA. On 17.01.2019 an agreement has been entered between applicant and respondent No. 2 and accordingly, 20 MVA power supply has been extended by respondent No.2 to the applicant from 19.01.2019 onwards.

Applicability of retail supply tariff to HT-I(B) 'Ferro Alloy Units' category for FY 2018-19 where the present issue is connected

e) The Commission in its order dated 27.03.2018 in O. P. Nos. 21 & 22 of 2017 has determined the retail supply tariff for FY 2018-19. Accordingly, the applicable retail supply tariff and specific condition (para 7.131) related to HT-I(B) 'Ferro Alloy Units' category in FY 2018-19 is as given below:

"HT-I(B): Ferro Alloys

Category	***Demand Charge* (Rs. / month)***		***Energy Charge (Rs./kVAh)***
	Unit	***Rate***	
HT I(B): Ferro Alloy Units			
11 kV			*5.90*
33 kV			*5.50*
132 kV and above			*5.00*
** Demand charge is calculated at Rs./kVA/month of the Billing Demand*			

… …

HT-I (B): Ferro Alloy

7.131 Guaranteed energy off-take at 6,701 kVAh per kVA per annum on Average Contracted Maximum Demand or Average Actual Demand, whichever is higher. The energy falling short of 6,701 kVAh per kVA per annum will be billed as deemed consumption. This shall be calculated on an annual basis and not on a monthly basis and disconnection periods shall be exempted while computing the minimum off-take energy."

f) While so, as the applicant was availing power supply, respondent No.2 sent a letter/demand notice dated 17.06.2019 claiming Rs.5,87,10,600/- towards deemed consumption (energy) charges for FY 2018-19 and it is stated as below:

"It is to inform that as per Terms & Conditions of Supply and Tariff Order for FY 2018-19, the Ferro Alloy services are required to pay Deemed Energy charges for energy falling shot of 6,701 kVAh per kVA per annum towards deemed consumption as guaranteed

energy off-take at an average contracted maximum demand or average actual demand whichever is higher.

Hence, it is requested to pay an amount of Rs. 5,87,10,600/- towards Deemed Energy charges for FY 2018-19 within 15 days, otherwise your service is liable for disconnection without further notice (the calculation sheet is enclosed for ready reference).”

The calculation sheet enclosed to the letter is reproduced below:

Month / Year	Opening Date	Closing Date	No. of Days	CMD	RMD	Average Base MD	Actual recorded kWh	Actual recorded kVAh	Actual PF	Deemed Energy to be availed at LF 0.85 with PF 0.90	Shortfall deemed energy units
12/2018	05/11/2018	18/12/2018	43	1000	732.72	1000	64400	66800	0.96	789480	722680
01/2019	18/12/2018	18/01/2019	31	1000	239.20	1000	51600	53400	0.97	569150	515760
02/2019	18/01/2019	19/02/2019	32	20000	19341.60	20000	6784600	7051400	0.96	11750400	4699000
03/2019	19/02/2019	19/03/2019	28	20000	18723.60	20000	5529600	5627800	0.98	10281600	4653800
03/2019	19/03/2019	31/02/2019	12	20000	14796.00	20000	3255520	3255520	1.00	4406400	1150880
			146	62000	53833.12	62000	15673000	16054920		27797040	11742120
Total Units @ 85% LF 27797040											
Actual Consumption 16054920											
Difference Units 11742120											
Load Factor Shortfall amount 11742120 x 5 = Rs.5,87,10,600/-											
At .85 LF units = Highest average CMD or RMD which ever is high x 85 x 0.90 x No. od days x No. of hours per day											
Deemed energy = Energy to billed at 0.85 LF(-) Recorded kWh											

g) Aggrieved by the demand notice dated 17.06.2019 issued by the respondent No.2, the applicant submitted a representation dated 01.07.2019 to the respondent requesting to waive off the deemed energy charges until 31.03.2019, Subsequently, the applicant had filed a Writ Petition (W.P.) No.14612 of 2019 before the Hon’ble High Court and the Hon’ble High Court disposed the writ petition vide order dated 16.07.2019 with a direction to the respondent to dispose of the representation of the applicant dated 01.07.2019 within two weeks after issuing a notice to the applicant and granting opportunity of hearing to him.

h) Consequently, after issuing a due notice to the applicant and granting an opportunity of hearing the applicant, the respondent No.1 served the

speaking order dated 13.08.2019 and disposed of the representation dated 01.07.2019 and also the subsequent representations dated 25.07.2019, 30.07.2019, 06.08.2019 and 08.08.2019 and upheld the claim dated 13.08.2019.

i) Aggrieved by the speaking order date 13.08.2019 issued by the respondent No.1, the applicant has filed another Writ Petition No.No.17927 of 2019 before the Hon'ble High Court, the prayer sought therein is as below:

> *"to pass an order or orders or direction more particularly one in the nature of a writ of mandamus declaring the action of the respondents in imposing deemed consumption charges on the petitioner in pursuance of the Guaranteed Energy Offtake at 6701 kVAh per kVA per annum on contracted Maximum Demand for the financial year 2018-19 despite the fact that the petitioners unit was reconnected only on 05.11.2018 for 1 MVA and on 19.01.2019 for additional 19 MVA vide proceedings Lr.No.CGM Rev/GMR/SAO Rev/AO HT/AAO HT/D.No. 172/19 dated 13.08.2019 issued by the 4th respondent as being arbitrary, illegal contrary to the Tariff Order dated 27.03.2018 passed by the Telangana State Electricity Regulatory Commission in O.P.No.21/2017 contrary to the provisions of the Electricity Act, 2003 besides violating petitioners rights guaranteed under Article 14 and 19(1)(g) of the Constitution of India and consequently set aside the proceedings and demand notice Lr.No.CGM Rev/GMR/SAO Rev/AO HT/ AAo HT/D.No.172/19 dated 3.08.2019 issued by the 4th respondent. … … "*

The Hon'ble High Court has granted interim directions as mentioned below:

> *"Heard the learned counsel for the petitioner. Sri R.Vinod Reddy, learned Standing Counsel for respondents, takes notice on their behalf, and seeks time for instructions. Post after two weeks in the motion list. In the meanwhile, there shall be interim directions as prayed for."*

The said directions are continued by order dated 20.01.2020 as stated below:

"Interim order granted on 20.08.2019 is extended until further orders.

… … ."

Thus, the applicant is enjoying the power supply.

9. Upon perusal of the prayer in the said writ petition and that of the prayer in the present I.A., the overall theme is identical, but the writ petition is related to the claim, whereas the present interlocutory application is relating to revisit and modification of the terms and conditions of retail supply tariff order for FY 2018-19 specifically as mentioned in Clause 7.131 in relation to HT-I(b) ferro alloy units and consequently to declare that the action of the respondent in demanding 85% deemed consumption charges from the applicant for FY 2018-19 as illegal and unenforceable and consequently to set-aside the demand raised by the respondents on applicant. Thus, the writ petition and application are not similar to each other and therefore, this application is proceeded with by the Commission.

10. Prima facie the issue in this Interlocutory Application is with regard to levy of 85% deemed consumption charges for FY 2018-19. The applicant's contention is that it's ferro alloy unit came to be operational only in November, 2018 and fully operated from January, 2019 onwards and was not availed power supply for the substantial part of FY 2018-19 and therefore, when the licensee sought to recover 85% of the deemed consumption charges for FY 2018-19, is now seeking revisiting and modification of the tariff order based on the wording employed in retail supply tariff order for FY 2018-19 that the consumption shall be considered on annual basis and not for financial year. Whereas the rival contention of the respondents is that since the applicant has utilized the power supply for the period from 05.11.2018 to 31.03.2019, 85% deemed consumption (energy) charges are considered proportionately and demand notice dated 17.06.2019 was issued for payment of Rs.5,87,10,600/- as per the provisions and conditions in retail supply tariff order for FY 2018-19 issued by the Commission.

11. Before dwelling upon the issue raised by the applicant, firstly it has to be seen whether the instant Interlocutory Application filed by the applicant falls within the purview of review petition and barred by limitation as contended by the respondent in the additional counter. According to the respondent the relief sought by the applicant is nothing but review of the orders of the Commission and is barred by limitation and liable for dismissal and such review petition is required to be filed within 75 days from

the date of order as per Clause 32 of Regulations No.2 of 2015 and the Commission may allow further period of 30 days on such terms and conditions as may be appropriate subject to production of sufficient cause and whereas the application is filed on 09.07.2019 after 15 months (about 469 days) days for review/revisiting of the conditions of retail supply tariff order for FY 2018-19 which was issued by the Commission on 27.03.2018 therefore the application is barred by limitation and liable for dismissal. Whereas in its rejoinder to the above contention the applicant stated that the application is not a review and nature of the application is for revisiting and modification of the terms and conditions of retail supply tariff order for FY 2018-19 in relation to HT-I(B) ferro alloy units which is well within the powers of this Commission under Section 62(4) read with 86 of the Act, 2003 and Clause 38 (1) and (3) of Conduct of Business Regulations No.2 of 2015.

12. Under Section 64 read with Section 62, determination of tariff is to be made only after considering all suggestions and objections received from the public. The Commission cannot assume to itself any powers which are not otherwise conferred on it. Needless to add that under the guise of exercising its inherent power which are envisaged in Clause 38 (1) and (3) of Conduct of Business Regulations No.2 of 2015, the Commission cannot take recourse to exercise of a power, procedure for which is otherwise specifically provided under the Electricity Act, 2003. Moreover, neither the Electricity Act, 2003 nor Regulation No.2 of 2015 does speak about the relief of revisiting the orders issued by the Commission.

13. Strictly speaking the grounds raised by the applicant in the application are attracting for review of retail supply tariff order for the FY 2018-19 in relation HT-I(B) Ferro Alloys. The Section 94 of the Electricity Act, 2003 deals with the powers of the Commission as far as the conduct of the proceedings. Under Section 94(1)(f), the Commission has the power to review its orders and the power of review under Section 94(1)(f) is akin to that under Order XLVII Rule 1 of Civil Procedure Code (CPC) i.e., only if such order was made under: (i) mistake or error of fact apparent on the face of the record; (ii) discovery of new and important matter which was not within the applicant's knowledge at the time when the order was made; or (iii) any other sufficient reason to meet the ends of justice.

14. As rightly said by the respondents a review petition is required to be filed within 75 days from the date of order as per Clause 32 of (Conduct of Business) Regulations No.2 of 2015 and the Commission may allow further period of 30 days on such terms and conditions as may be appropriate subject to production of sufficient cause. Whereas the instant Interlocutory Application came to be filed by the applicant on 09.07.2019 after 15 months (about 469 days), after issue of order by the Commission on 27.03.2018, with a request for revisiting of the conditions of retail supply tariff order for FY 2018-19 without there being any mention of sufficient cause to condone the delay.

15. In this connection it is to mention that undoubtedly, the respondents raised similar defence as enumerated above while resisting the other two interlocutory applications of the applicant viz., I.A.No.14/2019 in O.P.No.4 of 2012 and I.A.No.13/2019 in O.P.No.4 of 2013. But this Commission, however not considered the defence of the respondents, numbered those two interlocutory applications and proceeded with for the reason when the GoTS vide letter No.1114/PR.A1/2017, dated 06.06.2018 referred the matter to the Commission with a request to examine the request of the Ferro Alloys Industries for waiver of deemed energy (consumption) charges for the period from FY 2010-11 to FY 2014-15 and also for disconnection period w.e.f. FY 2015-16 as ordered by APERC the Commission Communicated to the Government of Telangana vide letter dated 11.10.2018 that "*if the respective tariff order is to be modified, as stated above, it is for the individual consumers to approach this Commission for modification of the same and which has to be examined on a case to case basis."* The facility given for individual to approach the Commission was for only such Ferro Alloy units against whom the respondents levied deemed consumption charges during the specified period and not for other regular periods.

16. The facts and situations narrated in the instant interlocutory application is completely varying from the facts and situations narrated in those two interlocutory applications, therefore the instant interlocutory application cannot be put with the same footing particularly with regard to limitation aspect in filing of a review petition. The applicant cannot take advantage of the facility extended for seeking modification of retail supply tariff order as stated in the communication sent to GoTS from this

Commission on 11.10.2018 when the dispute raised by the applicant in the instant interlocutory application is not related to the specified period.

17. In view of the above stated reasons it is hereby concluded that the instant interlocutory application of the applicant is nothing but a review petition and the same is not filed within time and it is barred by limitation.

18. Therefore the interlocutory application is dismissed without numbering.

This order is corrected and signed on this the 28th day of September, 2022.

Sd/-	Sd/-	Sd/-
(BANDARU KRISHNAIAH)	(M. D. MANOHAR RAJU)	(T. SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

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