

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

I.A. NO.221 OF 2015
IN
DFR No.1072 OF 2015

Dated:15th January, 2016.

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

IN THE MATTER OF:

1. M/s Vedanta Ltd
(Formerly known as M/s Sesa Sterlite
Limited)
1st Floor, Fortune Tower,
Chandrasekharpur,
Bhubaneswar-751023
Odisha.

....Appellant(s)/
Applicant(s)

Versus

1. Odisha Electricity Regulatory)
Commission)
Bidyut Niyamaka Bhawan, Unit-VIII)
Bhubaneswar-751012,)
Odisha.)

2. The Authorised Officer)
WESCO Utility(Formerly known as)
Western Electricity Supply Company of)
Odisha Ltd.,))
At/Po: Burla-768017, Sambalpur,)
Odisha.)

3. The Authorised Officer)
 NESCO Utility(Formerly known as)
 North Eastern Electricity Supply)
 Company of Odisha Ltd.,))
 Corporate Office:)
 Januganj, Balasore-756019)
 Odisha.)
4. The Authorised Officer)
 SOUTHCO Utility (Formerly known as)
 Southern Electricity Supply Company)
 of Odisha Ltd))
 Corporate Office:)
 Courtpeta, Berhampur-760004)
 Odisha.)
5. The Chief Executive Officer)
 Central Electricity Supply Utility of)
 Odisha Ltd.,(CESU))
 2nd Floor, IDCO Towers,)
 Janpath, Bhubaneswar-751022)
 Odisha.)....Appellant(s)/
 Applicant(s)

Counsel for the
 Appellant(s)/Applicants ... Mr. Sanjay Sen, Sr. Adv.
 Mr.Hemant Singh

Counsel for the Respondent(s) ...Mr. Rutwik Panda
 Mrs. Anshu Malik
 Mr.G. Umopathy for R.1

Mr. Buddy A. Ranganadhan
 Mr. Hasan Murtaza
 Ms. Malaika Prasad for R.2

Mr. Raj Kumar Mehta
 Mr. Abhishek Upadhyay
 Ms. Himanshi Andley for R.3

ORDER**PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI – CHAIRPERSON**

1. The Appellant has challenged in this appeal order dated 24/6/2010 passed by the Odisha Electricity Regulatory Commission (“the State Commission”). There is 1727 days’ delay in filing the appeal. Hence, in this application the Appellant has prayed that the said delay be condoned.

2. According to the Appellant the Appellant could not challenge the impugned order and the calculation methodology adopted by the State Commission for determination of Cross Subsidy Surcharge based on legal understanding and advise that its SEZ unit was not consumer of WESCO and hence it has no liability towards payment of Cross Subsidy Surcharge because of deemed distribution licensee status. On 25/4/2014, based on the judgement dated 25/4/2014 pronounced by the Supreme Court the Appellant became aware of its liability towards payment of Cross Subsidy Surcharge. It is further submitted by the Appellant that it was not made a party to the proceedings before the State Commission wherein the Cross Subsidy Surcharge was

determined for FY 2010-11 to FY 2013-14. The Appellant came to know about the wrong methodology adopted by the State Commission only after receipt of demand letter dated 28/4/2014 of Respondent No.2. Thereafter, the Appellant preferred a petition before the State Commission being Case No.37 of 2014 *inter alia* praying for correct computation of the Cross Subsidy Surcharge and for setting aside disconnection notice. The said petition was dismissed by the State Commission vide its order dated 9/7/2014.

3. On 17/7/2014 the Appellant filed writ petition in the High Court challenging the said order dated 9/7/2014 and challenging the impugned order dated 24/6/2010. On 17/4/2015 the High Court disposed of the said writ petition by directing that appeal be filed under Section 111 of the Electricity Act in this Tribunal within 15 days from the date of the order. The Appellant was directed to deposit rupees five crores with WESCO within the said time limit. A direction was issued that till filing of the appeal there shall be no disconnection of power. The Appellant has accordingly deposited the said amount. The Appellant has filed the instant appeal within the said period of 15 days.

4. Mr. Buddy Ranganathan, learned counsel for the 2nd Respondent has strenuously opposed the application for condonation of delay. Counsel submitted that a wrong statement is made in the application that the Appellant came to know about its liability to pay Cross Subsidy Surcharge only when the Supreme Court pronounced its judgment dated 25/4/2014. Counsel submitted that in its order dated 17/9/2012 the State Commission had held that Cross Subsidy Surcharge was payable by the Appellant. The said order is reflected in the order dated 9/7/2014 passed on a petition filed by M/s Sesa Sterlite Ltd., which was formed on amalgamation of the Appellant and Sterlite Energy Ltd. Counsel submitted that the State Commission in the said order dated 9/7/2014 has recorded that there was a meeting held between the disputing parties and as per the minutes of the said meeting, it was concluded in the meeting that the calculation of Cross Subsidy Surcharge of WESCO has been made as per the order of the State Commission for FY 2010-11 and FY 2012-13 and both the parties had agreed to it and therefore the issue of methodology of calculation of Cross Subsidy Surcharge does not arise. Counsel submitted that since there was a compromise between the parties it is not open to the

Appellant to raise the same issues again. Counsel submitted that the Appellant did not respond to public notice. It is therefore not open to the Appellant to make a grievance that it was not a party to the proceedings. Counsel submitted that no case is therefore made out for condonation of delay.

5. Mr. Sen, learned Sr. Advocate on the other hand submitted that the Appellant has given acceptable explanation. Sufficient cause has been made out, hence delay deserves to be condoned. Counsel submitted that the agreement recorded in order dated 9/7/2014 will not come in the way of the Appellant in challenging the impugned order because what is being now challenged is the adopted formula and the violation of tariff policy.

6. We have carefully considered the rival contentions. In our opinion the explanation offered by the Appellant is reasonable and acceptable. It deserves to be accepted. The case of Appellant is that the Appellant realised that it is liable to pay Cross Subsidy Surcharge when the Supreme Court declared

judgement on that point on 25/4/2014. It is true that the Appellant was aware about original order dated 17/9/2012 passed by the State Commission where the State Commission has held that the Appellant was liable to pay Cross Subsidy Surcharge. But it must be remembered that that view was confirmed by the Supreme Court on 25/4/2014. Therefore, the Appellant is right in contending that on 25/4/2014 it became aware of its liability because on that day the highest Court of land confirmed it.

7. We have also noted that the Appellant had challenged order dated 9/7/2014 and the impugned order dated 24/6/2010 in the High Court and the High Court directed the Appellant to file appeal in this Tribunal within 15 days. The Appellant accordingly filed the appeal. Pertinently the High Court had directed that during the said period there should be no disconnection of power. Besides the High Court had directed the Appellant to pay rupees five crores to WESCO, which the Appellant has paid. The fact that the Appellant was pursuing remedy of writ will have to be taken into account. Moreover, the Appellant was not a party before the State Commission. It is

true that public notice was issued. But while considering condonation of delay the Appellant's absence before the State Commission cannot be glossed over. We may also mention that appeals raising similar issue have been admitted by this Tribunal. As regards alleged compromise between the parties and the Appellant's contention that it is still open to it to challenge violation of tariff policy and formula adopted by the State Commission, since these submissions relate to merits of the case we are not inclined to deal with them at this stage. Suffice it to say that the Appellant has given acceptable explanation for not filing the appeal within the period of limitation. Delay will have to be therefore condoned. In the circumstances, delay in filing the appeal is condoned on the Appellant depositing a sum of Rs.50,000/- (Rupees fifty thousand only) with "The Child Relief and You (CRY)", 632, 2nd Floor, Lane No.3, West End Marg, Saiyadul Ajaib, New Delhi, within three weeks from today. Upon such deposit being made the delay shall stand condoned. The Registry shall then register the appeal. Needless to say that if the amount is not paid as directed the appeal shall stand dismissed. If the payment is deposited as directed, the Registry to place the appeal on board on **10/2/2016**.

8. The Application is disposed of in the afore-stated terms.
9. Pronounced in the Open Court on this 15th day of January, 2016.

I.J. Kapoor
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]

√REPORTABLE/~~NON-REPORTABLE~~