

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

(APPELLATE JURISDICTION)

APPEAL NO. 250 OF 2013

Dated: 10th September, 2015

**Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

IN THE MATTER OF

NTPC Limited

NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi -110003

..... Appellant/Petitioner

VERSUS

1. Central Electricity Regulatory Commission

3rd & 4th Floor, Chanderlok Building,
36, Janpath,
New Delhi- 110001

2. Uttar Pradesh Power Corporation Ltd.

Shakti Bhawan, 14, Ashok Marg,
Lucknow-226001,
Uttar Pradesh

3. Jaipur Vidyut Vitaran Nigam Ltd.

Vidyut Bhawan, Janpath,
Jaipur 302005

4. Ajmer Vidyut Vitaran Nigam Ltd.

Old Power House, Hathi Bhata,
Jaipur Road,
Ajmer-305001

5. Jodhpur Vidyut Vitaran Nigam Ltd.

New Power House, Industrial Area,
Jodhpur-342003

6. Tata Power Delhi Distribution Ltd.
Grid Substation, Hudson Road,
Kingsway Camp,
Delhi-110009
 7. BSES Rajdhani Power Ltd.
BSES Bhawan, Nehru Place,
New Delhi-110 019
 8. BSES Yamuna Power Ltd.
Shakti Kiran Building, Karkardooma,
Delhi-110 092
 9. Haryana Power Purchase Centre.
Shakti Bhawan, Sector-VI, Panchkula,
Haryana-134109
 10. Punjab State Power Corporation Ltd,
The Mall,
Patiala-147001
 11. Himachal Pradesh State Electricity Board Ltd.
Kumar Housing Complex Building-II,
Vidyut Bhawan,
Shimla- 171004
 12. Power Development Department,
Govt. of Jammu & Kashmir, Secretariat,
Srinagar-190009
 13. Electricity Department (Chandigarh)
Union Territory of Chandigarh,
Addl. Office Building, Sector-9 D,
Chandigarh-160 009
 14. Uttarakhand Power Corporation Ltd.
Urja Bhawan, Kanwali Road,
Dehradun-248001
- Respondents

Counsel for the Appellant	...	Mr. M.G. Ramachandran Ms. Poorva Saigal Ms. Ranjitha Ramachandran
Counsel for the Respondent(s)...		Mr. Pradeep Misra Mr. Manoj Kr. Sharma for R-2 to 5 Mr. R.B. Sharma for R-7 Mr. Sidharth Singh Mr. Alok Shankar for TPDDL

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The instant Appeal under Section 111 of the Electricity Act, 2003, has been preferred by NTPC Limited (in short, the '**Appellant/Petitioner**'), against the Order, dated 6.8.2013 passed by the Central Electricity Regulatory Commission (in short, the '**Central Commission**') in Petition No. 28/GT/2013 for the revision of tariff (True-Up) for the tariff period 1.4.2009 to 31.3.2014 for the Appellant's Auraiya Gas Power Station (663.36 MW). The Central Commission, by the impugned order, disposed of the said Petition No. 28/GT/2013 relating to generation tariff of the Appellant with the following observations:

- (a) The annual fixed charges allowed as above are subject to truing up as per Regulation 6 of the 2009 Tariff Regulations.
- (b) The energy charge rate as worked out in order, dated 23.5.2012, in Petition No. 270/2009 remained unchanged.
- (c) The difference in the annual fixed charges determined by the order, dated 23.5.2012, and those determined by this order shall be adjusted in accordance with the proviso to Regulation 5(3) of the 2009 Tariff Regulations.

2. The Appellant, NTPC is aggrieved by the impugned order on the following aspects, where the value of the said capital assets duly commissioned and put to use have not been considered for tariff:

- (i) in respect of the Energy Management System for the tariff period 2009-14 on the ground that the benefit of reduction in Auxiliary Power Consumption is not passed onto the beneficiaries during 2009-14 and, hence, not allowed a sum of Rs. 10.84 lakhs claimed by the Appellant as additional capitalization in respect of the Energy Management System (EMS);

- (ii) in respect of a Hydra Mobile Crane of 12T capacity on the ground that the Renovation & Modernization (R&M) activities would be completed only during the next tariff period 2014-19. A sum of Rs.10.87 lakhs claimed by the Appellant as additional capitalization in respect of a Hydra Mobile Crane of 12T capacity has been disallowed;
- (iii) in respect of Refurbishment of Gas Turbine rotors on the ground that the R&M activities would be completed only during the next tariff period 2014-19. A sum of Rs 377.89 lakhs claimed by the Appellant as additional capitalization in respect of Refurbishment of GT rotors has also been disallowed; and
- (iv) in respect of Up-gradations of Fire Fighting Communication System on the ground that the R&M activities would be completed only during the next tariff period 2014-19. A sum of Rs. 48.91 lakhs claimed by the Appellant as additional capitalization relevant to Up-gradations of Fire Fighting Communication System has been disallowed.

3. The learned Central Commission, in the impugned order, has disallowed the Appellant's claims on the following grounds:

- (a) that the Appellant/petitioner has claimed actual expenditure of Rs. 10.87 lakh during FY 2010-11 towards procurement of Hydra mobile crane of 12T capacity. Since, the installation of this crane would form part of R&M activity of GTs, as the same would facilitate lifting of equipments and heavy materials for their movements during R&M of GTs. Since, R&M activities of GTs would be completed only during the next tariff period i.e. FY 2014-19, the expenditure on this count could be considered only in the next tariff period along with the R&M of GTs. Hence, expenditure has not been allowed during this tariff period.

- (b) that the Appellant/petitioner has claimed actual expenditure of Rs. 377.89 lakh during FY 2011-12 towards refurbishment of GT rotors. The capital expenditure incurred form part of the R&M activity of gas turbine. Since, the R&M of Hot Gas Path components would be completed only during the next tariff period i.e. FY 2014-19, the capital expenditure on this count could be considered only in the next tariff period as the benefit of full R&M and consequent extension of life of the generating station could be passed on to the beneficiaries after completion of R&M.
- (c) that the Appellant/petitioner has claimed actual additional capital expenditure of Rs. 48.91 lakh during FY 2011-12 on cash basis, towards up-gradation of the fire fighting communication system. This capital expenditure also form part of the approved R&M activity. Hence, this expenditure of Rs. 48.91 lakh could only be considered in the next tariff period i.e. FY 2014-19.
- (d) that the Appellant/petitioner has claimed actual expenditure of Rs. 10.84 lakh (Rs.8.74 lakh during 2010-11, and Rs.2.10 lakh during FY 2011-12) towards Energy Management System (EMS) in order to monitor the auxiliary power consumption of the generating station and a liability of Rs. 3.40 lakh had been discharged during 2011-12, thereby, arriving at a total capital expenditure of Rs. 14.24 lakh. Considering the fact that the benefit of reduction in auxiliary power consumption is not passed on to the beneficiaries during the period 2009-14, the said expenditure should be borne by the Appellant/petitioner.

4. The relevant facts for the purpose of deciding this Appeal are as under:

- (a) that the Appellant, NTPC is a Central Government Enterprise and a Company incorporated under the Companies Act, 1956.

The Appellant/petitioner is engaged in the business of generation and sale of electricity to various purchasers/beneficiaries in India.

- (b) that one of the generating stations of NTPC is the Auraiya Gas Power Station and the energy generated from this station is supplied to Respondent No. 2 to 14.
- (c) that on 19.1.2009, the Central Commission notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as '**the Tariff Regulations, 2009**') applicable to determination of tariff for generating stations of NTPC for the tariff period 1.4.2009 to 31.3.2014.
- (d) that by an Amendment Notification, dated 21.6.2011, the Central Commission has amended Regulation 9 of the Tariff Regulations, 2009 as under-

"5. Amendment of Regulation 9 of the Principal Regulations.- Three sub-clauses namely, (vi) , (vii) and (viii) shall be added after sub- clause (v) of clause (2) of Regulation 9 of the Principal Regulations as under:

"(vi) In case of gas/ liquid fuel based open/ combined cycle thermal generating stations, any expenditure which has become necessary on renovation of gas turbines after 15 year of operation from its COD and the expenditure necessary due to obsolescence or non-availability of spares for successful and efficient operation of the stations.

Provided that any expenditure included in the RENOVATION AND MODERNIZATION on consumables and cost of components and spares which is generally covered in the O&M expenses during the major overhaul of gas turbine shall be suitably deducted after due prudence from the RENOVATION AND MODERNIZATION expenditure to be allowed.

(vii) Any capital expenditure found justified after prudence check necessitated on account of modifications required or done in fuel receipt system arising due to non-materialisation of full coal linkage in respect of thermal generating station as result of circumstances not within the control of the generating station.

(viii) Any undischarged liability towards final payment/withheld payment due to contractual exigencies for works executed within the cut-off date, after prudence check of the details of such deferred liability, total estimated cost of package, reason for such withholding of payment and release of such payments etc.”

- (e) that on 13.11.2009, the Appellant-NTPC, in terms of the Tariff Regulations, 2009, filed Petition No. 270 of 2009 (main petition) before the Central Commission for determination of tariff of the Auraiya Station for the period 2009-14. During the pendency of the said petition, the Central Commission, vide order, dated 21.4.2011, passed in another petition being Petition No. 193 of 2009, revised the tariff of the Auraiya Station for the previous period 2004-09 considering the impact of additional capital expenditure incurred during the year 2004-09 and, in the light of the judgment of this Appellate Tribunal, dated 13.6.2007, in Appeal No. 139 to 142 etc of 2006, 10,11 and 23 of 2007 and, judgment, dated 16.3.2009 in Appeal No. 133, 135, 136 and 148 of 2008, based on the capital cost of Rs. 74480.63 lakh as on 31.03.2009. This revised annual fixed charge was decided to be subject to the outcome of Civil Appeal filed by the Central Commission before the Hon'ble Supreme Court.
- (f) that the learned Central Commission, decided the above Petition No. 270 of 2009, vide order, dated 23.5.2012, and determined the tariff for the Auraiya Station for the tariff period 1.4.2009 to 31.3.2014 on the basis of extension of the life of Gas Turbines of the Gas Power Station by 15 years instead of 10 years provided for in Regulation 9 (2) of the Tariff Regulations, 2009.
- (g) that the Appellant-NTPC filed review petition being Review Petition No. 15 of 2012 seeking review of the main tariff order, dated 23.5.2012, in Tariff Petition No. 270 of 2009 on the issue of wrong consideration of balance life of 15.59 years as on 1.4.2009 instead of 6.57 years.

- (h) that the learned Central Commission vide review order, dated 29.4.2013, disposed of the said review petition as under:

“10. The submissions of the petitioner in its affidavit dated 9.4.2013 are taken on record. In Petition No.28/GT/2013 filed by the petitioner on 27.7.2012 for revision of tariff of the generating station for 2009-14 based on trueing up exercise, it is noticed from the submissions of the petitioner in Form-9 of the petition that major part of R&M on GTs have been postponed based on the actual progress/award position of various schemes and these works are expected to be capitalized beyond March, 2014. In other words, the expenditure on R&M of GTs has been revised and is likely to materialize during the next tariff period i.e 2014-19. Consequent upon this, the issue of revision of the balance useful life of the generating station for the purpose of depreciation as claimed by the petitioner in this review petition no longer survives. Accordingly, this review petition is dismissed as infructuous.

11. The question of calculation of the balance useful life of the generating station based on the revised phasing of expenditure would however be considered by the Commission at the time of disposal of the True-up Petition No.28/GT/2013, based on the submissions of the parties there under.

12. Review Petition No. 15/2012 is disposed of in terms of the above.”

- (i) that on 27.7.2012, the Appellant-NTPC, in accordance with provisions of Regulation 6(1) of Tariff Regulations, 2009, filed True-up Petition No. 28/GT/2013 before the Central Commission to revise the tariff for Auraiya Station for the period 1.4.2009 to 31.3.2014 considering the additional capitalization during the said period based upon the actual capital expenditure (on cash basis) for the tariff years 2009-10, 2010-11 & 2011-12 and projected capital expenditure for 2012-13 & 2013-14.
- (j) that the learned Central Commission, vide impugned order, dated 6.8.2013, has disallowed the claim of the Appellant mainly on the ground that the Renovation And Modernization of Gas Turbines will be completed beyond March, 2014 and, therefore, the additional capital expenditure claimed by the

Appellant on this count in Petition No.270 of 2009 could be considered during the next tariff period i.e. 2014-19 as the benefit of Renovation And Modernization and the consequent extension of life of the generating station could be passed on to the beneficiaries only after completion of Renovation & Modernization.

5. We have heard Mr. M.G. Ramachandran, the learned Counsel for the Appellant/petitioner, Mr. Pradeep Misra, the learned counsel for the Respondent No.2 to 5, Mr. Alok Shankar, the learned counsel for TPDDL/Respondent No.6 and Mr. R.B. Sharma, the learned counsel for the Respondent No.7 and gone through the written submissions filed by the rival parties. We have deeply gone through the evidence and other material available on record including the impugned order passed by the Central Commission and written submissions.

6. The following issues arise for our consideration in the instant Appeal:

(A) *Whether the Central Commission is right in deferring the additional capitalization incurred in respect of certain capital assets only on completion of the R&M activities of the GTs?*

(B) *Whether on the facts and circumstances of the case, the Central Commission has wrongly disallowed various expenditures claimed?*

7. Since, both the issues are inter-connected; we are taking-up and deciding them together.

8. The following contentions have been made on behalf of the Appellant on these issues:

(a) that the disallowances made by the Central Commission are contrary to certain legal principles. The Commission is bound by the Regulations as held by the Hon'ble Supreme Court in

PTC India Limited vs Central Electricity Regulatory Commission (2010) 4 SCC 603 and the decision of this Tribunal in the case of Haryana Power Generation Corporation Ltd. vs Haryana Electricity Regulatory Commission in Appeal No. 131 of 2011, dated 1.3.2012.

- (b) that the condition provided in Regulation 9 (2) (ii) is only that there is a change in law. On there being a Change in Law, the capital expenditure incurred after the cut-off date on the grounds prescribed therein, may be admitted by the Central Commission in its discretion, subject to prudence check. There is no condition that the claim under change in law will be admissible only if the benefit is shown to have been passed on to the beneficiaries. Regulation 9(2)(ii) does not contain any such conditions. Such a condition has been introduced by the Central Commission while passing the impugned order.
- (c) that, similarly, there is no condition in Regulation 9(2)(vi) that the capitalization of assets put to use will be allowed only upon the completion of the R & M works as a whole. The Central Commission has not implemented the Statutory Regulations in letter and spirit.
- (d) that the expenditure for Energy Monitoring System was claimed as per the requirements of the Central Electricity Authority, vide Notification, dated 17.3.2006, and the same was on account of the statutory mandate i.e. change in law. In such a situation, the passing on the benefit to the beneficiaries is not a relevant consideration.
- (e) that as per the Bureau of Energy Efficiency guidelines in light of Energy Conservation Act 2001, the installation of online energy meters is required for energy audits as well as energy conservation of various system/equipment. This system not only helps in conservation of energy of the system but in turn

also helps to minimize pollution/stack emission level which benefits environment and, ultimately, inherent benefit to the beneficiaries

- (f) that once a methodology is adopted at the time of tariff determination, it should not be changed at the stage of review/true up as observed by this Tribunal in its judgment, dated 4.12.2007, passed in Appeal No. 100 of 2007 in the case of Karnataka Power Transmission Company Limited vs Karnataka Electricity Regulatory Commission & Ors and in the case of North Delhi Power Limited vs Delhi Electricity Regulatory Commission 2007 ELR (APTEL) 193.
- (g) that the generation tariff was determined by the Central Commission by an earlier order, dated 23.5.2012. The expenditures were duly considered and allowed in the said Tariff Order, dated 23.5.2012 when the Central Commission had specifically allowed the claim of additional capital expenditures on the capital assets, based on the Tariff Regulations, 2009 providing for consideration of such expenditure on projected basis. Thus, the Central Commission in its main tariff order, dated 23.5.2012, allowed the projected capitalisation based on assets put to use accepting the reasons put forth by NTPC and held that the assets are necessary for efficient and successful operation of the generating station. No stipulation of completion of entire R & M works was then made.
- (h) that the Central Commission is not entitled to change the methodology and disallow aforesaid expenditure in the impugned order. The review/truing up is not a stage for the Central Commission to change the methodology.
- (i) that the Statutory provisions should be applied on its term without adding or subtracting conditions or wordings. The Central Commission has wrongly read conditions for

application of capitalization under Regulation 9(2)(ii) and 9(2)(vi) regarding benefits being passed onto the beneficiaries or completion of entire R &M Works.

- (j) that once the asset is put to use for generation, the capitalization is to be allowed. The servicing of the capital expenditure through tariff is not to be deferred after the asset is put to use as held by this Tribunal in its judgment, dated 6.9.2013, in Appeal No. 2 of 2013 in the matter of Haryana Viduyut Prasaran Nigam Limited vs Haryana Electricity Regulatory Commission and Ors. Thus, the Central Commission has not considered that the assets put to use optimize the plant performance. The benefit of such improved performance goes to the beneficiaries immediately and there is no reason for deferring the servicing of such capital expenditure to the next control period of 2014-19.
- (k) that the schemes for the Renovation & Modernization/life extension schemes have been split in to identified packages and are being executed progressively. The purpose of doing so is to progressively bring improved and better performance of the power station instead of waiting for the entire R & M works to be completed in all respects. There is, therefore, no rationale in deferring the capitalization of such expenditures from the date from which the identified assets are put to use. A substantial amount of expenditure has already been incurred on the assets put to use by the Appellant-NTPC in 2012-13 and 2013-14 (upto December, 2013) and, there was a need to service them through tariff. The asset put to use is giving benefit to the beneficiaries.
- (l) that the Central Commission had allowed similar expenditure in other generating stations of the Appellant-NTPC but has disallowed the same in the present case which is not valid. The

Central Commission should maintain a consistency/ uniformity in its approach.

- (m) that the Central Commission in its decision, dated 22.8.2013, passed in Petition No. 1/RP/2013 in the case of SJVN Limited vs Punjab State Power Corporation Ltd & Ors, held that denying the benefit of tariff for the assets which have been capitalized and put to use, would result in denying recovery of reasonable cost of supply of electricity by the Generator. A similar claim for Renovation & Modernization of Gas Turbines for the year 2008-09 was allowed in the case of Anta Gas Power Station by the Central Commission, vide its order, dated 21.1.2011 passed in Petition No 127 of 2009. The servicing of assets was allowed from the year expenditure is incurred, the asset is put to use and the expenditure is capitalized and not deferred till the completion of the Renovation & Modernization activities in all gas turbines.
- (n) that as regards the disallowance of the additional capitalization claimed in respect of the Energy Management System, a claim against the same head was allowed in Vindhyachal-I Station in Petition no. 227 of 2009. On the same parity, the Central Commission ought to have allowed the capital expenditure claimed in the present case and there is no reason for adopting a different course in the present case.
- (o) that this Appellate Tribunal, vide its order, dated 17.4.2014, in Appeal No. 245 of 2013, in the case of another generating station of NTPC namely Kawas Generating station has granted liberty to NTPC to claim the additional capitalization actually incurred in the period 2012-13 and 2013-14 during the Truing Up for the control period 2009-14.
- (p) that this Appellate Tribunal, vide its order, dated 8.5.2014, in Appeal No. 173 of 2013, in the case of another generating

station of NTPC namely Talcher Super Thermal Power Station, Stage-II disallowed the capitalization of the Energy Management System. The facts and circumstances of the Appeal No. 173 of 2013 are distinguishable as the said Appeal no. 173 of 2013 was filed against the order, dated 28.5.2013, wherein the Central Commission had disallowed the claim in respect of the Energy Management System while approving the tariff for the Talcher Station for the period 2009-14 (main tariff order). In the present case, the Central Commission had in fact allowed the capitalization of the Energy Management System while approving the tariff in its Order, dated 23.5.2012, and, subsequently, has sought to disallow it, while carrying out the mid-term review.

9. **Per contra**, the following submissions have been made on behalf of the contesting Respondents:

- (a) that the impugned order, dated 6.8.2013, is a true up of the capital cost and consequent determination of tariff by the Central Commission on a trued-up capital cost.
- (b) that the Appellant in this Appeal has contended that the benefits of the additional capitalization incurred/proposed to be incurred on R&M may be allowed irrespective of the following:
 - (i) Non completion of R&M works
 - (ii) Without passing the benefits of R&M and the consequent extension of life of generating station on to the beneficiaries.
- (c) that on the above, that the Appellant filed a Petition No. 270 of 2009 before the Central Commission for determination of tariff of this generating station as per Tariff Regulations, 2009. The Central Commission, vide its order, dated 23.5.2012, allowed the tariff and also allowed the actual/projected additional

capitalization for inclusion in the capital cost for the purpose of tariff determination. As the capital cost so determined also consists of the projected capital expenditure, the capital cost was required to be trued up subsequently as per Regulation 6 of the Tariff Regulations, 2009. The Central Commission, in its order, dated 23.5.2012, also allowed additional capital expenditure on renovation of gas turbines after 15 years of operation from COD besides the additional capitalization under other heads.

- (d) that the Appellant showed great urgency during the hearing of the Petition No. 270 of 2009 for incorporating the expenditure on renovation of gas turbines in the order on the ground that the renovation of gas turbines is to be completed within the tariff period 2009-14. The Central Commission also rendered requisite help in completing the R&M work within the tariff period 2009-14 by exercising its 'Power to Relax' under Regulation 44 to allow additional capital expenditure projected to be incurred after the cut off date with the objective to extend the balance useful life of the generating station.

- (e) that the Appellant, subsequently, filed a Review Petition No. 15 of 2012 questioning the alleged wrong consideration of balance life of 15.59 years as on 1.4.2009 instead of 6.57 years. While the Review Petition was under consideration before the Central Commission, Appellant filed a True-Up Petition No. 28/GT/2013 revising the projected capital expenditure for the years 2012-13 and 2013-14 and also informing the Central Commission that the R&M of the Gas turbines will materialize only in the next Tariff period 2014-19. The perusal of the order, dated 29.4.2013, in the Review Petition would show that the Appellant has questioned the balance useful life of the generating station to deprive the beneficiaries of the depreciation on the extended balance useful life after R&M of

Gas Turbines. The Review Petition was dismissed as infructuous.

- (f) that the Appellant filed a True-UP Petition No. 28/GT/2013 (Docket No. 72/GT/2012), vide Affidavit, dated 26.7.2012, just after 2 months of the tariff order, dated 23.5.2012, in Petition No. 270 of 2009 determining the tariff for the tariff period 2009-14 whereby, the Appellant revised the entire projected capital expenditure for the years 2012-13 and 2013-14 and also revised the schedule of completion of the R&M of the Gas turbines which will materialize now only in the next Tariff period i.e. 2014-19.
- (g) that the urgency shown by the Appellant/petitioner during the hearing in Petition No. 270 of 2009 was not the real one and the same was meant only for seeking approval of the Central Commission for allowing the additional capital expenditure during the tariff period 2009-14 and, thereafter. All these efforts of the Central Commission were frustrated by the Appellant. The Appellant has succeeded in obtaining the revised balance useful life of the generating station based on revised phasing expenditure for the purpose of depreciation in Petition No. 28/TT/2013 and now, the attempt through this appeal is to secure the additional capitalisation on R&M and thus, derive double benefits.
- (h) that the contention of the Appellant, that the benefits of the capital expenditure on R&M works completed and put to use by 31.3.2014 be allowed, is wrong and misconceived because the grant of expenditure on renovation of Gas Turbines after 15 years of operation from its COD under Regulation 9(2)(vi) of the Tariff Regulations, 2009 was considered by the Central Commission to extend the useful life of the Gas Turbines. The useful life of Gas based thermal generating station was increased to 25 years for the Tariff Period 2009-14 in

comparison to the 15 years prescribed in 2004-09 tariff period. The expenditure allowed by the Central Commission under Regulation 9(2)(vi) of the Tariff Regulations, 2009 is for the specific purpose to extend the useful life of the Gas Turbines beyond 15 years which the Appellant has failed to ensure during 2009-14 tariff period and yet intend to claim the additional capitalization in 2009-14 tariff period.

- (i) that the order, dated 21.1.2011, in Petition No. 127 of 2009 for Anta Gas Power Station passed by the Central Commission is not applicable to the instant case as that order was governed by the Tariff Regulations, 2004 whereas, the instant case is governed by the provisions of the Tariff Regulations, 2009. Further, a specific regulation 9(2)(vi) has been added by amendment, dated 21.6.2011, to tackle with the specific problems of renovation of the Gas Turbines after 15 year of operation from its COD owing to the extension of the useful life of Gas Turbines to 25 years in 2009-14 tariff period although, a general provision on R&M was also existing under Regulation 10 of the Tariff Regulations, 2009. Thus, in Anta case, as per Tariff Regulations, 2004, the useful life of the plant was considered as 15 years whereas, in Tariff Regulations, 2009, covering the present case, the life of 15 years has been amended to 25 years by adding a new regulation, namely, Regulation 9(2)(vi) to Tariff Regulations, 2009 with one proviso to the effect that any expenditure included in the R&M on consumables and cost of components and spares which is generally covered in the O&M expenses during the major overhaul of gas turbine shall be suitably deducted after due prudence from the R&M expenditure to be allowed.
- (j) that the Central Commission has rightly disallowed the claim of additional capitalization on Energy Management System as the benefit of the reduction of auxiliary power consumption due to

implementation of Energy Management System is not being passed on to the beneficiaries by the Appellant. It is, thus, evident that the Appellant intend to enjoy double benefits by claiming the additional capitalization as well as enjoying the improved benefits of the auxiliary consumption which is norm based. Thus, the denial of the additional capitalization in respect of the Energy Management System is based on equity.

- (k) that the claim on Hydra Mobile Crane made by the Appellant has not been rejected by the impugned order of the Central Commission but consideration of the claim has only been deferred in the next tariff period i.e. 2014-19 as the acquisition of the Hydra Mobile Crane of 12T capacity is associated with the R&M works. Thus, the Central Commission by the impugned order, has only deferred the consideration of the claim in the next tariff period when the R&M works are expected to be over.
- (l) That the claim on refurbishment of GT rotor made by the Appellant has also not been rejected but consideration of the claim has only been deferred in the next tariff period as the refurbishment of GT rotor was associated with the R&M works. Thus, the Central Commission has, by the impugned order, only deferred the consideration of the said claim in the next tariff period when the R&M works are expected to be over.
- (m) that the claim on up-gradation of Fire Fighting System made by the Appellant has also not been rejected by the Central Commission by the impugned order, but its consideration has only been deferred in the next tariff period as up-gradation of Fire Fighting Communication System is associated with the R&M works. The Central Commission has rightly deferred the consideration of the said claims in the next tariff period when the R&M works are expected to be over.

- (n) that the contention of the Appellant, that determination of tariff under the cost plus mechanism requires all the assets to be serviced, is misleading and misconceived. Only those assets which have been admitted by the Central Commission, subject to prudence check, can be serviced.
- (o) that the Appellant's contention, that any scheme or mechanism or methodology once allowed in the main tariff petition, cannot be disallowed in a true-up petition is misleading and misconceived because the Central Commission has not disallowed the R&M but deferred to the next tariff period at the request of the Appellant as the Appellant was not in a position to complete the scheme during 2009-14 tariff period. Hence, the Appeal merits dismissal.

10. **OUR DISCUSSION AND CONCLUSION:**

10.1 We have, in the upper part of the judgment, described the details of the impugned order, dated 6.8.2013, passed by the learned Central Commission in the matter of revision of generation tariff for the Appellant's Auraiya Gas Power Station, the submissions made by the rival parties and rules and regulations relevant for the purpose of deciding this Appeal. Hence, we do not think it proper to repeat the same here.

10.2 It is evident from the impugned order itself that the impugned order, dated 6.8.2013, is a true up of the capital cost and consequent determination of tariff by the Central Commission on a trued-up capital cost. The Appellant, in this Appeal, has contended that the benefits of the additional capitalization incurred/proposed to be incurred on R&M must be allowed irrespective of the following facts:

- (a) Non completion of R&M works
- (b) Without passing the benefits of R&M and the consequent extension of life of generating station on to the beneficiaries.

10.3 The Appellant/petitioner filed a petition being Petition No. 270 of 2009 before the Central Commission for determination of tariff for the said generating station as per Tariff Regulations, 2009. The Central Commission, vide its order, dated 23.5.2012, determined the generation tariff and also allowed the actual/projected additional capitalization for inclusion in the capital cost for the purpose of tariff determination. The capital cost so determined also consists of the projected capital expenditure; the capital cost was required to be trued up subsequently as per Regulation 6 of the Tariff Regulations, 2009. The learned Central Commission, in its order, dated 23.5.2012, in petition no. 270 of 2009, also allowed additional capital expenditure on renovation of gas turbines after 15 years of operation from COD besides the additional capitalization under other heads. Since, the Appellant/petitioner showed great urgency during the hearing of the Petition No. 270 of 2009 for incorporating the expenditure on renovation of gas turbines in the order on the ground that the renovation of gas turbines is to be completed within the same tariff period 2009-14, the Central Commission exercised its 'Power to Relax' under Regulation 44 to allow additional capital expenditure projected to be incurred after the cut off date with the objective to extend the balance useful life of the generating station of the Appellant. Thus, the learned Central Commission also rendered requisite help in completing the R&M work within the tariff period 2009-14 to the Appellant. Instead of completing the R&M work during the tariff period 2009-14, Appellant, subsequently, filed a Review Petition No. 15 of 2012 questioning the alleged wrongful consideration of balance life of 15.59 years as on 1.4.2009 instead of 6.57 years. While the Review Petition was under consideration before the Central Commission, the Appellant filed the impugned True-Up Petition No. 28/GT/2013 revising the projected capital expenditure for the years 2012-13 and 2013-14 and also informing the Central Commission that the R&M of the Gas turbines will materialize only in the next Tariff period 2014-19. Thus, the Appellant, in the said review petition, had questioned the balance useful life of the generating station to deprive the beneficiaries of the depreciation on the extended balance useful life after

R&M of Gas Turbines and on this ground, the said review petition was dismissed by the Central Commission, vide Review Order, dated 29.4.2013, as infructuous.

10.4 The Appellant filed a True-UP Petition No. 28/GT/2013, just after 2 months of the tariff order, dated 23.5.2012, in Petition No. 270 of 2009, thereby, the Appellant revised the entire projected capital expenditure for the years 2012-13 and 2013-14 and also revised the schedule of completion of the R&M of the Gas turbines stating that it will materialize in the next tariff period i.e. 2014-19.

10.5 It appears from the material on record that the Appellant during the hearing of the Petition No. 270 of 2009, which resulted in the main tariff order, dated 23.5.2012, urged for incorporating the expenditure on renovation of gas turbines which was to be completed in the same tariff period i.e. 2009-14. At that time, the Central Commission believing the urgency shown by the Appellant-NTPC, exercised its 'Power to Relax' provided under Regulation 44 of Tariff Regulations, 2009 and allowed the additional capital expenditure projected to be incurred after the cut off date with the objective to extend the balance useful life of the generating station. After the learned Central Commission exercised its 'Power to Relax' in favour of the Appellant and passing of the tariff order, dated 23.5.2012, the Appellant, subsequently, filed Review Petition No. 15 of 2012, questioning the alleged wrongful consideration of the balance life of the gas turbines. Not only this, the Appellant did not wait for the disposal of the review petition, but filed the impugned True-up Petition No. 28/GT/2013 revising the projected capital expenditure for the years 2012-13 and 2013-14 and informed the Central Commission that R&M works on gas turbines will be materialized only during the next tariff period i.e. 2014-19. It appears that the urgency or the assurance shown by the Appellant/petitioner during the hearing of the Petition No. 270 of 2009 was not the real one and the same was meant only for seeking approval of the

Central Commission for allowing the additional capital expenditure during the tariff period 2009-14 and, thereafter.

10.6 Having given our thoughtful consideration to the contention of the Appellant that the benefits of the capital expenditure on R&M works completed and put to use by 31.3.2014 should be allowed to the Appellant. We are unable to accept this contention because the grant of expenditure on renovation of gas turbines after 15 years of operation from its COD under Regulation 9(2)(vi) of the Tariff Regulations, 2009 was considered by the Central Commission to extend the useful life of the gas turbines. The useful life of gas based thermal generating station was increased to 25 years in the tariff period 2009-14, whereas, it was 15 years prescribed in 2004-09 tariff period i.e. Tariff Regulations, 2004. Thus, the expenditure allowed by the Central Commission under Regulation 9(2)(vi) of the Tariff Regulations, 2009 is for the specific purpose to extend the useful life of the gas turbines beyond 15 years which the Appellant failed to ensure or complete during 2009-14 tariff period and intended to claim the additional capitalization in 2009-14 tariff period.

10.7 We have gone through the case-law cited on the said issues but the said case-law is not applicable to the instant matter. The order, dated 21.1.2011, in Petition No. 127 of 2009 for Anta Gas Power Station of the Appellant –NTPC was passed by the Central Commission under Tariff Regulations, 2004 whereas, the instant case is governed by the provisions of the Tariff Regulations, 2009. Further, a specific regulation 9(2)(vi) has been added by amendment, dated 21.6.2011, to tackle with the specific problems of renovation of the Gas Turbines after 15 year of operation from its COD due to the extension of the useful life of Gas Turbines to 25 years in 2009-14 tariff period, although a general provision on R&M was also existing under Regulation 10 of the Tariff Regulations, 2009. Further a proviso to the regulation 9(2)(vi) to Tariff Regulations, 2009 has been added vide amendment, dated 21.6.2011, to the effect that any expenditure included in the R&M on consumables and cost of components and spares

which is generally covered in the O&M expenses during the major overhaul of gas turbine shall be suitably deducted after due prudence from the R&M expenditure to be allowed.

10.8 On deep analysis of the material on record and, after due consideration of the rival contentions, we find that the Central Commission has rightly and legally disallowed the claim of the additional capitalization on Energy Management System claimed by the Appellant on the ground that the benefit of reduction in Auxiliary Power Consumption due to the implementation of Energy Management System is not being passed on to the beneficiaries by the Appellant.

10.9 We have also considered the submissions of the learned counsel for the Appellant on the aspect of Hydra Mobile Crane of 12T capacity, refurbishment of gas turbine rotors and up-gradations of fire fighting communication system but, we are unable to accept the contentions of the Appellant on these aspects.

10.10 The claim of the Appellant on Hydra Mobile Crane of 12T capacity is since associated with the R&M works, and the learned Central Commission, in the impugned order, has only deferred the consideration of the claim in the next tariff period i.e. 2014-19. Thus, the impugned order on this point is clear that the Central Commission has only deferred the consideration of the claim on Hydra Mobile Crane to the next tariff period when the R&M works are expected to be over.

10.11 The claim of the Appellant on refurbishment of GT rotor has also not been rejected in the impugned order but consideration of the claim has only been deferred to the next tariff period as the refurbishment of GT rotor was associated with the R&M works. Thus, the learned Central Commission has, by the impugned order, only deferred the consideration of the claim on refurbishment of GT rotor to the next tariff period when the R&M works are expected to be over.

10.12 The claim on up-gradation of Fire Fighting System made by the Appellant has also not been rejected by the Central Commission by the impugned order, but its consideration has only been deferred to the next tariff period i.e. 2014-19 as the up-gradation of Fire Fighting Communication System is associated with the R&M works.

10.13 Further, we are unable to accept this contention of the Appellant that the determination of tariff under the cost plus mechanism requires all the assets to be serviced because only those assets which have been admitted by the Central Commission, subject to prudence check, can be serviced.

10.14 Further, we are also unable to accept the contention of the Appellant that any scheme or mechanism or methodology once allowed in the tariff petition, cannot be disallowed in a true-up petition because the Central Commission, in the impugned order, has not disallowed the R&M but deferred to the next tariff period i.e. 2014-19 at the instance of the Appellant that the Appellant was not in a position to complete the scheme during 2009-14 tariff period. The Central Commission, in the impugned order, has not changed any scheme or methodology while dealing with the true up petition and passing the impugned order. Once the Central Commission, at the instance of the Appellant considering urgency or assurance of the Appellant, exercised its 'Power to Relax' in regulation 44 of the Tariff Regulations, 2009 allowed additional capitalization but subsequently, when the Appellant itself informed that the completion of the same R&M works was not possible in the present tariff period i.e. 2009-14, but will be done only in the next tariff period i.e. 2014-19, the Central Commission has passed the impugned order. Thus, the impugned order on legal scrutiny is found to be correct, just and legal one requiring no interference from us in this Appeal.

10.15 Thus, the Central Commission is legally right and justified in deferring the additional capitalization incurred in respect of certain capital assets only on completion of the R&M activities of the GTs. **In view of the above discussions, both these issues are decided against the Appellant and the present Appeal is liable to be dismissed.**

ORDER

The instant Appeal, being Appeal No. 250 of 2013, is hereby dismissed and the impugned Order, dated 6.8.2013, passed by the Central Electricity Regulatory Commission, in Petition No. 28/GT/2013 for the revision of tariff (True-Up) for the tariff period 1.4.2009 to 31.3.2014 for the Appellant is hereby affirmed. There shall be no order as to costs.

PRONOUNCED IN THE OPEN COURT ON THIS 10TH DAY OF SEPTEMBER, 2015.

**(T. Munikrishnaiah)
Technical Member**

**(Justice Surendra Kumar)
Judicial Member**

√ REPORTABLE/NON-REPORTABLE

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