

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

**APPEAL No.58 of 2011**

**Dated: 21<sup>st</sup> Dec. 2012**

**Present : HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,  
CHAIRPERSON  
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

**In the Matter of:**

**N.T.P. C.Limited  
NTPC Bhawan, SCOPE Complex  
7, Institutional Area, Lodhi Road  
New Delhi-110003.**

**...Appellant**

**Versus**

- 1. Central Electricity Regulatory Commission  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath,  
New Delhi-110 001.**
- 2. Madhya Pradesh Power Trading Company Limited  
Shakti Bhawan,  
Vidyut Nagar,  
Jabalpur – 482 008.**
- 3. Maharashtra State Electricity Distribution Company  
Ltd.  
Pradashgar, Bandra(East),  
Mumbai – 400051.**

4. **Gujarat Urja Vikas Niagam Ltd.,  
Sardar Patel Vidyut Bhawan,  
Race Course Road,  
Vadodra-390 007.**
  
5. **Chhattisgarh State Power Distribution Company Ltd  
(Formerly Chattisgarh State Electricity Board).  
P.O. Sunder Nagar,  
Danganiya,  
Raipur-492913.**
  
6. **Electricity Department, Government of Goa  
Government of Goa,  
Vidyut Bhawan,  
Panaji, Goa-403 001.**
  
7. **Electricity Department,  
Administration of Daman & Diu- 396 210.**
  
8. **Electricity Department,  
Administration of Dadra and Nagar Haveli,  
Silvassa-396230.**

**...Respondent(s)**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran  
Ms. Swapna Seshadri  
Mr. Anand K. Ganesan  
Mr. Swetaketu Mishra

Counsel for the Respondent(s): Ms. Suparna Srivastava  
Mr. Pradeep Misra  
Mr. Sudhir Kathpadia  
Mr. Manoj Dubey

**J U D G M E N T**

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,  
CHAIRPERSON**

1. NTPC Ltd., is the Appellant. Challenging the impugned order dated 10.2.2011 passed by the Central Electricity Regulatory Commission(Central Commission), the Appellant has filed this Appeal.

2. The short facts are as follows:-

(a) The Appellant, NTPC is engaged in the business of generation and sale of electricity to various purchasers in India. At present, it owns and operates 22 Generating Stations situated in different parts of India.

(b) One of the generating stations of NTPC is the Vindhyachal Super Thermal Power Station, Stage III (Vindhyachal Station situated in Madhya Pradesh). The electricity generated from Vindhyachal Station is supplied to Respondents No.2 to 8, the beneficiaries.

(c) On 24.8.2009 NTPC filed a petition No.185 of 2009 for revision of the fixed charges after

considering the impact of additional capital expenditure incurred by NTPC during period from 15.7.2007 to 31.3.2009, on the tariff for Vindhyachal Station in accordance with the Central Commission Regulations,2004.

- (d) The Central Commission after hearing the parties disposed of the said petition on 10.2.2011. In this order, the Central Commission has not allowed NTPC to retain the value of the de-capitalised unserviceable assets/equipments such as Wagons, Inter-Connecting Transformers, Shunt Reactors and condemned items, etc, amounting to Rs.306.73 lakhs in the books of accounts for the year 2008-09.
- (e) On being aggrieved over this disallowance, the Appellant has filed this Appeal as against the order dated 10.2.2011.

3. The learned Counsel for the Appellant has made the following submissions:-

- (a) The Central Commission has failed to consider the fact that concerned assets have been de-capitalised for accounting purpose only and not for tariff purpose.

- (b) The assets in question, in the present case, are important components for the purpose of generating station and the same have to be procured and replaced by the NTPC in future in order to run its generating station to its optimum capacity. However, replacement of new assets takes time. In the account books, the value of an unserviceable asset gets de-capitalised on the day when the asset becomes unserviceable.
- (c) Such de-capitalisation of assets should not be given effect for the purpose of tariff. To recover the tariff NTPC is required to conform to the norms and parameters specified in the Tariff Regulations,2004. The non-availability of unserviceable assets does not lead to any relaxation to NTPC and in case NTPC is not able to achieve the norms and parameters, there will be a proportionate reduction in the capacity charge, incentive, etc.
- (d) The Wagons are used to transport coal from different coal mines to Vindhyachal Station through Merry-Go-Round System. In order to meet the operating norms the unserviceable

wagons are required to be replaced and their procurement is in progress.

(e) Similarly, the Inter-Connectors Transformers and Shunt Reactors are used for voltage control in long distance power transmission lines. The Appellant is mandated to maintain voltage level at its end. Therefore, it is required to install the equipments for this purpose. Thus, it is essential that the items which have been de-capitalised in the books of accounts in the tariff period 2004-09 need to be considered along with the replacement in the future.

4. On these grounds, the impugned order is sought to be set-aside.
5. Per Contra, the learned Counsel for the Respondents submitted that these grounds are not valid and as such there exists no infirmity in the impugned order since the Central Commission has given the correct reasons for not allowing the Appellant to retain the value of capital assets de-capitalised in the capital base for the purpose of tariff determination.

6. In the light of the rival contentions of the parties, the only question of law that arises for consideration in this Appeal is as follows:-

**“Whether the Central Commission was right in not allowing NTPC to retain the value of unserviceable capital assets de-capitalised in the capital base for the purpose of tariff under Electricity Act?**

7. Before dealing with this question, let us refer to the relevant finding rendered by the Central Commission on this issue.

*“(b) **Unserviceable assets de-capitalised in books:** The petitioner by negative entry has sought exclusion of Rs.306.73 lakh during 2008-09 on account of de-capitalization of unserviceable components/equipment like wagons, ICT & shunt reactor and condemned items. The justification provided by the petitioner is as under:*

*“Those assets were procured along with original main plant package. However, due to damage the same has been discarded & de-capitalised. The petitioner shall be purchasing replacement of the same in the coming years. Since the same would not be allowed after cut-off date for capitalization, Hon’ble Commission may allow the exclusion of negative capitalization from the books of accounts and as such not reduce the capital base.”*

*The petitioner’s prayer for exclusion of negative entries arising due to de-capitalization of unserviceable assets on the ground that corresponding new assets would be purchased in future, is not allowed as these assets do not render useful service.*

8. Dealing with a similar contention raised by NTPC in respect of de-capitalised spares, the Central Commission has observed as under:-

*“In view of the fact that these spares form part of capital cost for the purpose of tariff and have been de-capitalised from books of accounts, being found defective, its de-capitalization is not allowed to be excluded, as these assets do not render useful service. However, the petitioner is at liberty to approach the Commission in future, for capitalization of spares as and when purchased, which would be considered in accordance with law.”*

9. In the present Appeal, the Appellant has contended that de-capitalisation of the unserviceable assets is for accounting purpose only and therefore, the Appellant should have been allowed to retain the value of capital assets de-capitalised in the capital base for the purpose of tariff determination. This point raised before the Central Commission had been rejected by the Central Commission for the following reasons:-

*“(i) unserviceable assets which have formed part of capital cost and have been de-capitalised from the books of accounts, being found damaged, do not render useful service and therefore their de-capitalisation cannot be allowed to be excluded.*

*(ii) As regards spares, the Appellant would be at a liberty to approach the Commission in future for their capitalization of spares as and when purchased, which would be considered in accordance with law.”*



10. In the light of the above reasons we have to consider as to whether the Central Commission was right in disallowing the Appellant to retain the value of unserviceable capital assets de-capitalised in the capital base for the purpose of tariff determination, when such de-capitalisation is only for accounting purpose.
11. Since additional capitalization is claimed during the period 2004-09, the said claim will be governed by the statutory Regulations namely, the Central Electricity Regulatory Commission(Terms & Conditions of Tariff) Regulations,2004. The relevant provisions of the Regulations are being re-produced below:-

*1. Short title and commencement (1)* These regulations may be called the Central Electricity Regulatory Commission(Terms and Conditions of Tariff) Regulations,2004.

“(2). These regulations shall come into force on 1.4.2004, and unless reviewed earlier or extended by the Commission, shall remain in force for a period of 5 years.

*2. Scope and extent of applications 1) Where tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government, the Commission shall adopt such tariff in accordance with the provisions of the Act.*

*(2). These regulations shall apply in all other cases where tariff is to be determined by the Commission based on capital cost”.*

*18. Additional Capitalisation:*

*(2) Subject to the provisions of clause(3) of this regulation, the capital expenditure of the following nature actually incurred after the cut off date may be admitted by the Commission, subject to prudence check:*

*i) Deferred liabilities relating to works/services within the original scope of work;*

*(ii) Liabilities to meet award of arbitration or for compliance of the order or decree of a court;*

*(iii) On account of change in law;*

*(iv) Any additional works/services which have become necessary for efficient and successful operation of the generating station, but no included in the original project cost; and*

*(v) Deferred works relating to ash pond or ash handling system in the original scope of work.*

*(3) Any expenditure on minor items/asserts like normal tools and tackles, personal computers, furniture, air-conditioners, voltage stabilizers, refrigerators, fans, coolers, TC, washing machines, heat-convectors, carpets, mattresses etc. brought after the cut off date shall not be considered for additional capitalization for determination of tariff with effect from 01.4.2004.*

**Note 2**

*Any expenditure on replacement of old asserts shall be considered after writing off the gross value of*

*the original assets from the original project cost, except such items as are listed in clause(3) of this regulation.*

**Note 3**

*Any expenditure admitted by the Commission for determination of tariff on renovation and modernization and life extension shall be serviced on normative debt-equity ration specified in regulation 20 after writing off the original amount of the replaced assets from the original project cost.*

12. These Regulations nowhere provide for tariff to be worked out on de-capitalised assets which have stopped rendering useful service. This apart, there is no provision in the Tariff Regulations 2004 permitting the generator to de-capitalise its assets without revising its capital base merely because new assets in place of de-capitalised assets have to be purchased in future. On the other hand Note-2 of Regulation 18 provides for expenditure on replacement of old assets to be considered after writing off the gross value of the original assets from the original Project cost.
13. The capital cost of generating station is a cost which is incurred in commissioning the plant. Any additional capital expenditure incurred for efficient running of the plant is to be allowed as per the Regulations. In other words, the tariff of Appellant's generating stations is determined on cost plus basis meaning thereby that any capital expenditure incurred which will enhance the efficiency of the plant will be

capitalized according to the Regulations and the tariff will be determined accordingly. Similarly, if any asset is taken out of service then its gross value will be deducted from the capital cost of the plant.

14. As per Regulations 18, note No.2, the replacement of old assets can take place only after these are written-off from the books of accounts. That being so, unserviceable assets which are to be replaced in future can not be permitted to be retained in the books of accounts for the purpose of determination of tariff.
15. Fixed assets are essentially assets which are held with the intention of being used. The rationale behind this is that fixed assets being depreciable assets on which depreciation is claimed in each accounting year. After the useful life of the assets, they should not remain in the books of accounts if they are no longer held with the intention of being used, so that the benefit of depreciation is not unduly claimed. Therefore, the Appellant's claim for retaining declined unserviceable assets in its books of accounts "for accounting purposes only" is not tenable. On the other hand, it would burden the beneficiaries with passed-on depreciation and returns on assets which have been eliminated from its books of accounts for having become unserviceable assets.

16. As and when new assets are purchased, the expenditure on that account is to be charged to revenue as repair and maintenance expenditure. This can be capitalized depending upon whether the same are major or minor replacement according to the Regulations. As such, if unserviceable assets are allowed to be retained in the account books and if the capital base is not correspondingly reduced, the depreciation and returns on investment benefit would be continued to be claimed unduly by the claimant, the Appellant, which will ultimately be passed-on to the beneficiary in tariff.
17. It cannot be disputed that the accounts must reflect true and correct picture of the financial affairs of an entity. There can not be any dispute in the fact that fixed charges are to be worked out on the basis of capitalized assets only. If assets which are liable to be written off and removed from the capital base are allowed to be retained on the ground that this is for accounting purpose, it will unduly load the tariff to be charged by the Appellant from the Respondent beneficiaries.
18. The Central Commission has rightly declined the negative entry of Rs.1.86 lakhs by holding that once these assets became unserviceable, the same can not be permitted to remain in capital base of the generating station, as they do

not render any useful service. Similarly, the negative entry of Rs.306.73 lakhs was correctly disallowed to be retained to capital cost as these assets do not render any useful service.

19. According to the Appellant, under Tariff Regulations,2009, even if new assets are purchased, the same may not be capitalized. This is not correct because the Regulations,2009 can not be taken into account for the purpose of capitalization in the control period 2004-09.
20. In view of the above, the Central Commission has rightly declined to retain the negative entries for the purpose of tariff as those assets became unserviceable and no benefit of the same is available to the beneficiaries.

**21. Summary of our findings:-**

- i) According to Tariff Regulations, 2004, any expenditure on replacement of old assets can be considered after writing off the gross value of the original assets from the original Project cost. When the unserviceable assets/equipments have been written off and discarded, the cost of the same could not be allowed to form the part of the Capital Cost for determination of tariff.**

- ii) **The Central Commission has correctly disallowed the negative entry on account of de-capitalisation of unserviceable assets/equipments claimed by NTPC in the capital base for determination of tariff.**

22. In view of our above findings, there is no infirmity in the impugned order dated 10.2.2011 passed by Central Commission. Therefore, the Appeal is liable to be dismissed, being devoid of merits. Accordingly, the Appeal is dismissed. No order as to cost.

23. Pronounced in the open court on 21<sup>st</sup> of December, 2012.

**(Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

Dated: 21<sup>st</sup> Dec, 2012

✓ ~~REPORTABLE/NON-REPORTABLE~~