

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

**(APPELLATE JURISDICTION)**

**APPEAL NO. 245 OF 2013**

**Dated: 17<sup>th</sup> April, 2014**

**Present: Hon'ble Mr. Rakesh Nath, Technical Member  
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

**IN THE MATTER OF :**

NTPC Limited,  
NTPC Bhawan, SCOPE Complex,  
7, Institutional Area, Lodhi Road,  
New Delhi-110 003

.... Appellant/  
Petitioner

***VERSUS***

1. Central Electricity Regulatory Commission,  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath, New Delhi-110001.
2. Madhya Pradesh Power Trading Company Limited  
Shakti Bhawan, Vidyut Nagar,  
Jabalpur-482008.
3. Maharashtra State Electricity Distribution Company Ltd.  
Pradashgad, Bandra (East),  
Mumbai-400051.
4. Gujarat Urja Vikas Nigam Ltd.  
Sardar Patel Vidyut Bhawan, Race Course Road,  
Vadodra-390 007.
5. Chattisgarh State electricity Board,  
P.O. Sundar Nagar, Danganiya,  
Raipur-492913.
6. Electricity Department, Government of Goa,  
Vidyut Bhawan,  
Panaji, Goa-403001.

7. Electricity Department,  
Administration of Daman & Diu – 396210.
8. Electricity Department,  
Administration of Dadra and Nagar Haveli,  
Silvassa-396230. .... Respondents

Counsel for the Appellant(s) ... Mr. M.G. Ramachandran  
Ms. Poorva Saigal  
Mr. Avinash Menon

Counsel for the Respondent(s) ... Mr. M.S. Ramalingam for R-1  
Mr. Manoj Dubey for R-2

## **JUDGMENT**

### **PER HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER**

1. This is an appeal filed under Section 111 of the Electricity Act, 2003 against the order dated 01.08.2013, passed by the Central Electricity Regulatory Commission (hereinafter called the 'Central Commission') in Petition No. 25/GT/2013 in NTPC Ltd, New Delhi Vs. Madhya Pradesh Power Management Company Ltd. and Others, whereby the learned Central Commission, in terms of the proviso to Regulation 6 (1) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as the '2009 Tariff Regulations') has revised the fixed charges, for Kawas Gas Power Station, for the period from 01.04.2009 to 31.03.2014 of the appellant on the petition for Revision of Tariff of Kawas Gas Power Station and truing up of tariff, determined vide order dated 31.12.2011 in Petition No. 285 of 2009.

2. The appellant is aggrieved by the impugned order in as much as the learned Central Commission has not allowed the additional capitalization expenditures claimed by the appellant/petitioner in respect of Gas Turbine Life Extension Package and C & I Control System of the Steam Turbines

and additional capitalization in respect of online compressor washing system of gas turbines for the tariff period FY of 2012-14, with the observation that the said expenditure claimed by the appellant towards Renovation and Modernization ( R & M) of Gas Turbines (GTs) would only be considered during the next tariff period (FY 2014-19). Thus, the learned Central Commission has only deferred these issues for the present observing that the same will be considered for the next tariff block period because the tariff is payable only for an asset which is put to use and is serviceable.

3. Regulation 6 of the 2009 Tariff Regulations is reproduced below for ready reference:-

**“6. Truing up of Capital Expenditure and Tariff.**

(1) *The Commission shall carry out truing up exercise along with the tariff petition filed for the next tariff period, with respect to the capital expenditure including additional capital expenditure incurred up to 31.3.2014, as admitted by the Commission after prudence check at the time of truing up.*

*Provided that the generating company or the transmission licensee, as the case may be, may in its discretion make an application before the Commission one more time prior to 2013-14 for revision of tariff.*

(2) *The generating company or the transmission licensee, as the case may be, shall make an application, as per Appendix I to these regulations, for carrying out truing up exercise in respect of the generating station a unit or block thereof or the transmission system or the transmission lines or sub-stations thereof by 31.10.2014;*

(3) *The generating company or the transmission licensee, as the case may be, shall submit for the purpose of truing up, details of capital expenditure and additional capital expenditure incurred for the period from 1.4.2009 to 31.3.2014, duly audited and certified by the auditors;*

(4) *Where after the truing up, the tariff recovered exceeds the tariff approved by the commission under these regulations, the generating company or the transmission licensee, as the case may be, shall refund to the beneficiaries or the transmission customers, as the case may be, the excess amount so recovered along with simple interest at the rates specified in the proviso to this regulation.*

(5) *Where after the truing up, the tariff recovered is less than the tariff approved by the Commission under these regulations, the generating company or the transmission licensee, as the case may be, shall recover from the beneficiaries or the transmission customers, as the case may be, the under-recovered amount along with simple interest at the rates specified in the proviso to this regulation.*

(6) *The amount under-recovered or over-recovered, along with simple interest at the rates specified in the proviso to this regulation, shall be recovered or refunded by the generating company or the transmission licensee, as the case may be, in six equal monthly installments starting within three months from the*

*date of the tariff order issued by the Commission after the truing up exercise.*

*Provided that the rate of interest, for clauses (4), (5) and (6) of this regulation, for calculation of simple interest shall be considered as under:*

*(i) SBI short-term Prime Lending Rate as on 01.04.2009 for the year 2009- 10.*

*(ii) SBI Base Rate as on 01.07.2010 plus 350 basis points for the year 2010-11. Monthly average SBI Base Rate from 01.07.2010 to 31.3.2011 plus 350 basis points for the year 2011-12.*

*(iii) Monthly average SBI Base Rate during previous year plus 350 basis points for the year 2012-13 & 2013-14.”*

4. It is seen that the grievance of the appellant is the disallowance of the capital expenditure on R&M work performed in the Kawas Gas Power Station. The case of the appellant is that additional capital expenditure amounting to Rs. 33796 lakh towards Gas Turbines Life Extension package and C&I Control System and Rs. 276 lakh towards online compressor washing system have been wrongly disallowed vide the impugned order dated 01.08.2013 in Petition No. 25/GT/2013.

5. In this connection, it is clarified that the appellant, in its Petition No. 285/2009 had claimed actual/projected additional capital expenditure during the period FYs 2009-14. The Central Commission vide its order dated 30.12.2011 in Petition No. 285/2009 allowed, after necessary prudence check, the permissible additional capital cost as per regulation 9 of the 2009 Tariff regulations. Projected capital expenditure included inter alia, claims of Rs. 31051.00 lakh and Rs. 16594.00 lakh for the FY 2011-12 and 2012-13 respectively towards items of expenditure relating to Gas Turbine Life Extension package. The above item was allowed by the Central Commission in its tariff order dated 30.12.2011, after necessary prudence check and corresponding de-capitalization.

6. Impugned order dated 1.8.2013 was passed in Petition No. 25/GT/2013, which was filed by the appellant, under the proviso to regulation 6 (1) of the 2009 Tariff Regulations praying for truing up the tariff earlier awarded vide Order dated 30.12.2011 in Petition No. 285/2009 based on projected capital expenditure.

7. It is thus evidently clear from the material on record that the impugned petition was filed under the proviso to Regulation 6(1) of the 2009 Tariff Regulations before the expiry of the tariff period 2009-14 before the Central Commission in which the respondent no.2 MPPTCL had pointed out that the expenditures earlier projected to be incurred by the appellant/petitioner during FY 2010-11 and FY 2011-12 were not actually incurred. Then the appellant/petitioner NTPC in its reply before the Central Commission tried to explain the delay in the commencement of the work in question and there remained no dispute that the work was not carried out during FYs 2009-10, 2010-11 and 2011-12. The impugned petition was for the purpose of truing up, the expenditure could not be considered for the purpose of tariff determination based merely on projections. The petition for truing up, by its very nature as well as by the language of Regulation 6 of the 2009 Tariff Regulations, has to be based on the incurred expenditure and not the proposed expenditure.

8. We may further note that even during the hearing before this Appellate Tribunal there was no submission on behalf of the appellant that the expenditures projected to be incurred as per Petition No. 285 of 2009 were actually incurred during FYs 2009-10, 2010-11 & 2011-12.

9. We may now deem it necessary to reproduce the relevant part of the impugned order dated 01.08.2013 as under:-

***“R&M package***

*16. In response to letter of the Commission dated 14.1.2013 seeking clarification as regards the non-incurring of the R&M expenditure as approved by the Commission in order dated 30.12.2011, the petitioner vide its affidavit dated 11.2.2013 has submitted as under:*

*"The petitioner respectfully submits that subsequent to the CEA approval for Renovation & Modernization of Gas Turbine and C&I control system, the petitioner had contacted around 15 nos. leading Gas Turbines manufactures /Gas Turbine components manufacturers (including OEM) for R&M works of Kawas GPS. However, none of the parties except OEM was ready to carry out the work as stipulated by NTPC.*

*As no manufacturer other than OEM gave response in the affirmative manner, it was ultimately decided to approach OEM (M/S General Electric) for carrying out R&M work. NTPC Board in the month of Feb-2010 had accorded approval*

for implementation of R&M of Gas Turbine (Hot Gas path component) through OEM on single tender negotiation basis.

After the approval as accorded by NTPC Board, bidding document was issued to M/s GE, USA. M/s GE Energy expressed their difficulty and reservations for submitting the bids and informed that BHEL GE Gas Turbine Services (BGGTS) would be submitting bids on their behalf, as BGGTS are the sole and exclusive service providers including the execution of R&M projects. Further M/s GE also expressed their inability to offer output guarantee for gas turbine if C&I control system is sourced from third party and not from them. Accordingly, partially modified board approval was obtained in July 2011 for GT Renovation and R&M of C&I control system packages for award to BGGTS. Bid for the above referred packages was opened and after extensive negotiations, the package was awarded on 23.03.2012 to BGGT. After award of the package, R&M of GT 1A was taken up for implementation and the work of GT-1A got completed in FY 12-13. R&M of two more GTs is planned during 2013-14 and the last GT will go under R&M in 2014-15."

17. Accordingly, the revised phasing of expenditure for R&M of Gas Turbines is as under:

(Rs. In Lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
R & M of GTs	0.00	0.00	0.00	10286	23510	11198

18. The respondent, MPPTCL has submitted that the tariff has been claimed by the petitioner as per projected additional capitalization during the years 2010-11 and 2011-12 and whereas as per Form-9, the actual capital expenditure for the said years is 'nil'. Accordingly, it has prayed that the Commission may not allow the projected additional capital expenditure for the years 2012-13 and 2013-14. In response, the petitioner has reiterated its submissions made in affidavit dated 14.1.2013.

**19. We have examined the matter. It is observed that the petitioner has not incurred any expenditure towards R&M during the years 2009-10, 2010-11 and 2011-12 respectively. The proposed expenditure on R&M is to be incurred from the year 2012-13 onwards and would be completed during 2014-15 only. Since the complete benefits of R&M in the form of life extension and improvement in operational performance would be passed on to the respondents/beneficiaries only after the completion of R&M of all the three GTs in 2014-15, we are of the considered view that the projected additional capital expenditure claimed for R&M of GTs could be considered only during the next tariff period (2014-19). Accordingly, the expenditure claimed by the petitioner on this count during the period 2012-13 and 2013-14 has not been allowed.**

#### **Additional capitalization of other assets**

20. The additional capitalization in respect of other assets claimed by the petitioner during the period 2009-14 is discussed as under:

#### **On Line Compressor Washing of GTs**

21. The petitioner has claimed expenditure of Rs.276 lakh during 2012-13 towards on-line compressor washing of GTs. The petitioner has stated that due to continuous running of GTs, the compressor blades get fouled with deposition of fine dust which affects the compressor performance resulting in

*reduced GT power output. It has also submitted that at present, the compressor is being washed off line only, whenever opportunity during shut down is available. The respondent, MPPMCL has submitted that the proposed additional capital expenditure on this asset may not be allowed as the same is not covered under Regulation 9(2)(vi) of the 2009 Tariff Regulations. In response, the petitioner has clarified that the expenditure on this asset is necessary for ensuring plant availability and maintaining the rated output and hence claimed under Regulation 9(2)(vi). We have examined the matter. As stated, the proposed expenditure on R&M is to be incurred from the year 2012-13 onwards and would be completed during 2014-15 only. Considering the submissions of the petitioner that the expenditure is necessary for ensuring plant availability and rated output from the generating station and since this work has been planned in the R&M package accordingly, we are of the view that the expenditure claimed could only be considered during the next tariff period. Accordingly, the expenditure claimed by the petitioner on this count during the period 2012-13 has not been allowed.”*

10. The relevant facts for deciding the instant Appeal are given below:-
- (a) that the appellant /petitioner NTPC is a Central Government Enterprise and a Company incorporated under the Companies Act, 1956. NTPC is engaged in the business of generation and sale of electricity to various purchasers/beneficiaries in India.
  - (b) that the appellant/petitioner being a generating company is owned and controlled by the Central Government as per the provisions of Section 79 of the Electricity Act, 2003 for sale of electricity to distribution licensees in India. The generation and sale of energy by the appellant is regulated by the Central Commission, respondent no.1 herein.
  - (c) The electricity generated from the Kawas Gas Power Station is supplied to respondents no. 2 – 8 herein.
  - (d) The date of commercial operation of the Kawas Station by NTPC was 01.11.1993.
  - (e) On 19.01.2009, the Central Commission notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 for determination of tariff for generating stations of NTPC for the tariff period from 01.04.2009 to 31.03.2014.
  - (f) By an amendment notification dated 21.06.2011, the Central Commission has amended Regulation 9 of the Tariff Regulations, 2009 and added sub-clauses (vi), (vii), & (viii) to clause 2 of

Regulation 9 of the Tariff Regulations, 2009 whereby the capital expenditure incurred on gas/liquid fuel based open/combined cycle thermal generating stations, after the cut-off date, may in its discretion, be admitted by the Commission subject to prudence check where any expenditure which has become necessary of renovation of gas turbines after 15 years of operation from its commercial operation date and the expenditure necessary due to obsolescence or non-availability of spares for successful and efficient operation of the station.

- (g) On 20.11.2009, the petitioner NTPC filed Petition being No. 285 of 2009 before the Central Commission for determination /approval of tariff for Kawas Gas Power Station for the period from 01.04.2009-31.03.2014, as per the provisions of 2009 Tariff Regulations and the Central Commission vide its order dated 30.12.2011, determined only the fixed charges for the generating station and allowed, after necessary prudence check, corresponding de-capitalization, the permissible additional capital cost as per Regulation 9 of 2009 Tariff Regulations. The projected capital expenditure included, inter alia, claims of Rs. 31051.00 lakhs and Rs. 16594.00 lakh for FYs 2011-12 and 2012-13 respectively towards items of expenditure relating to Gas Turbine Life Extension package. Aggrieved by the order dated 30.12.2011 in Petition No. 285 of 2009, NTPC filed appeal being Appeal No. 70 of 2012 before this Appellate Tribunal which has been decided by the Tribunal vide judgment dated 25.10.2013. This Tribunal while partly allowing Appeal No. 70 of 2012 and connected Appeal No. 71 of 2012 directed the Central Commission to pass consequential orders in terms of the findings given by it.
- (h) The Summary of Findings as recorded in Para 43 of the judgment dated 25.10.2013 passed in Appeal Nos. 70 of 2012 & 71 of 2012 by this Appellate Tribunal are as follows:-

*“43. Summary of findings:*

- i) Life extension of Gas Turbine: The useful life of Gas Turbine should be extended by 10 years after completion*

*of the Renovation of the Gas Turbines as per the Regulations. Accordingly, the matter is remanded back to the Central Commission with direction to re-determine the useful life of the plants after extension of life by 10 years for GTs after renovation instead of 15 years.*

*ii) Adjustment of un-recovered depreciation:*

*We do not find any infirmity in the order of the Central Commission.*

*iii) Capitalization of the expenditure on installation of Air Inlet Cooling System:*

*We direct the Central Commission to decide the issue according to its Regulations after considering whether the expenditure on Air Inlet Cooling System is required for renovation of gas turbine or necessary due to obsolescence or non-availability of spares for successful and efficient operation of the gas station, after hearing the concerned parties.*

*iv) Amount of de-capitalization for Gandhar:*

*We do not find any infirmity in findings on this issue given in the order of the Central Commission.”*

11. On 01.05.2012, the appellant NTPC filed the impugned petition bearing Petition No. 25/GT/2013 before the Central Commission for approval of tariff for Kawas Gas Power Station from 1.4.2009 to 21.3.2014 after the truing up exercise which has been decided by the impugned order as stated above.

12. We have heard Shri M.G. Ramachandran, learned counsel for the appellant, Shri M.S. Ramalingam, learned counsel appearing for the respondent no.1/Central Commission and Shri Manoj Dubey, learned counsel for the Madhya Pradesh Power Trading Co. Ltd./respondent no.2 and have gone through the evidence and other material available on record.

13. The following submissions have been made on behalf of the learned counsel for the Appellant/petitioner- NTPC:-

- (a) that under the Tariff Regulations, 2009, the generating companies like NTPC are entitled to project the capital expenditure to be incurred during the five year control period, namely, 1.4.2009 to 31.3.2014 and the tariff is determined and allowed on the capital expenditure projected to be incurred in

the respective FYs 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14. Further, in terms of Regulation 6(1) of the Tariff Regulations, 2009, the generating company is entitled to, at its discretion to make an application before the Central Commission for revision of tariff, namely, on account of the capital expenditure incurred and projected to be incurred once during the control period prior to 2013-14.

- (b) that the Kawas Gas Power Station consisting of 4 Gas Turbine Units and two Steam Turbine Units, having been declared commercial on 1.11.1993 and having completed more than 15 years of operation was entirely covered by Regulation 9(2)(vi) of the Tariff Regulations, 2009 as there was a necessity to incur expenditure for renovation of all the four gas turbine units.
- (c) that the Central Commission in its order dated 30.12.2011 passed in Petition No. 285/2009 (main order) inter alia, decided various aspects of four gas turbines and some of the assets relating to steam turbine, the projected capitalization was then allowed on the basis of that all the four gas turbines and associated steam turbines assets would be renovated and completed during FYs 2011-12, 2012-13 and 2013-14. According to the Appellant, capital expenditure in the order dated 30.12.2011 in Petition No. 285/2009 of the Central Commission was allowed on the basis of projection made by the Appellant-NTPC and not on the basis of actual expenditure incurred by it. The Appellant-NTPC was, however, not able to incur the capital expenditure on the life extension of any gas turbine and its associated assets upto the FY 2011-12 as was approved by the Central Commission.
- (d) that according to the Appellant, there was a delay in the award of contract to the equipment manufacturer for the renovation of the Gas Turbines. Finally, the bidding process was undertaken and the Letter of Award was issued to M/s BHWL – GE Gas

Turbine Services Pvt. Ltd. (BGGTS) on 23.3.2012. The Letter of Award, provided for the work schedule, was finalized at the meeting of Appellant-NTPC with the above company on 18.11.2011 and 12.12.2011. Consequently, the implementation of life extension of the station was divided into two modules, each containing two Gas Turbines with associated assets. One Gas Turbine was to be completed within 12 months, two Gas Turbines were to be completed within 24 months and 4<sup>th</sup> Gas Turbine was to be completed beyond 24 months. Accordingly, in place of completion of the two Gas Turbines projected in the FY 2011-12, one in the FY 2012-13 and one in the FY 2013-14, the revised completion was one in FY 2012-13, two in FY 2013-14 and one in FY 2014-15.

- (e) that the Appellant-NTPC having not incurred additional capitalization projected during FY 2010-11 and 2011-12 sought the revision of tariff decided by the Central Commission in its order dated 30.12.2011 passed in Petition No. 285/2009 as per the revised projection given in the impugned Petition No. 25/2013.
- (f) that during the pendency of the impugned Petition No. 25/2013, the Appellant-NTPC duly completed the implementation of the work in regard to one Gas Turbine before the close of FY 2012-13 and had proceeded to implement the completion of work relating to two more Gas Turbines during FY 2013-14.
- (g) that according to the Tariff Regulations, 2009, the Central Commission should have allowed the tariff in respect of one Gas Turbine from FY 2012-13 and for the two Gas Turbines from the FY 2013-14, and the Central Commission should also have allowed the Appellant-NTPC to collect the tariff as per the projected capital expenditure subject to the adjustment of the shortfall or excess in the tariff collected as per the projected

capital expenditure compared to the actual capital expenditure in the subsequent truing-up exercise as envisaged in Regulation 6 of the Tariff Regulations, 2009. At the stage of approval of revision in the projected capital expenditure under Regulation 6(1) – proviso, the Central Commission was only concerned with projected capital expenditure as it was not undertaking the truing up of the actual capital expenditure qua the projected capital expenditure.

- (h) that the capital expenditure projected to be trued up will be trued up finally with reference to the commissioning of each individual Gas Turbine and assets namely, when the assets were capitalized in the books of Appellant-NTPC and were commissioned.
- (i) that the decision of the Central Commission in the impugned order in postponing the grant of tariff for the assets duly commissioned during FYs 2012-13 and 2013-14 to the subsequent period on the basis that the renovation and modernization of the entire life extension scheme involving all the four Gas Turbine Units ought to be completed, even for getting the tariff in respect of three Gas Turbine Units which are scheduled to be completed and commissioned during FYs 2012-13 and 2013-14, is erroneous. Lastly, the Central Commission has wrongly raised the issue of the Appellant-NTPC claiming the tariff based on truing up of the actual value of the capital assets and, therefore, the same can be done only after the close of tariff period FY 2009-2014. The Appellant-NTPC is claiming the tariff based on the projected capital expenditure for the period FY 2012-13 and 2013-14. In any event, the tariff should be related to the period during which the Gas Turbines are put into commercial operation after the life extension scheme is undertaken and the same cannot be postponed till the total completion of the scheme in all respects in respect of four Gas Turbines and associated assets.

14. **Per contra**, the learned counsel for the Respondents including the Central Commission have justified the impugned order of the Central Commission saying that the same is legal, just and correct one containing the complete material available on record and full discussion with the analysis and no interference, at this stage, is legally warranted by this Tribunal in the instant Appeal.

15. The following issues arise for our consideration:

- (i) Whether the learned Central Commission has erred in not allowing additional capitalization expenditure claimed by the appellant in respect of Gas Turbine Life Extension Package and C & I Control System of the Steam Turbines for the tariff period of FY 2012-14 directing its consideration to be made during the next tariff period viz. 2014-2019?
- (ii) Whether the learned Central Commission has further erred in not allowing additional capitalization in respect of online compressor washing system of Gas Turbine for the tariff period of FY 2012-14 and observing that the said expenditure would be considered during the next tariff period FY 2014-19?

16. Point-wise consideration are as follows:

16.1 Since both the issues are inter-connected, therefore, we are taking them up together and deciding simultaneously.

16.2 It is abundantly clear from the impugned order and record itself that the learned Central Commission has not allowed the aforesaid expenditures claimed by the appellant and deferred their consideration to the next tariff block period, namely, FY 2014-19 on the ground that the impugned Petition No. 25/GT/2013 filed by the appellant/petitioner under the proviso to Regulation 6 (1) of the 2009 Tariff Regulations was for truing up the tariff earlier

awarded/determined vide order dated 30.12.2011 in Petition No. 285 of 2009 based on projected capital expenditure and tariff is payable only for an asset which is put to use and is serviceable. The learned Central Commission in its order dated 30.12.2011 passed in Petition No. 285 of 2009 allowed additional capital cost as per Regulation 9 of 2009 Tariff Regulations and projected capital expenditure including, inter alia, claims of Rs. 31051.00 lakh and Rs. 16594.00 lakhs for the FYs 2011-12 and 2012-13 respectively towards items of expenditure relating to Gas Turbine Life Extension Package, after necessary prudence check and corresponding de-capitalization.

16.3 During the hearing of the impugned petition filed in terms of the proviso to Regulation 6 (1) of 2009 Tariff Regulations before the expiry of tariff period FY 2009-14 before the Central Commission, in which the respondent no.2 pointed out that the expenditures earlier projected to be incurred by the appellant/petitioner during FYs 2010-11 and 2011-12 had not actually been incurred. At that stage, the appellant NTPC Ltd, through reply tried to explain the delay in the commencement of the work in question and the required work was not carried out during FYs 2009-10, 2010-11 and 2011-12. Since the impugned petition before the learned Central Commission was filed only for the purpose of truing up, the expenditure claimed by the appellant could not be considered for the purpose of tariff determination based merely on projections. The petition for truing up, by its very nature, and as is also clear by Regulation 6 of 2009 Tariff Regulations has to be based on the incurred expenditure and not the proposed expenditure. According to the appellant itself, after award of the package Renovation and Modernization (R&M) of Gas Turbine 1A was taken up for implementation and work on the same got completed in FY 2012-13, whereas the Renovation & Modernization (R & M) of two more Gas Turbines is planned during FY 2013-14 and the last Gas Turbine will go under R & M in FY 2014-2015. These are the facts abundantly clear from the deep and careful perusal of the material and other evidence on record and are

also not disputed by the learned counsel for the rival parties. The learned Central Commission has rightly observed that the appellant/petitioner has not incurred any expenditure towards R & M during FYs 2009-10, 2010-11 and 2011-12 respectively. The proposed expenditure on R & M has to be incurred from FY 2013 onwards and would be completed during FY 2014-15 only.

- 16.4 The Appellant in its Petition No. 285 of 2009 for determination of tariff during the period 2009-14 had proposed a composite gas turbine life extension package for all the four Gas Turbines to be taken up during FY 2011-12 to FY 2013-14 and completed during FY 2013-14. No unit wise execution schedule and corresponding expenditure was given. Accordingly, the Central Commission by Tariff Order dated 13.12.2011 allowed additional capitalization for the Gas Turbine R&M package as projected during the FY 2011-12 to FY 2013-14. In the Petition 25/GT/2013 filed by the Appellant for trueing up it was indicated that no expenditure was incurred on the R&M Package upto FY 2011-12 and the revised expenditure was projected for FY 2012-13 and 2013-14. Here also, the projected expenditure on Gas Turbine Life Extension was indicated as a package and not unit wise schedule and expenditure. The Appellant is now claiming that the additional capitalization on R&M of one GT which was completed during the proceedings before the Central Commission during FY 2012-13 and the projected expenditure for two more GTs during the FY 2013-14 should have been allowed.
- 16.5 We are not inclined to accept the contention of the Appellant. Firstly, no case was made out for true-up of expenditure actually incurred on one GT. Secondly, the projected capital expenditure of the other two GTs which were proposed to be renovated during the FY 2013-14 could not be allowed in the true-up petition under Proviso to Regulation 6(1) as the true up can only be for the expenditure actually incurred.

16.6 In view of above, we agree to the observation and conclusion of the Central Commission to the fact that since the complete benefits of Renovation & Modernization (R&M) in the form of life extension and improvement in operational performance would be passed to the respondents/ beneficiaries only after the completion of R & M of all the three Gas Turbines in FY 2014-15 and the projected additional capital expenditure claimed for R & M of Gas Turbines could be considered only during the next tariff period, namely, FY 2014-19. The learned Central Commission has not totally disallowed the said claims of the appellant but simply deferred the consideration of the claims of the appellant to the next tariff period viz. FY 2014-2019.

16.7 However, we give liberty to the Appellant to present its case for GT wise additional capital expenditure incurred on R&M during the period 2012-13 to 2013-14 during the true up of additional capital expenditure exercised to be carried out by the Central Commission for the control period 2009-14 after 31.3.2014 as per Regulation 6(1), to enable it to claim additional capitalization actually incurred on the assets which are put to use during the Control Period 2009-14. In such an event, the Central Commission shall consider the same and decide as per the law.

16.8 As per the appeal memorandum, the order dated 30.12.2011, in Petition No. 285 of 2009 of the learned Central Commission was challenged by the appellant NTPC by filing Appeal No. 70 of 2012 before this Appellate Tribunal and on the date of filing the instant, Appeal No. 70 of 2012 was pending consideration before this Tribunal and now the said Appeal No.70 of 2012 along with connected Appeal No. 71 of 2012 has been decided by this Appellate Tribunal vide judgment dated 25.10.2013. The fate of the learned Central Commission's order dated 30.12.2011 in Petition No. 285 of 2009 has also been decided by this Appellate Tribunal, the details of which judgment, we have deduced above. Since in the aforesaid Appeal No. 70 of 2012, this Hon'ble Tribunal in its judgment dated

25.10.2013, by remanding the matter back to the learned Central Commission directed it to re-determine the useful life of the plant in question after extension of life by 10 years for Gas Turbines after renovation instead of 15 years.

16.9 The main contention of the appellant is that the Central Commission vide amendment notification dated 21.06.2011 has amended Regulation 9 of Tariff Regulations, 2009 and has added sub clauses (vi), (vii) & (viii) to clause 2 of Regulation 9, sub-clause (vi) clearly provides that in case of gas/liquid fuel based open/combined cycle thermal generation stations any expenditure, which has become necessary, on renovation of Gas Turbines after 15 years of operation from its COD and the expenditure necessary due to obsolescence or non-availability of spares for successful and efficient operation of the gas station generally covered, after cut-off date must have been admitted by the Central Commission in its discretion subject to prudence check. Proviso added to sub clause (vi) to Clause 2 of Regulation 9 of 2009 Tariff Regulations further stipulates that any expenditure incurred for the R & M on consumables and cost of components and spares generally covered in the O & M expenses during the major overhaul of gas turbine shall be suitably deducted after due prudence check from R & M expenditure to be allowed.

16.10 We have considered this contention. Having a look at the amended sub-clauses to clause 2 of 2009 Tariff Regulations, it appears to us that the discretion given to the Central Commission has rightly been exercised by it without any prejudice. It is true that the Central Commission by 2009 Tariff Regulations, extended the useful life of Gas Turbine Power Stations by 10 years from 15 years to 25 years and considering the extension of useful life of Gas Power Turbine Stations by 10 years, this Appellate Tribunal has, as we have mentioned above, remanded the matter vide judgment dated 25.10.2013 in Appeal No. 70 of 2012 which was filed by the same appellant, namely, NTPC challenging the previous tariff order dated

30.12.2011 passed in Petition No. 285 of 2009 by the Central Commission. Thus, this contention of the Appellant pales into insignificance.

17. The Tariff Regulations, 2009 were notified by the Central Commission on 19.1.2009 for the control period from 2004-2009. One of the modifications made in the 2009 Tariff Regulations over the earlier Regulations of 2004 was that the useful life of Gas Power Turbine Stations was extended from 15 years to 25 years. On 21.6.2011, the Central Commission issued the first amendment to the 2009 Tariff Regulations allowing the Gas Turbine Stations to carry on the renovation and modernization programme and claim expenditure for extending the useful life of the Gas Turbine.

**18. Summary of Findings:**

The learned Central Commission has not committed any mistake, error, illegality or perversity in not allowing the additional capitalization expenditure claimed by the Appellant in respect of Gas Turbine Life Extension Package and C & I Control System of the Steam Turbines for the tariff period of FY 2012-14. Further, the Central Commission has also not committed any illegality, mistake, error or perversity in not allowing additional capitalization in respect of online compressor washing system of gas turbines for the tariff period FY of 2012-14. The learned Central Commission has simply postponed the consideration of the said claims of additional capitalization of the said expenditures till the next tariff period viz. FYs 2014-2019. However, we have given liberty to NTPC to claim GT wise additional capitalization during the true up of additional capitalization for the Control Period 2009-14 be carried out by the Central Commission as per Regulation 6(1).

19. After making the aforesaid analysis of the material available on record, we find no force in the submissions advanced on behalf of the Appellant-NTPC. We agree to the findings recorded by the learned Central Commission in the impugned order as the findings are based on legal, correct and proper appreciation of the evidence and material available on record and we do not find any cogent or convincing reason to deviate or upset the said findings recorded in the impugned order. Consequently, both the issues are decided against the Appellant/Petitioner. This Appeal merits dismissal. In the result, this Appeal is dismissed and the impugned order dated 1.8.2013 is hereby affirmed. No order as to costs.

**Pronounced in open Court on this 17<sup>th</sup> day of April, 2014.**

**(Justice Surendra Kumar)  
Judicial Member**

**(Rakesh Nath)  
Technical Member**

**√ REPORTABLE/~~NON-REPORTABLE~~**

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