Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated: 16th Jan, 2014

Present:

HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON

HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

Appeal No. 216 of 2012

M/s. Alok Ferro Alloys Ltd.,
Plot No.458/1, 459,
Urla Industrial Complex,
Raipur,
Chhattisgarh-493 221

... Appellant

Versus

1. **The Chhattisgarh State Electricity Regulatory Commission**
   Irrigation Colony, Shanti Nagar,
   Raipur, Chhattisgarh-492 001
2. **Chhattisgarh State Power Distribution Company Ltd.,**
   Daganiya, Raipur,
   Chhattisgarh-492 014

Respondent(s)

Counsel for the Appellant (s): Mr. Buddy A Ranganadhan
Mr. Raunak Jain

Counsel for the Respondent (s): Mr. C K Rai
Mr. Ravin Dubey for R-1
Mr. Sudhir Kathpalia
Ms. Suparna Srivastava for R-2

J U D G M E N T

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

1. M/s. Alok Ferro Alloys Limited is the Appellant herein.

2. This Appeal has been preferred by the Appellant challenging the Impugned Order dated 31.12.2011 and the Review Order dated 26.6.2012 passed by the Chhattisgarh State Commission whereby the State Commission has rejected the prayer of the Appellant to direct the Distribution Company, the 2nd Respondent to refund the excess fixed charges recovered from the Appellant for connectivity on 132 KV for 4000 KVA instead of zero KVA for the period between June, 2009 and February, 2010.

3. The short facts are as follows:

(a) Chhattisgarh State Commission is the 1st Respondent. Chhattisgarh Power Distribution Company is the 2nd Respondent. The Appellant was operating a 8 MW Coal Based Captive Power Plant as well as co-located Ferro Alloys Unit to meet the requirements of its Ferro Alloys Industry.

(b) Both the Ferro Alloys Plant as well as 8 MW Captive Power Plant were located in the same premises. Both were functioning in isolation mode

without any connectivity with the Grid from the year 2006.

(c) On 6.6.2008, the Captive Power Plant of the Appellant failed; due to break down and consequently it had to be shut down. Since the Appellant's Power Plant had been shut down, the Appellant's Ferro Alloys Unit had necessarily to purchase power from the Distribution Company, the 2nd Respondent to continue the manufacturing of Ferro Alloys. Hence, the Appellant on 17.6.2008 approached the Distribution Company and applied for temporary connection of 8000 KVA on 33 KV line for its Ferro Alloys Plant.

(d) Accordingly, the Distribution Company (R-2) through the letter dated 26.6.2008 conveyed the sanction of temporary 8000 KVA connection on 33 KV line for the consumption by the Ferro Alloys Unit of the Appellant for a period of two months.

(e) The Appellant again on 3.7.2008 applied for a permanent connection having a sanctioned load of 8000 KVA on 33 KV. In response to this further request, the Distribution Company sanctioned the same through the letter dated 16.7.2008.

(f) Thereupon, the Appellant and the Distribution Company entered into a HT Supply Agreement with a contract demand of 8000 KVA on 33 KV on 21.7.2008.

(g) In view of the expected expansion of the Appellant's 8 MW Power Plant in the near future and the need for having independent 132 KV connectivity for evacuation of the power, the Appellant applied to the Distribution Licensee through the letter dated 5.8.2008 requesting to provide connectivity to the said power plant on 132 KV for evacuation of power from its Generating Plant.

(h) On 11.11.2008, there was a heavy fire in the Transformer of the Ferro Alloys Unit due to which the entire Ferro Alloys Plant was broken down.

(i) Therefore, the Appellant through the letter dated 12.11.2008 informed about the break down of Ferro Alloys Plant due to heavy fire and applied for reduced supply and prayed for relaxation in contract demand in terms of Clause 23 (a) of the HT Supply Agreement dated 21.7.2008.

(j) Thereupon, the Appellant on 7.4.2009 applied for a parallel operation and synchronization on 132 KV line for evacuation of power.

(k) The Transmission Company sanctioned construction of 132 KV Bay to provide independent connectivity by the letter dated 28.4.2009.

(l) On 30.4.2009 and 6.5.2009, the Appellant sent letters to the Distribution Company (R-2) clarifying that it did not require drawing power on the 132 KV line and requested for a zero contract demand on the said line.

(m) In pursuance of the request made by the Appellant, the Distribution Company (R-2) sanctioned (1) synchronization line of 8 MW captive power plant of the Appellant on 132 dedicated line and (2) reduction of contract demand from 8000 KVA to 4000 KVA on 132 KV line through the letter dated 26.5.2009.

(n) By this letter, the Appellant was directed to execute a fresh HT Agreement with the Distribution Company for change of supply voltage from 33 KV to 132 KV and reduction of contract demand from 8000 KVA to 4000 KVA.

(o) Accordingly, on 30.5.2009, the Appellant entered into a HT Supply Agreement with the Distribution Company for 4000 KVA EHT Power Supply at 132 KV.

(p) However, on the next day itself i.e. on 1.6.2009, after signing of the said Agreement dated 30.5.2009, the Appellant requested the Distribution Company to reduce the contract demand of 132 KV line into zero. But, there was no response. Therefore, the Appellant filed a Petition in OP No.44 of 2009 on 25.7.2009 praying for reduction of contract demand to zero in place of 4000 KVA by directing the Distribution Company to cancel the Agreement dated 30.5.2009 and in its place enter into a fresh HT Agreement for zero contract demand.

(q) During the pendency of this Petition, as suggested by the State Commission, both the parties held meetings to resolve the dispute. Finally on 9.10.2009, both of them appeared before the State Commission and submitted that outstanding matters have been settled to the extent that the Appellant intended to continue to get the 33 KV supply from the Distribution Company for their Ferro Alloys Unit and 132 KV connectivity for the Generating Plant separately.

(r) In view of this change of stand taken by the Appellant, it was directed to file the Amendment Petition. Accordingly the Appellant filed the Amendment Petition seeking for a direction to the

Distribution Company to continue the connectivity on 132 KV line by treating the power plant as an independent power plant and other consequential directions. In the light of the amended prayer, the State Commission disposed of the said Petition in OP No.44 of 2009 accepting the request of the Appellant/Petitioner to have connectivity of their 8 MW Power Plant with 132 KV pooling sub station which is a requirement of the Grid Code with zero contract demand and directed that the supply voltage for 4000 KVA as per the Supplementary Agreement need to be changed from 132 KV to 33 KV. For availing 8000 KVA load on 33 KV line, the Appellant was asked to approach the Respondent distribution Company and the latter was directed to sanction and release the enhanced load on priority after completion of required formalities. This order was passed on 17.12.2009.

(s) Pursuant to the above order dated 17.12.2009, the Appellant and the Distribution Company on 3.2.2010 entered into a Supplementary HT Supply Agreement for change of voltage from 132 KV to 33 KV w.e.f the date of release of connection at 33 KV.

(t) Thereupon, the Appellant applied in July, 2010 for enhancement of the contract demand from 4000

KVA to 8000 KVA. This was sanctioned in August, 2010.

(u) On 15.2.2011 the Distribution Company (R-2) sanctioned a reduced supply of 60 KVA from November, 2008 to May, 2009 only. Therefore, the Appellant by the letter dated 6.6.2011, requested the Distribution Company for the refund of Rs.71,88,204/- for zero contract demand on 33 KV from June, 2009 to February, 2010 along with the interest contending that as per Commission's order dated 17.12.2009, the contract demand had been reduced to zero.

(v) There was no response to this letter. Hence, the Appellant on 12.7.2011 approached the State Commission and filed a Petition No.37 of 2011 seeking for a direction to the Distribution Company (R-2) to refund the fixed charges excessively recovered from the Appellant/Petitioner for 4000 KVA instead of zero KVA for supply at 132 KV for the period from June, 2009 to February, 2010 along with the interest.

(w) After hearing the parties, the State Commission passed its Impugned Order on 31.12.2011 rejecting the Petition filed by the Appellant holding that the

billing done by the Distribution Company for 4000 KVA contract demand on 132 KV was in order.

(x) Aggrieved by this order, the Appellant filed a Review Petition before the State Commission on 3.2.2012. Ultimately, the State Commission on 26.6.2012 dismissed said the Review Petition also holding that no ground was made out for Review.

(y) Challenging both the orders dated 31.12.2011, the Original Order and 26.6.2012, the Review Order, the present Appeal has been filed.

4. The learned Counsel for the Appellant while assailing the impugned orders has urged the following grounds:

(a) The Appellant's claim for refund of excessive charges was rejected by the State Commission on the erroneous premise that the Distribution Company (R-2) had correctly billed the Appellant for 4000 KVA demand on 132 KV from June, 2009 to February, 2010. This finding is contrary to the Supplementary Agreement dated 2.2.2010 executed by both the parties.

(b) For the period from June, 2009 to Feb, 2010, the State Commission ought to have held that the Distribution Company should have billed only on the basis of the 33 KV connection and not on the basis of

132 KV connection. If the State Commission had noticed that the Appellant's connection for the said period was deemed to be on 33 KV line, then, the possible course open was to direct the Distribution Company (R-2) to treat the period from June, 2009 to Feb, 2010 at the "reduced supply" as per the prayer of the Appellant. As such, the Appellant could not be made liable to pay on the basis of a contract demand of zero in terms of the order of the State Commission dated 6.2.2006 in which it was ordered that the Appellant is entitled to reduce its contract demand to zero KVA.

(c) In any event, the Appellant is ready and willing to pay the contract demand charges at the minimum contract demand as already sanctioned by the Distribution Company for the period from Nov, 2008 to May, 2009 which will be in terms of Supplementary Agreement as well as the Order of the State Commission dated 6.2.2006.

(d) The argument of the Distribution Company (R-2), on the applicability of the supply code is immaterial for the purpose of the present adjudication. In fact, the Appellant is ready and willing to pay the charges for the minimum of 60 KVA on 132 KV lines which is in conformity with the Supply Code. It is only when the

Appellant were to claim a zero contract demand, the question of applicability of the supply code would arise. Therefore, the Impugned Order is liable to be set-aside and consequently, the direction be issued to the Distribution Company (R-2) to revise the billing for the period from June, 2009 to Feb, 2010 on the basis of the 33 KV connections with 60 KVA contract demand and refund the excess charges recovered from the Appellant.

5. In reply to the above submissions, the Respondents in justification of the Impugned Order have made the following submissions:

(a) The Appellant filed a Petition in OP No.44 of 2009 praying for the direction to the Distribution Company to cancel the HT Agreement dated 30.5.2009 for a contract demand of 4000 KVA and in its place enter into a fresh agreement for zero contract demand. However, during the pendency of the Petition, the parties held meetings to resolve the dispute and finally on 9.10.2009, the parties appeared before the State Commission and submitted their resolution. Hence, the Appellant was directed by the State Commission to amend the Petition. Accordingly, the Appellant filed the Petition for amendment in OP No.44 of 2009 praying for maintaining 8000 KVA

contract demand without any break in the period of supply. While disposing of this Petition in OP No.44 of 2009, the State Commission specifically held in its Order dated 17.12.2009 that the Agreement dated 30.5.2009 through which the Appellant was given 4000 KVA EHT power supply on 132 KVA is binding upon the parties for which only the supply voltage is required to be changed from 132 KV to 33 KV and directed the parties to give effect to the same after execution of Supplementary Agreement. The Impugned Order dated 31.12.2011 is thus, in consonance with the order dated 17.12.2009.

(b) It is only after the interconnection executed between co-located Generating Plant and Ferro Alloy load was removed, the premises were separated. As per the order dated 17.12.2009, the requirement of the Appellant to have connection at 132 KV of their 8 MW Generating Plant with zero contract demand was allowed by the State Commission.

(c) Both the parties have complied with the order dated 17.12.2009 and accordingly they entered into a Supplementary Agreement on 2.2.2010 for change of Voltage from 133 KV to 33 KV for 4000 KVA EHT power supply. Thus, the Order dated 17.12.2009 has reached the finality.

(d) The conjoint reading of the amended prayer in the clause in the Petition No.44 of 2009 which resulted in the order dated 17.12.2009 passed by the State Commission and Clause (ii) of the Supplementary Agreement dated 2.2.2010 for change of voltage of supply from 132 KV to 33 KV would make it clear that the change of voltage from 132 KV to 33 KV is required to be given w.e.f the date of release of connection at 33 KV with prospective effect and not with retrospective effect. Thus, the impugned order does not suffer from any infirmity.

6. Having regard to the above rival contentions urged by both the parties, the following questions have arisen for consideration:

(a) Whether the Appellant is entitled to receive connectivity of its 8 MW power plant without any contract demand as per Order dated 6.2.2006 passed in the Petition No.17 of 2005?

(b) Whether the State Commission has overlooked the fact that the Distribution Company has not complied with the Order dated 17.12.2009 passed in Petition No.44 of 2009 regarding restoration and continuity of 33 KV connection for Ferro Alloys unit without any break in the period

of supply and has further not adopted the correct manner of billing without connectivity of 8 MW power plant of the Appellant at 132 KV for the period from June, 2009 and Feb, 2010?

7. The learned Counsel for both the parties have argued at length on these questions.

8. Before analysing these questions, it would be better to quote the relevant findings rendered by the State Commission in the Impugned Order dated 31.12.2011.

9. The relevant passage of the Impugned Order is reproduced herewith as under:

"7. ……. the petitioner, M/s AFAL has prayed for refund of the fixed charges stating to be excessively imposed and recovered from them for 4000 KVA instead of zero KVA for the period from June' 2009 to December' 2009 along with interest accrued on the principal amount. On this point, we are of the view that in petition No. 44 of 2009(M), the main intention of the petitioner was to get refund of fixed charges billed and recovered by CSPDCL from the petitioner M/s AFAL for 4000 KVA after its connectivity on 132KV instead of considering their contract demand as zero as per their application submitted to CSPDCL. However, subsequently in the amendment to the petition No. 44 of 2009(M), the petitioner desired to continue to avail power from CSPDCL for their ferro alloy unit with contract demand of 8000 KVA on 33 KV and an independent connectivity on 132 KV for their 8MW power generating plant considering their plant to be an IPP Unit. On the basis of amended petition, the

Commission vide order passed on 17.12.2009 directed that the 33 KV supply which was being availed for the ferro alloy plant may be continued. Further, since the agreement for load of ferro alloy unit was already executed for 4000 KVA on 132 KV, the same may be got changed from 132 KV to 33 KV. Moreover, 8000 KVA load on 33 KV for ferro alloy plant may be allowed on submission of application and completion of required formalities by M/s AFAL. In their submission respondent in current petition No. 37 of 2011 (D) have confirmed that in compliance to Commission's order dated 17.12.2009 in petition No. 44 of 2009 (M), the CSPDCL continued connectivity of 8 MW generating plant of the petitioner on 132 KV with the pooling sub-station and 4000 KVA power availed by the petitioner on 132 KV has been changed from 132 KV to 33 KV under supplementary agreement dated 02.02.2010. It is further stated by CSPDCL that load was enhanced from 4000 KVA to 8000 KVA on 33 KV under supplementary agreement dated 19.07.2010, on completion of required formalities by the petitioner. It is further submitted by CSPDCL that billing has been done as per the executed agreement and prevailing tariff during the period of supply and no excessive billing over and above the applicable tariff has been done.

8. While going through the prayer of the petitioner in this petition, we have observed that petitioner is of the view that they are not liable to be billed for minimum charges for the period from June' 2009 to December' 2009, i.e. during the period connectivity of their ferro alloys was with 132KV system as per their requisitioned zero contract demand, though the petitioner in its amended petition No. 44 of 2009 it had intended to maintain 8000 KVA contract demand for its ferro alloy unit on 33 KV line without any break in the period of supply. Accordingly, the Commission in its order dated 17.12.2009 has approved conversion

of 4MVA connection on 132KV to 33KV and directed the respondent to comply the same after execution of supplementary agreement in this respect. Petitioner in its amended petition of 44 of 2009 has prayed to maintain 8MVA contract demand without any break in the period of supply. There is no provision in Supply Code to discontinue the billing of a consumer for certain period during the currency of agreement.

The respondent, in compliance to Commission's order dated 17.12.2009 in petition No. 44 of 2009 (M), maintained 8000 KVA contract demand for ferro alloy unit of M/s AFAL on 33 KV system. Start up power was also provided to M/s AFAL generator by respondent on request of the petitioner. The billing to ferro alloy unit of M/s AFAL was done as below as per provisions of agreement i.e.

(i) 8000 KVA CD on 33 KV from 24.07.2008 to 05/2009

(ii) 4000 KVA CD on 132 KV from 06/2009 to 01/2010

(iii) 4000 KVA CD on 33 KV from 02/2010 to 07/2010

(iv) 8000 KVA CD on 33 KV from 08/2010 to 06/2011

Based on above mentioned facts, we have reached to the conclusion that, since the agreement for power supply to ferro alloy unit of petitioner has to be in continuity, the billing done by the respondent for 4MVA contact demand on 132KV is in order. Thus, we do not find any justification to refund the demand charges billed and recovered by respondent from M/s AFAL ferro alloy unit, for the period from June' 2009 to December' 2009."

10. The crux of the findings rendered by the State Commission in the Impugned order dismissing the Petition filed by the Appellant is as under:

" (a) Appellant is of the view that they are not liable to pay the bill for minimum charges for the period from June, 2009 to February, 2010 i.e. during the period connectivity of their Ferro Alloys was with 132 KV system as per their requisitioned zero contract demand, though the Petitioner in its amended petition No.44 of 2009 had specifically stated that it had intended to maintain 8000 KVA contract demand for its Ferro Alloy unit on 33 KV line without any break in the period of supply.

(b) There is no provision in the Supply Code to discontinue the billing of a consumer for certain period during the currency of agreement.

(c) Distribution Company (R-2), in compliance with the State Commission's Order dated 17.12.2009 in Petition No.44 of 2009 (M), maintained 8000 KVA contract demand for Ferro Alloys unit of Appellant on 33 KV system.

(d) Since the Agreement for power supply to Ferro alloys unit of petitioner has to be in continuity, the

billing done by the Distribution Company (R-2) for 4000 KVA contract demand on 132 KV is in order."

11. In the light of the above findings, we shall now take up both the issues together for discussion as they are interlinked.

12. The main controversy which has arisen in the present Appeal would relate to the claim of reduction in contract demand for the period from June, 2009 to February, 2010 for the power supplied by the Distribution Company to the Appellant. The Appellant has claimed for the refund of the demand charges billed which was excessively recovered by the Distribution Company from the Appellant for the said period.

13. There is no dispute in the fact that the Appellant has been a consumer of the Distribution Company by drawing power under HT agreement entered into in that behalf during the period in question i.e. from June, 2009 to February, 2010.

14. Similarly, it cannot be disputed that the State Commission's Supply Code, 2005 has been amended through Clause 7.2 of the Supply Code which provides that the contract demand has to be as per the Agreement executed between the consumer and the distribution Licensee having regard to the requirement of the consumer's installation.

15. Clause 7.9 of the Supply Code prescribes the procedure for reduction in contract demand. As per this clause, the

contract demand cannot be reduced during initial period of Agreement. Whenever exceptional circumstances arise, the reduction in contract demand is permissible only once and that too to the extent of 50% of the contract demand.

16. The Supply Code provides for a situation of Force Majeure. Clause 12.2 provides for permissible limit of contract demand during the period of Force Majeure. As per this Clause, whenever a situation of Force Majeure arises which results in requirement of reduced supply of power from the licensee, the consumer can avail such reduction only within the permissible limits of contract demand at respective voltage levels. The provision of Supply Code is applicable to the Appellant as a consumer of the Distribution Company.

17. These provisions have been followed by both the parties while implementing HT agreement entered into from time to time. So long as the Appellant remains a consumer of the Distribution Company under the HT agreement which is binding on both the parties, the Appellant cannot claim any concession which is not provided under the Supply Code.

18. As narrated earlier, since there was a failure of its captive power plant, the Appellant applied to the Distribution Company for temporary connection for two months through the letter dated 17.6.2008. In pursuance of the same, the Appellant was accorded temporary approval on 26.6.2008

for 8000 KVA temporary power supply on 33 KV lines for a period of two months. Again, through the application dated 3.7.2008, the Appellant requested for a permanent connection to run its Ferro Alloy unit.

19. Accordingly, the Distribution Company conveyed the approval for supply of HT power by the letter dated 16.7.2008 to the extent of 8000 KVA at 33 KV. The said approval was subject to various conditions including the execution of HT Agreement.

20. Thereupon, on 21.7.2008, the Appellant executed HT Agreement with Respondent for supply of 8000 KVA power to its Ferro Alloy unit at 33 KV voltages. As per this Agreement, from 24.7.2008 onwards, the Appellant had been availing supply as a consumer of the Distribution Company at 33 KV. Since, the Ferro Alloys Unit and the Captive Generating Plant of the Appellant were co-located in the same premises, a single point connectivity as permitted under the Supply Code was granted to the Appellant's premises.

21. As indicated earlier, the Distribution Company could consider reduction in contract demand only as per the procedure prescribed in the Supply Code. As regards availing reduced supply on account of Force Majeure, as per the Supply Code, the consumer was not required to pay for

a greater supply of electricity than it required. But, such a reduction was to be in conformity with the Supply Code which permitted reduction in contract demand on occurrence of Force Majeure within the prescribed limitations on a different voltage level.

22. As per Clause 28 (a) of the Agreement, such Agreement was to remain in force for a period of two years from the date of its commencement. The two year's restrictions are also in consonance with the provisions of the Supply code.

23. Thereafter, the Appellant who was desirous of expanding its power plant approached the Respondent for seeking connectivity through the 133 KV line for evacuation of power. There are various correspondences between the parties with reference to the request for connectivity. The Appellant also requested for relaxation under Clause 23 (a) of the HT Agreement, due to break down due to fire. In fact, the said request for reduced supply on account of fire was duly considered and allowed by the Distribution Company (R-2).

24. Accordingly, monthly bills for the period from 12.11.2008 to 30.5.2009 were issued on the basis of the minimum contract demand at 60 KVA on 33 KV line as permissible under the Supply Code.

25. Thereafter, on 7.4.2009, the Appellant requested for permission for operating its generating plant in a parallel with the Grid. Accordingly, this sanction also was granted to the Appellant on 28.4.2009.

26. Immediately thereafter, through letters dated 30.4.2009 and 6.5.2009, the Appellant requested for reduction of its contract demand to zero. The zero contract demand as claimed by the Appellant on the earlier orders passed by the State Commission could not be considered because the Appellant's power plant was under shut down since 6.6.2008 and supply for Ferro Alloy Units was being availed of by the Appellant from the Distribution Company (R-2) only.

27. In the meantime, through the letter dated 25.6.2009, the Distribution Company granted permission for synchronisation and running of 8 MW captive power plant of the Appellant in parallel with the Grid through 132 KV dedicated line. The reduction of the contract demand was permitted on the request of the Appellant and as per the provisions of the Supply Code. Under the Supply Code the minimum contract demand at 132 KV could not go below 4000 KVA.

28. Even after synchronization of the power plant, no supply was made by the Appellant's power plant to its Ferro Alloys unit during the year 2009-10. While granting the permission

to switch the supply from 33 KV to 132 KV, the Distribution Company in its letter dated 26.5.2009 categorically intimated that before extending connectivity on 132 KV, the existing 33 KV shall be dismantled and a fresh HT Agreement for change of supply voltage from 33 KV to 132 KV and reduction of contract demand from 8000 KVA to 4000 KVA was to be executed.

29. Accordingly, the Appellant and the Distribution Company on 30.5.2009, executed HT Agreement for supply of 4000 KVA power on 132 KV to the Appellant's plant.

30. Despite this execution, the Appellant on 1.6.2009, sent a letter to the Distribution Company requesting for reduction of load from 4000 KVA to zero KVA which is not in consonance with the HT Agreement dated 30.5.2009. This was not agreed to. Therefore, the Appellant filed a Petition before the State Commission for giving a suitable direction in Petition No.44 of 2009.

31. During the course of this proceedings both the parities negotiated and understood the real problem in the meetings held as per the State Commission's suggestions. Accordingly, after a sequence of meetings, the Appellant and the Distribution Company appeared before the State Commission and the Appellant submitted that it intended to

continue the 33 KV supply from the Utility for its Ferro Alloys Plant and 132 KV connectivity for the generator separately.

32. Pursuant thereto, the Appellant was permitted to amend the prayer. Then the Appellant amended this Original Petition stating that it intended to keep connectivity at 132 KV line through pooling sub station for evacuation of power generated by its power plant withy any contracted load. The Appellant also agreed that after connectivity was provided on 132 KV line for evacuation of power from generators, the interconnection between the power plant and the Ferro Alloys plant was to be disconnected and the power plant was to be treated as an independent power plant. On this basis, the State Commission passed an order on 17.12.2009 referring to the stand taken by both the parties and gave directions to both the parties to act accordingly. The State Commission in the said order directed for segregation of the Appellant's premises and separate connections along with the contract demands available for each such connection.

33. In furtherance of the above order, the Appellant and the Distribution Company executed a Supplementary Agreement dated 2.2.2010 for change of voltage from 132 KV to 33 KV.

34. Thus, by the said Supplementary Agreement dated 2.2.2010, the Agreement dated 30.5.2009 was amended.

35. After the execution of the above Supplementary Agreement without any protest, the Appellant has now claimed that as per the order of the State Commission, the contract demand had been reduced to zero while Distribution Company had continued to charge at minimum contract demand of 4000 KVA and collected excess charges. On this basis, the Appellant claimed refund of the payment under the bills of June, 2009 to Feb, 2010 with 4000 KVA contract demand. This claim is not in accordance with the law, since zero contract demand at 132 KV connectivity had been permitted by the State Commission when such connectivity was to a segregated premises of the power plant with the status of an independent power plant and not when the 132 KV connectivity was to a composite premises of Ferro Alloy unit and the captive generation plant.

36. During the period in question, the composite premises had remained connected at 132 KV under HT Agreement with reduced contract demand of 4000 KVA as per Supply Code and the bills had been raised accordingly. On this basis, the said claim for refund was rejected by the Distribution Company. Thereafter, the Appellant filed a Petition in Petition No.44 of 2009 claiming refund of the fixed charges excessively imposed along with the interest, the State Commission did not agree with the same and directed the parties to settle the issue. Accordingly, the same was

reported. Thereafter, the Supplementary Agreement was entered into on 2.2.2010.

37. All these facts have been taken into consideration by the State Commission while passing the Impugned Order dated 31.12.2011. The State Commission in the Impugned Order held that billing for the Ferro Alloy unit of the Appellant has been done as per the provisions of the Agreement i.e. 4000 KVA contract demand on 132 KV from June, 2009 to Feb, 2010 and the same was in order.

38. As pointed out by the State Commission in the Impugned Order, the billing had been done for the period when premises of the Appellant the Ferro Alloy unit as well as the captive power plant had a single connectivity under duly executed HT agreement.

39. Even during the period of June, 2009 to Feb, 2010, the Ferro Alloy Unit of the Appellant had not been in a position to consume power on account of breakdown. This would show that during the said period, the Ferro Alloy Unit remained co-located with captive generating plant to form a composite premises having connectivity with the Distribution Company as a consumer. In that event, the provisions of the Supply Code are squarely applicable to the Appellant. Under the Supply Code, the reduced contract demand was available only to the minimum level of 4000 KVA and no

further. This had been provided under the Supplementary Agreement dated 2.2.2010.

40. Therefore, the plea relating to the retrospectivity of the Appellant in the operation of the said Supplementary Agreement cannot be accepted since the said Agreement was to govern the Supply Code after the 33 KV connection was released upon disconnecting the existing 132 KV connectivity.

41. Therefore, there is no infirmity in the Impugned Order.

42. <u>Summary of Our Findings</u>

The billing of the Appellant has been done by the Distribution Company as per the provision of the Agreement entered into between the parties for contract demand of 4000 KVA on 132 KV for the period from June,2009 to Feb.2010. Thus, there is no infirmity in the impugned Order.

43. In view of our above findings, we find no merit in the present Appeal. Hence the same is dismissed.

44. However, there is no order as to costs.

(Rakesh Nath) **Technical Member**

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

<u>Dated: 16th Jan, 2014</u>
√REPORTABLE/~~NON REPORTABLE PP~~