

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

**Appeal no. 190 of 2013 and  
Appeal no. 191 of 2013**

**Dated : 22<sup>nd</sup> August, 2014**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. Rakesh Nath, Technical Member**

**Appeal no. 190 of 2013**

**In the matter of**

**M/s. Sree Rengaraaj Ispat Industries Pvt. Ltd. ... Appellant (s)**  
**Plot No. MM1(Part-I)**  
**SIPCOT Industrial Growth Centre**  
**Perunthurai 638052**  
**Erode District, Tamil Nadu**

**Versus**

- 1. The Tamil Nadu Electricity Board ...Respondent(s)**  
**Represented by its Chairman**  
**144, Anna Salai, Chennai – 600 002**  
**Tamil Nadu**
  
- 2. The Chief Engineer/PPA**  
**Tamil Nadu Electricity board**  
**144, Anna Salai, Chennai – 600 002**  
**Tamil Nadu**

3. **The Superintending Engineer  
Tamil Nadu Generation and Distribution Corpn. (Ltd.)  
TANGEDCO, Erode Electricity Distribution Circle  
Erode-9, Tamil Nadu**
  
4. **Tamil Nadu Electricity Regulatory Commission  
No. 19A, Rukmini Lakshmipathy Salai  
Egmore, Chennai – 600 008  
Tamil Nadu.**

**Counsel for the Appellant(s):** Mr. A.R.L. Sundaresan, Sr. Adv.  
Mrs. N. Shoba  
Mr. Sri Ram J. Thalapathy  
Mr. V. Adhimoolam  
Mr. K. Seshadri  
Mr. S. Shyam Sundar

**Counsel for the Respondent(s):** Mr. S. Vallinayagam

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**Counsel for the Respondent(s):** **Mr. S. Vallinayagam**

## **JUDGMENT**

### **RAKESH NATH, TECHNICAL MEMBER**

These Appeals have been filed by M/s. Sree Rengaraj Ispat Industries Pvt. Ltd. against the common order of the Tamil Nadu Electricity Regulatory Commission (“State Commission”) dated 11.07.2013 whereunder the State Commission, apart from denying the reliefs sought for by the Appellant has passed the order directing the Tamil Nadu Generation and Distribution Corporation (“TANGEDCO”) to treat the Appellant as a consumer and redraw the bills in respect of two connections of the Appellant taken for the purpose of start up power for its generating units from the inception of the respective service connections.

2. The brief facts of the case in Appeal no. 190 of 2013 are as under:

- i) The Appellant is engaged in manufacture of Sponge Iron. For the said purpose, the Appellant obtained a service connection HTSC no. 197 with maximum demand of 2200 KVA from the Respondent Electricity Board, the predecessor of the TANGEDCO on 10.03.2005. Since the requirement was less than 2200 KVA, the Appellant applied and reduced the maximum demand to 1400 KVA. After installation and commissioning of 8 MW co-generation power plant of the Appellant for generating electricity by using the waste heat that emanated from its Sponge Iron Plant, the Appellant surrendered the service connection HTSC no. 197 on 27.03.2006.
- ii) The State Commission vide its order no.2 dated 15.05.2006 decided that in case of outage of a generator supplying power to a consumer under Open Access, standby arrangements should be provided by the Distribution Licensee to meet the demand of the Open Access

beneficiary, on payment of energy charges and energy equated demand charges applicable to HT Tariff III which was 621.81 paise per unit. Similarly, in case of drawal by generator for start up power from the Distribution Licensee, the generator shall be permitted to draw start up power on payment of energy charges and energy equated demand charges applicable to HT Tariff III, which was then 621.81 paise/unit.

- iii) On 23.05.2006, the Appellant applied to the Respondent Electricity Board for start up power of 200 KVA as a Generator for its 8 MW co-generation power plant and the same was sanctioned by the Respondent Board on 08.06.2006. Pursuant to that, an Agreement was entered into on 12.06.2006 between the Appellant and the Respondent Electricity Board.

- iv) The energy which was consumed by the Appellant for start up was charged by the Respondent Electricity Board at HT Tariff III for the energy consumed as start up power and separate demand charges and the same were paid by the Appellant, after raising of protest. Subsequently the Electricity Board started levying energy charges and energy equated demand charges as stipulated in order no. 2 by the State Commission at 621.81 paise per KWH. However, after imposition of power cuts in November 2008, the Electricity Board started imposing excess demand charges at the rate of Rs. 600/KVA whenever the recorded demand exceeded the contract demand of 200 KVA.
- v) The Appellant has been generating electricity from its 8 MW power plant and after consumption of the captive use, the entire surplus is being supplied to the captive users and third party users through the Respondent's grid as per the wheeling agreement entered into between the Appellant and

the Respondent Electricity Board from time to time, by paying the necessary charges.

- vi) The Appellant filed a petition before the State Commission contending that the Appellant being a generator was not liable to pay demand charges and excess demand charges for start up power and praying for refund of amounts collected in excess of the tariff of 621.815 paise/unit.
  
- vii) This petition was disposed of by the State Commission by the impugned order dated 11.07.2013 rejecting the prayer of the Appellant regarding refund of demand charges collected by the Electricity Board. The State Commission also came to conclusion that the Appellant had used the start up power for purpose other than the start up of its generator and decided that the applicable charges on the service connection HTSC 249 shall be as per HT Tariff III for the period upto 31.03.2012 and thereafter at temporary supply tariff.

TANGEDCO was directed to redraw the bills for the service connection. This order is challenged in Appeal no. 190 of 2013.

3. The facts in case of Appeal no. 191 of 2013 are as under:
  - i) The Appellant commissioned a 30 MW coal based thermal generating station in its premises and commissioned the same in January 2012. In the same premises, the Appellant is having a steel melting furnace. The energy generated from the 30 MW power plant is being consumed by the Appellant in its steel melting furnace and the surplus energy is being supplied to the Respondent Electricity Board's grid for supply to captive and third party users.
  - ii) For start up purpose for its 30 MW power plant, the Respondent TANGEDCO, the successor of the Electricity Board sanctioned a 1000 KVA connection being HTSC no. 379 on 24.01.2012. On 28.01.2012, the Appellant applied for

additional 2000 KVA to which it was entitled. The said application is pending with TANGEDCO.

- iii) The Appellant also entered into an Energy Wheeling Agreement on 09.02.2012 with the TANGEDCO for wheeling of surplus energy after captive consumption for supply to captive users and third party users on payment of the necessary charges.
  
- iv) TANGEDCO had been raising the bills for the start up energy and the same was being paid by the Appellant. TANGEDCO also levied additional demand charges @ Rs. 600 per KVA for the entire month for the months during which the record demand was in excess of the sanctioned demand and the same was paid by the Appellant after protest.

- v) The Appellant preferred a petition being DRP no. 12 of 2012 before the State Commission praying for direction to the TANGEDCO to refund the amounts collected in excess of the energy charges.
  
  - vi) The State Commission disposed of the petition by a common order dated 11.07.2013 rejecting the prayer of the Appellant and also giving similar directions to the TANGEDCO for redrawing bills of the Appellant for the past period, as given in respect of service connection HTSC 249. .
4. The State Commission in the common impugned order dated 11.07.2013 has held that the Appellant should be treated as a consumer and the entire bills from the inception of the respective service connection should be revised and the tariff as applicable to temporary supply should be charged and the difference between the revised bill and the amount already paid be collected from the Appellant. The

State Commission has further noted that during the inspection of the Appellant's premises by the Board an 11 KV cable was found lying between the service connections HTSC no. 249 and HTSC no. 379 which might have been used for supplying electricity for erection, testing and commissioning of the 30 MW generating plant and also for use in its industrial unit from the service connection meant for start up power.

5. Assailing these findings, the Appellant has made the following submissions:
  - a) The Appellant cannot be treated as a consumer since the initial service connection which the Appellant obtained in HTSC no. 197 for the sponge iron plant was of the capacity of 2200 KVA and subsequently reduced to 1400 KVA and the same was surrendered as early as on 27.03.2006. For Sponge Iron Plant alone the capacity required was 1400

KVA. Hence, the fact that the Appellant had obtained service connection for 200 KVA for start up power cannot be held against the Appellant to treat it as a consumer.

- b) The generator which is entitled to obtain service connection for start up purposes upto 10% of the generation capacity stands on a different footing than a consumer who consumes electricity for the purpose of industrial activity. The connections obtained for 8 MW plant and 30 MW plant were insufficient to run the operation of the Sponge Iron Plant or Steel Melting Furnace Plant.
- c) The Tribunal in its judgment in Appeal no. 166 of 2010 has held that a generator requiring start up power from the grid cannot be termed as a consumer.
- d) The recorded demand has been higher than 10% of the capacity of the 8 MW generating plant only on 5 occasions

between 2006 and 2012 in HTSC no. 249. It has not exceeded the said 10% even on a single occasion in so far as HTSC no. 379 is concerned.

- e) If the sanctioned demand of 200 KVA and 1000 KVA are taken as the basis for the HTSC nos. 249 and 379 respectively, then the excess demand was in excess only on 11 occasions between June 2006 and June 2013 in HTSC no. 249.
  
- f) In the month during which recorded demand is high, there is no corresponding increase in the units consumed. However, when the number of units consumed in a month are high, the demand is not high. Only if recorded demand and energy consumption were high only, then there may be a reasonable suspicion that the energy drawn might have been used for industrial consumption by the Appellant.

- g) The energy consumption may be high on account of continuous drawl of power for the purpose of running the Turbine auxiliaries of the generator, which cannot be kept idle when the generating plant is down. In order to ensure that the turbine generator bearing does not get damaged and ceased, the Appellant was constrained to keep the turbine running in idle stage with low RPM. For restoring the Sponge Iron Plant, it takes 2 to 3 weeks once in a period of 3 to 6 months. During such times, to run the Turbine with low RPM, energy is drawn on continuous basis for 10 to 17 days.
- h) The percentage units imported in HTSC no. 249 are less than 0.5% of the energy generated by the 8 MW power plant. Similarly in HTSC no. 379 the units imported are less than 0.5% of the units generated by the 30 MW power plant. This would also establish the status of the Appellant as a generator.

- i) The State Commission has gone beyond the pleadings of the parties and the relief claimed by the Appellant in its petition.
  
- j) The entire order of the State Commission is based on suspicion and surmises and not on actual facts.
  
- k) The 11 KV cable found lying idle on 08.03.2012 was not connected between the 8 MW plant and 30 MW plant. The cable was used earlier by the Appellant to supply power generated in its 8 MW unit for testing and commissioning of 30 MW power plant. For construction power of its 30 MW plant the Appellant had utilized the power from its 8 MW power plant and hence there was no necessity to go in for a temporary connection for construction power from the Respondent Board/TANGEDCO. If the power from the start up power connection had been used for construction power

and for the Sponge Iron Plant, the consumption would have been much higher than that actually recorded.

6. In reply, TANGEDCO, the Respondent has made following submissions:
  - a) The Appellant has exceeded the maximum demand of 200 KVA in 13 months in connection HTSC 249 during the period May 2007 to February 2012. In 5 months the recorded demand exceeded 10% of the power plant capacity i.e. 800 KVA. It clearly shows that the Appellant used the power drawn from the Distribution Licensee not only for start up power for its generator but also for other purposes. In February 2012 the maximum demand has been 3672 KVA. This huge quantum of power cannot be for start up purpose alone.

- b) The Appellant also used power continuously for 11 to 18 days on five occasions from November 2007 to October 2010.
- c) The Appellant established another 30 MW captive power plant adjacent to the 8 MW power plant. However, the Appellant did not avail the temporary supply from TANGEDCO for construction, testing and commission purpose.
- d) Inspection of the premises of the Appellant on 08.03.2012 revealed that power supply from 8 MW power plant is used for start up purpose of 30 MW plant since November 2011. It was found that a 11 KV cable was laid between the 8 MW and 30 MW plants, which was found disconnected.
- e) The Appellate Tribunal judgment dated 17.04.2012 in Appeal no. 47 of 2011 has held that a generator drawing power from

the grid is not a consumer if no captive load is connected to it.

7. We have heard the A.R.L. Sundaresan, Senior Advocate representing the Appellant and Shri S. Vallinayagam, Learned Counsel for the Respondent no. 1 on the above issues and have carefully examined the documents and written submissions submitted by both the parties in support of their respective claims.
  
8. Keeping in view the rival contentions of the parties, the following questions would arise for our consideration.
  - i) **Whether the State Commission is justified in directing TANGEDCO to redraw the billing of the Appellant's service connection HTSC 249 for start up power for its 8 MW cogeneration power plant for both demand and energy charges as applicable to temporary connection of the consumer category by treating the Appellant as a**

**consumer from the date of obtaining the service connection on the suspicion of use of electricity for purpose other than the start up of its generator?**

- ii) Whether the State Commission is justified in directing TANGEDCO to redraw the billing of the Appellant's service connection HTSC 379 for start up power for its 30 MW captive power plant for both demand and energy charges as applicable to temporary connection of the consumer category by treating the Appellant as a consumer from the date of obtaining the service connection on the suspicion that power might have been used for its captive load?**

9. Let us examine the first issue regarding findings of the State Commission in respect of service connection HTSC 249.

10. The findings of the State Commission on this issue in the impugned order are as under:

- i) The start up supply is meant for the generator auxiliaries and shall not exceed 10% of the generator capacity.
- ii) The Appellant has exceeded the contracted demand of 200 KVA during the following months.

Sl.No.	Month	Recorded Demand
1	11/2007	1314 kVA
2	4/2008	369 kVA
3	8/2008	216 kVA
4	5/2009	211.50 kVA
5	9/2010	279 kVA
6	10/2010	333 kVA
7	10/2011	306 kVA
8	11/2011	1098 kVA
9	12/2011	2034 kVA
10	01/2012	2889 kVA
11	02/2012	3672 kVA

- iii) In 2007 itself, the consumer reached a maximum demand of 1314 KVA, which is 1.6 times more than the maximum start up power of 800 KVA. It clearly shows that the

Appellant used the power drawn from the Distribution Licensee not only for the start up power of his generator but also for other purposes. Further, the Appellant also exceeded the start up power requirement of 800 KVA in the months as tabulated below:

Sl.No.	Month	Recorded Demand
1	11/2007	1314 kVA
2	11/2011	1098 kVA
3	12/2011	2034 kVA
4	01/2012	2889 kVA
5	02/2012	3672 kVA

- iv) Thus during February 2012, the start up power drawn by the Appellant was 3672 KVA which is around 46% of the installed capacity and 4.6 times the maximum start up power requirement of 800 KVA.
- v) In the inspection report dated 08.03.2012, signed by both the parties, it has been reported that supply obtained in the HTSC 249 was used for start up purpose of the 30

- MW generator of the Appellant. This could be the reason for abnormal increase in requirement of power.
- vi) The Appellant has exceeded his contracted demand of 200 KVA many a times, and also exceeded his maximum start up requirement of 800 KVA many a times. Thus, the Appellant has used the power drawn from TANGEDCO for the purpose other than the start up of his generator.
- vii) As per the agreement entered between the parties the Appellant had to avail maximum demand not exceeding 200 KVA and the Appellant also agreed to comply with the requirements of Act and terms and conditions of the Distribution Code and Supply Code. As per the agreement, the Appellant has to pay “excess demand charges” as specified in the Supply Code as and when he has exceeded such permitted contract demand.

- viii) The claim of the Appellant that he is only a generator and not consumer is also not acceptable as
- (a) Throughout the agreement the petitioner is addressed as a consumer and he has not challenged this classification for the past 6 years.
  - (b) In this present case he could have used the TANGEDCO's power for the purpose other than the generator startup.
  - (c) His plant load also has been connected along with the generator auxiliaries.
- ix) As the Appellant has used the power for purposes other than the start up, the charges as specified in the State Commission's order dated 15.05.2006 will not be applicable to the Appellant.
- x) The applicable charges/tariff for the Appellant for power drawn through HTSC 249 will be as per State Commission's Codes and retail supply tariff orders issued from time to time, as given below:

Period	Charges	Applicable Order of the Commission
From 12-06-2006 to 31-07-2010	Both demand and energy Charges under HT tariff III	Retail Tariff order dated 15-3-2003
From 01-08-2010 to 31-03-2012	Both demand and energy Charges under HT tariff III	Order No. 3 of 2010 dated 31-07-2010.
From 01-04-2012 to 20-06-2012	Both demand and energy Charges under HT tariff V.	Order No. 1 of 2012 dated 30-3-2012
From 21-06-2013	Both demand and energy Charges under HT tariff V.	T.P. No.1 of 2013 dated 20-06-2013

The above charges have been ordered as specified in the Commission's codes and retail tariff orders issued from time to time. Para 8.5.6 of the National Tariff policy stipulates that in case of outages of generator supplying to a consumer on open access, standby arrangements should be provided by the licensee on payment of tariff for temporary connection to that consumer category as specified by the Appropriate Commission. In view of this, the energy charges equivalent to the temporary supply tariff has been ordered for the grid support given by the TANGEDCO to the petitioner. Till 31-03-2012, no separate tariff for the temporary supply was fixed by the Commission. Therefore, HT Tariff III, the tariff specified for such purpose has been ordered for the period before 31-03-2012.

- xii) Accordingly TANGEDCO has been directed to redraw the billing of the Appellant for service connection HTSC 249 and

adjustment has to be made as directed in the impugned order.

11. The perusal of the impugned order would show that the State Commission has concluded on the basis of the maximum demand data that the Appellant has used power for purpose other than start up of 8 MW co-generation power plant. In view of this, the State Commission directed the Appellant to be treated as a consumer and charged at tariff as applicable for temporary connection. Accordingly, the tariff as per order no. 2 dated 15.05.2006 which is applicable to generators for the purpose of start up will not be applicable to the Appellant.
  
12. Let us now examine the data for the months when the recorded demand of HTSC no. 249 was more than the contract demand of 200 KVA.

S.No.	Month	Energy exported KWH	Energy imported KWH	Recorded demand 'KVA'
<b>1.</b>	<b>11/2007</b>	<b>11,89,980</b>	<b>1,24,470</b>	<b>1314</b>
2.	4/2008	9,38,610	37,530	369
3.	8/2008	9,42,570	36,720	216
4.	5/2009	11,67,120	17,370	211.5
5.	9/2010	17,28,900	5310	279
6.	10/2010	8,07,030	24,930	333
7.	10/2011	18,50,130	630	306
<b>8.</b>	<b>11/2011</b>	<b>24,61,590</b>	<b>360</b>	<b>1098</b>
<b>9.</b>	<b>12/2011</b>	<b>26,09,910</b>	<b>1890</b>	<b>2034</b>
<b>10.</b>	<b>1/2012</b>	<b>29,54,880</b>	<b>2880</b>	<b>2889</b>
<b>11.</b>	<b>2/2012</b>	<b>27,17,820</b>	<b>1620</b>	<b>3672</b>

13. Out of above 11 months, in 5 months, highlighted above, the recorded demand was in excess of 800 KVA i.e. 10% of the generation plant capacity which is permissible start up power. However, in months when recorded demand was in excess of 800 KVA (November 2011 to February 2012), the energy drawl was very small (360 to 2880 KWH). This means that immediately on tripping of the 8 MW generating station, some additional load over and above the auxiliary load of 8 MW generating station was coming on the service

connection HTSC 249, but this load was fed for a short period. This can be explained as under:

Admittedly the Appellant had laid down an 11 KV cable from 8 MW power plant to the 30 MW power plant and the Appellant was meeting the load of construction, testing and commission of its 30 MW plant which was commissioned in January 2012 from its 8 MW co-generation power plant. This is also evident from the Demand Trend Graph submitted by TANGEDCO for 14.01.2012. In this graph it is clear that when the generation at 8 MW power plant became nil for about 1½ hours, the import by the Appellant on service connection HTSC 249 was above 800 KVA. Similar conclusion can be drawn from the graph for 29.01.2012 submitted by TANGEDCO when during the period of zero generation from 8 MW plant more than 800 KVA was drawn by the Appellant on service connection HTSC 249 for about 1 hour. Thus, for short duration some additional load of the

Appellant over and above the auxiliary consumption of 8 MW plant was being fed from TANGEDCO's supply on service connection HTSC no. 249. This may be the auxiliary load of 30 MW power plant which was connected through the 11 KV cable with the 8 MW power plant. However, the quantum of energy consumption during November 2011 to February 2012 would show that the additional load has been fed for a short duration say one hour after which it was isolated. The quantum of energy consumption would also show that there was no attempt to run the sponge Iron Plant or steel melting furnace on service connection HTSC no. 249.

14. However, in November, 2007 the energy drawl was 124470 units with maximum demand of 1314 KVA, which indicates some load other than the auxiliary load of 8 MW unit was met from the HTSC 249. TANGEDCO has intimated that there was drawl for continuous 18 days during November 2007 from 08.11.2007 and 26.11.2007. The Appellant has

tried to explain that during the period when Sponge Iron Plant is under shutdown the Turbo-Generator has to be rotated on barring gear and therefore power was drawn continuously for 18 days. We are not able to accept the argument of the Appellant. Firstly, as recorded, demand of 1314 KVA during November 2007 was in excess of the maximum requirement of start up power of 800 KVA. Secondly, as rightly pointed out by Learned Counsel for TANGEDCO, Turbo-Generator for a small unit of 8 MW size may not be required to be rotated on barring gear for a long period of 18 days, as it can cool down in much shorter period.

15. Thus, we feel that the State Commission has concluded correctly that the Appellant had been drawing power on HTSC 249 for purpose other than meeting the auxiliary load of 8 MW unit for start up of the generating unit.

16. We are, however, not in agreement with the following two reasons given by the State Commission for rejecting the claim of the Appellant.

- (i) Throughout the agreement the petitioner is addressed as a consumer and he has not challenged this classification for the past 6 years.
- (ii) His plant load also has been connected along with the generator auxiliaries.

17. The generator is entitled to take start up power connection as per the various tariff orders of the State Commission. The State Commission has also passed an order dated 15.05.2006 regarding charges for start up power. Therefore, use of word 'consumer' in the agreement for start up connection will not disentitle the Appellant to take start up power as a generator. As long as the supply is used for meeting the auxiliaries of the generator, the supply will be treated as start up supply from the generator. Similarly in a case where the Captive Power Plant and captive load are

co-located at one place the auxiliaries of the Captive Power Plant and the captive load will remain connected electrically. However, it has to be ensured by the generator that when the Captive Power Plant trips, the captive load is isolated and is not continued to be fed from the start up power connection.

18. However, we agree with the State Commission's finding that if the start up power has been used for purposes other than the generator start up, the claim of the Appellant as generator will not survive. This Tribunal has held in various judgments that if the start up power is used exclusively for the generator auxiliaries, then the generator cannot be called a consumer. However, in this case the power supply from the service connection taken for the purpose of start up power for 8 MW unit has been used for other purposes. The Appellant also laid down an 11 KV cable within its premises to supply power from its 8 MW plant to 30 MW plant which

resulted in the undesirable situation of power being drawn from service connection HTSC 249 by 30 MW unit when 8 MW unit went under outages, resulting in use of power supply for construction, testing and commissioning of 30 MW unit.

19. In view of above, we uphold the tariff applicable to the Appellant for HTSC no. 249 as correctly decided by the State Commission and bills of the Appellant be redrawn accordingly.
20. Let us take up the second issue raised in the Appeal no. 191 of 2013 regarding service connection HTSC no. 379.
21. We shall first examine the findings of the State Commission in the impugned order regarding service connection HTSC no. 379. The findings of the State Commission are summarized as under:

- (i) Both the parties in the Agreement signed for start up power for 30 MW unit had agreed to comply with the requirements of codes and terms and conditions of Distribution Code and Supply Code. Accordingly, the Appellant shall pay the excess demand charges as and when he exceeds the contract demand.
- (ii) Though the 10% limit of auxiliary consumption works out to 3000 KVA for the 30 MW generator, the Appellant obtained contracted demand of only 1000 KVA. It is upto the Appellant to obtain the contract demand according to his specific requirement.
- (iii) The Appellant has exceeded the contract demand of 1000 KVA in HTSC 379 in the all months from January 2012 to November 2012.
- (iv) Both the auxiliaries of generator and the Sponge Iron Plant of the Appellant have been connected to the grid so as to receive supply from TANGEDCO. Therefore, it is not known

whether the supply drawn by the Appellant has been utilized for the consumption of his Sponge Iron Plant.

- (v) In the above circumstances, as discussed in the case of service connection HTSC no. 249, following the same logic, the Commission allowed the levy of charges for the use of power in HTSC 379 under HT Tariff III as per the retail supply tariff order given in the impugned order.
  
  - (vi) Accordingly, TANGEDCO was directed to redraw the billing of the Appellant.
22. Thus, the State Commission decided that the Appellant be charged as per HT Tariff III as per the various retail supply tariff orders on the suspicion that the Appellant might be using the start up supply for its Sponge Iron Plant. There is no definite finding about the misuse of electricity connection by the Appellant.

23. Let us examine the month-wise data considered by the State Commission in respect of service connection HTSC no. 379 for the period January 2012 to December 2012. The relevant data is given as under:

Sl. No.	Month	Sanctioned Demand	Recorded Demand
1	Jan-12	1000	2044
2	Feb-12	1000	1960
3	Mar-12	1000	1800
4	Apr-12	1000	2536
5	May-12	1000	1620
6	Jun-12	1000	1900
7	Jul-12	1000	1504
8	Aug-12	1000	1132
9	Sep-12	1000	1816
10	Oct-12	1000	2016
11	Nov-12	1000	1576
12	Dec-12	1000	0

24. It may be seen that in none of the months the recorded maximum demand was in excess of 10% of the capacity of the generating unit i.e. 3000 KVA which is the limit of auxiliary power consumption. In all the months from January

to November 2012 the recorded maximum demand has been more than the contracted demand, thus attracting excess demand charges. However, there was no drawal of power during December 2012. In the months the recorded maximum demand is more than the contract demand, for such months the Appellant is liable to pay excess demand charges to TANGEDCO.

25. We do not find any material to establish that the start up supply connection HTSC no. 379 has been used for running steel plant. The State Commission has also decided the alleged misuse of start up supply connection only on suspicion. There was no evidence to establish that the start up supply connection HTSC no. 379 was used for running load of the steel plant. In this connection it is pertinent to note the finding of the State Commission in this regard which are reproduced below.

*“Further, as per the schematic diagram submitted by the respondent both the auxiliaries of the petitioner’s power plant and the load of the petitioner’s sponge iron plant have been connected to the grid so as to receive supply from the TANGEDCO. Therefore, it is not known whether the supply drawn by the petitioner from TANGEDCO has been utilized for the consumption of his sponge iron plant. At the same time, the Commission cannot conclude that the power drawn by the petitioner in HTSC 379 is used only for the start up purpose of the generator. In the above circumstances, as discussed in the case of D.R.P. No. 11 of 2012, following the same logic, the Commission has no option except to allow the levy of the following charges for the use of power in HTSC 379 taking into account the retail Tariff Order in force”.*

26. We feel that it is not proper to penalize the Appellant without establishing the misuse from Service Connection HTSC 379, merely on suspicion. In the data considered by the State

Commission for the period January 2012 to December 2012, in none of the months the recorded maximum demand was in excess of the 10% of the capacity of the 30 MW power plant. However, we are in agreement with the State Commission that the Appellant is liable to pay excess demand charges for the months when the recorded demand was in excess of the contracted demand on the quantum in excess of the contract demand.

27. **Summary of our findings:**

- i) **The Appellant had been drawing power on Service Connection HTSC 249 for the purpose other than meeting the auxiliary load of the 8 MW unit for start up of the generating unit. Therefore, the Appellant is not entitled to tariff as applicable to generators for start up power. The bills of the Appellant will be redrawn as decided by the State Commission and**

**the Appellant will be liable to pay the difference between the revised billing amount and the amount already paid. The finding of the State Commission on this issue, is confirmed.**

- ii) It is not established conclusively that the Appellant was misusing the service connection HTSC 379 for purpose other than the start up power. The State Commission has passed the impugned order merely on suspicion. In none of the months considered by the State Commission the recorded demand was in excess of 10% of the plant capacity i.e. 3000 KVA which is the maximum limit of the auxiliary consumption. However, the Appellant is liable to pay excess demand charges for the recorded demand in excess of the contract demand.**

28. In view of above findings, Appeal No. 190 of 2013 is disposed of. However, Appeal No. 191 of 2013 is partly allowed as indicated above. No order as to cost.

29. Pronounced in the open court on this  
22<sup>nd</sup> day of August, 2014.

(Rakesh Nath)  
Technical Member

(Justice M. Karpaga Vinayagam)  
Chairperson

√  
REPORTABLE/~~NON-REPORTABLE~~  
mk