

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

(APPELLATE JURISDICTION)

APPEAL NO. 185 OF 2014

Dated: 04th July, 2016

**Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T. MUNIKRISHNAIAH, TECHNICAL MEMBER**

IN THE MATTER OF

Rajasthan Rajya Vidyut Utpadan Nigam Limited

Through Executive Engineer (Commercial),
Vidyut Bhawan, Jyoti Nagar,
Janpath, Jaipur – 302005

..... Appellant/Petitioner

VERSUS

1. Rajasthan Electricity Regulatory Commission,

Through its Secretary,
Vidyut Viniyamak Bhawan,
Near State Motor Garage,
Sahkar Marg, Jaipur - 302001

2. Jaipur Vidyut Vitaran Nigam Limited

Through its Managing Director,
Vidyut Bhawan, Janpath,
Jaipur – 302 005

3. Ajmer Vidyut Vitaran Nigam Limited

Through its Managing Director,
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer– 305004

4. Jodhpur Vidyut Vitaran Nigam Limited

Through its Managing Director,
New Power House,
H. I. Area Phase II, Basni,
Jodhpur, Rajasthan 342001

..... Respondents

Counsel for the Appellant	...	Mr. Virendra Lodha, Sr. Advocate Ms. Petal Chandhok Mr. Sakaar Srivastava
Counsel for the Respondent(s)...		Mr. Raj Kumar Mehta Mr. Abhishek Upadhyay Ms. Himanshi Andley for R-1/RERC Mr. Pradeep Misra Mr. Manoj Kr. Sharma Mr. Shashank Pandit for R-2 to 4

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The instant Appeal under Section 111 of the Electricity Act, 2003, has been preferred by Rajasthan Rajya Vidyut Utpadan Nigam Limited (in short, the '**Appellant**'), a Government Undertaking, against the impugned Order, dated 6.6.2013, read with Order, dated 10.12.2013, passed by the Rajasthan Electricity Regulatory Commission (in short, the '**State Commission**'), in the Petitions, being Petition Nos. 285/2011 & 314/2012 & in Review Petition No. RERC/413/13 filed by the Appellant for truing up for Financial Year 2009-2010 for Kota Thermal Power Station (KTPS) (unit 1 to 7), Suratgarh Thermal Power Station (STPS) (unit 1 to 6), Ramgarh Gas Thermal Power Station (RGTPP), Dholpur Combined Cycle Gas based Thermal Power Plant (DCCPP) and Mahi Hydrel Power Station (Mahi) of the Appellant. The State Commission, vide impugned order, dated 6.6.2013, has partly allowed the petition filed by the Appellant. Aggrieved against the said impugned order, dated 6.6.2013, the Appellant preferred a review petition before the State Commission and the State Commission, vide its review order, dated 10.12.2013, partly allowed the review petition filed by the Appellant. However, the substantial part of the main petition and review petition pertaining to Interest (Extra ordinary items) on subvention receivable from Government to the tune of Rs. 90.96 crore was disallowed, depreciation was also disallowed and, simultaneously, reduction of capital cost on account of Works Contract Tax (WCT) was disallowed by the State Commission, vide its main order, dated 6.6.2013.

2. The Appellant is a Government Undertaking and a Company incorporated under the Companies Act, 1956. The Respondent No.1 is the State Commission, which is empowered to discharge various functions as per the provisions of the Electricity Act, 2003 including determination of tariff, etc. The Respondent No. 2 to 6 are engaged in the distribution business.

3. The relevant facts for the purpose of deciding the instant Appeal, are as under:

- (a) that the Appellant/petitioner initially filed an application for Annual Performance Review (truing up) for FY 2009-2010 and Annual Revenue Requirement for FY 2012-2013 and approval of tariff for sale of electricity from its existing power stations to distribution companies for the year 2012-2013 in respect of following power stations;

S.No.	Particulars	Capacity (MW)
1	Kota Thermal Power Station (KTPS)	1240
2	Suratgarh Thermal Power Station (STPS)	1500
3	Ramgarh Gas Thermal Power Station (RGTPS)	110.50
4	Dholpur Combined Cycle Gas based Thermal Power Plant (DCCPP)	330
5	CTPP Thermal Power Station (CTPP)	500
6	Mahi Hydle Power Project (MAHI)	140
7	Mini Micro Hydle (MMH)	23.85
Total.....		3844.35

- (b) that in addition to it, the Appellant also submitted a petition for determination of tariff for FY 2011-2012 for CTPP unit 2 and approval of annual revenue requirement for the FY 2012-2013 to 2013-2014 in respect of CTPP unit 1 and unit 2 on 22.2.2012, and also prayed to allow provisional tariff w.e.f. 1.4.2012 for FY 2012-2013 till the issuance of final tariff order.

The State Commission allowed provisional tariff for KTPS, STPS, RGTPS, DCCPP and Mahi for FY 2012-2013 vide its order, dated 30.3.2012, and for CTPP unit 2 for FY 2011-2012 and unit 1 & 2 for FY 2012-2013, vide order, dated 3.4.2012. By the aforesaid impugned order and review order, the said petitions have been disposed of.

4. We have heard Mr. Virendra Lodha, learned Senior Counsel for the Appellant/petitioner, Mr. Raj Kumar Mehta, learned counsel for the Respondent No.1 and Mr. Pradeep Misra, learned counsel for the Respondent Nos. 2 to 4. We have deeply gone through the material available on record including the impugned order passed by the State Commission.

5. The following issues arise for our consideration in this Appeal:

- (A) Whether the State Commission is justified in not considering the reversal interest of Rs. 90.96 crores on subvention receivable from the Government as an expense for the purpose of tariff?**
- (B) Whether the State Commission is justified in arriving at the conclusion that since the Appellant has already charged depreciation upto 90% value of assets, hence, the Appellant is not entitled to depreciation of Rs. 127.52 crores of FY 2009-2010?**
- (C) Whether the State Commission is justified in not considering the actual payment made by Appellant for the buy-back of assets as adjustment in form of security deposit from the aforesaid sale consideration of Rs. 172.45 crore on buy back/purchase of the assets sold to different financial institutions?**
- (D) Whether the State Commission is justified in reducing Rs. 9.89 crore, Rs. 14.26 crore, Rs. 22.46 crore, and Rs. 6.15 crore, which is the advance amount paid to BHEL, from the Boiler Turbine Generator (BTG) package of capital cost of KTPS-7, STPS-6, Chhabra- 1 & 2 and DCCPP Dholpur?**

ISSUE-WISE CONSIDERATIONS ARE AS FOLLOWS:**6. Issue (A) : *Non-consideration of the reversal interest on subvention receivable from the Government as an expense for the purpose of tariff:***

6.1 On this issue, the following contentions have been made by the Appellant:

- (a) that the State Commission has wrongly observed that reversal interest on subvention receivable from the Government cannot be considered as an expense for the purpose of tariff and has to be borne by the Appellant himself. The State Commission has wrongly proceeded on the premise that it is for the Appellant to take up the issue before the State Government independently, for realization of Rs. 491.87 crore appearing as “Subvention receivable from State Government” in the books of accounts and the State Commission did not decide the aforesaid issue;
- (b) that the State Government is already allowing the payment of subvention of Rs. 491.87 crore in a phased manner by way of adjustment of amount payable to the Government towards the interest on State Government loan payable every year;
- (c) that this issue is not related to subvention of Rs. 491.87 crore but, the matter pertains to the interest of Rs. 90.96 crore on subvention receivable of Rs. 491.87 crore which the company has already passed on to the Discom while computing the final settlement amount with Discom. Now, upon denial by the State Government to pay the interest on subvention, this amount stands to be reversed in the books of accounts;
- (d) that the opening balance sheet of the Appellant, as on 19.7.2000 and, as per provisions of the “Financial Restructuring Plan” of the State Government, Appellant was entitled to earn interest @ 5% on the balance of “Subvention receivable” (Rs. 491.87 crore);

- (e) that the Appellant had accounted the amount of Rs. 90.96 crore on accrual basis @ 5% on Rs 491.87 crore for the period FY 2000-01 to 2003-04, as interest accrued on Subvention receivable from the State Government. Since, interest was not paid by the State Government from FY 2000-01 to 2003-04, the total interest of Rs 90.96 crore has been booked up to FY 2003-04 under current assets head of balance sheet as interest accrued on subvention receivable;
- (f) that the Appellant has charged interest to the tune of Rs. 90.96 crore in the Profit and Loss Account as other income from the FY 2000-01 to 2003-04;
- (g) that the “Interest on subvention” of Rs 90.96 crore has been disallowed by the State Commission on the basis of para 2.34 of the main impugned order, dated 6.6.2013;
- (h) that the amount of Rs. 90.96 crore booked as interest up to FY 2003-04 has not been received till FY 2008-09 and the State Government has accorded approval to write back of the same in the books of accounts, vide its letter, dated 25.3.2010;
- (i) that, thereafter, the Appellant, in order to write back the amount of Rs 90.96 crore, passed a reverse entry in FY 2009-10 and Interest, which was earlier recognized as income from FY 2000-01 to FY 2003-04, stood charged to the debit side of Profit and Loss Account thereby treating it as an expense, which had been earlier charged short from the Discoms;
- (j) that the Discoms were billed on the basis of provisional tariff. At the end of the year, once the accounts get audited, Appellant produces the data regarding the net expenditure to the Discoms from the Audited accounts i.e. Total expenditure less Other Income. Difference if any, occurring due to provisional billing (revenue received on sale of power on provisional tariff) and net

expenditure (total expenditure less other income) is paid or received by the Appellant;

- (k) that, since, the interest on subvention income was part of Other Income and same had been claimed short from Discoms by way of claiming net expenditure, it appears that the benefit of above income has been ultimately passed on to the Discoms in period of 4 years i.e. from FY 2000-01 to FY 2003-04;
- (l) that the matter does not pertain to income or expenses, however, the benefit of interest income wrongly booked in books of accounts upto FY 2003-04 had been passed on to Discoms, which the Appellant is claiming back from Discoms in FY 2009-10. This aspect of the matter has completely been overlooked by the State Commission while disallowing the interest on subvention. Hence, this Appellate Tribunal should allow the expenditure to the tune of Rs 90.96 crore either in single onetime payment or in equal five instalments to the Appellant.

6.2 **Per contra**, the following contentions have been made on behalf of the Respondents:

- (a) that the State Commission has rightly held in the impugned order that the interest accrued on subvention receivable from the State Government cannot be considered as an expense for the purpose of tariff and has to be borne by the Appellant. The State Commission has also rightly observed that the Appellant should take up the matter to the State Government for realization of Rs. 491.87 crore appearing as “Subvention receivable from State Government” in the books of accounts;
- (b) that as the State Commission refused to grant the interest, the Appellant has written off the said amount from its income. The Appellant has not spent this amount; hence, the same cannot

be treated as expenses so as to burden the consumers in the State of Rajasthan.

6.3 Our consideration on Issue (A):

6.3.1 We have cited above the rival contentions raised by the parties on this issue. Without feeling any need to reiterate the same, we proceed towards our discussion and conclusion on this issue, being issue (A), relating to non-consideration of the reversal interest on subvention receivable from the Government as an expense for the tariff purpose.

6.3.2 According to the Appellant, the reversal interest on subvention receivable from the Government cannot be considered as an expense for the purpose of tariff and the same cannot be allowed to be borne by the Appellant himself. As per the Appellant, the State Commission has proceeded on the wrong premise that the Appellant should take up the issue before the State Government independently, for realization of Rs. 491.87 crore appearing as “Subvention receivable from State Government” in the books of accounts. Since, the State Government is already allowing the payment of subvention of Rs. 491.87 crore in a phased manner by way of adjustment towards the amount payable to the Government towards the interest on State Government loan payable every year and this issue only pertains to the interest of Rs. 90.96 crore on subvention receivable of Rs. 491.87 crore which the company has already passed on to the Discom while computing the final settlement amount with Discom. Hence, now, upon denial by the State Government to pay the interest on subvention, this amount stands to be reversed in the books of accounts. The Appellant had accounted the amount of Rs. 90.96 crore on accrual basis @ 5% on the subvention receivable i.e. Rs 491.87 crore for the period FY 2000-01 to 2003-04, as interest accrued

on subvention receivable from the State Government. Since, the interest was not paid by the State Government from FY 2000-01 to 2003-04, the total interest of Rs 90.96 crore has been booked up to FY 2003-04 under current assets head of balance sheet as interest accrued on subvention receivable.

6.3.3 Further, the Appellant has charged interest of Rs. 90.96 crore in the Profit and Loss Account as other income from the FY 2000-01 to 2003-04. The Appellant pleads that the interest on subvention of Rs 90.96 crore has been disallowed by the State Commission on the basis of para 2.34 of the main impugned order, dated 6.6.2013, which is reproduced as under:

“Commission’s Views:

2.34 The Commission agrees with the stakeholders that the interest on subvention receivable from the Government cannot be considered as an expense for the purpose of tariff and has to be borne by the petitioner. Further, it is also desirable that RVUN should take up the matter with the State Govt. for realisation of Rs. 491.87 cr. appearing as “Subvention receivable from State Govt.” in accounts books.”

6.3.4 One more contention of the Appellant is that since the amount of Rs. 90.96 crore booked as interest for FY 2003-04 has not been received till 2008-09, the State Government has accorded its approval to write back the same vide its letter, dated 25.3.2010.

6.3.5 We have gone through the letter, dated 25.3.2010, sent by the Government of Rajasthan to the Appellant, which depicts that the decision was taken on 8.12.2009 on the file of Energy Section of the Government of Rajasthan, according to which, the sanction of Writing Back of Rs. 90.96 crores had been granted to the Appellant on the condition that first of all, the Company would adjust this amount in the surplus of the Financial Year 2009-10 and the balance amount would be adjusted by filing Tariff Petition in the next year or from the

surplus available in the next year. The decision, dated 8.12.2009, had been informed by the Government of Rajasthan to the Appellant, vide letter, dated 25.3.2010. It is evident from the letter, dated 25.3.2010, communicated by the Government of Rajasthan to the Appellant, informing the decision taken on 8.12.2009 that the sanction of Writing Back had been granted to the Appellant on the sole condition that first of all, the Appellant would adjust this amount in the surplus of the Financial Year 2009-10 and the balance amount would be adjusted by filing Tariff Petition in the next year or from the surplus available in the next year.

6.3.6 The main contention of the Appellant is that after receipt of the letter, dated 25.3.2010, from the Government of Rajasthan, the Appellant, in order to write back the amount of Rs 90.96 crore, passed a reverse entry in FY 2009-10 and Interest, which was earlier recognized as income from FY 2000-01 to FY 2003-04, stood charged to the debit side of Profit and Loss Account thereby treating it as an expense.

6.3.7 The State Commission appears to have rightly held in the impugned order that the interest accrued on subvention receivable from the State Government cannot be considered as an expense for the purpose of tariff and the same has to be borne by the Appellant. Since, the Appellant has not spent this amount, the same cannot be treated as an expense so as to burden the consumers in the State of Rajasthan. The State Commission, in the impugned order, has given a liberty to the Appellant to take up the matter with the State Government for realization of Rs. 491.87 crore appearing as subvention receivable from State Government in the books of accounts.

6.4 In view of the above discussion, we do not find any perversity or illegality in the findings recorded by the State Commission in the impugned

order on this issue and, we agree to all the findings recorded in the impugned order while approving the same view. **Accordingly, this issue, being Issue (A), regarding Non-consideration of the reversal interest on subvention receivable from the Government as an expense for the purpose of tariff, is decided against the Appellant.**

7. Issue (B) & (C): Non-entitlement of the Appellant to depreciation and non-consideration of the actual payment made by Appellant for the buy-back of assets as adjustment in form of security deposit from the aforesaid sale consideration on buy back/ purchase of the assets sold to different financial institutions:

Since, both the issues are interconnected relating to depreciation, we are taking them up together.

7.1 On these issues, the following contentions have been made by the Appellant:

- (a) that both the impugned orders, being main order, dated 6.6.2013 and review order, dated 10.12.2013, are not legally sustainable because the matter pertains to denial of depreciation of asses buy back given on lease. The depreciation has been denied and disallowed by the State Commission on the following analysis:

“Regarding providing depreciation on leased assets bought back of KTPS unit 2 by appellant, the Commission vide order dated 07.12.2014 had already clarified, that it does not agree to consider the acquisition cost of leased assets bought back for the purpose of tariff as it was not based on the depreciated value of the assets based on the original cost due to their revaluation. If such acquisition price is agreed then the petitioner would take advantage of transfer and retransfer of assets to appreciate capital cost and burden the purchaser/consumer. The commission, therefore, keeping in view of the fact that these assets if remaining intact would have been fully depreciated does not consider any further depreciation on these assets

The commission in its impugned order dated 06.06.2013 has taken as it is the depreciation part as earlier allowed in tariff order dated 31.08.09 pertaining to KTPS (1 to 6)

and proved true up verbatim same instead of allowing on the actual audited figures Rs. 175.13 crore”

- (b) that when the assets were sold to different financial institutions, the original value of assets (total sales consideration) had been removed/ deducted from the gross value of assets as shown in the balance sheet of the Appellant and, therefore, no depreciation had been charged thereafter and the security deposit amounts were shown as advance payment till the assets buy back by the Appellant. As and when the assets bought back, the amount of security deposit had been reduced and amount equivalent to security deposit had been included in the gross value of the assets and the depreciation had been charged on the same. With respect to providing depreciation on leased assets bought back of KTPS unit 2 worth Rs. 172.45 crore by the Appellant, after deducting the 10% salvage value arrived at depreciable value of assets as Rs. 155.2 crore (172.45x90%). As the Appellant had already charged the depreciation of Rs. 27.69 crore from FY 2003-04 to 2008-09 on assets buyback, the same has been approved by the State Commission in the earlier true up order for FY 2008-09 and the remaining depreciation of Rs. 127.52 crore claimed in true up petition of FY 2009-2010 has been disallowed by the State Commission;
- (c) that the State Commission has grossly erred in considering the value of the assets buy back of Rs. 172.45 crore (security deposit) as residual value, factually the security deposit in all such cases were more than 10% of the assets buyback value. These assets should be considered as good as new asset. Since, the Appellant has paid a consideration for acquiring these assets buy back and has also claimed depreciation of Rs. 155.2 crore (on 90% value of assets buy back) as per general accepted accounting principle and standard prescribed under the company law. The same has equally been accepted by the

statutory auditor and Comptroller and Auditor General of India (CAG). Further, the income tax authority had considered and allowed this amount as depreciation while assessing the income of the Appellant. Since, the percentage of security deposit is more than 10% of assets value, it is not correct to say that the Appellant has already charged depreciation up to 90% of the assets.

7.2 **Per contra**, the following contentions have been made on behalf of the Respondent No. 2 to 4 on these issues:

- (a) that the learned State Commission, vide subsequent order, dated, 7.10.2004, particularly, in paragraphs 38 & 39 thereof, has disapproved the same contention of the Appellant that the value of buy-back assets could be considered for capital addition enabling the Appellant to get depreciation. The State Commission, accordingly, had concluded that 90% of depreciation has been allowed on assets of Kota Thermal Power Station as on 31.3.83. Accordingly, no depreciation will be admissible on GFA of Rs. 9670 lakhs as on 31.3.83, representing KTPS unit 1 and 2;
- (b) that on the point of depreciation, the Appellant's submission before the State Commission was as under:

“4.7 RVUN has submitted that there is significant variation in depreciation submitted as part of True Up on a/c of buy back of some leased assets relating to KTPS for Stage-II during the period between FY 2002-03 to FY 2008-09 with total gross value of Rs. 172.45 cr. They submitted that after the buy-back, total depreciation charged for these assets till FY 2008-09 amounts to Rs. 27.69 cr. These assets owned by KTPS from the beginning were already fully depreciated due to higher rate (7.84%) of depreciation charged to them in initial years. Thus, the original assets from Stage-II were already depreciated fully and statutory auditors made a note stating residual life for buy-back assets of Stage- II to be nil. As the residual life of the buy-back assets were considered nil, the buy- back assets from the Stage-II

was not allowed to charge depreciation till FY 2013-14 and the balance depreciation to be charged over these five years has been booked in FY 2009-10 itself.”

- (c) that, since, the Appellant has not challenged the order, dated 7.10.2004, passed by the State Commission, that order has become final and conclusive, hence, the same issue cannot be reopened in true up proceedings.

7.3 **Our consideration on Issue (B) & (C):**

- 7.3.1 We have cited above the contentions of the rival parties on these issues hence, we directly proceed towards our conclusion on these issues and, before we reach to our conclusion, we deem it proper to reproduce the State Commission’s analysis on these issues in the impugned order, which is reproduced as under:

“Commission’s Analysis:

4.9 Regarding providing depreciation on leased assets bought back by RVUN, the Commission vide order dated 7.12.2004 had already clarified that it does not agree to consider the acquisition cost of leased assets bought back for the purpose of tariff as it was not based on the depreciated value of the assets based on original cost due to their revaluation. If such acquisition price is agreed then the petitioner would take advantage of transfer and retransfer of assets to appreciate capital cost and burden the purchaser/consumer. The Commission, therefore, keeping in view the fact that these assets if remaining intact would have been fully depreciated, does not consider any further depreciation on these assets.

4.10 Accordingly, the depreciation already allowed in tariff order dated 31.8.2009 is retained and depreciation for KTPS Unit-7 and STPS Unit-6 is allowed as under:

Table: 13 - Depreciation:

(Rs. cr.)

Particular	KTPS (Unit 1-6)	KTPS Unit-7	STPS (Unit 1-5)	STPS (Unit 6)	RGTPS	DCCPP	Mahi	RVUN Total
Recovered from Discoms as per Tariff Order	78.83	11.19	229.44		12.26	58.19	2.16	392.07
Approved for True Up	78.83	10.26	222.99	12.02	13.92	58.19	6.18	402.39
Recoverable(+)/Payable (-) to Discoms	0	-0.93	+5.57		+1.66	0	+4.02	+10.32

- 7.3.2 It is evident from the record that the State Commission, vide its order, dated 7.10.2004, had already disapproved the said contention of the Appellant to the effect that the value of buy-back assets could be considered for capital addition enabling the Appellant to get depreciation. In that order, dated 7.10.2004, the State Commission clearly concluded that 90% of depreciation had been allowed on assets of Kota Thermal Power Station as on 31.3.83 and, accordingly, no depreciation would be admissible on GFA of Rs. 9670 lakhs as on 31.3.83, which as per commissioning dates of various units/power stations represents KTPS unit 1 & 2.
- 7.3.3 It is also established from the record that the said order, dated 7.10.2004, passed by the State Commission, had not been challenged by the Appellant and that order had become final and conclusive. Though, the Appellant cannot be allowed to reopen the same issue or contention in the true up proceedings, we have examined in depth the real contention of the Appellant on these issues but, we do not find any force in the said contention of the Appellant.
- 7.3.4 Further, the learned State Commission, in the impugned order, dated 6.6.2013, has taken the same as it is the depreciation part as earlier allowed in tariff order, dated 31.8.2009, pertaining to KTPS (1 to 6) and proved true up verbatim same instead of allowing on the actual audited figures of Rs. 175.13 crore.
- 7.3.5 We are unable to accept the contention of the Appellant that the said buy back asset should be considered as good as new asset. We find that the Appellant had already charged depreciation of the 90% value of assets. Even if, the income tax authority had considered and allowed the said amount of depreciation while assessing the income of the company, no benefit of the same can be given to the Appellant in the present case just on the ground

that since, the percentage of security deposit is more than 10% of assets value and it cannot be said that the Appellant had already charged depreciation up to 90% value of the assets. The State Commission is bound by the provisions of the Electricity Act, 2003 and other Regulations. **We find no fault or infirmity in the findings recorded in the impugned order on these issues. Hence, the said issues, being Issue (B) & (C), are also decided against the Appellant affirming the views of the State Commission on these issues.**

8. Issue (D): Relating to reduction of amount from the Boiler Turbine Generator (BTG) package of capital cost:

8.1 On this issue, the following contentions have been made by the Appellant:

- (a) that the State Commission has wrongly disallowed the reduction of capital cost on account of works contract tax (WCT) on the premise that no such document was furnished by the Appellant to show that WCT was deducted at source by the Appellant on the supply of portion of the contract awarded to M/s BHEL;
- (b) that M/s BHEL in their representation and as also the Appellant have contended that the supply from BHEL units located outside State of Rajasthan is not liable for WCT deduction. Considering it, the Appellant has refunded this amount to BHEL against a corporate guarantee which states that M/s BHEL would get its sales tax assessment done and refund the work contract tax amount received from the tax authorities together with interest thereon to the Appellant;
- (c) that the State Commission has, therefore, reduced the amount of Rs. 9.89 crore, Rs. 14.26 crore, Rs. 22.46 crore, and Rs. 6.15 crore from the Boiler Turbine Generator (BTG) package of

capital cost of KTPS-7, Chhangra 1 & 2 and DCCPP Dholpur respectively;

8.2 **Per contra**, the following contentions have been made on behalf of the Respondent No. 2 to 4 on this issue:

- (a) that the learned State Commission, while determining the provisional tariff and capital cost for CTPP unit 1 & 2, vide order, dated 13.6.2011, in para 3.5 observed as under:

“Regarding refund of works contract tax to M/s. BHEL, the Commission has observed on the basis of the documents furnished by the Petitioner that work contract tax was deduced at source by the Petitioner on the supply portion of contracts awarded to M/s. BHEL. M/s. BHEL in their representation to Petitioner have also contended that the supply from BHEL Units located outside Rajasthan is not liable for work contract tax deduction. Considering the above, the Petitioner has refunded this amount to M/s. BHEL against a corporate guarantee which states that M/s. BHEL would get its sales tax assessment done and refund the work contract tax amount received from the tax authorities together with interest thereon to the Petitioner. The Commission has, therefore, reduced this amount from the capital cost for the present and a final view would be taken based on the outcome of the assessment.”

- (b) that an amount of Rs. 22.46 crore paid on account of extra payment of WCT to BHEL, was reduced from the BHEL package of capital cost by the State Commission vide its order, dated 13.6.2011. Since, the order, dated 13.6.2011, of the State Commission had become final and conclusive, the amount of work contract tax has been reduced from capital cost for giving similar treatment subject to outcome of assessment of M/s. BHEL.

8.3 **Our consideration on Issue (D):**

- 8.3.1 After going through the rival contention of the parties on this issue of reduction on account of Works Contract Tax (WCT), we deem it proper to examine the legality of the relevant part of the impugned order on this issue, which is quoted hereunder:

“Reduction on account of Works Contract Tax (WCT):

3.23 The RVUN, vide Schedule-30 “Notes on Accounts” at para No.33 has mentioned that BoD in its 154th meeting held on 5.3.2009 decided to refund to BHEL Rs.59.82 cr., the equivalent amount of WCT deducted from their bills subject to the condition that BHEL shall promptly refund entire amount including interest, if any, to the RVUN within 7 days from the date of receipt of the same by BHEL from the Commercial Taxation Department. On specific query, RVUN has intimated that the above amount of Rs.59.82 cr. includes an amount of Rs.9.89 cr. on account of KTPS Unit-7.

3.24 In this regard, the Commission has observed on the basis of the documents furnished by the petitioner that WCT was deducted at source by the petitioner on the supply portion of contracts awarded to M/s. BHEL. M/s. BHEL in their representation to petitioner have also contended that the supply from BHEL Units located outside Rajasthan is not liable for WCT deduction. Considering the above, the petitioner has refunded this amount to M/s. BHEL against a corporate guarantee which states that M/s. BHEL would get its sales tax assessment done and refund the work contract tax amount received from the tax authorities together with interest thereon to the petitioner. The Commission has, therefore, reduced the amount of Rs. 9.89 cr. from the BTG package of capital cost.”

8.3.2 The State Commission, in the impugned order, has clearly observed on the basis of the documents furnished by the Appellant/petitioner that WCT was deducted at source by the Appellant on the supply portion of contracts awarded to M/s. BHEL. M/s. BHEL in its representation to the Appellant/petitioner has also contended that the supply from BHEL units located outside Rajasthan is not liable for WCT deduction. On that basis, the Appellant/petitioner has refunded this amount to M/s. BHEL against a corporate guarantee which clearly states that M/s. BHEL would get its sales tax assessment done and refund the work contract tax amount received from the tax authorities together with interest thereon to the Appellant/petitioner. On this basis, the State Commission has reduced the amount of Rs. 9.89 crore from the BTG package of capital cost.

8.3.3 After giving our thoughtful consideration to the facts and the relevant part quoted above and the earlier order, dated 13.6.2011, of the State Commission, we do not find any perversity or illegality in the finding recorded in the impugned order on this issue. **Accordingly, this issue, being Issue No. (D), is also decided against the Appellant.**

9. Since, all the four issues have been decided against the Appellant, the instant Appeal, being Appeal No. 185 of 2014, is liable to be dismissed.

ORDER

10. The present Appeal, being Appeal No. 185 of 2014, is hereby dismissed being without merits and the impugned Order, dated 6.6.2013, read with Order, dated 10.12.2013, passed by the Rajasthan Electricity Regulatory Commission, is hereby affirmed. There is no order as to costs.

PRONOUNCED IN THE OPEN COURT ON THIS 04th DAY OF JULY, 2016.

**(T. Munikrishnaiah)
Technical Member**

**(Justice Surendra Kumar)
Judicial Member**

√ **REPORTABLE/NON-REPORTABLE**

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