

**In the Appellate Tribunal for Electricity,**  
**New Delhi**  
**(Appellate Jurisdiction)**

**APPEAL NO. 283 OF 2014**  
**APPEAL NO. 141 OF 2015**  
**APPEAL NO. 30 OF 2016 & IA NO. 82 OF 2016**  
**AND**  
**APPEAL NO. 31 OF 2016 & IA NO. 84 OF 2016**

**Dated: 29<sup>th</sup> May, 2018**

**Present: Hon'ble Mr. I.J. Kapoor, Technical Member**  
**Hon'ble Mr. Justice N. K. Patil, Judicial Member**

**APPEAL NO. 283 OF 2014**

**In the matter of:**

**M/s Sesa Sterlite Ltd.**  
**1<sup>st</sup> Floor, Fortune Tower,**  
**Chandrasekharapur,**  
**Bhubaneswar-751023,**  
**Odisha.**

.... **Appellant(s)**

**Versus**

**1. Odisha Electricity Regulatory Commission**  
**Bidyut Niyamaka Bhawan, Unit-VIII,**  
**Bhubaneswar-751012, Odisha.**

.... **Respondent No.1**

**2. Western Electricity Supply**  
**Company of Odisha Ltd.,**  
**At/Po: Burla, Sambalpur,**  
**Odisha.**

.... **Respondent No.2**

**3. North Eastern Electricity Supply**  
**Company of Odisha Ltd.,**  
**Corporate Office:**  
**Januganj, Balasore-756019,**  
**Odisha.**

.... **Respondent No.3**

4. **Southern Electricity Supply Company of Odisha Ltd.,  
Corporate Office:  
Courtpetta, Berhampur-760004.  
Odisha.** .... Respondent No.4
5. **Central Electricity Supply Utility of Odisha Ltd.,  
2<sup>nd</sup> Floor, IDCO Towers,  
Janpath, Bhubaneswar,  
Odisha.** .... Respondent No.5
6. **Principal Secretary to Govt.,  
Department of Energy,  
Govt. Of Odisha, Bhubaneswar,  
Odisha.** .... Respondent No.6
7. **M/s Adhunik Metaliks Limited,  
IPICOL House, 3<sup>rd</sup> Floor,  
Annexe Building,  
Janpath, Bhubaneswar-2,  
Odisha.** .... Respondent No.7
8. **M/s Swain & Sons Power Tech Private Limited,  
Swati Villa, Surya Vihar,  
Link Road, Cuttack-753012,  
Odisha.** .... Respondent No.8
9. **Shri R. P. Mohapatra,  
Retd. Chief Engineer & Member (Gen,  
OSEB),  
Plot No 775(pt), Lane-3,  
Jaydev Bihar, Bhubaneswar-751013,  
Odisha.** .... Respondent No.9
10. **M/s. OCL India Limited,  
At/Po-Rajgangpur-770017,  
Sundergarh, Odisha.** .... Respondent No.10
11. **M/s. Facor Power Limited,  
At/Po: Randia, Dist. Bhadrak-756135,  
Odisha.** .... Respondent No.11

12. **M/s. Jayashree Chemicals Limited,  
P.O. Jayshree-761025,  
Dist Ganjam-760001, Odisha.** .... **Respondent No.12**
13. **M/s. Visa Steel Limited,  
Kalinganagar Industrial Complex,  
At/Po-Jakhapura-755026,  
Dist-Jajpur, Odisha.** .... **Respondent No.13.**

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Mr. Elangbam Premjit Singh for R-3 to R-4

Ms. Kirti  
Ms. Soomyajit Pani for R-6

Mr. Ruth Elwin for R-7

Mr. Abhas Mishra for R-8 & R-13

**APPEAL NO. 141 OF 2015**

**In the matter of:**

**M/s Vedanta Limited  
Formerly known as  
M/s. Sesa Sterlite Limited  
1<sup>st</sup> Floor, Fortune Tower,  
Chandrasekharapur,  
Bhubaneswar-751023,  
Odisha.**

.... **Appellant(s)**

**Versus**

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Bidyut Niyamaka Bhawan, Unit-VIII,  
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Odisha.** .... **Respondent No.7**
  
8. **M/s Swain & Sons Power  
Tech Private Limited,  
Swati Villa, Surya Vihar,  
Link Road, Cuttack-753012,  
Odisha.** .... **Respondent No.8**
  
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Plot No 775(pt), Lane-3,  
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Odisha.** .... **Respondent No.10**
  
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P.O. Jayshree-761025,  
Dist Ganjam-760001, Odisha.** **Respondent No.11**
  
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Kalinganagar Industrial Complex,  
At/Po-Jakhapura-755026,  
Dist-Jajpur, Odisha.** **Respondent No.12**

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Ms. Himanshi Andley  
Mr. Elangbam Premjit Singh for R-3 to R-4

Ms. Kirti  
Ms. Soomyajit Pani for R-6

Mr. Ruth Elwin for R-7

Mr. Abhas Mishra for R-8

**APPEAL NO. 30 OF 2016 & IA NO. 82 OF 2016**

**In the matter of:**

**M/s Vedanta Limited  
Formerly known as  
M/s. Sesa Sterlite Limited  
1<sup>st</sup> Floor, Fortune Tower,  
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Odisha.**

**.... Appellant(s)**

**Versus**

1. **Odisha Electricity Regulatory Commission  
Bidyt Niyamaka Bhawan, Unit-VIII,  
Bhubaneswar-751012, Odisha.** .... **Respondent No.1**
  
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At/Po: Burla, Sambalpur,  
Odisha.** .... **Respondent No.2**
  
3. **North Eastern Electricity Supply  
Company of Odisha Ltd.,  
Januganj, Balasore-756019,  
Odisha.** .... **Respondent No.3**
  
4. **Southern Electricity Supply  
Company of Odisha Ltd.,  
Courtmeta, Berhampur-760004.  
Odisha.** .... **Respondent No.4**
  
5. **Central Electricity Supply  
Utility of Odisha Ltd.,  
2<sup>nd</sup> Floor, IDCO Towers,  
Janpath, Bhubaneswar,  
Odisha.** .... **Respondent No.5**
  
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P.O. Jayashree-761025,  
Dist Ganjam-760001, Odisha.** .... **Respondent No.6**
  
7. **Shri R. P. Mohapatra,  
Retd. Chief Engineer & Member (Gen,  
OSEB),  
Plot No 775(pt), Lane-3,  
Jaydev Bihar, Bhubaneswar-751013,  
Odisha.** .... **Respondent No.7**
  
8. **M/s. Ferro Alloys Corporation Ltd.  
D.P. Nagar, At/PO: Randia,  
Dist. Bhadrak – 756135  
Odisha** .... **Respondent No.8**

- 9. Independent Power Producers Association  
of India  
Shubhanchal Hostel Building  
Nea Vikas Sadan  
INA Colony, New Delhi – 110023** .... Respondent No.9
- 10. M/s. Power Tech Consultants  
1-A/6, Swativilla, Surya Vihar  
Link Road, Cuttack – 753012  
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Mr. Abhishek Upadhyay  
Ms. Himanshi Andley  
Mr. Elangbam Premjit Singh for R-3 to R-4



**APPEAL NO. 31 OF 2016 & IA NO. 84 OF 2016**

**In the matter of:**

**M/s Vedanta Limited  
Formerly known as  
M/s. Sesa Sterlite Limited  
1<sup>st</sup> Floor, Fortune Tower,  
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**Versus**

- 1. Odisha Electricity Regulatory  
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Bidyut Niyamaka Bhawan, Unit-VIII,  
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- 2. Western Electricity Supply  
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Mr. Elangbam Premjit Singh for R-3 to R-4

## **JUDGMENT**

### **PER HON'BLE MR. I.J. KAPOOR, TECHNICAL MEMBER**

1. The present Appeals are being filed by M/s Sesa Sterlite Ltd. and M/s Vedanta Ltd., (hereinafter individually referred to as the “**Appellant**” and collectively as the “**Appellants**”) under Section 111 of the Electricity Act, 2003 (hereinafter referred to as the “**Act**”) against the orders dated 30.9.2014 (in Appeal No. 283 of 2014), 24.6.2010 (in Appeal No. 31 of 2016), 13.7.2012 (in Appeal No. 30 of 2016) and 23.3.2015 (in Appeal No. 141 of 2015) (hereinafter individually referred to as the “**Impugned Order**” and

collectively as the “**Impugned Orders**”) passed by Odisha Electricity Regulatory Commission (hereinafter referred to as the “**State Commission**”) in various petitions filed by the distribution licensees in the State of Odisha wherein the State Commission has approved Open Access (OA) charges for various years applicable to OA consumers for the use of Intra State transmission/ distribution systems.

2. The Appellant(s) viz. M/s Sesa Sterlite Ltd. (M/s SSL) and M/s Vedanta Ltd.(M/s Vedanta) are the companies registered under the Companies Act, 1956. M/s Vedanta was formerly known as M/s. Sesa Sterlite Limited. Basically, the Appellant (s) is the same entity having different names at appropriate point of time. The Appellant is an entity created out of a Scheme of Arrangement & Amalgamation (‘Scheme’) carried out within the group companies with effect from 01 January 2011/ April 01, 2011. In accordance with the procedure established under the law, on 3.4.2013, the High Court of Bombay and on 25.7.2013, the Madras High Court gave their approvals to the said Scheme. M/s SSL/Vedanta is operating a 1.5 MTPA Aluminium Smelter Plant with a 1215 MW Captive Generating Plant (CGP) and a 2400 MW Thermal Power Plant, in Jharsuguda district, Odisha. It is one of the OA consumer in the State of Odisha.
3. The Respondent No. 1 i.e. OERC is the Electricity Regulatory Commission in the State of Odisha discharging functions under the provisions of the Act.

4. The Respondent Nos. 2 to 5 in all the Appeals are WESCO, NESCO, SOUTHCO and CESU (hereinafter referred to as “Discom” individually and “Discoms” collectively) are the distribution licensees in the State of Odisha which are operating in their respective areas. The Impugned Orders were issued by the State Commission based on the petitions filed by the Discoms for approval of OA charges for different Financial Years.
5. The other Respondents are either the Govt. Department in the State of Odisha or other companies/parties who objected to the petitions of the Discoms for approval of OA charges before the State Commission.
6. **Brief Facts of the present Appeals:**
  - a) The Appeal No. 283 of 2014 has been filed against the Impugned Order dated 30.9.2014 in Case Nos. 16, 17, 18 and 23 of 2014 filed by the Discoms regarding approval of OA charges for the FY 2014-15.
  - b) The Appeal No. 31 of 2016 has been filed against the Impugned Order dated 24.6.2010 in Case Nos. 24, 25, 26 & 27 of 2010 filed by the Discoms regarding approval of OA charges for FY 2010-11.
  - c) The Appeal No. 30 of 2016 has been filed against the Impugned Order dated 13.7.2012 in Case Nos. 5, 6, 7 and 8 of 2011 and Case No. 24, 25, 26 and 27 of 2012 filed by the Discoms regarding approval of OA charges for FY2011-12 & FY2012-13 respectively.

- d) The Appeal No. 141 of 2015 has been filed against the Impugned Order dated 23.3.2015 in Case Nos. 61, 62, 63 & 64 of 2014 filed by the Discoms regarding approval of OA charges for the FY 2015-16.
- e) The Appeals filed by the Appellants are having same issues pertaining to different financial years and hence are being dealt together. We are taking Appeal No. 283 of 2014 as the base case and is dealt accordingly in the forthcoming paragraphs. The decision/judgement of this Tribunal in Appeal No. 283 of 2014 shall be squarely applicable on the other Appeals.
- f) In Odisha, the Discoms purchase power from GRIDCO under respective Bulk Supply Agreement (BSA). The status of GRIDCO is "Deemed Trading Licensee", which has been granted by the State Commission under the 5<sup>th</sup> proviso to Section 14 of the Act. GRIDCO purchases power from the generators and supply it in bulk to the Discoms at Bulk Supply Price (BSP) determined by the State Commission from time to time.
- g) On 22.3.2014, the State Commission has approved the Annual Revenue Requirement (ARR) and Retail Supply Tariff (RST) of the Discoms for FY 2014-15. On directions from the State Commission Discoms filed fresh applications for approval of OA charges for FY 2014-15 in accordance with the approved ARR and RST for FY 2014-15.
- h) On 28.7.2014, M/s. SSL filed its objection before the State Commission in Case No. 16 of 2014 challenging the methodology

of calculation of OA Charges by WESCO. On 5.8.2014, the State Commission clubbed all the similar cases of Discoms for the approval of OA charges for the financial year 2014-15.

- i) The State Commission vide Impugned Order dated 30.9.2014 in Case Nos. 16,17,18 & 23 of 2014 rejected the calculation methodology and views submitted by M/s SSL during the course of hearing process.
- j) The State Commission has taken similar view in calculation of OA charges as done by it in earlier financial years since 2009 by rejecting the methodology submitted by the Appellants.
- k) Aggrieved by the Impugned Orders, the Appellants have preferred the present Appeals before this Tribunal.

## **7. Questions of Law:**

The Appellants have raised the following questions of law in the present Appeals for our consideration:

- a) Whether the State Commission has erred in calculating the component 'C' and 'T' of the Cross Subsidy Surcharge (CSS) formula?
- b) Whether the State Commission while calculating component 'C' of the CSS formula has wrongly calculated the Weighted Average cost of power purchase of top 5% at the margin excluding liquid fuel based generation and renewable power

in violation to the surcharge computation formula prescribed in the National Tariff Policy (NTP) in paragraph 8.5.1?

- c) Whether the State Commission has wrongly calculated the component 'T' i.e. Tariff at 100% load factor payable by the EHT consumer while determining the CSS payable by EHT consumer using prescribed formula in NTP?
- d) Whether the State Commission has violated provisions stipulated in Sections 61(i) and 86 (4) by not adhering to the principle enunciated in the NTP for computation of CSS?
- e) Whether the State Commission has wrongly determined the CSS in violation of Regulation 4(2)(iv) of OERC (Determination of Open Access Charges) Regulations, 2006 (OA Regulations)?
- f) Whether the State Commission has erred and violated the Regulation 7(c) of OERC (Terms and Conditions for Determination of Tariff) Regulations, 2004 (Tariff Regulations, 2004) by taking two different approaches for calculation of Cross Subsidy (CS) and CSS by:
  - a. Calculating the CS based on Regulation 7(c) (iii) of Tariff Regulations, 2004 wherein the CS payable by certain category of consumer is calculated by the difference between average cost-to-serve to all consumers of the state of Odisha taken together and average tariff applicable to such consumers.

- b. Calculating the CSS, based on the cost of the distribution licensee to supply to the consumers of the applicable class and not the average cost-to-serve all consumers of the state of Odisha.
  
- g) Whether the State Commission ought to interpret Regulation 4(2)(iv) of the OA Regulations in line with Regulation 7(c) of the Tariff Regulations, 2004 ?
  
- h) Whether the State Commission has wrongfully acted in violation of the provisions of the Act, and the relevant regulations framed there under by not following the principles laid down in the NTP while calculating the CSS?
  
- i) Whether the State Commission by passing the Impugned Order(s) has created a deterrent for the consumers to avail their right under OA?
  
- j) Whether the impugned order suffers from gross irregularity by violating the objective and spirit with which the Act has come into existence and the same being passed in violation of the provisions of Section 42 of the Act?
  
- k) Whether in the alternate the State Commission's regulation for determination of surcharge deserves to be ignored by the this Tribunal in view of the fact that the formula provided offends the provisions of the Act, the NTP and the judgments passed by this Tribunal?



The Appellant vide its written submissions made on 21.2.2018 has restricted the questions of law raised above by omitting the questions of law at S. No. 7. e), 7. g) to 7. k). Accordingly, this Tribunal will be dealing with the questions of law at 7. a) to 7. d) and 7. f) above.

8. The learned senior counsel, Mr. Sanjay Sen appearing for the Appellants (i.e. M/s Sesa Sterlite Ltd. in Appeal No. 283 of 2014 and M/s Vedanta Limited in Appeal Nos. 141 of 2015, 30 and 31 of 2016), submitted following submissions for our consideration on the issues raised by the Appellants:

a) The State Commission has erred in computation of component 'C' (pertaining to the Weighted Average cost of power purchase of top 5% at the margin excluding liquid fuel based generation and renewable power) & component 'T' (pertaining to the Tariff at 100% Load Factor payable by the EHT consumer) used in the CSS formula. The calculations of said components are contrary to the provisions of the Act, National Electricity Policy and NTP.

b) The entire case of the Appellant is that when the State Commission has itself adopted the CSS formula from the NTP, it has to be followed in totality by the State Commission.

c) The State Commission has adopted different approaches for calculation of CS and CSS. The State Commission has calculated the CS based on Regulation 7(c)(iii) of the Tariff Regulations, 2004 wherein the CS payable by certain category of consumer was

calculated by the difference between average cost-to-serve to all consumers of the State of Odisha taken together and average tariff applicable to such consumers. However, while calculating the CSS, the State Commission has considered the cost of the Discom to supply to the consumers of the applicable class and not the average cost-to-serve all consumers of Odisha. By doing the same the State Commission has violated the Regulation 4(2)(i), 4(2)(ii), 4(2)(iii) of the OA Regulations. The CS amount for Odisha Discoms works out to about 91.57 paisa/kWh, which means that an EHT consumer opting to source power through OA was cross subsidising the other consumers to the extent of the said amount. As per Regulation 7(c)(i) of the Tariff Regulations, 2004 the CSS for an EHT consumer taking power through an OA can only be less than or equal to the above CS amount. The State Commission for calculation of component 'C' in the surcharge formula is taking the weighted average power procurement cost of the individual/ relevant Discom instead of the average cost of supply for the State as a whole. The said calculation is resulting in a CSS of Rs. 1.84/kWh, which is much more than the CS amount, which was inbuilt in the tariff of the EHT consumer. The State Commission has acted contrary to the its own regulations and as well as to the NTP.

- d) As per clause 8.5.1 of the NTP, the component "C" of the CSS formula should be calculated based on the highest cost of power procurement and not an average value. The change from top 5% at the margin, to the average value results in a complete change of principle behind the intent with which surcharge has been

introduced under the Act and the regulatory framework. For computation of component 'C' the State Commission has to consider the weighted average cost of power purchase of top 5% at the margin excluding liquid fuel based generation and renewable power. The same is only possible if the power procurement cost of GRIDCO is considered and not that of individual Discom.

- e) The component 'C' ought to be calculated by considering Table 44 at Page No. 52 of approved BSP Order of State Commission dated 22.3.2014 in Case No. 84 of 2013. According to the Appellant the component 'C' works out to Rs. 4.833093/kWh based on Table 44.
  
- f) The State Commission has erred in calculating component 'T' of the CSS formula. In OA the power to be drawn is already scheduled and fixed and there is no scope for change or fluctuation in the drawl, which has already been scheduled. The State Commission ought to have taken 100% load factor for the purpose of calculation of 'T'. This has been recognized by the State Commission in the order dated 13.07.2012 in Case Nos. 5, 6, 7 & 8 of 2011 and Case Nos. 24, 25, 26 & 27 of 2012 while approving the OA charges for the FY 2011-12 and 2012-13. However, while calculating the "T" component of surcharge formula, the State Commission has not considered the 100% load factor and the computation details of 'T' was not brought on record by the State Commission. The Impugned Order has to be a speaking order and it suffers from irregularity.

- g) As per calculation of the Appellant the component 'T' works out to Rs. 4.33/kWh as against the value of Rs. 4.96/kWh calculated by the State Commission.
- h) The term 'applicable class' appearing in Regulation 4(2)(iv) of the OA Regulations is required to be read with the RST order dated 22.3.2014. As per the said order the State Commission has determined the average cost to supply to all consumers of the State taken together and not any particular class of consumers. Therefore, for calculation of CSS the State Commission ought to have considered the cost of the Discom to supply electricity to the consumers of the applicable class. The same will also be in line with the interpretation of surcharge as per Regulation 7(c) of the Tariff Regulations, 2004.
- i) The State Commission has wrongly calculated the cost of the Discom to supply electricity to the consumers of the applicable class contrary to the calculation made by the State Commission at paragraphs 387, 388, 389, 391, 392 and Table -66 of its RST order dated 22.3.2014. The State Commission has acted contrary to the OA Regulations and the NTP.
- j) Section 42(2) of Act provides that, there should be constant endeavour on the part of the State Commission to reduce the CSS on a progressive basis. In the present case, the CSS has been actually increased from the surcharge which was determined for previous years. However, in order to demonstrate that the surcharge determined by the State Commission is lower than the previous years, the State Commission has considered 80% of the

amount of the CSS determined for the FY 2014-15. This does not change the fact that the actual CSS is higher as compared to the previous years'. The Appellant is not challenging the said discount, the same is being highlighted to demonstrate that the computation methodology adopted by the State Commission for the calculation of CSS is wrong.

k) This Tribunal vide judgement dated 31.5.2013 in case of Kerala High Tension and Extra High Tension Electricity Consumers' Association v. KSERC & Anr. has held that cross subsidy can only be on the basis of voltage wise cost of service. The same has also been followed by this Tribunal in the judgement dated 23.9.2013 in Appeal Nos. 52 & 67 of 2012 in case of Ferro Alloys Corporation Ltd. v. OERC & Anr. This Tribunal vide its judgement in case of Kashi Vishwanath Steels Ltd. v. UERC in Appeal Nos. 124,125 & 177 of 2005 and 18 of 2006 has held that cross subsidy ought to be progressively reduced and the Commissions ought to notify a road map in accordance with clause 8.3 of the NTP.

l) The State Commission was bound to follow the CSS formula and the computation strictly in line with the NTP. The same has been held by this Tribunal in RVK Energy Pvt. Limited Vs. Central Power Distribution Co. of Andhra Pradesh Ltd &Anr. This judgement has been upheld by Hon'ble Supreme Court. The NTP has been issued by the Central Govt. under Section 3 of the Act which has a statutory flavour. The Hon'ble Supreme Court in case of Energy Watchdog v. CERC & Anr. while interpreting the phrase "composite scheme" has also referred to the tariff policy stating that such policy is a statutory policy which is enunciated under

Section 3 of the Act. The principle laid down by this Tribunal has been followed in subsequent judgments passed from time to time including Sarover Energy Private Limited v. Karnataka Electricity Regulatory Commission and Anr., decided on 3.9.2013. This Tribunal has observed that the NTP is laid down by the Central Government in exercise of powers under section 3 of the Electricity Act, 2003. Further, as per section 61(i) of the Electricity Act, 2003 the State Commission shall be guided by the National Electricity Policy and NTP. Therefore, the computation of CSS formula prescribed under the NTP is binding on the State Commission. The State Commission on the contrary, even after extracting the relevant paragraphs of the Tariff Policy dealing with the computation of CSS formula, made categorical deviation from the same while implementing the formula.

9. The learned counsel, Mr. G Umapathy appearing for the State Commission submitted following submissions for our consideration:-
  - a) The present Appeal is barred by the doctrine of estoppel and principles of res judicata (Hon'ble Supreme Court's judgement in 2016 (9) SCC 134 in case of Bhaskar Iron Ltd. v. APERC &Ors.) regarding method of calculation as the State Commission has been adopting the same methodology since 2009 while determining the OA charges particularly the CSS and the Appellant formerly known as Vedanta Aluminium SEZ has been making payment of CSS on the bills raised by the Discom in line with the rate determined by the State Commission.

- b) The issue of CSS has attained finality in view of Hon'ble Supreme Court's judgement dated 25.4.2014 passed in Civil Appeal No. 5479 of 2013 (2014 (8) SCC 444) in case of M/s Sesa Sterlite Ltd. v. OERC &Ors. In the said judgement it has been held that the Appellant is a consumer of the Discom and thus it is liable to pay CSS.
- c) The High Court of Odisha vide judgement dated 30.3.2012 in W.P. No. 8409 of 2011 in case of Keonjhar Navanirman Parishad & Ors. v. State of Orissa &Ors. has already upheld the method of computing CSS. This judgement has attained finality as no appeal was preferred by any party. Further, the ratio laid down by the Hon'ble Supreme Court in 2007 (6) SCC 769 in case of Ambica Industries v. Commissioner of Central Excise is binding and applicable to the present case.
- d) The State Commission has not deviated from the NTP in applying the CSS and it has broadly adopted the formula laid down in the NTP for determination of CSS. The State Commission has adopted the same principle as in the past for determination of CSS considering uniqueness of power sector of the State in structural and functional area. As Odisha follows single buyer model, the power is first purchased from different generators and then pooled at GRIDCO end. The same power is resold to then Discoms at a price called Bulk Supply Price (BSP) as approved by the State Commission and includes the intra-State transmission loss.
- e) There is no contradiction in the Impugned Order and the OA Regulations. The State Commission has applied the OA

Regulations in accordance with the facts and circumstances of the power sector of the State.

- f) The Appellant had made the following prayer before the State Commission:

*“Direct that the calculation of Cross Subsidy Surcharge to be done as per the formula laid down in the Tariff Policy and the approved Tariff Orders of the Hon’ble Commission.”*

The State Commission in the Impugned Order has held that the existing principle and rate of CSS and wheeling charges as determined by the State Commission for FY 2012-13 shall continue till 31.3.2014. The State Commission has been adopting the same principle and methodology since 2009 and the Appellant has not raised any objection.

- g) The State Commission has also drawn attention of this Tribunal to the changes made in the NTP by the Ministry of Power on 20.1.2016. The State Commission has also contended that the reliance of the Appellant in various judgements of this Tribunal like in Appeal No. 103 of 2012 in case of Maruti Suzuki India Ltd. v. HERC, in Appeal Nos. 196, 170, 171, 172 of 2005 & 248 & 249 of 2006 in case of RVK energy Pvt. Ltd. v. Central Power Distribution Co. and Tata Steel Ltd. v. OERC, 2011 SCC Online Aptel 89 are not applicable to the present Appeal(s).

- h) The provisions of NTP are guiding factor for the State Commission for framing regulations for determination of OA charges. In present case the State Commission has adopted the principle and



objective set out in the NTP and is reflected in OA Regulations which were framed in line and spirit of the Act.

- i) Similar issue has been dealt by this Tribunal in Appeal No. 103 of 2012 in case of Maruti Suzuki India Ltd. v. HERC. The CSS formula provided in NTP is guiding in nature and the State Commission is bound to follow the regulations made by it and the same has been held by Hon'ble Supreme Court in case of PTC India Ltd. v. CERC (2010) SCC 603. In the said judgement the Honb'le Court has observed that the policies and plans framed by the Central Govt. under the Act are guiding factors for framing the regulations. In the present case it is only to be seen that whether the decision of the State Commission is in line with the Act and applicable Regulations of the State Commission. In the present case the small deviation made by the State Commission does not contravene any provisions under the Act or applicable Regulations of the State Commission. The deviation is bonafide for reasons due to peculiar aspects of the power sector in Odisha. The same has been done in view of general interest of the consumers in the State of Odisha.

10. The learned counsel, Mr. Salim A. Inamdar appearing for the Respondent No. 2 (Discom - WESCO), submitted following submissions for our consideration:-

- a) The present Appeal has become infructuous based on agreement reached in Minutes of Meeting (MoM) dated 19.1.2015 between the Appellant and the Respondent No. 2 wherein the Appellant has agreed to pay entire CSS amount of Rs. 24.68 Cr. in 6 instalments.

The Appellant has also paid 3 instalments along with outstanding arrear dues. The Appeal has been barred by the doctrine of estoppel in as much as the method of calculation is concerned as the State Commission has been adopting the same for long time now.

- b) The CSS determined by the State Commission is much less, than as claimed by the Discom and any further reduction in CSS would adversely affect the viability of the Discom.
- c) In view of peculiar situation of power sector in Odisha the BSP of the respective Discom used in calculation of CSS is appropriate. Further, the cross subsidy has been worked out based on average cost to supply to all consumers of the State and average tariff applicable to such class of consumers.
- d) On the issue of non inclusion of demand charges the Discom has submitted that the maximum demand of the Appellant is recorded in the overall maximum demand of the Discom and it is difficult to ascertain the maximum demand of a particular consumer in the recorded overall maximum demand. The demand charges are being considered in addition to energy charge while considering the applicable tariff.
- e) Regarding component 'T' the Appellant has made calculation on wrong premise as it has suggested the rate for consumption above 60% load factor and the rate for consumption up to 60% of load factor has not been considered. The tariff at 100% load factor implies the average energy charges for consumption upto 60%

and consumption above 60% load factor would be Rs. 4.58/kWh instead of Rs. 3.95/kWh apart from levy of demand charges as applicable. Accordingly, the average tariff at 100% load factor is appropriate for calculation of CSS.

f) The CS has been worked out based on average cost to supply to all consumers of the State taken together and average tariff applicable to such consumers. The logic cannot be applied for calculation of CSS as the ARR of Discom has been determined based on the revenue to be earned from subsidising consumer like EHT/HT & subsidised consumer like LT category consumers. The CS is a factor which determines the surcharge on OA. It is not mandated on the State Commission to determine uniform CS for RST and OA charges.

11. The learned counsel, Mr. Abhas Mishra appearing for the Respondent Nos. 8 & 13 in their submissions supported the contentions of the Appellant.

12. We have heard the learned senior counsel appearing for the Appellants and the learned counsel appearing for the Respondents and we have gone through the written submissions of the Appellants and the Respondents on various issues raised in the instant Appeal and after thorough evaluation of the entire relevant material available on records the following issues that arises for our consideration are as follows:-

a) In the present Appeals the Appellants are mainly aggrieved by the methodology adopted by the State Commission in the Impugned Orders for computation of components 'C' and 'T' used in the formula of CSS.

b) First, we take Questions of Law raised by the Appellant at S. No. 7.

a) to 7. c) together as they are interrelated for computation of CSS.

On Question No. 7. a) i.e. Whether the State Commission has erred in calculating the component 'C' and 'T' of the CSS formula?,

On Question No. 7. b) i.e. Whether the State Commission while calculating component 'C' of the CSS formula has wrongly calculated the Weighted Average cost of power purchase of top 5% at the margin excluding liquid fuel based generation and renewable power in violation to the surcharge computation formula prescribed in the NTP in paragraph 8.5.1? and on Question No. 7.

c) i.e. Whether the State Commission has wrongly calculated the component 'T' i.e. Tariff at 100% load factor payable by the EHT consumer while determining the CSS payable by EHT consumer using prescribed formula in NTP?, we observe as herein below:

- i. To answer these questions let us first examine the findings of the State Commission in the Impugned Order on this issue. The relevant extract from the Impugned Order is reproduced herein below:

*"11. In this connection, the formula for computation of surcharge prescribed in the tariff policy in para 8.5.1 is quoted as under:*

**Surcharge formula:**

$$S = T - [C (1 + L / 100) + D]$$

Where

**S** is the surcharge

**T** is the Tariff payable by the relevant category of consumers;

**C** is the Weighted average cost of power purchase of top 5% at the margin excluding liquid fuel based generation and renewable power

**D** is the Wheeling charge

**L** is the system Losses for the applicable voltage level, expressed as a percentage

Now we adopt the same principle as in the past laid out in the Tariff Policy for determination of cross-subsidy surcharge considering the uniqueness of the power sector of the State in structural and functional area as follows:

**T** = applicable tariff for EHT and HT consumers at 100% load factor

**C** = Power Purchase cost plus transmission & SLDC charge payable by DISCOMs.

Since Odisha follows single buyer model, the power is purchased from different generators first and then pooled at GRIDCO end. The same power is resold to DISCOMs at a price called Bulk Supply Price as

approved by the Commission and includes the intra-State transmission loss. This is the power purchase cost of DISCOMs. In addition to that DISCOMs are to pay transmission charges to OPTCL and SLDC charges for the power purchased by them.

*L = loss at HT 8% (assumed) since EHT loss is already in the BSP.*

*D = Wheeling charge levied by DISCOMs for power handled in HT = Distribution cost of DISCOMs/ Input units at HT*

*12. The wheeling charge is determined in pursuance to our Regulation which prescribes the adoption of same methodology as transmission for determination of the same. Since we have been following postage stamp method for determination of transmission charges we adopt the same for the determination of wheeling charge in the above formula considering only HT units handled by the system.*

13. For the year 2014-15, the Commission have approved the following Bulk Supply Price in respect of four distribution companies.

- |            |                |
|------------|----------------|
| 1. CESU    | 265.00 per KWH |
| 2. NESCO   | 280.00 per KWH |
| 3. WESCO   | 286.00 per KWH |
| 4. SOUTHCO | 185.00 per KWH |

*In addition to that DISCOMs are to pay transmission charge @ 25 paise / Unit and SLDC charge as determined the Commission for the current year. All these constitute power purchase cost (C) of the DISCOMs.*

....."

The State Commission while referring to the formula provided in NTP for CSS, adopting similar principle as followed by it in earlier years and based on peculiar situation of the State power sector which follows single buyer model has calculated the component 'C' considering power purchase cost of Discom which includes BSP, transmission & SLDC charge payable by Discom.

The State Commission has considered the component 'T' as applicable tariff for EHT and HT consumers at 100% load factor for computation of CSS.

- ii. Now let us analyze the provisions of the NTP. The relevant extract is reproduced herein below:

*"8.5.1 .....*

*Accordingly, when open access is allowed the surcharge for the purpose of sections 38,39,40 and sub-section 2 of section 42 would be computed as the difference between (i) the tariff applicable to the relevant category of consumers and (ii) the cost of the*

distribution licensee to supply electricity to the consumers of the applicable class. In case of a consumer opting for open access, the distribution licensee could be in a position to discontinue purchase of power at the margin in the merit order. Accordingly, the cost of supply to the consumer for this purpose may be computed as the aggregate of (a) the weighted average of power purchase costs (inclusive of fixed and variable charges) of top 5% power at the margin, excluding liquid fuel based generation, in the merit order approved by the SERC adjusted for average loss compensation of the relevant voltage level and (b) the distribution charges determined on the principles as laid down for intra-state transmission charges.

Surcharge formula:

$$S = T - [ C (1 + L / 100) + D ]$$

Where

S is the surcharge

T is the Tariff payable by the relevant category of consumers;

C is the Weighted average cost of power purchase of top 5% at the margin excluding liquid fuel based generation and renewable power

D is the Wheeling charge

L is the system Losses for the applicable voltage level, expressed as a percentage

The cross-subsidy surcharge should be brought down progressively and, as far as possible, at a linear rate to



*a maximum of 20% of its opening level by the year 2010-11.”*

As per NTP surcharge is the difference between the tariff applicable to the relevant category of consumers ('T') and the cost of the distribution licensee to supply electricity to the consumers of the applicable class ('[ C (1+ L / 100) + D ]'). The cost of supply to the consumer consists of three components namely 'C', 'D' & 'L'. The component 'C' is to be calculated based on weighted average cost of power purchase of top 5% at the margin excluding liquid fuel based generation and renewable power. The component 'D' is the wheeling charge and the component 'L' is the system Losses for the applicable voltage level.

- iii. The Appellant has contended that for computation of 'C', the weighted average cost of the costliest stations' top 5% at the margin for GRIDCO should have been considered by the State Commission and not the BSP of the Discom. According to the Appellant, this is in violation to the NTP formula / principle prescribed by the State Commission. The State Commission and the Discom have contended that they have been following said principle as done in the Impugned Order since 2009 and which has not been contested.
- iv. As per the Discom, the Appellant has also agreed to pay the CSS amount as per the Impugned Order in the meeting held with the Discom in 6 instalments & has also paid 3 instalments and it is not open to the Appellant to open the

issue once it has agreed to make payment as per the Impugned Order.

- v. The Appellant has also contested that the State Commission has not followed the OA Regulations notified by it. Let us examine the same. The relevant extract from the OA Regulations is reproduced herein below:

*“4 (2) Surcharge*

*(i) Surcharge to be levied on open access customers under Section 42(2) of the Act, shall be determined by the Commission keeping in view the loss of cross subsidy from these customers opting to take supply from a person other than the incumbent distribution licensee.*

*(ii) Avoided cost method shall be used to determine the cost of supply of electricity to consumers of the applicable class.*

*(iii) The methodology for computing such cost is as follows:*

*(a) As a first step, the projected capacity that is likely to move away due to open access will be estimated.*

*(b) Since, it will avoid purchase of power from marginal sources of supply, the weighted marginal cost of power purchase (fixed plus variable costs) from such sources would be considered as avoided cost of power purchase.*

(c) To that avoided cost, other charges viz. applicable transmission and wheeling charges will be added to arrive at the cost of supply.

(iv) Cross-subsidy surcharge shall be computed by the licensee as the difference between (1) the tariff applicable to relevant category of consumers and (2) the cost of the distribution licensee to supply electricity to the consumers of the applicable class”

From the above it can be seen that for arriving at the cost of supply to the applicable class of consumers the State Commission has adopted the principle of avoided cost. The cost of supply would comprise of weighted marginal cost of power purchase (fixed plus variable costs) from marginal sources of supply plus applicable transmission and wheeling charges. Further, CSS to be computed as the difference between the tariff applicable to relevant category of consumers and the cost of the distribution licensee to supply electricity to the consumers of the applicable class.

- vi. The provisions in the OA Regulations are similar to that of the NTP regarding computation of CSS. As per NTP ‘C’ is the weighted average cost of power purchase of top 5% at the margin excluding liquid fuel based generation and renewable power. However, the State Commission has defined ‘C’ as ‘Power Purchase cost plus transmission & SLDC charge payable by Discoms.’ To our mind, the cost of such power purchase also includes other applicable components on it like transmission charges and SLDC

charges. The State Commission in the Impugned Order has considered component 'C' that is the sum of BSP inclusive of EHT losses, transmission charges and SLDC charges. Further 'L' is the losses at HT voltage level and 'D' is the wheeling charges. All these taken together forms second part of the NTP formula i.e. cost of the distribution licensee to supply electricity to the consumers of applicable class.

- vii. It is also observed that the State Commission in view of the peculiar situation of the power sector in the State of Odisha in structural and functional area has been calculating component 'C' based on the BSP determined by the State Commission in the tariff order for the Discom which is the average price at which the Discom purchase power from GRIDCO. The State Commission has submitted that this principle has been adopted by it based on the order dated 29.03.2008 in Case No. 66, 67, 68 & 69 of 2006 for OA charges. The relevant extract from the Impugned Order is reproduced herein below:

"8. The Open Access Charges (Transmission / wheeling Charges, Surcharge and Additional Surcharge applicable to open access customers for use of Intra-state transmission/ distribution system) under the provisions of the Act were first fixed by the Commission for 2008-09 in its order dated 29.03.2008 in Case No. 66, 67, 68 & 69 of 2006. The detailed procedures and methodologies for computation of surcharge for different consumer categories have been

elaborately described in the said order. Subsequently, the Commission has passed many orders for different years on Open Access Charges applicable to open access customers for use of Intra-state transmission/distribution system based on the same principle. The Commission have also adopted the same principle for calculating wheeling Charges, Surcharge and Additional Surcharge applicable to open access customers for use of Intra-state transmission/distribution system for the current year i.e. FY 2014-15.”

From the above it can be seen that State Commission has adopted the principles for determination of OA charges as done vide its order dated 29.3.2008.

- viii. Now it is important for us to consider the order dated 29.3.2008. The relevant extract from the order is reproduced herein below:

“In the matter of: Approval of Open Access Charges (Transmission/wheeling Charges, Surcharge and Additional Surcharge applicable to open access customers for use of Intra-state transmission/distribution system ) in accordance with Section 39 and 42 of the Electricity Act, 2003 read with the provisions of Chapter II (Charges for Open Access) of OERC (Determination of Open Access Charges) Regulations, 2006.

.....  
*12. In Orissa, the single-buyer model prevails, with GRIDCO as the sole supplier to the DISTCOs. Differential Bulk Supply price is fixed for four distribution utilities of the state. This has become necessary to maintain a uniform retail tariff through out the State. Power is procured by the DISTCOs at bulk supply prices as they purchase their entire requirement from GRIDCO at present. However, where GRIDCO cannot meet their demand, DISTCOs have the liberty, of purchasing power from CGPs and other sources in addition to the purchase of power from GRIDCO. Such a situation or stage is yet to take place as GRIDCO is meeting their full demand at present. Therefore, for the purpose of determination of cost of supply by the distribution utility we shall be considering the rate at which each distribution company purchases power form the GRIDCO.*

From the above it is clear that the State Commission has passed the order in accordance with relevant provisions of the Act and the OA Regulations and has adopted the principle for considering BSP for the purpose of determination of cost of supply by the Discom. The reasoning given by the State Commission is just and reasonable, does not call for our interference.

- ix. It is observed that the State Commission has been adopting the same principle for determination of OA charges for subsequent years as adopted in the order dated 29.3.2008 for the purpose of calculation of CSS after considering the relevant provisions of the OA Regulations. It is also observed that the same was done keeping in view the functional and structural scenario of Odisha power sector. Thus the order

dated 29.3.2008 became the principal order for the State Commission to determine the OA charges. The stakeholders also accepted the said order and were making requisite payments. The Appellant was also making the payments of CSS based on the said order. Based on the Impugned Order, the Appellant has also accepted to make payment of CSS in MoM. Looking at all aspects of the case we are of the opinion that as of now we do not find merit in interfering with the Impugned Order. Further, it is significant to note that the State Commission after evaluation of the oral, documentary and other relevant materials available on file and by assigning valid and cogent reasons in the Impugned Order has rightly dismissed the claim of the Appellant, hence interference of this Tribunal does not call for.

- x. Now let us deal the issues related to component 'T'. As per the NTP, the component 'T' in the CSS formula is the tariff payable by the relevant category of consumers.
- xi. Let us now consider the findings of the State Commission on this issue. The relevant extract is reproduced herein below:

*“The tariff (T) in the surcharge formula has been adopted for HT and EHT consumers at 100% load factor without deviating from the principles of earlier years. This tariff includes not only energy charge but also other component of tariff called demand charge as applicable to the consumer at respective voltage level such as HT & EHT in the current year.”*

The State Commission has adopted 'T' for HT and EHT consumers at 100% load factor based on the principle adopted during the earlier years. The component 'T' comprises of energy charge and demand charge as applicable to the category of the consumer.

- xii. The contention of the Appellant is that the State Commission in the Impugned Order has given that 'T' has been adopted at 100% load factor but actually the same has not been done and the State Commission has also not brought on record how the component 'T' has been calculated and this is against the principles of natural justice.
- xiii. The learned counsel for the State Commission Mr. G Umapathy described in detail about the computation of component 'T'. It was submitted that there were two slab rates for energy charges for HT/EHT consumers considering load factors of less than or equal to 60% and load factor more than 60%. He further explained that average energy charge for 100% load factor is worked out based on energy charge for consumption up to 60% and energy charge for consumption from 60% to 100%. The same has been explained by an example for EHT consumers.
- xiv. We have heard the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondents and also gone through the RST order for FY 2014-15 and after considering the same we are in agreement



to the methodology adopted by the State Commission for calculation of component 'T' which was also being done on similar principles in earlier orders which were accepted by all the concerned. We also observe that as per the formula for CSS in NTP there is no such specific requirement of load factor for calculation of component 'T' and hence it is left to the State Commission to interpret and deal accordingly the same to meet the requirement of provisions envisaged in the Act and NTP. Accordingly, we do not see any legal infirmity in the decision of the State Commission on this count also.

xv. In view of our discussions as above, we are of the considered opinion that the issues raised in the said questions of law are decided against the Appellant.

c) On Question No. 7. d) i.e. Whether the State Commission has violated provisions stipulated in Sections 61(i) and 86 (4) by not adhering to the principle enunciated in the NTP for computation of CSS?, we observe as below:

i. Let us consider the provisions of 61 (i) and 86 (4) of the Act. The relevant extract is reproduced herein below:

“61. The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

.....

*(i) the National Electricity Policy and tariff policy:*

.....

*86 (4) In discharge of its functions the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3.*

From the above it can be seen that the State Commission in discharging its functions and in specifying the terms and conditions for determination of tariff shall be guided by NTP.

- ii. The learned counsel appearing the Appellant placed reliance on various judgements on the issue that the State Commission was bound to follow the CSS formula strictly in line with the NTP. These include the judgement of this Tribunal in case of RVK Energy Pvt. Limited Vs. Central Power Distribution Co. of Andhra Pradesh Ltd & Anr., Maruti Suzuki India Ltd. v. HERC and Sarover Energy Private Limited v. Karnataka Electricity Regulatory Commission and Anr. The learned counsel appearing the Appellant has also placed reliance on the judgement of Hon'ble Supreme Court in case of Energy Watchdog v. CERC & Anr. on the issue that the policy issued under Section 3 of the Act by the Central Government is a statutory policy and therefore, the computation of CSS as per formula prescribed under the NTP is binding.
- iii. The State Commission has submitted that the provisions of NTP are guiding factor for the State Commission for framing

regulations for determination of OA charges and has relied on judgements of this Tribunal in case of Maruti Suzuki India Ltd. v. HERC and judgement of Hon'ble Supreme Court in case of PTC India Ltd. v. CERC (2010) SCC 603.

- iv. We have gone through the judgements of this Tribunal and Hon'ble Supreme Court on which reliance has been placed by the learned counsel for the Appellant and the learned counsel for the Respondents. We observe that the Hon'ble Supreme Court in judgement dated 11.4.2017 in Civil Appeal Nos.5399-5400 of 2016 in case of Energy Watchdog v. CERC & Anr. has dealt the issue of nature of policies issued by the Central Government under Section 3 of the Act. The Hon'ble Court has concluded that the tariff policy being issued under Section 3 of the Act is a statutory document and have the force of law.
  - v. In view of the facts and circumstances of the case, we are of the considered opinion that it is the responsibility of the State Commission to follow the provisions of NTP for computation of CSS as envisaged therein. The State Commission is hereby directed to work out some methodology so that the computation of component 'C' could be carried out by it as per the provisions of NTP in its forthcoming orders on OA charges.
- d) On Question No. 7. f) i.e. Whether the State Commission has erred and violated the Regulation 7(c) of OERC (Terms and Conditions for Determination of Tariff) Regulations, 2004 by taking two

different approaches for calculation of Cross Subsidy (CS) and CSS by:

- a. Calculating the CS based on Regulation 7(c) (iii) of Tariff Regulations, 2004 wherein the CS payable by certain category of consumer is calculated by the difference between average cost-to-serve to all consumers of the state of Odisha taken together and average tariff applicable to such consumers.
- b. Calculating the CSS, based on the cost of the distribution licensee to supply to the consumers of the applicable class and not the average cost-to-serve all consumers of the state of Odisha.
- i. Let us consider the provisions of Tariff Regulations, 2004. The relevant extract relied by the Appellant is reproduced herein below:

*“7. Tariff Principles*

*.....*

*c) Surcharge*

*.....*

*iii) For the purpose of computing Cross-subsidy payable by a certain category of consumer, the difference between average cost-to-serve of all consumers of the State taken together and average tariff applicable to such consumers shall be considered.”*

From the above it can be seen that CS payable by certain category of consumer is to be calculated as the difference between average cost to serve for consumers of the State taken together and the average tariff applicable to such consumers.

- ii. Now let us consider the order dated 22.3.2014 of the State Commission in reference to which the above Regulation has been quoted by the Appellant. The relevant extract of the same is reproduced herein below:

“391. The cross-subsidy calculated as per the above methodology is given in the table below:

*Table - 66 Cross-subsidy for FY 2014-15*

Year	Level of Voltage	Average cost of supply for the State as a whole (P/U)	Tariff P/U	Cross-Subsidy P/U	Percentage of Cross-subsidy above/below of cost of supply
1	2	3	4	5=(4-3)	6=(5/3)
2012-13	EHT	460.51	551.04	90.53	19.66%
	HT		552.09	91.58	19.89%
	LT		368.52	-91.99	-19.98%
2013-14	EHT	466.68	559.18	92.50	19.82%
	HT		559.69	93.01	19.93%
	LT		374.66	-92.02	-19.72%
2014-15	EHT	461.07	552.64	91.57	19.86%
	HT		553.15	92.08	19.97%
	LT		369.63	-91.44	-19.83%

392. It would be noted from the above that Commission in line with the mandate of the National Electricity Policy and Tariff Policy has managed to keep cross-subsidy among the subsidised and subsidising category of consumers in the State within + 20%. Commission at this stage would like to make it abundantly clear that the above cross subsidy is meant only for Retail Supply Tariff fixation in the state applicable to all consumers (except BPL and

agriculture) and not to be confused with cross subsidy surcharge payable by open access consumers to the DISCOM. The order of the cross subsidy surcharge applicable only to open access consumers shall be issued separately.”

From the above it is clear that the State Commission while calculating CS has made it abundantly clear that CS was meant only for Retail Supply Tariff fixation in Odisha applicable to all consumers (except BPL and agriculture) and not to be confused with CSS payable by OA consumer to the Discom.

- iii. The State Commission has considered that it has calculated CS to find the difference of tariff between the subsidised and subsidising category of consumers in the State which is required to be within +/- 20% in line with requirements of NTP and as such the CS and CSS are two different components. The CSS is payable for loss of CS to the Discom. We agree to the reasoning assigned by the State Commission. We also observe that the methodology adopted for calculation of CS and CSS are different and are for different purposes as stated by the State Commission. Accordingly, we do not find any error in calculation of CSS by the State Commission.
- iv. In view of the above, this issue is also answered against the Appellant.

e) The Appellant in its written submissions has not insisted on balance questions of law to be considered by this Tribunal as raised in the main Appeal. However, we observe that the issues raised in the said questions of law have been either addressed while dealing the main questions of law as above or are no longer relevant in view of our decisions in this judgement.

### **ORDER**

After careful evaluation of the oral, documentary and other relevant materials available on the file and for the foregoing reasons as stated supra, we are of the considered opinion that the issues raised in the instant Appeals have no merit. The State Commission has rightly justified the findings in answering the issues against the Appellants. Therefore, interference of this Tribunal does not call for.

Hence, the Appeals are hereby dismissed devoid of merits. All the IAs also stand disposed of as having become infructuous.

The Impugned Orders dated 30.9.2014 (in Appeal No. 283 of 2014), 24.6.2010 (in Appeal No. 31 of 2016), 13.7.2012 (in Appeal No. 30 of 2016) and 23.3.2015 (in Appeal No. 141 of 2015) passed by the State Commission are hereby upheld.

No order as to costs.

Pronounced in the Open Court on this **29<sup>th</sup> day of May, 2018.**

**(Justice N. K. Patil)**  
**Judicial Member**

**(I.J. Kapoor)**  
**Technical Member**

✓  
**REPORTABLE/NON-REPORTABLE**

mk