IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.2 of 2019
APPEAL No.55 of 2019
APPEAL No.5 of 2020
APPEAL No.7 of 2020

Dated: 24.06.2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

APPEAL No.2 of 2019

DCM Shriram Ltd.
Shriram Nagar, Kota – 324 004
Rajasthan … Appellant

Versus

1. **Jaipur Vidyut Vitran Nigam Ltd.**
   Through its Chief Engineer
   Vidyut Bhawan, Janpath,
   Jaipur, Rajasthan – 302 005

2. **Ajmer Vidyut Vitran Nigam Ltd.**
   Through its Chairman & Managing Director
   Vidyut Bhawan, Makarwali Road,
   Panchsheel Nagar,
   Ajmer, Rajasthan - 305004

3. **Jodhpur Vidyut Vitran Nigam Limited**
   Through its Chairman & Managing Director
   New Power House, Industrial Estate,
   Jodhpur – 342 003 (Rajasthan)

4. Rajasthan Urja Vikas Nigam Limited
Through its Chief Engineer
Shed No 5/5, Vidyut Bhawan,
Vidyut Nagar, Jaipur – 302005 (Rajasthan)

5. Rajasthan Electricity Regulatory Commission
Through its Secretary
Vidyut Viniyamak Bhawan,
Near State Motor Garage,
Sahkar Marg, Jaipur – 302 005 (Rajasthan) … Respondent (s)

Counsel for the Appellant(s)	:	Anand K. Ganesan Ashwin Ramanathan Swapna Seshadri
Counsel for the Respondent(s)	:	Sandeep Pathak for Res. 1 Sandeep Pathak Archana Pathak Dave for Res. 2 to 4

APPEAL No. 55 of 2019

Shree Cement Limited
Having its Registered Office at:
Bangur Nagar, Beawar,
District Ajmer, Rajasthan – 305901
Through its Assistant Vice President
(Power Business) … Appellant

Versus

1. Rajasthan Electricity Regulatory Commission
Vidyut Viniyamak Bhawan,
Sahakar Marg,
Near State Motor Garage,
Jaipur – 302001
Through its Secretary

2. Jaipur Vidyut Vitran Nigam Limited
Through Chief Engineer (CP&L)
Vidyut Bhawan, Janpath, Jaipur – 302016

3. Rajasthan Urja Vikas Nigam Ltd.
Through its Director
Vidhan Sabha RD, Janpath,
Jyothi Nagar, Lalkothi,
Jaipur, Rajasthan – 302005 … Respondent (s)

Counsel for the Appellant(s) : Kumar Mihir

Counsel for the Respondent(s) : Sandeep Pathak for Res. 2

Sandeep Pathak
Archna Pathak Dave for Res. 3

APPEAL No. 5 of 2020

RSWM Ltd.
Pur Road, Dist. Banswara (Raj.)
Pin – 327001
Through its Authorised Signatory
Email: nkbahedia@lnjbhilwara.com … Appellant

Versus

1. Ajmer Vidyut Vitran Nigam Limited (AVVNL)
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer – 305004 (Raj.)
Through its Managing Director
Email: ajmerdiscom@yahoo.co.in

2. Rajasthan Urja Vikas Nigam Ltd.
(Formerly Raj. Discoms Power Procurement Centre (RDPPC)
Vidyut Bhawan, Janpath, Jaipur – 302005 (Raj.)

Through its Managing Director
Email: md.ruvnl@rajasthan.gov.in

3. **Jaipur Vidyut Vitran Nigam Limited (JVVNL)**
Vidyut Bhawan, Janpath, Jaipur – 302005 (Raj.)
Through its Managing Director
Email: cmd@jvvnl.in

4. **Rajasthan Electricity Regulatory Commission**
"Vidyut Vinyamak Bhawan",
Near State Motor Garage,
Sahakar Marg, Jaipur – 302005
Through its Secretary
Email: rercjpr@yahoo.co.in … Respondent (s)

Counsel for the Appellant(s) : P. N. Bhandari

Counsel for the Respondent(s) : Abhay Jain for Res. 1

Parinitoo Jain
Abhay Jain for Res. 2 & 3

APPEAL No. 7 of 2020

M/s. Sangam (India) Ltd.
P.B. No. 90, Atun, Chittorgarh Road,
Bhilwara (Raj.) Pin – 311001
Through its Authorised Signatory
Email: akjain@sangamgroup.com … Appellant

Versus

1. **Ajmer Vidyut Vitran Nigam Limited (AVVNL)**
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer – 305004 (Raj.)
Through its Managing Director
Email: ajmerdiscom@yahoo.co.in

2. **Rajasthan Urja Vikas Nigam Ltd.**
(Formerly Raj. Discoms Power Procurement Centre (RDPPC)
Vidyut Bhawan, Janpath, Jaipur – 302005 (Raj.)
Through its Managing Director
Email: md.ruvnl@rajasthan.gov.in

3. **Jaipur Vidyut Vitran Nigam Limited (JVVNL)**
Vidyut Bhawan, Janpath, Jaipur – 302005 (Raj.)
Through its Managing Director
Email: cmd@jvvnl.in

4. **Rajasthan Electricity Regulatory Commission**
"Vidyut Vinyamak Bhawan",
Near State Motor Garage,
Sahakar Marg, Jaipur – 302005
Through its Secretary
Email: rercjpr@yahoo.co.in … Respondent (s)

Counsel for the Appellant(s)	:	P. N. Bhandari
Counsel for the Respondent(s)	:	Abhay Jain Mayank Jain for Res. 1 Parinitoo Jain Abhay Jain Mayank Jain for Res. 2 & 3

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The appellants in the captioned four appeals who are industrial consumers in the State of Rajasthan, have assailed two separate orders

dated 25.10.2018 and 05.12.2019 passed by Rajasthan Electricity Regulatory Commission (hereinafter referred to as “the Commission”) in three separate petitions filed by the appellants, thereby rejecting the petitions wherein prayer was made by the appellants for quashing the demand raised by the Rajasthan Discoms on the basis of clarification notification dated 06.11.2012.

2. Since the appeals arise from the identical orders of the Commission and involve identical facts, we propose to dispose off these by way of this common judgement.

Description of the parties :

3. M/s DCM Shriram Limited (appellant in appeal no.2 of 2019) is a public limited company and is engaged in the manufacture, *inter alia,* of urea, caustic soda, plastic and cement. It has a captive power plant with total installed capacity of 125.3 MW at Kota, Rajasthan with five separate power units having capacity of 1x40 MW, 1x30 MW, 1x35 MW, 1x10 MW and 1x10.3 MW.

4. M/s Shree Cement Limited (appellant in appeal n.55 of 2019) is also a company registered under the Companies Act, 1956 and is engaged in manufacture of cement. It has its own captive power plants at Beawar and

Ras in the State of Rajasthan for captive consumption for its cement manufacturing units at Khushkhera, Suratgarh and Jobner in the State. Most of the electricity generated by these power plants is used by the appellant for its own requirements and the excess electricity is sold by it to the distribution licensees, power exchange and other open access consumers at mutually acceptable terms and conditions.

5. M/s RSWM Limited (appellant in appeal no.5 of 2020) is an industrial consumer located at Ajmer in the State of Rajasthan and also owns captive power plants.

6. M/s Sangam (India) Limited (appellant in appeal no.7 of 2020) is also an industrial consumer of Ajmer Discom and owns few captive power plants in the State of Rajasthan.

7. Jaipur Vidyut Vitran Nigam Limited (in short JVVNL), Ajmer Vidyut Vitran Nigam Limited (in short AVVNL) and Jodhpur Vidyut Vitran Nigam Limited (in short JoVVNL), which are arrayed as respondents in these appeals, are the distribution licensees operating in the State of Rajasthan.

8. Rajasthan Discoms Power Procurement Centre (in short RDPPC), which is also arrayed as respondent in these appeals, is a nodal agency

responsible for procurement of power on behalf of the distribution licensees in the State of Rajasthan.

Facts giving rise to these appeals: -

9. In the year 2009, State of Rajasthan was facing acute power shortage an accordingly RDPPC invited bids on behalf of the three discoms JVVNL, AVVNL and JoVVNL for purchase of power on short term basis for one year commencing from 01.07.2009 and ending on 30.06.2010 from captive as well as independent power plants located in Rajasthan. The bidders were directed to quote uniform fixed price. It was further stated in the bid documents that captive power plants without open access for wheeling of power to their other units/sister concerns at different locations need not adjust, account for the consumption of such other units/sister concerns from the power injected by the captive power plant and such consumption by the other units/sister concerns shall be regarded as power drawn against normal HT connection from the discoms. The relevant extract of the terms and conditions in the bid documents are extracted hereinbelow: -

"The CPPs will have the option of sale of electricity after meeting requirement of captive use by its Industrial Unit (s) and meeting commitment for sale of power to Rajasthan Respondents. The Captive Power Plant will not be eligible for sale of power if CPP/Industrial Unit(s) is drawing net electricity from the grid i.e. the power exported to the grid should be more than the power drawn from the grid at any instant during the contracted period. However CPPs who are not having or not availing/utilizing open access for wheeling of power to their other units/sister concerns at different locations, need not adjust / account for, the power drawn by such other units/sister concerns from the power injected by the CPP. The consumption of such other units/sister concerns shall be regarded as power drawn from their normal HP connection of Respondents."

10. The bid document was amended in the month of June, 2009 to provide that for captive power plants who are willing to sell power to the discoms in

Rajasthan, the power drawn by their other units/sister concerns from the Rajasthan Discoms as HT consumers of the discoms shall be adjusted/accounted for from the energy supplied irrespective of whether there existed an open access agreement or not and the balance energy shall be considered as sale to the Rajasthan Discoms. The relevant extract of the amended bid document is extracted hereinbelow: -

> *"The CPP will have option of sale of electricity after meeting requirement of captive use by its Industrial Unit (s) and meeting commitment for sale, of power to Rajasthan Respondents. The CPP will not be eligible for sale of power if CPP/Industrial Unit(s) is drawing net electricity from the grid i.e. the power exported to the grid should be more than the power drawn from the grid at any instant during the contracted period. For the CPPs who are willing to sell power to Rajasthan, the drawn from Rajasthan Respondents by its other unit(s)/ sister concerns(s) as an HT consumer of the Respondents, located adjoining the Industrial unit where the CPP is located and also elsewhere at*

different places in Rajasthan shall be adjusted / accounted for, first from the energy supplied on 'Firm' basis & if the same still remains unadjusted then such unadjusted energy shall be adjusted / accounted for from the energy supplied on 'Day ahead' basis to Rajasthan Respondents, on weekly basis during the contracted period. The balance energy, after such adjustment, shall be considered as sale to Rajasthan Respondents, irrespective of whether there exists an open access agreement between CPP and RVPN/Respondents for wheeling of power from the CPP to its such other unit(s)/sister concern(s) or not. Such adjustment shall be effected based on weekly meter readings of the other unit(s) or sister concern(s), for which concerned SE (RDPPC) Respondents shall take necessary action. However the power/energy drawn by such other unit(s) or sister concern(s), shall not be considered for the purpose of comparing the actual power supply vis-à-vis scheduled power to see that the variation in any time block of 15 minutes is

between 95% to 105% or not and also for the purpose of working out the actual supply of energy to see whether the same is at least 80% of the contracted quantity during a week or not. The CPP will give details viz Name, Location, Contracted Demand and Account No. of the HT connection indicating the Name of the concerned Discom, in respect of his other unit(s) and/or sister concern(s).

For the IPPs who are willing to sell power to Rajasthan Respondents, the above provision will also be applicable to them to the extent relevant."

11. The appellants successfully participated in the bid to supply surplus electricity from their captive power plants to the Rajasthan Discoms. The bids submitted by the appellants were accepted by the discoms vide Letter of Intent (LoI) dated 30.06.2009 issued separately to the appellants for supply of Round the Clock (RTC) power during the relevant period i.e. from 01.07.2009 to 30.06.2010 on firm basis at a tariff which was uniformly fixed as Rs.6.50/kWh for all the successful bidders. As per the LoI the appellants

could also sell power to the discoms on “day ahead basis” to be paid at 90 percent of Rs.6.50/kWh. The relevant portion of the LoI is reproduced hereinbelow: -

> *“5. ……..The energy drawl from Rajasthan Respondents by your other unit(s) system concern(s) as an HT consumer of the Respondents, located adjoining the Industrial unit where your CPP is located and also elsewhere at different places in Rajasthan shall be adjusted / accounted for first from the energy supplied on ‘Firm’ basis & if the same still remains unadjusted then such unadjusted energy shall be adjusted I accounted for from the energy supplied on ‘Day ahead basis, if any to Rajasthan Respondents, on weekly basis during the contracted period. The balance energy, after such adjustment, shall be considered as sale to Rajasthan Respondents, irrespective of whether there exists an open access agreement between your CPP and VPN/Respondents for wheeling of power from your CPP to your such other unit(s) sister concern(s) or*

not. Such adjustment shall be effected based on weekly meter readings of the other unit(s) sister concern(s), for which concerned SE (RDPPC) Respondents shall take necessary action. However the power/energy drawn by such other unit(s) or sister concern(s) shall not be considered for the purpose of comparing the actual power supply vis-à-vis scheduled power to see that the variation in any time block of 15 minutes is between 95% to 105%, or not and also for the purpose of working out the actual supply of energy to see wheth4er the same is at least 80% of the contracted quantity during a week or not. You will provide the details viz Name, Location, contract Demand and Account No. of the HT connection indicating the Name of the concerned Discom, in respect of your other unit(s) and/or sister concern(s) to the concerned SE (RDPPC) Discom."

12. The LoI was duly accepted by all the appellants and a concluded contract came into existence between the parties. Accordingly, the appellants

commenced supply of power to the discoms as per the said LoI with effect from 01.07.2009. The appellants raised bills/invoices for supply of power from their captive power plants to the discoms which were duly paid by the discoms as per the terms and conditions of LoI.

13. It appears that since the traditional role of parties had reversed in this case as the industrial consumers were to supply power to the discoms instead of traditionally receiving power from discoms, many issues regarding the actual implementation of the contract cropped up as there was no such past practice. Accordingly, elaborate discussions took place between the RDPPC and the concerned captive power plants including the appellants in order to streamline the procedure and clarify the methodology for proper implementation of the terms of the contract and to clarify the doubts raised by the discoms, a circular dated 17.08.2009 was issued by JVVNL based upon mutual discussions between the contracting parties. The circular provided for a formula for arriving at the amount payable to the captive power plants by the discoms as under :-

> *"Say the energy exported by CPP is 100 units and the power drawn by CPP's industrial units is 20 units for*

which a bill of Rs.90 has been raised. The bill for sale to Discom would be thus drawn as such:

Rs.(100-20) X Rs. 6.6 Sale from CPP i.e. Rs.520 = A

Bill raised to industrial unit/sister concern say = B

Total (A)+ (B) payable by Nigam to CPP

(Bill for Industrial unit paid as raised by HT Billing Section)

The above instructions are issued for compliance by all concerned."

14. In pursuance to the terms and conditions of the LoI as well as mutually agreed procedure contained in the circular dated 17.08.2009, the appellants supplied the contracted power to the discoms during the period 01.07.2009 till 30.06.2010 and received the amount due from the discoms. The agreement expired on 30.06.2010 by efflux of time and hence the parties were discharged from any obligations towards each other thereafter.

15. It so happens that after lapse of nearly two and a half years from the expiry of the agreements between the parties, JVVNL issued a clarification

for the procedure for adjustment of energy sold by various captive power plants to the discoms. The clarificatory circular was issued on 06.11.2012 wherein it was stated that the adjustment of fixed charges and other charges for the consumed units was not to be made and while adjusting the energy exported by captive power plants, fixed charge along with meter rent was also mistakenly refunded back to the captive power plant consumers. Thus, the methodology for power adjustment was sought to be revised retrospectively by way of the said circular, the relevant extract of which is as under :-

> *"In the above prescribed method it was observed that while adjusting the energy exported by CPP's fixed charges along with meter rent has also been refunded back to the CPP consumers, which should not be there, as such, an agenda note was put up before the Directional Committee In its 27th Meeting held on 24/01/2012. As per item no. 4 of the Minutes of the Meeting, the method of adjustment i.e. illustration is clarified as under:-*

"Say the firm energy exported by CPP is 100 units and the power drawn by CPP's industrial unit is 20 units for which a bill has been raised by HT billing section". The bill for sale to Discom would thus be drawn as under:

(100-20) unit X selling rate of CPP

viz. Rs. 6.50 per kwh = Rs. 520 =A

20 units X effective per unit rate of LIP

tariff of the consumer for the month =B

Total (A) + (B) payable to RDPPC to CPP consumer

NOTE: *The effective per unit rate of LIP tariff for 'B' above would be prevailing billed energy charges net off after admissible voltage rebate and power factor incentive/surcharge as the case may be, divided by the units billed. As such no refund on account of fixed charges, transformer rent, metering equipment rent etc. shall be made."*

All Respondents are advised to review the payment already made on this account immediately."

16. In pursuance to the said clarificatory circular dated 06.11.2012, JVVNL raised the demand in the amount of Rs.2,74,49,724/- against M/s DCM Shriram Limited vide demand note dated 20.02.2013. Similar demand in the amount of Rs.5,83,31,434/- was raised against M/s Shree Cement Limited vide demand letter dated 07.01.2013. Similar recovery orders dated 01.04.2013 were issued by JVVNL against M/s RSWM Limited and M/s Sangam (India) Limited.

17. Being aggrieved by such demands raised by JVVNL, the appellants initially approached the High Court of Rajasthan by way of separate writ petitions which were dismissed vide orders dated 01.09.2014, 01.10.2014 and 04.07.2019 on the ground that the writ petitioners i.e. the appellants herein could avail alternative remedy under the law.

18. Thereafter, the appellants approached the Commission by way of separate petitions under section 86 (f) of Electricity Act, 2003 questioning the correctness of the demand notice/recovery orders issued by JVVNL. Petition

No.476/2014 was filled by M/s DCM Shriram Limited before the Commission. Petition No.475/2014 was filled by M/s Shree Cement Limited. Petition Nos.1537/2019 and 1538/2019 were filled by M/s RSWM Limited and M/s Sangam (India) Limited respectively.

19. Petition No.476/2014 filed by M/s DCM Shriram Limited was initially dismissed by the Commission vide order dated 10.04.2015 holding that the circulars dated 17.08.2009 was only billing procedure order and not in accordance with the terms of the LoI and the same can not be relied upon by the petitioner DCM Shriram Limited to retain the unjust benefit. It was, thus, held that recovery initiated by the respondent discoms can not be termed as illegal and no exception can be taken to the same.

20. The said order dated 10.04.2015 of the Commission assailed by M/s DCM Shriram Limited before this tribunal by way of appeal no.129/2015 which was disposed off vide judgment dated 20.03.2018 thereby setting aside the Commission's order and remanding the case back to the Commission for fresh consideration. The relevant portion of the said judgment of this tribunal is quoted hereinbelow: -

"(i) The matter stands remitted back to the fifth Respondent for fresh consideration and pass appropriate orders in accordance with law after affording reasonable opportunity of hearing to the Appellant and the Respondent Nos. 1 to 4 and dispose off as expeditiously as possible at any rate within the period of six months from the date of appearance of the parties before the fifth Respondent.

(ii) The Appellant and Respondent Nos. 1 to 4 herein are directed to appear before the fifth Respondent personally or through their counsel on 23.04.2018 at 1 1:00 a.m. without notice to collect necessary date of hearing.

(iii) All the contentions of both the parties are left open."

21. In pursuance to the directions of the tribunal in the above noted judgment, the Commission heard the matter again and passed a fresh order dated 25.10.2018 which is the subject matter of appeal no.02 of 2019. Vide

the said fresh order also, the Commission rejected the petition of M/s DCM Shriram Limited.

22. On the basis of the said order dated 25.10.2018 passed in petition no.476/2014, the Commission rejected the petition no.475/2014 filed by M/s Shree Cement Limited, vide separate order of the same date.

23. Vide identical but separate common order dated 05.12.2019, the Commission rejected the petition nos.1537/2019 and 1538/2019 filed by M/s RSWM Limited and M/s Sangam (India) Limited respectively.

24. These orders dated 25.10.2018 and 05.12.2019 have been assailed the appellants in these four appeals.

Orders/decisions of the Commission: -

25. The appellants had prayed in their respective petitions to the Commission to quash the demand notices/orders issued by respondent discoms in pursuance to the clarificatory circular dated 06.11.2012.

26. The contention of the appellants before the Commission was that they have supplied electricity to the discoms in pursuance to the LoI dated 30.06.2009 issued by RDPPC and the bills raised by them were duly settled

in terms of the provisions of the LoI read with the procedure order dated 17.08.2009. It was contended that once the power supply had been made and the bills were settled as per the LoI, the contract stands performed fully and also discharged and therefore, can not be reopened on the basis of clarificatory circular dated 06.11.2012 on the ground that there were errors in settling the bills of the appellants. It was also contended that the recovery of so-called excess charges is time barred.

27. On behalf of the respondents, it was contended before the Commission that while settling the bills of the appellants, instead of giving credit only for the energy charges paid, fixed charges, transformer rent, metering equipment rent etc. of discoms were also inadvertently refunded. It was stated that when this came to the notice of the respondent discoms, clarificatory circular dated 06.11.2012 was issued and the wrongly refunded amount was ordered to be recovered back from the appellants. It was further stated that the impugned action is nothing but only error rectification.

28. The Commission came to the conclusion that vide clarificatory circular dated 06.11.2012, the discoms only ensured that the tariff to be charged from the customer should be as per the tariff determined by the Commission and therefore, by way of making corrections in the defective billing procedure,

discoms rightly raised demand to recover the balance amount. The Commission further held that since the discoms had charged lesser tariff from the appellants against the electricity supplied, they are entitled to recover the remaining charges from the appellants as and when they became aware about the error in billing procedure. On the aspect of limitation, the Commission ruled that the benefit which were unduly got by the appellants can be recovered by the respondent discoms as they are merely seeking to rectify their mistake and therefore, the impugned action of the respondent discoms can not be termed to be barred by limitation.

Submissions of the Parties: -

(A) Submissions on behalf of the Appellants: -

29. Learned counsels appearing on behalf of the appellants submitted that the clarificatory order dated 06.11.2012 is contrary to the express provisions of law for the reason that except an Act of Parliament or State Legislature, no rule or regulation or order or circular can be issued with retrospective effect to take away the benefit vested in a party. It is further argued that :-

a) It is no longer *res integra* that the respondent discom JVVNL was not competent to issue the clarificatory order dated 06.11.2012

retrospectively thereby changing the terms and conditions of the LoI dated 30.06.2009 read with circular dated 17.08.2009 and therefore, the consequential claim raised thereupon is liable to be rejected outrightly. It is stated that by way of retrospective application of clarificatory circular dated 06.11.2012, the discoms have malafidely attempted to take away the rights/benefits which already stood vested in the appellants. In this regard reliance is placed upon the judgments of the Hon'ble Supreme Court in Bejgam Veeranna Venkata Narasimloo vs. State of Andhra Pradesh (1998) 1 SCC 563; T.R. Kapur and Ors. vs. State of Haryana and Ors. 1986 (SUPP) SCC 584; and Sri Vijayalakshmi Rice Mills, New Contractors Co. and Ors. vs. State of Andhra Pradesh (1976) 3 SCC 37.

b) The parties at the time of negotiations were *ad idem* with respect to the terms and conditions for supply of power including the process of energy accounting and the method of adjustment of bills as reflected in LoI dated 30.06.2009 and the commercial circular dated 17.08.2009. Having acted on the same and much after completion of transactions, the unilateral issuance of clarification order dated

06.11.2012 and consequent demand notices/orders can not be countenanced and deserve to be quashed.

c) Once the parties accept the terms of a contract and act upon the same, those terms can not be unsettled or materially altered unilaterally by any party. Therefore, the unilateral action of the respondent discoms in the instant case in changing the terms of a binding contract after the contract had been performed, is liable to be set aside.

d) The methodology of bills adjustment/accounting given in the commercial circular dated 17.08.2009 clearly provided that the entire amount of HT bills raised upon the other units/sister concerns of the appellants would be reimbursed as was duly understood and acted upon by the parties to the contract. Therefore, there was no mistake of fact or law as claimed by the respondent discoms. Thus, the impugned action of the respondent discoms can not be sustained as the same is contrary to the express terms and agreements i.e. LoI.

e) The amount of bills under the LoI was paid to the appellants on weekly basis and therefore, the alleged cause of action for recovery

of excess amount as claimed would have arisen every month during the subsistence of the contract i.e. till 30.06.2010. Since the recovery has been initiated by the respondent discoms only after 07.01.2013, the same is barred by limitation and deserves to be quashed on this score only.

(B) Submissions on behalf of the Appellants: -

30. It is submitted by the learned counsels appearing on behalf of the respondent discoms that the impugned orders of the Commission do not suffer from any error or infirmity as the Commission had undertaken a comprehensive and meticulous examination of all the issues raised by the appellants in their petitions and has given detailed reasons for rejecting the petitions. It is further argued that :-

a) The commercial circular dated 17.08.2009 inadvertently extended the scope of adjustment of bills to cover the entire bill raised to the appellants due to an erroneous illustration. This mistake resulted in the refund of charges that were intended to be reimbursed, including fixed charges, transformer rent and metering equipment rent etc.

which are part of the tariff determined by the Commission under section 62 of the Electricity Act, 2003 and must be paid by a HT consumer as per the applicable tariff regulations. The error arose from misinterpretation of the agreement due to which the appellants got enriched unjustly by receiving the refunds for non-energy charges also. Therefore, the correction made by the discoms was necessary and lawful to rectify the inadvertent error.

b) The Commission has correctly observed in the impugned orders that the billing procedure circular dated 17.08.2009, which was acted upon by the parties, is *non est* as it was not in accordance with the provisions of the Electricity Act, 2003.

c) The true intent of the LoI is clear from its requirement for the appellants to provide details of all their HT connections, including those of their industrial units and sister concerns, which indicates that these connections would be governed by their respective agreements. Clause 5 of the LoI unambiguously uses the term “energy drawn” rather than all encompassing phrase like “entire bill”. Had the intention been to reimburse the entire billed amount to HT

consumers it would have been explicitly stated in the document i.e. LoI. The use of expression “energy drawn” signifies that only the effective rate of electricity consumed is to be adjusted which, in this case, was Rs.4.50/kWh excluding fixed charges. Therefore, the appellants can not seek refuge in the erroneous illustration provided in billing procedure circular dated 17.08.2009 to evade their obligation to pay fix charges.

d) The clarificatory order dated 06.11.2012 issued by the discoms was necessary to rectify the mistake of wrongly refunding fixed charges also to the respective captive power plants i.e. appellants. This clarification can not be viewed as retrospective reopening of the contract but rather as a corrective measure to address an inadvertent error in the billing process. In this regard reliance is placed upon judgment of Supreme Court in Chandi Prasad Uniyal v. State of Uttarakhand 2012 8 SCC 417.

e) When excess payment is identified, it is the obligations of the recipient to return such fund in order to avoid unjust enrichment

regardless of the circumstances that led to the over payment. Therefore, the clarificatory circular dated 06.11.2012 issued by the discoms serves to reinforce this principle by ensuring that the fixed charges, which were erroneously refunded to the appellants, are rightfully recovered.

f) The argument on behalf of the appellants that the clarificatory circular dated 06.11.2012 and the consequent demand notices/orders issued by the respondent discoms are time barred does not hold merit in the light of legal principle enunciated by the Supreme Court in Shri Vallabh Glass Works v. Union of India 1984 3 SCC 362 in which it has been held that under section 72 of the Indian Contract Act and section 17 (1) (c) of the Limitation Act, 1963, where relief is sought from the consequences of a mistake, the period of limitation does not begin to run until the party seeking relief has discovered the mistake or would have discovered it with reasonable diligence. In the instant case the corrective action was taken by the respondent discoms as soon as the error in adjustment of charges was discovered and therefore, the period of limitation would begin

from the date when the mistake was discovered, not from the date of original bills or the date of payment of the bills.

Our Analysis: -

31. In view of the contentions of the parties raised in these appeals and considering the rival submissions made on their behalf by their learned counsels, following two issues arise for our consideration: -

(i) Whether the clarificatory circular dated 06.11.2012 issued by the respondent discoms is legally valid in the facts & circumstances of these cases in which the parties had transacted with each other?

32. We have already noted the terms/conditions for supply of power by appellants to the discoms from their captive power plants as recorded in the LoI in paragraph no.11 hereinabove. The relevant portion of the commercial circular dated 17.08.2009 and clarificatory circular dated 06.11.2012 have also been already quoted in paragraph nos.13 and 15 hereinabove. It is clear from the perusal of clause 5 of the LoI that only the energy drawn by the other units/sister concerns of the appellants as HT consumers from the Rajasthan Discoms was to be adjusted against the generations and the

balance energy was to be considered as sale to the discoms. As rightly argued on behalf of the discoms the term used in this clause is “energy drawn” and not the all-encompassing term like “entire bill”. Therefore, evidently the intention was to adjust only the effective charges of electricity consumed by the units/sister concerns of the appellants and not the entire electricity bill raised upon them including the fixed charges.

33. Despite the said clear and unambiguous provision of LoI, the billing procedure circular dated 17.08.2009 came to be issued by the discoms wherein an illustration was given regarding the adjustment of energy consumed by the other units/sister concerns of the appellants providing for adjustment entire bill raised upon such units/sister concerns of the appellants instead of adjustment of only the charges for energy consumed by them. Accordingly, the fixed charges, transformer rent, metering equipment rent etc. which also were reflected in the bills raised upon the other units/sister concerns of the appellants came to be refunded to the appellants. Thus, by adjusting the entire bills of the industrial units/sister concerns of the appellants, the discoms have undoubtedly made lesser recovery of tariff from the appellants. It can not be disputed that the procedure for adjustment explained in the illustration given in commercial circular dated 17.08.2009

was absolutely erroneous and contrary to the provisions for clause 5 of LoI as also not in consonance with the relevant provisions of the Electricity Act, 2003. In spite of such patent error in the procedure for adjustment given in the said circular dated 17.08.2009, the same was followed and acted upon by the parties during the entire period for which LoI subsisted. The bills came to be raised by the appellants in terms of the said procedure which were duly settled without any objection by the discoms.

34. It appears that in the year 2012 i.e. after two and a half years of expiry of the period of LoI, the discoms woke up from the slumber and detected the error in adjustment procedure. Accordingly, the clarification circular dated 06.11.2012 was issued providing correct procedure for adjustment of energy sold by the captive power plants to the discoms thereby ensuring that the tariff charged from the consumers is as per the tariff determined by the Commission. It specifically mentions that no refund on account of fixed charges, transformer rent, metering equipment rent etc. can be made to the captive power plants.

35. Concededly, the commercial circular dated 17.08.2009 had been issued by the discoms after elaborate discussions with the Appellants to

streamline the procedure and clarify the methodology for proper implementation of the terms of the contract i.e. LOI. Thus, the formula for adjustment mentioned in the circular had been evolved upon mutual deliberations and with the consent of both the parties i.e. discoms on one hand and captive power plants on the other hand. The adjustment formula was accepted by both the parties regardless of what was provided in this regard in the LOI. Evidently, the procedure/formula for adjustment was followed and acted upon by both the parties during the entire period of subsistence of the LOI. Therefore, there remains no doubt regarding the fact that the parties, by their conduct, interpreted the terms of LOI in a particular manner as reflected in the said circular dated 17.08.2009 and the understanding was that tariff adjustment would be made as provided in the circular.

36. In view of these circumstances, none of the parties was competent to vary or amend such adjustment procedure unilaterally later on, particularly after lapse of about 2½ years from the date when the transaction had concluded, as has been done by the discoms vide clarificatory circular dated 06.11.2012. In saying so, we draw support from the following observations of the Hon'ble Supreme Court in Transmission Corporation of Andhra Pradesh

Ltd. & Ors. Vs. GMR Vemagiri Power Generation Ltd. and another (2018) 3 SCC 716 : -

"25. In the facts and circumstances of the present case, there can be no manner of doubt that the parties by their conduct and dealings right up to the institution of proceedings by the respondent before the Commission were clear in their understanding that RLNG was not to be included within the term "Natural Gas" under the PPA. The observations in Gedela Satchidananda Murthy are considered apposite in the facts of the present case: (SCC pp. 688-89, para 32)

"32 … The principle on which Miss Rich relies is that formulated by Lord Denning, M.R. in Amalgamated Investment & Property Co. Ltd. v. Texas Commerce International Bank Ltd. 14, QB at p. 121:

"…. If parties to a contract, by their course of dealing, put a particular interpretation on the terms of it - on the faith of which each of them - to the knowledge of the other-acts and conducts their mutual affairs- they are bound by that interpretation just as much as if they had written it down as being a variation of the contract. There is no need to inquire whether their particular interpretation is correct or not – or whether they were mistaken or not – or whether they had in mind the original terms or not. Suffice it that they have, by their course of dealing, put their own interpretation on their contract, and cannot be allowed to go back on it." ' "

37. We also find the following paragraph in another judgement of Apex Court in Bejgam Veeranna Venkata Narasimloo and ors. vs. State of Andhra Pradesh (1998) 1 SCC 563, profitable on this aspect :-

> *"We are of the view that the contentions made on behalf of the Andhra Pradesh Government are untenable in law. It has not been explained how and in what circumstances the order/memorandum dated 2.11.76 extending the life of the 1975-76 procurement order came to be issued. The issuance of the memorandum is not denied. It is also not denied that rice was procured in terms of this order. Rice millers had to deliver the rice according to the quantum or slab fixed by the 1975-76 order on the strength of the Memorandum dated 2.11.76. FCI also acted upon this Memorandum and paid the millers at the rates laid down in the order dated 24.9.75. It is not open to the Andhra Pradesh Government now to say that this Memorandum is of no legal effect because it was not notified in the Official Gazette and was not addressed to any of the rice millers but was merely an inter-departmental communication. The Memorandum categorically stated "pending issue of the amendment, the District Collectors are instructed to take action to collect levy from millers and dealers not exceeding the percentage mentioned above for the crop year 1976-77". District Collectors acted on the basis of this Memorandum. The millers were compelled to sell rice to FCI. In the background of all these facts, it is not open to the State Government to contend that the Memorandum was not notified and*

therefore, no right or obligation flowed from that Memorandum. If the Memorandum was required to be notified, the Government cannot take advantage of its failure to notify it. Having acted on the basis of the Unnotified Memorandum and having collected rice compulsorily from the millers on the strength of this Memorandum and also having paid the millers at the rate fixed by the Memorandum, the Government cannot be heard to say that the Memorandum is of no legal effect and the payment was made under mistake of law."

38. Therefore, when the discoms themselves had, upon discussions with the Captive Power Generators including the appellants, evolved a formula for Tariff adjustment as provided in the LOI which was explained in the circular dated 17.08.2009 and having acted upon the same during the entire period of subsistence of the LOI, it was not open to them to contend that the said circular was erroneous and should not be given effect to. The discoms were bound by the interpretation given to the terms of LOI as reflected in the circular dated 17.08.2009, whether or not was that interpretation correct and whether or not was it in consonance with the original terms of LOI. They cannot be permitted to go back on the said circular by saying that it was erroneous and the error needed to the corrected by issuing a fresh circular dated 06.11.2012. The said circular dated 06.11.2012 cannot be termed as legally valid.

39. Further, we note that the clarificatory circular dated 06.11.2022 has been issued after lapse of more than three years from the circular dated 17.08.2009 and about 2½ years after the expiry of LOI. The Discoms are seeking refuge under Section 17 of the Limitation Act, 1963 by contending that circular dated 06.11.2012 was issued as soon as the error in circular dated 17.08.2009 was discovered and therefore, period of limitation would commence from the date of detection of mistake, not from the date of earlier circular or date of transaction between the parties. For the sake of convenience, Section 17 of the Limitation Act is extracted herein below :-

> ***"17. Effect of fraud or mistake.—***
>
> *(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—*
>
> *(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or*
>
> *(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or*
>
> *(c) the suit or application is for relief from the consequences of a mistake; or*
>
> *(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him,*
>
> *the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production :*

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which—

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order : Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be."

40. We do not find any force in these contentions on behalf of the Discoms. Firstly for the reason that Section 17 of Limitation Act deals with the effects of fraud or mistake in a suit or application instituted by the party seeking relief from the consequences of such fraud or mistake but in the cases at hand, it is not the discoms which had approached the Commission for relief from the consequences of error in the circular dated 17.08.2009. Section 17 could

have been applied only if the discoms had filed petitions before the Commission against the appellant Captive Power Generators for relief from the consequences of error in the Circular dated 17.08.2009. Here, the petitions had been filed by the Captive Power Generators for quashing of the demands raised by the discoms after belatedly correcting the so called error in the adjustment procedure mentioned in circular dated 17.08.2009 by way of a fresh circular dated 06.11.2012 issued unilaterally. Hence, Section 17 is not applicable at all.

41. Secondly, Section 17 provides that limitation shall not begin to run until the plaintiff or applicant has "discovered the fraud or mistake or could, with reasonable diligence, have discovered it." The discoms have, neither in the reply to the petitions before the Commission nor in the reply to these appeals before the Tribunal, stated the date when they detected the error in the circular dated 17.08.2009. Since the clarificatory Circular has been issued in the month of November, 2012 we may assume that so called error was discovered by them in the year 2012. However, it is nowhere stated by the discoms that despite due diligence, they could not discover the error during three long years till the year 2012.It can not be disputed that the discoms have a well trained staff which could have detected the mistake very early if it

was intended to do so. What appears is that the discoms themselves having evolved the adjustment formula specified in Circular dated 17.08.2009 and having acted upon the same, were satisfied about it. They themselves did not see any error in the same. There seems to have been a sudden change of mind in the year 2012 whereupon circular dated 06.11.2012 was issued. Thus, the benefit of Section 17 of the Limitation Act is not available to the discoms at all.

42. It is also to be noted that these cases do not relate to a billing dispute where a mistake in the electricity bill is sought to be rectified by the discoms. The bills raised by the Appellant upon discoms for power supplied from their captive power plants to the discoms as well as the bills raised by discoms upon the other units/sister concern of Appellant are absolutely correct. The dispute relates to the adjustment formula as specified in the circular dated 17.08.2009 which, according to the discoms, is erroneous but admittedly, accepted as well as acted upon by them. Once such a formula was evolved by consensus, accepted as well as acted upon by both the parties, there was no reason or occasion for the discoms to dispute the said formula by way of a fresh circular dated 06.11.2012.

43. Hence, we are of the considered opinion that circular dated 06.11.2012 is not legally valid and cannot be sustained.

44. The issue stands answered accordingly.

Conclusion :-

45. The appeals are allowed and the impugned orders dated 25.10.2018 and 05.12.2019 are hereby set aside. Consequently, demand notices/orders dated 20.02.2013, 07.01.2013 & 01.04.2013 issued by the discoms to the appellants are quashed. Any sum of money, if recovered by the discoms from the appellants in pursuance to these demand notices/orders, shall be refunded to them along with carrying cost within one month from the date of this judgement. Any amount deposited by the appellants in the registry of this Tribunal in pursuance to any interim order passed in these appeals shall be refunded to them within one month from the date of this judgement.

Pronounced in the open court on this the 24th day of June, 2025.

(Virender Bhat)	(Sandesh Kumar Sharma)
Judicial Member	Technical Member (Electricity)

✓

REPORTABLE / ~~NON REPORTABLE~~

tp/ng