IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 47 of 2019

Dated: 23.07.2025

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

IN THE MATTER OF:
Tamil Nadu Generation and
Distribution Corporation Ltd. (TANGEDCO)
Represented by Chief Engineer, Commercial
144, Anna Salai, Chennai – 600 002. **…Appellant(s)**

Vs.

1) The Secretary,
Tamil Nadu Electricity Regulatory Commission,
19-A, Rukmini Lakshmipaty Salai,
Marshal Road, Egmore, Chennai – 600 008.

2) Tuticorin Electricity Supply Private Ltd.
(Earlier M/s. India Power Corporation (Tuticorin) Pvt. Ltd.
Plot No. X-1, 2 & 3, Block EP, Sector V,
Salt Lake City, Kolkata – 700091. **…Respondent(s)**

Counsel for the Appellant(s) : Ms. Anusha Nagarajan

Counsel for the Respondent(s) : Mr. Sakya Singha Chaudhuri
Mr. Avijeet Lala
Mr. Anand Kumar Shrivastava
Ms. Shreya Mukerjee
Ms. Shikha Pandey
Ms. Astha Sharma
Mr. Shivam Sinha
Ms. Gayatri Aryan
Ms. Meha Chandra
Mr. Nishant Talwar
Ms. Anandini Sood

Mr. Arnav Vidyarthi
Ms. Nameeta Singh
Ms. Narayani Anand
Ms. Nithya Balaji for R-2

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. The captioned appeal has been filed by M/s. Tamil Nadu Generation and Distribution Corporation Ltd. (in short "TANGEDCO") inter alia challenging the Impugned Order dated 21.08.2018 passed by the Tamil Nadu Electricity Regulatory Commission (in short "TNERC" or "Commission") in L.P. No. 1 of 2017.

Description of the Parties

2. The Appellant, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) is the distribution licensee for the State of Tamil Nadu and is wholly owned by the State Government and is the successor of the erstwhile Tamil Nadu Electricity Board, formed pursuant to its unbundling under a transfer scheme, in terms of Section 131 of the Electricity Act, 2003.

3. The Respondent No. 1, the Tamil Nadu Electricity Regulatory Commission (TNERC), established under Section 82 of the Electricity Act, 2003, inter alia, is the appropriate Commission to adjudicate the issue.

4. The Respondent No. 2 is the Tuticorin Electricity Supply Private Limited (in short "TESPL" or "R-2"), which is a private company engaged in the production, collection, and distribution of electricity.

Factual Matrix of the Case

5. This appeal has been filed by the Appellant (TANGEDCO) against the order dated 21.08.2018 passed by the Tamil Nadu Electricity Regulatory Commission in L. P. No. 1 of 2017. The Appellant contended that the TNERC failed to appreciate that there is no amendment carried out under the Electricity Act, amending section 14 of the Act, 2003.

6. Further contended that the Notification under Sub-Section (1) of Section 49 of the SEZ Act cannot insert a proviso to a section under the Electricity Act, which is a special Act enacted by the Parliament. There needs to be an amendment to the Act of 2003, duly validated by Parliament. There is no amendment to Section 14 of the Electricity Act, 2003, and the Act remains the same.

7. Also argued that the Regulations and tariff orders make payment of cross-subsidy charges mandatory by all consumers of the distribution licensee, including the open access consumers. The SEZ developer is an open-access consumer of the Appellant. The SEZ developer is connected to the distribution network of the distribution licensee. The notification does not exempt anyone connected to the distribution network of the distribution licensee from payment of the cross-subsidy surcharge.

8. It is in the above circumstances that the findings of TNERC aggrieve the Appellant in the impugned order and has preferred the present Appeal.

Written Submissions of the Appellant, TANGEDCO

9. The Appellant, TANGEDCO, has challenged the Order dated 21.08.2018 passed by the TNERC in Petition L.P. No. 1 of 2017. The said Petition was filed by Tuticorin Electricity Supply Private Limited (formerly India Power Corporation (Tuticorin) Private Limited), seeking formal recognition as a deemed distribution licensee under Section 14 of the Electricity Act, 2003, read with the Ministry of Commerce and Industry's Notification dated 03.03.2010 concerning Special Economic Zones (SEZs).

10. By the impugned Order, TNERC held that Respondent No. 2 is a deemed distribution licensee with effect from 17.04.2017 in respect of the SEZ notified by Notification No. S.O. 2690(E) dated 18.11.2008, covering an area of 1019.22.5 hectares in various villages of Tirunelveli District, Tamil Nadu.

Brief Factual Background:

11. On 24.06.2005, TNERC enacted the TNERC (Licensing) Regulations, 2005 to establish a structured and transparent process for granting transmission and distribution licences in Tamil Nadu, aimed at promoting efficiency, competition, and consumer protection.

12. Subsequently, on 23.05.2007, the Ministry of Commerce and Industry issued a Letter of Assurance to Tamil Nadu Industrial Development Corporation Limited (TNIDCL) for setting up a multi-product SEZ in Tirunelveli district. Upon TNIDCL's request, on 28.08.2008, the Central Government approved the transfer of SEZ rights to AMRL International Tech City Limited, which was formally notified as the SEZ developer on 18.11.2008 via Notification No. 1626.

13. On 03.03.2010, in exercise of powers under Section 49(1) of the SEZ Act, 2005, the Ministry issued a notification declaring SEZ developers as deemed distribution licensees under Section 14(b) of the Electricity Act, 2003 for supply within SEZs, although the text of Section 14 itself remains unamended.

14. On 30.05.2011, the Department of Commerce approved the name change of AMRL International Tech City Limited to AMRL Hitech City Limited. Thereafter, on 19.12.2016, AMRL Hitech City Limited entered into an MoU with India Power Corporation (Bihar) Private Limited to jointly develop generation and distribution infrastructure in the SEZ.

15. On 19.01.2017, the Department of Commerce notified India Power Corporation (Bihar) Private Limited as a co-developer for the SEZ, and subsequently, on 19.04.2017, approved the company's name change to India Power Corporation (Tuticorin) Private Limited.

16. Respondent No. 2 filed a petition before TNERC seeking formal recognition as a deemed distribution licensee under Section 14 of the Electricity Act, 2003, read with the Notification dated 03.03.2010 relating to SEZs. TNERC, by order dated 21.08.2018, allowed the petition and held that Respondent No. 2 is a deemed distribution licensee with effect from 17.04.2017 for the SEZ area of 1019.22.5 hectares in Tirunelveli district, Tamil Nadu, and further directed that TANGEDCO’s tariff would serve as the ceiling tariff.

17. TANGEDCO filed the present appeal challenging the TNERC Order dated 21.08.2018 on multiple grounds. It contends that the Notification dated 03.03.2010 issued by the Ministry of Commerce and Industry cannot substitute a

statutory amendment to Section 14 of the Electricity Act, 2003, and hence cannot form the basis for granting deemed distribution licensee status to Respondent No. 2.

18. TANGEDCO argues that mere designation as an SEZ developer does not automatically confer deemed licensee status, and the Respondent was required to follow the licensing procedure under the TNERC (Licensing) Regulations, 2005. It further submits that TNERC failed to consider the issue of cross-subsidy surcharge, which is necessary to offset the burden of subsidizing consumers, especially in light of the financial impact from consumers shifting to SEZ areas to avail lower tariffs.

19. TANGEDCO also raises concerns about the lack of clarity regarding responsibility for open access consumers within the SEZ, noting that it is still required to maintain a backup supply and pay fixed charges to generators, despite the potential loss of consumer base.

Re: Respondent No.2 cannot become a deemed distribution licensee merely by operation of law

20. The mere fact that the SEZ developer is granted the status of a deemed distribution licensee does not obviate the requirement for:

(i) an application under the Electricity Act and Licensing Regulations; and
(ii) examination by the State Commission as to whether the person is equipped properly to discharge the duties of a distribution licensee.

21. In its judgment rendered in Appeal No. 206 of 2012 dated 03.05.2013 in ***Vedanta Aluminium Ltd. vs. OERC & Others***, this Tribunal has observed as under:

> "*47. The perusal of the notification dated 3.3.2010 would make it evident that the legislation's intention for declaring the developer in SEZ area as deemed distribution licence, is confined only to clause-b of Section 14 of electricity Act, which deals with the grant of license by the appropriate State Commission to any person for distribution of electricity. The said notification has not curtailed the power of State Commission so far as the applicability of other provisions is concerned. The interpretation of various relevant terms was necessary prior to grant of deemed distribution licence by the State Commission. Therefore, the State Commission rightly acted upon those provisions. As a matter of fact, by the said amendment by inserting another proviso to Section 14(b), the context has not been changed as claimed by the Appellant.*
>
> *48. The State Commission, being the apex State Regulatory Authority, has got every power to examine whether the Appellant is adequately equipped to act as a distribution licensee in consonance with other provisions of law."*

22. The Tribunal clearly spelt that the Notification dated 03.03.2010 has granted exemption from specifically applying for a licence under Section 14 of the Act. In order to avail further benefits under the Act, the Respondent No. 2 is also required to show that it is, in fact, having a distribution system and has a number of

consumers to whom it is supplying electricity. The said notification is confined only to clause (b) of Section 14 of the Electricity Act, which deals with the grant of licence by the appropriate State Commission to any person for distribution of electricity; the said notification has not curtailed the power of the State Commission so far as applicability of other provisions are concerned.

23. Further, the definition of the term “distribution licensee” as enumerated under Section 2(17) of the Electricity Act, 2003 emphasizes upon the distribution licensee to operate and maintain a distribution system and supply electricity to the consumers; considering the definition of ‘supply’ in Section 2(70), ‘supply’ here means sale of electricity to consumers; by merely being authorized, to operate and maintain a distribution system as a deemed licensee, would not confer the status of a distribution licensee on any person; the purpose of such establishment is for supply of power to consumers

24. The Hon’ble Supreme Court in judgment dated 17.05.2024, the Civil Appeal bearing Civil Appeal No. 8978/2019 titled as ***Sundew Properties Limited vs Telangana State Electricity Regulatory Commission & Anr.*** noted that provisos to section 14 of the Electricity Act distinguish between entities that are *ipso facto* deemed distribution licensees and those that are merely declared as deemed licensees without clarity on the necessity of making an application to obtain a licence.

25. For instance, the third and fourth provisos to section 14 not only confer the status of deemed licensees to the State Government and the Damodar Valley Corporation, respectively, but also explicitly exempt them from the requirement to

obtain a licence. Entities not covered by these specific provisos would, therefore, be required to obtain a licence.

26. The Hon'ble Supreme Court further noted that the 2010 Notification is concerned, the proviso to section 14(b) introduced by the said Notification, confers deemed licensee status on SEZ developers. However, such conferment does not explicitly exclude the requirement of obtaining a licence.

> *24. Further, the provisos to section 14 of the Electricity Act distinguish between entities that are ipso facto deemed distribution licensees and those that are merely declared as deemed licensees without clarity on the necessity of making an application to obtain a licence. For instance, the* ***third and fourth provisos to section 14 not only confer the status of deemed licensees to the State Government and the Damodar Valley Corporation, respectively, but also explicitly exempt them from the requirement to obtain a licence. Entities not covered by these specific provisos would, therefore, be required to obtain a licence****. The requirement of obtaining a license has to be read into the other provisos to section 14 since, for instance, the second and fifth provisos to section 14 grant deemed licensee status to Central/State Transmission Utility and a government company, respectively, but neither specifies the requirement to obtain a license nor exempts them from obtaining license.*
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> *25. As far as the 2010 Notification is concerned, the proviso to section 14(b) introduced by the said Notification, confers deemed licensee*

status on SEZ developers. ***However, such conferment does not explicitly exclude the requirement of obtaining a licence****. This lack of specificity, especially when compared with the clear provisions for other entities, suggests that the legislative intent was not to ipso facto grant SEZ developers the status of deemed distribution licensees, thereby obliging them to obtain a licence by making an application in terms of regulation 13.* ***TSERC is, therefore, empowered to scrutinise such applications in accordance with law, however, only limited to the provisions which are applicable to deemed licensees. Verification and acceptance recognise their status as deemed licensees****.*

Re: TNERC has not dealt with the issue of loss of cross subsidy

27. TANGEDCO raised a critical concern that the Respondent No. 2's supply of electricity at tariffs lower than TANGEDCO's to consumers within the SEZ would disrupt the cross-subsidy balance essential for maintaining subsidized power to weaker consumer segments.

28. It argued that the cost of supply by Respondent No. 2 would be lower, potentially attracting subsidizing consumers into the SEZ area, thereby reducing TANGEDCO's revenue and financial capacity to support cross-subsidies. TANGEDCO submitted that in such cases, Respondent No. 2 should be made liable to pay a cross-subsidy surcharge to offset the financial loss.

29. Further, TANGEDCO apprehended that existing and prospective industrial consumers may shift to the SEZ to benefit from lower tariffs, especially as the

TNERC held that TANGEDCO's tariff would operate as the ceiling rate. This migration would reduce TANGEDCO's consumer base and revenues, while it would still bear the burden of supplying to subsidized consumers.

30. Additionally, TANGEDCO pointed out that the tariff it charges subsidizing consumers is higher than what may be charged by Respondent No. 2. Therefore, it urged the Commission to evolve a methodology to calculate a surcharge that would fully compensate for the loss of cross-subsidy for each affected consumer category. TANGEDCO further requested periodic regulatory review to assess the impact of consumer migration on its consumer mix and overall revenue.

31. In addition to the direct financial impact of losing consumers to SEZs, this migration could also result in higher tariffs being levied on the remaining subsidized consumers. The TNERC's failure to fully appreciate these ramifications has the potential to disrupt the balance between market competition and social equity in the electricity supply sector.

32. In its judgment dated 25.04.2014, in Civil Appeal No. 5479 of 2013 (***M/s. Sesa Sterlite Ltd. v/s. Orissa Electricity Regulatory Commission & Ors.***), the Hon'ble Supreme Court addressed the issue of the liability of a Deemed Distribution Licensee, such as an SEZ (Special Economic Zone) developer, to pay cross-subsidy surcharge (CSS) to the incumbent Distribution Licensee.

33. The Hon'ble Supreme Court emphasized that CSS is a mechanism for compensating the distribution licensee for the costs associated with maintaining the electricity supply infrastructure and meeting the demands of all consumers, including low-end, subsidized consumers. Importantly, the Hon'ble Supreme

Court clarified that the obligation to pay CSS arises regardless of whether the incumbent distribution licensee's lines are physically used by the SEZ developer or not.

34. In other words, even if the SEZ developer does not directly use the distribution licensee's infrastructure to supply electricity, they are still liable to pay the CSS as compensation for the role the distribution licensee plays in ensuring an equitable and reliable electricity supply system.

35. Furthermore, the Court concluded that consumers situated in areas like SEZs, which may benefit from lower tariff rates, are still bound to contribute to the cross-subsidy mechanism. If they are located in a region that is considered a subsidizing area, their payments, in the form of the CSS, help subsidize the electricity rates for the economically weaker sections of society. This ensures that the financial burden of maintaining a universal electricity supply is shared across all consumers, including those who may be able to afford higher tariffs and those who are subsidized.

> ***30.*** *Therefore, in the aforesaid circumstances though CSS is payable by the consumer to the distribution licensee of the area in question when it decides not to take supply from that company but to avail it from another distribution licensee. In a nutshell, CSS is a compensation to the distribution licensee irrespective of the fact whether its line is used or not, in view of the fact that, but for the open access the consumer would pay tariff applicable for supply which would include an element of cross-subsidy surcharge on certain other categories of consumers. What is important is that a consumer*

situated in an area is bound to contribute to subsidising a low end consumer if he falls in the category of subsidising consumer. Once a cross-subsidy surcharge is fixed for an area it is liable to be paid and such payment will be used for meeting the current levels of cross-subsidy within the area. A fortiori, even a licensee which purchases electricity for its own consumption either through a "dedicated transmission line" or through "open access" would be liable to pay cross-subsidy surcharge under the Act. Thus, cross-subsidy surcharge, broadly speaking, is the charge payable by a consumer who opt to avail power supply through open access from someone other than such distribution licensee in whose area it is situated. Such surcharge is meant to compensate such distribution licensee from the loss of cross-subsidy that such distribution licensee would suffer by reason of the consumer taking supply from someone other than such distribution licensee

Re: No development of infrastructure (Distribution Network) in SEZ areas, till date by the Respondent No. 2

36. Regulation 7 of the TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 mandates that applicants for electricity distribution licences must submit detailed technical and financial information, including scale maps showing the area of supply, power source, delivery points, the length of high- and low-tension lines, and number of transformers to be used. These requirements are aimed at ensuring a technically viable and financially sound distribution system.

37. TANGEDCO submitted that Respondent No. 2 failed to comply with these mandatory requirements, particularly by not disclosing the source of power for supply within the SEZ. This omission, according to TANGEDCO, undermines the regulatory purpose of assessing the feasibility and sustainability of the proposed distribution network and constitutes a serious breach of Regulation 7.

38. Subsequently, Respondent No. 2 filed M.P. No. 27 of 2020 before TNERC seeking approval of its Capital Investment Plan for FY 2018-2019 and the subsequent MYT control period years FY 2019-2020 to FY 2021-2022 under Regulation 17 of the 2005 Regulations and Regulation 3(v) of the TNERC MYT Regulations, 2009, which provide the framework for investment approval and tariff determination in the electricity distribution and transmission sectors.

39. In the said petition, the TNERC, in its Order dated 23.11.2021, made a crucial observation regarding the status of the capital works and expenditures during the control period. The Commission recorded that, contrary to what might have been expected or proposed, ***no physical work had been carried out, and no expenditure had been incurred for the control period covering FY 2019-2020, FY 2020-2021, and FY 2021-2022, up until that point in time***. This lack of progress and expenditure likely had significant implications for the approval of the Capital Investment Plan and the associated tariff determination process under the MYT framework.

> *"5. Findings of the Commission:-*
>
> *……*
>
> *As per M/s.IPCT(P)L submission base year will be taken as 2018-19 in which no work/ expenditure was carried out. Further as per the*

*petition, no work was carried out and no expenditure incurred for the control period FY2019-2020, FY2020-2021 and FY2021-2022 till date. **As no expenditure was incurred for both on Capital Expenditure and Capitalisation side for MYT control period FY2019-2022, till date**, Commission takes into account of CIP submitted by the petitioner for MYT FY 2019-22 as 'Taken on record' purpose."*

40. Considering the actual ground reality on non-development of the project, the TNERC has issued the following directives:

"6. Commission's Directives 1. Deemed Distribution Licensee was mainly granted to create competition in tariff and efficiency in functions of distribution function. Accordingly Deemed Distribution Licensee was granted to M/s. India Power Corporation (Tuticorin) Pvt. Ltd., during August 2018 w.e.f 19.04.2017. IPCTPL should have started the Licensee related works from 2019-20 onwards. But till now no ground work was carried out so far as per their revised CIP submission on 13.10.2021. The Commission notes this attitude of not carrying out any work related to Distribution Licensee with much displeasure. By the attitude of IPC(T)PL, the very purpose of Electricity Act 2003 is getting defeated even though Commission is ready to support their activities.

2. Hence next CIP submission for MYT Tariff Period 2021-22, 2022-23, 2023-24 should contain all the necessary works to be carried out to operate as separate Deemed Distribution Licensee.

3. Where the cost of schemes are Rs.10 lakhs and less, the Licensee may club similar schemes to obtain approval. Details of such schemes shall be shown at the time of Tariff determination process. DPR/Feasibility reports shall be submitted for those schemes involving expenditure above Rs.10 crores.

4. The incoming 110 kV supply source as shown in the revised diagram is taken via 110 kV Tee-Off line. When T-off line trips on any fault/ due to shutdown etc. supply interruption will be there until normalisation. Hence necessary standby supply arrangement may be provided for 110 kV & also 33 kV supply sources to give uninterrupted supply to consumers. This may be included in the CIP plan.

5. The petitioner shall ensure that each and every capital work planned shall give proper return on investment. The payback period for money invested may be ensured to be within a reasonable period.

6. Schemes for reduction of line losses shall also be taken up only after assessing the return on investment.

7. Power supply agreement with TANGEDCO or with any licensee may be submitted for approval.

8. Any deviation in the CIP plan approval may be informed to the Commission.

9. Source of funding for each capital scheme may be mentioned in the CIP approval.

10. The Commission directs the Petitioner to maintain the record of the scheme-wise actual capital expenditure incurred and actual capitalisation done for each Distribution function separately and submit the same to the Commission at the time of next Tariff Petition furnishing details of loan, own funding for each scheme. The

Commission will approve the actual Capital expenditure and actual capitalisation based on these information, subject to prudence check."

41. As per a note dated 17.02.2025 filed before the Tribunal, Respondent No. 2 admitted that, despite being granted deemed distribution licensee status effective from 17.04.2017 under TNERC's Order dated 21.08.2018, no physical distribution infrastructure has been established to date. Even after nearly eight years, no substations, distribution lines, or related facilities have been developed.

42. Additionally, Respondent No. 2 has confirmed that it has not received any consumer applications for new electricity connections or supply within its designated area. This lack of consumer engagement is attributed to the absence of the required distribution infrastructure, indicating that consumers are either unaware of or unable to access the services of Respondent No. 2.

Written Submissions of the Respondent No. 2

43. The Appellant, TANGEDCO, has filed an appeal challenging the Order dated 21.08.2018 passed by the Tamil Nadu Electricity Regulatory Commission in L.P No.1 of 2017, whereby deemed distribution licensee status was granted to Respondent No. 2 for an SEZ area measuring 1019.22.5 hectares located across five villages in Tirunelveli District, Tamil Nadu, as per the Central Government Notification No. S.O. 2690(E) dated 18.11.2008.

44. The primary grounds of challenge include the validity of the Central Government's Notification dated 03.03.2010 treating SEZ developers/co-developers as deemed distribution licensees under the Electricity Act, 2003, and

the allegation that such status enables selective supply to consumers without corresponding liability to pay Cross Subsidy Surcharges to TANGEDCO. An additional argument raised during proceedings is that Respondent No. 2 failed to meet the conditions prescribed under the sixth proviso to Section 14 of the Electricity Act, including capital adequacy, creditworthiness, and code of conduct, as specified under the 2005 Rules.

45. Respondent No. 2 is a co-developer of the AMRL Hitech City SEZ, established over 2500 acres in Nanguneri Taluk, Tirunelveli District, developed by AMRL Hitech City Ltd., a joint venture with TIDCO. The SEZ became operational in March 2011. A Memorandum of Understanding was executed on 19.12.2016 between AMRL Hitech City Ltd. and India Power Corporation (Bihar) Pvt. Ltd. The Ministry of Commerce and Industry approved the co-developer status on 19.01.2017.

46. The entity subsequently changed its name to India Power Corporation (Tuticorin) Pvt. Ltd. on 24.01.2017, acknowledged by the Ministry on 21.02.2017, and later to Tuticorin Electricity Supply Pvt. Ltd. on 21.12.2018, which was also acknowledged by the Ministry.

47. As far as the challenge to grant of deemed distribution license on the basis of notification dated 03.03.2010 of the Central Government pursuant to the SEZ Act is concerned this issue has now been clearly decided by the Hon’ble Supreme Court in the matter of SESA Sterlite Ltd. v. Orissa Electricity Regulatory Commission, reported in (2014) 8 SCC 444, as well as in Sundew Properties Ltd. v. Telangana State Electricity Regulatory Commission and Another, reported in (2024) 6 SCC 443. In both these matters the grant of deemed distribution license

status under the 2010 Notification has been duly noted by the Hon'ble Supreme Court on the basis of validity of such notification.

48. Sub-section (1) of Section 49 of the Special Economic Zone ("SEZ") inter alia provides:

> *"49.(1) The Central Government may, by notification, direct that any of the provisions of this Act (other than sections 54 and 56) or any other Central Act or any rules or regulations made thereunder or any notification or order issued or direction given thereunder(other than the provisions relating to making of the rules or regulations specified in the notification-*
>
> *(a) Shall not apply to a Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones; or*
>
> *(b) Shall apply to a Special Economic Zone or a class of Special Economic Zone or all Special Economic Zones only with such exceptions, modifications and adaption, as may be specified in the notification.*
>
> *….."*

49. In exercise of its powers under the SEZ Act, the Central Government issued notification dated 03.03.2010 by which a proviso has been added to Section 14 of the Electricity Act, 2003 which provides as under:

> "*Provided that the Developer of a Special Economic Zone notified under sub -section (1) of Section 4 of the Special Economic Zones Act, 2005, shall be deemed to be a*

licensee for the purpose of this clause, with effect from the date of the notification of such Special Economic Zone."

50. The Respondent No. 2, being a co-developer of the SEZ, qualifies as a deemed distribution licensee under clause (b) of Section 14 of the Electricity Act, 2003, effective from the date of the Central Government Notification. This is consistent with Section 2(g) of the SEZ Act, 2005, which defines "developer" to include co-developers. Therefore, the Commission's interpretation that the Respondent No. 2 is a deemed distribution licensee is legally sound.

51. A harmonious construction of the SEZ Act and the Electricity Act is necessary, as both legislations are complementary. The Central Government's Notification dated 03.03.2010, which inserted an additional proviso to clause (b) of Section 14, cannot be challenged in this statutory appeal proceeding.

52. Regarding the Appellant's contention that Respondent No. 2 must satisfy the additional requirements under the sixth proviso to Section 14, including those set out in the 2005 Rules (pertaining to capital adequacy, creditworthiness, and code of conduct), the issue stands settled.

53. The Hon'ble Supreme Court in the Sundew Properties case held that deemed distribution licensees are not required to meet the conditions under Rule 3(2) of the 2005 Rules. The Court, specifically in paragraphs 25.2 and 45 of the judgment, found the Commission unjustified in imposing such conditions on SEZ developers or co-developers and ruled that the 2005 Rules are not applicable in such cases.

54. The Respondent No. 2 submits that the grant of deemed distribution licensee status under the SEZ Act does not require compliance with the general conditions under Section 14 of the Electricity Act. However, as a distribution licensee, it is obligated under Section 43 to supply electricity to any consumer within its licensed SEZ area upon application.

55. The Appellant's claim of cherry-picking and denial of cross subsidy surcharge (CSS) is unfounded. Respondent No. 2 is licensed only for the notified SEZ area and cannot supply outside its area of authorization. Hence, the apprehension that consumers from TANGEDCO's subsidizing category may shift to Respondent No. 2 is misplaced.

56. The obligation to supply within the SEZ remains intact, and the universal service obligation applies to all consumers within that area. Regarding CSS, it is payable only when a licensee uses another's network under open access as per Section 42.

57. Since Respondent No. 2 is not a consumer and is not utilizing TANGEDCO's network to supply power within its own licensed area, there is no basis for any CSS levy. CSS is not applicable between two distribution licensees operating separate and independent networks, consistent with the competitive framework of the Electricity Act.

58. However, if Respondent No. 2 does use the Appellant's network to supply power to its consumers, then CSS will be payable for such usage. Where Respondent No. 2 uses its own network within its licensed SEZ area, no CSS arises as it does not amount to open access.

59. Respondent No. 2 clarifies that it does not own or control the SEZ units; it merely acts as a co-developer. Therefore, the distribution license has not been obtained to supply electricity to its own entities. The Capital Investment Plan for the Multi-Year Tariff (MYT) Control Period (FY 2019-20 to FY 2021-22) was approved by the Commission through Order dated 23.11.2021 in Petition No. M.P. 27 of 2020.

60. Further, the issue of levying or denying cross subsidy surcharge (CSS) is a matter to be determined based on operational facts between licensees and cannot form a basis to oppose the grant of a license. The Electricity Act, 2003 permits parallel licensing, and the Central Government notification supports such licensing within SEZs.

61. Thus, the Appellant's apprehension regarding a potential burden on cross-subsidizing consumers has no legal foundation. The Appellant's demand for CSS appears intended to increase the cost of supply for Respondent No.2 and reduce its tariff competitiveness. This conduct is anti-competitive, as the Appellant, being the dominant distribution licensee in the State, is attempting to restrict Respondent No. 2's operations within its licensed SEZ area through an unjustified CSS claim.

62. Finally, the allegation that the Commission failed to address the Appellant's submissions is incorrect. The Impugned Order reflects due consideration of the arguments and responses presented by both parties.

NOTE ON AMRL BUSINESS PARK BY RESPONDENT NO. 2

63. Respondent No. 2, Tuticorin Electricity Supply Private Limited (formerly India Power Corporation (Tuticorin) Pvt. Ltd.), is a co-developer of the AMRL Hitech City SEZ, developed over approximately 2500 acres in Nanguneri Taluk, Tirunelveli District, by AMRL Hitech City Ltd, a joint venture with Tamil Nadu Industrial Development Corp. Ltd. (TIDCO). The SEZ became operational in March 2011.

64. On 19.12.2016, Respondent No. 2, then operating as India Power Corporation (Bihar) Pvt. Ltd., signed an MoU with AMRL Hitech City Ltd. The Ministry of Commerce & Industry approved its co-developer status on 19.01.2017 and acknowledged its name change to India Power Corporation (Tuticorin) Ltd. on 21.02.2017.

65. At that time, nine SEZ units were already functional and receiving electricity from TANGEDCO, though none were owned by Respondent No. 2. Respondent No. 2 thereafter filed L.P. No. 1 of 2017 before TNERC seeking formal recognition of its deemed distribution licensee status, which was granted by order dated 21.08.2018.

66. Later, its Capital Investment Plan for FY 2019-20 to FY 2021-22 was approved by TNERC on 23.11.2021 in M.P. No. 27 of 2020. However, due to disruptions caused by the COVID-19 pandemic and related restrictions, development and industrial activity within the SEZ were adversely impacted until 2022. As of now, Respondent No. 2 has not received any applications from consumers within its licensed area for electricity connections or supply.

Analysis and Conclusion

67. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondents at length and carefully considering their respective submissions, we have also examined the written pleadings and relevant material on record. Upon due consideration of the arguments advanced and the documents placed before us, the following issue arises for determination in this Appeal:

i. ***Whether the Tamil Nadu Electricity Regulatory Commission was justified in recognizing Respondent No. 2, a co-developer of the SEZ, as a "Deemed Distribution Licensee" under Section 14(b) of the Electricity Act, 2003 read with the SEZ Notification dated 03.03.2010, without requiring compliance with the Licensing Regulations and other statutory preconditions?***

ii. ***Whether Respondent No. 2, despite being granted deemed distribution licensee status, can continue to retain such status in the absence of any physical distribution infrastructure, consumer applications, or actual supply of electricity within the SEZ area, even after a prolonged period?***

iii. ***Whether the Appellant (TANGEDCO) is entitled to levy cross-subsidy surcharge on account of potential migration of subsidizing consumers to the SEZ area, and whether the Commission erred in not addressing this issue in the Impugned Order?***

68. The Appellant herein has prayed for the following:

> *"i. to set aside the order dated 21.08.2018 passed by the Tamil Nadu Electricity Regulatory Commission in L.P.No.1 of 2017; and*
> *ii. to pass any other order or orders as this Hon'ble Appellate Tribunal may deem fit and proper in the facts of the case."*

69. This Appeal arises out of order dated 21.08.2018 passed by the Tamil Nadu Electricity Regulatory Commission in L.P. No. 1 of 2017, whereby the Commission recognized Respondent No. 2, Tuticorin Electricity Supply Private Limited (formerly known as India Power Corporation (Tuticorin) Pvt. Ltd.), as a "Deemed Distribution Licensee" in respect of the AMRL Hi-Tech City Special Economic Zone (SEZ) at Nanguneri, Tirunelveli District.

70. The Appellant, (TANGEDCO), has challenged the said order primarily on grounds relating to the improper grant of deemed distribution licensee status without due scrutiny and the non-consideration of financial implications in the form of Cross Subsidy Surcharge (CSS).

> **Issue No. 1:** *Whether the Tamil Nadu Electricity Regulatory Commission was justified in recognizing Respondent No. 2, a co-developer of the SEZ, as a "Deemed Distribution Licensee" under Section 14(b) of the Electricity Act, 2003 read with the SEZ Notification dated 03.03.2010, without requiring compliance with the Licensing Regulations and other statutory preconditions?*

71. The Appellant argued that the Notification dated 03.03.2010 issued by the Ministry of Commerce & Industry, while it inserts a proviso into Section 14(b) of the Electricity Act, 2003 recognizing SEZ developers as deemed licensees, cannot be interpreted as overriding the general regulatory framework provided under the Electricity Act, 2003 and the Licensing Regulations framed thereunder.

72. The Appellant contends that the Notification dated 03.03.2010 issued by the Ministry of Commerce and Industry cannot substitute a statutory amendment to Section 14 of the Electricity Act, 2003, and hence cannot form the basis for granting deemed distribution licensee status to Respondent No. 2.

73. **We find the above averments totally unreasonable and baseless, if the Appellant was aggrieved by the said notification of the Government of India, it should have challenged the same at the appropriate forum and not before this Tribunal.**

74. **In various judgments relied upon by the Appellant, it is clear that the said notification has been agreed to by this Tribunal and also by the Hon'ble Supreme Court of India.**

75. Further, the Appellant pointed out that Respondent No. 2 neither filed an application under the TNERC Licensing Regulations, 2005, nor demonstrated compliance with mandatory requirements such as capital adequacy, creditworthiness, and technical capacity. Reliance was placed on this Tribunal's judgment in ***Vedanta Aluminium Ltd. v. OERC & Ors., Appeal No. 206 of 2012***, and on the Hon'ble Supreme Court's later judgment in ***Sundew Properties Ltd. v. TSERC***, ***Civil Appeal No. 8978/2019*** to support the contention that the

notification does not dispense with the power of the State Commission to scrutinize and regulate entities who seek to function as distribution licensees.

76. We find it appropriate to record that the Appellant has failed to read the Impugned Order, which was passed in Petition No. L.P. No. 1 of 2017, by nomenclature itself, is an application filed for seeking the grant of a Licence by the State Commission.

77. It is, therefore, important to note the relevant extracts of the Impugned Order to have clarity on the issues raised by the Appellant herein. The relevant extracts are quoted as under:

> *"1. Prayer of the Petitioner:-*
>
> *The prayer of the Petitioner in L.P.No.1 of 2017 is to-*
>
> ***(i) take on record the deemed Distribution Licensee status of the Petitioner, IPCTPL, under section 14 of the Electricity Act, 2003 in terms of notification dated March 3, 2010, issued by the Ministry of Commerce & Industry (Department of Commerce), Government of India;***
>
> ***(ii) issue Specific Conditions of Distribution Licence applicable to IPCTPL;***
>
> *(iii) allow IPCTPL to charge consumers in its licence area, the tariff that is applicable for the respective category of consumers in the TANGEDCO area of supply, as modified from time to time, as the 'ceiling tariff' in its area of supply, till such time the ARR and tariff is determined by the Commission, and approve the appropriate tariff schedule.*

(iv) allow IPCTPL to charge consumers in its licence area the same Schedule of Charges that is applicable in the TANGEDCO area of supply, as modified from time to time.

(v) Condone any inadvertent omissions/errors/shortcomings and permit IPCTPL to add/change/modify/alter this filing and make further submissions as may be required at a future date.

(vi) Pass such Orders as the Commission may deem fit in the facts of the present case.

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5. Findings of the Commission:-

5.1. Having heard the Petitioner and after considering all the documents available on record, the Commission notes that Ministry of Commerce & Industries, Govt. of India vide its letter dated 23rd May, 2007 accorded formal approval to Tamil Nadu Industrial Development Corporation Limited, for setting up of multi-product Special Economic Zone (SEZ) at NangueriTaluk, Tirunelveli District in the State of Tamil Nadu after having granted in-principle approval vide letter dt.28.9.2000. Further, the Ministry of Commerce & Industry, Department of Commerce (SEZ Section), Government of India vide letter dt.20.8.2008 conveyed transfer of formal approval granted for setting up SEZ vide letter dt.23rd May 2007 from M/s. Tamil Nadu Industrial Development Corporation Limited to M/s.AMRL International Tech City Limited. Thereafter, M/s AMRL International Tech City Limited has undergone a change of name to M/s AMRL Hitech City Limited. The said change of name was approved by Ministry of Commerce & Industry, Department of Commerce (SEZ

Section), Government of India vide its letter dated May 31, 2011. Therefore, M/s AMRL Hitech City Limited who is the Developer of the SEZ has entered into a Memorandum of Understanding (MoU) on 19-12-2016 with M/s. India Power Corporation (Bihar) Private Limited (IPCBPL) to develop the electricity generation and distribution infrastructure for the notified SEZ area. The Ministry of Commerce & Industry, Department of Commerce vide Notification No. F.2(2)/2/2000-SEZ dated 19th January 2017 recognised and recorded M/s India Power Corporation (Bihar) Private Limited (IPCBPL) as Co-Developer for the said multi-product SEZ.

5.2. Subsequently, the said co-developer has changed its name from "M/s India Power Corporation (Bihar) Private Limited" to "M/s India Power Corporation (Tuticorin) Private Limited" and this has been approved by the Ministry of Commerce &Industry, Department of Commerce on 19.4.2017 by its Letter No.F5/11/2015-SEZ. M/s.AMRL International Tech city Ltd has been notified as a developer in place of Tamil Nadu Industrial Development Corporation Limited vide Notification No.F.2(2)/2000-EPZ dt.20.8.2008 and change of name approved in Notification No.F2.(2)/2/2000-SEZ dt.31.5.2011 and not in notification No.1626 dt.18.11.2008 as cited by the petitioner in para 8 of the Petition.

5.3. In the backdrop of the above factual events, the Commission would like to dwell upon the legal provisions.

5.4. Sub-section (1) of section 49 of the SEZ Act, 2005 (Central Act 28 of 2005) interalia provides as follows:

> *"49. (1) The Central Government may, by notification, direct that any of the provisions of this Act (other than sections 54 and 56) or any other Central Act or any rules or regulations made thereunder or any notification or order issued or direction given thereunder (other than the provisions relating to making of the rules or regulations) specified in the notification—*
>
> *(a) shall not apply to a Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones; or*
>
> *(b) shall apply to a Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones only with such exceptions, modifications and adaptation, as may be specified in the notification.*
>
> *--------"*

In exercise of the above powers, the Central Government issued notification in S.O.528(E), dated 3.03.2010, by which a proviso has been added to section 14 of the Electricity Act, 2003 as follows:-

> *"In clause (b) of section 14 of the Electricity Act, 2003 (36 of 2003), the following proviso shall be inserted, namely:-*
>
> *"Provided that the Developer of a Special Economic Zone notified*
> ..... *under sub-section(1) of section 4 of the Special Economic Zones Act 2005, shall be deemed to be a licensee for the purpose of this clause, with effect from the date of notification of such Special Economic Zone."*

5.5. From the above, it is clear that with effect from the date of notification of a SEZ, the Developer of the SEZ shall be a deemed licensee under clause (b) of section 14 of the Electricity Act, 2003 (Central Act 36 of 2003). The Petitioner is a Co-Developer of SEZ. As per the definition contained in section 2(g) of the SEZ Act, 2005 (Central Act 28 of 2005), the Developer includes a Co-Developer also and hence the Co-developer is also a deemed Licensee. As directed by the Commission in its hearing on 13-06-2017, the Petitioner has published in the following 4 leading dailies having wide circulation in the licensed area on 30-06-2017, namely:-

1. *Business Standard (English)*
2. *The New Indian Express (English)*
3. *Dinamani (Tamil)*
4. *Makkal Kural (Tamil)*

No objection has been received from any person objecting the grant of deemed licensee status to the Petitioner.

5.6. TANGEDCO, the sole Distribution Licensee of the State in their response dated 01-02-2018 has stated as follows:-

i. Section 12 read with Section 14 and 15 together under 'Part IV Licensing ' of Electricity Act,2003 mandates that no person shall transmit, distribute or undertake trading in electricity unless authorized to do so. As such, SEZ may contain various types of consumers such as industries, commercial, residential etc., TANGEDCO cannot extend supply to SEZ unless the Commission notifies separate categories of supply to SEZ.

ii. *M/s. India Power Corporation (Bihar) Ltd., the co-developer has addressed the Regional Development Commissioner of Tamil Nadu for approval for change of name as M/s. India Power Corporation (Tuticorin) Ltd. which has been forwarded to the Ministry of Commerce and Industry for issue of necessary notification. The notification is not yet issued.*

iii. *Tariff Policy insists that the local distribution licensee has to maintain back up power supply to the open access consumer. TANGEDCO has to maintain back up supply to that Open access quantum for which TANGEDCO has to pay Fixed charges to the generators. The TANGEDCO need not maintain back up power supply to the consumer who is getting their entire power requirement from other than TANGEDCO.*

iv *M/s. India Power Corporation (Tuticorin) Private Ltd. is targeting to supply electricity only to the subsidising consumers of TANGEDCO in lower tariff than that of present tariff rate of TANGEDCO. The cost of supply to the company will be much lower than that of TANGEDCO and hence they can supply at lower rate. Due to supply of power in lower tariff by the petitioner, the other subsidizing consumers may migrate to petitioner's area in order to get electricity in lower rate.*

v. *On payment of cross subsidy surcharge towards the compensation for the revenue loss on account of moving/migration of subsidising consumers to the petitioner's area, the TANGEDCO can continue supplying electricity to its consumers without any additional tariff increase.*

The Petitioner in his rejoinder dated 12-02-2018 has responded to the above views of TANGEDCO as follows:-

(i) TANGEDCO is misplaced to interpret that IPCTPL is desirous of seeking power supply from TANGEDCO for the consumers within its licence area under the separate category of SEZ.

(ii) IPCTPL, by virtue of being the co-developer of the SEZ, is a deemed Distribution Licensee in accordance with the proviso to section 14 (b) of the Electricity Act, 2003.

(iii) It is reiterated that IPCTPL has not filed an application for grant of distribution Licence under sections 14 and 15 of the Electricity Act, 2003.

(iv) While approving the ceiling tariff, Commission will approve the tariff of different consumer categories along similar lines as applicable for TANGEDCO, which is the other Distribution Licensee in the same area of supply.

(v) IPCTPL similar to other Distribution Licensee will arrange power of its own and enter into appropriate Power Purchase Agreement/s (PPA) with power suppliers / generators, to meet the power requirements of the consumers who intend to avail supply from IPCTPL in its licence area.

(vi) IPCTPL has already received the notification with the change of name, and the same was submitted to the TNERC vide letter / affidavit dated 28-04-2017.

(vii) It is incorrect that IPCTPL intends to be an Open Access (OA) consumer of TANGEDCO. As IPCTPL has repeatedly clarified, IPCTPL is also a Distribution Licensee just like TANGEDCO and is connected to the transmission system of TANTRANSCO by

virtue of its EHV connectivity. IPCTPL has given space in its area for erection of EHV sub-station, which has been constructed at site. IPCTPL fully intends to enter into Power Purchase Agreement/s (PPA) with power suppliers / generators, to meet the power requirements in its area of supply and may not be relying on power supply from TANGEDCO for meeting its power requirement. IPCTPL will use TANTRANSCO transmission network on payment of the applicable transmission charges and SLDC charges.

(viii) IPCTPL is setting up SEZ in the State of Tamil Nadu, and whoever eligible and willing to set up their establishments to avail SEZ benefits will become the consumers of IPCTPL.

(ix) The tariff to be charged by IPCTPL will be approved by the Commission based on the costs and consumption mix of IPCTPL. IPCTPL will also be subject to Universal Service Obligation (USO) within its area of supply and will supply electricity to all the consumers in the licence area who intend to avail supply from IPCTPL, irrespective of the category, without any discrimination.

(x) TANGEDCO's apprehension that subsidising consumers may migrate to IPCTPL's area of supply is highly misplaced, as IPCTPL is not venturing into other areas where TANGEDCO is already supplying electricity and IPCTPL will only supply power in its licence area. There are very few consumers in IPCTPL area at present, and IPCTPL hopes to increase the consumer base over time, who will be new consumers and result in development of SEZ area. As most of the consumers to whom the IPCTPL will

supply the power in SEZ will be new consumers, the issue of migration of existing consumers from TANGEDCO to IPCTPL does not arise at all.

(xi) TANGEDCO's plea for payment of Cross-Subsidy Surcharge (CSS) is legally non-tenable and against the provisions of Electricity Act, 2003. IPCTPL is a Distribution Licensee and not a consumer, and hence IPCTPL is not liable to pay any CSS or any such surcharge to TANGEDCO or to any other entity. IPCTPL is a Distribution Licensee just like TANGEDCO, though much smaller in scale.

5.7. Further, the SAC meeting was held on 21-03-2018 to discuss the deemed distribution licensee status of the Petitioner. The Petitioner has made a presentation with regard to this claim for deemed licensee status. The Chairman and Managing Director of TANGEDCO, being the sole distribution licensee of the State has expressed the following views:-

5.7.1. TANGEDCO is aware of the fact that the petitioner has the ability to supply power at lower tariff and draw away subsidising consumers thereby increasing the burden of TANGEDCO. He also stated that TANGEDCO has to supply to the subsidised categories of agricultural, hut and domestic consumers and there is an element of cross subsidy therein. He suggested that the petitioner has either to supply to the subsidised categories in proportion to its supply to the subsidising categories or alternatively the applicant should compensate TANGEDCO in the form of cross subsidy surcharge. He

also drew attention to the fact that as per Tariff Policy local Distribution Licensee has to maintain back up supply to the open access consumers and the need on the part of TANGEDCO to maintain backup supply to the Open Access quantum for which fixed charges are to be paid to the generators. He added that if the entire power requirement of IPCL consumers is not required to be given by TANGEDCO then TANGEDCO need not maintain backup supply to the consumers of IPCL for which IPCL need not pay fixed charges to the generators. He also expressed TANGEDCO's concern on the moving away of subsidising consumers outside the SEZ area as those consumers are the ones who subsidise the subsidised category of TANGEDCO and that TANGEDCO shall lose the cross subsidy surcharge paid by the subsidising consumers and therefore requested that in the event of the Commission deciding to grant the licence, TANGEDCO would like to ensure that such cross subsidy surcharge is being paid by the applicant.

5.7.2. The Chairman/TEDA observed that the issue of subsidising consumers moving away from TANGEDCO has not been addressed and that subsidised consumers may not opt for change in licensee but the subsidising category may move away from the existing licensee. He queried the company whether there will be cherry picking in the choice of supply and sought to know the measures to prevent the same.

He also expressed his view that for parallel operation of SEZs as Distribution Licensee, certain policies are to be framed by the Government.

5.7.3. The Member, TNERC Thiru G.Rajagopal raised the Issue of none of the stakeholders responding to the newspaper advertisements. He observed that the basic provision in the Electricity Act, 2003 is to encourage competition and supply of cheaper power to consumers. He further observed that IPCL is also a big generator and it will be able to generate at Rs.4.00 per unit and considering the same after payment of inter-state transmission charges of approximately 50 paise per unit, the landed cost at the SEZ area will be only Rs.4.50/unit He wondered how IPCL could request the Commission to fix the ceiling tariff fixed to TANGEDCO i.e. at Rs.6.35/unit for Industrial consumers and Rs.8.00 per unit for Commercial category. He also expressed the concern as to why the SEs of the Tirunelveli Region and the Regional Chief Engineer Tirunelveli have not responded for the Newspaper publications seeking comments/objections from the stakeholders when another distribution company has applied for licence in the area of operation of the TANGEDCO.

5.7.4. Another Member, TNERC, Dr.T.Prabhakara Rao stated that in the orders issued by other Commissions in similar cases, it is seen that the State Commissions have requested the Government's opinion and in some States, Government has levied additional duties to neutralize the orders of the Commission. Member observed that lot of issues are involved and as CMD/TANGEDCO is also the Energy Secretary, he requested that guidelines in this regard may be formulated. The major points raised by CMD, TANGEDCO and CMD,

TEDA have been responded and explained by the Petitioner in their Rejoinder dated 12-02-2018.

5.7.5. It is stated that Cross Subsidy is leviable on the consumers only and not on a Licensee or a Deemed Licensee. In as much as the prayer in the petition is to take on record the Deemed Licensee status of the Petitioner as per the proviso to clause (b) of section 14 of the Electricity Act, 2003, the question to be decided is whether the Petitioner satisfies the condition laid down in the said provision. In other words, the prayer of the Petitioner is to recognise the statutorily conferred right of deemed licensee status in SEZ area, by taking on record its status.

5.8. In the light of the above legal provisions, the Commission takes on record the deemed distribution licensee status of the Petitioner under section 14 (b) of the Electricity Act 2003 for the SEZ area of 1019.22.5 hectares covering villages of Therku Nanguneri, Rajakkamangalam, Puliyurkurichi, Alankulam and Veppankulam of the Tirunelveli District in State of Tamil Nadu as notified in Notification No.S.O. 2690(E) dated 18-11-2008 by the Ministry of Commerce and Industry.

The Commission also notes that the SEZ layout approval furnished is for 1013.34 Hectares whereas the area in the Notification dt.18.11.2008 of Ministry of Commerce & Industry is 1019.22.5 Hectares. Scrutiny of the layout with reference to the Notification shows variations i.e repetitions/omissions of few survey numbers.(Sl.Nos. 315 & 317 and 623 & 626 of the Notification have

same survey numbers -343/1B and 808/3. Survey numbers against Sl.No.360 to 363 do not find place in the layout. Survey No.446/2A present in the layout is not available in the Notification. Sl. No.519 and 520 of Notification specify survey nos. as 471/3Q and 471/3R whereas it is 471/Q and 471/R in the layout.). There is an arithmetical error in the summing up of non-processing area detailed in the petition. As demarcation of processing and non-processing areas are under the purview of the Development Commissioner /SEZ as per the SEZ Act and Rules, Commission is not getting into the details of demarcation of areas. However, it is the duty of the petitioner to affirm the correct layout with survey numbers confirming to the notification or furnish amended notification in case of change in survey numbers and furnish map of SEZ area, which is the proposed area of distribution of supply, as certified by the concerned Development Commissioner/SEZ.

5.9. The taking on record of the deemed licensee status of the Petitioner is based on the area of SEZ notified in Notification No.S.O.2690(E), dated 18-11-2008 and subject to the conditions specified in paras 5.8 to 5.16 herein. The petitioner shall file an affidavit furnishing the following details:

- *(i) Three sets of maps of the proposed area of distribution, approved layout with correct survey numbers, as in notification, amended copy of notification if required.*
- *(ii) detailed description of existing assets in the proposed area of activity including single line diagram of the network as well as an executive summary of existing facilities , details of other*

equipments/apparatus including sub stations, transformers and all other relevant details of the system

(iii) Certificate of incorporation/Registration certificate of commencement of business, details of income tax registration and other similar statutory documents.

5.10. As a deemed Distribution Licensee, the Petitioner shall have to adhere to the following:

a. The relevant provisions of the EA, 2003 and the applicable Rules, Regulations and Orders issued thereunder in particular, regulation 7, 17 and 26 of the Commission's Licensing Regulations.

b. Guidelines of the Commission for in-principle approval of its proposed capital investment schemes.

5.11. The Petitioner has also sought approval of a ceiling Tariff. The Commission notes that the Petitioner has no PPA in place for fulfilling its Universal Service Obligation. In order to do so in accordance with section 43 of the EA, 2003, the Petitioner must make necessary filings for PPA approval and subsequent approval of its ARR.

5.12. Till that time, an interim arrangement is necessary to regularize the supply of power by the Petitioner to consumers in its SEZ area. The Petitioner's Licence area of supply overlaps with that of TANGEDCO, which is the incumbent Distribution Licensee. The proviso to section 62(1)(d) of the EA, 2003 provides that, in case of distribution of electricity in the same area by two or more Distribution

Licensees, the Appropriate Commission may, for promoting competition among them, fix only the maximum ceiling of Tariff for retail sale of electricity. Accordingly, as an interim arrangement, the Commission allows the Petitioner to charge consumers in its Licence area the Tariff applicable to the respective categories of TANGEDCO's consumers as the ceiling Tariff, and apply the same Schedule of Charges as is applicable to the consumers of TANGEDCO.

5.13. The Petitioner is also required to establish mechanisms to serve its consumers, including CGRF, Customer Care Centre for complaint handling, and systems and modalities for billing, releasing new connections, ensuring reliable and uninterrupted power supply, etc. Section 42(5) of the EA, 2003 provides that the Distribution Licensee shall establish a forum for redressal of grievances of the consumers within six months of the date of grant of Licence. Accordingly, the Petitioner is directed to establish CGRF and comply with the other requirements of the TNERC (CGRF and Electricity Ombudsman) Regulations, 2004 as amended from time to time within six months from the issue of the Specific Conditions of its Licence.

5.14. The Commission further directs the Petitioner to pay the Annual Licence Fees for FY 2017-18, based on estimated revenues, within 30 days of this Order. It shall pay Annual Licence Fees for subsequent years as per the TNERC (Fees and Fines) Regulations, 2004 as amended from time to time.

5.15. The Petitioner has also sought approval of Specific Conditions of Distribution Licence applicable to it. In exercise of powers conferred by section 16 of the Electricity Act,2003, the Commission hereby specifies the following Special Conditions for the Deemed Distribution Licensee viz. M/s. India Power Corporation (Tuticorin) Private Limited (IPCTPL):

a	*Area of Supply:*	*Notified SEZ area*
b	*Period/Terms of distribution licence:*	*25 years from April 19, 2017 to April 18, 2042. (25 years from the date of notification of M/s. India Power Corporation (Tuticorin) Private Limited as co-developer of the SEZ).*

5.16. All general conditions of licence notified by the Commission in its Licensing Regulations shall be applicable to the petitioner in addition to the special conditions approved above. The Commission may at any time modify the terms and conditions of the licence in public interest or on an application made by the licensee. The petitioner shall abide by all Regulations notified by the Commission from time to time, orders/rules issued by the Commission and provisions of the Electricity Act, 2003.

5.17. The draft licence and the general conditions of the deemed distribution licence as approved by the Commission is annexed with this order and the Secretary of the Commission is directed to issue the Licence with the general conditions to the Petitioner on furnishing of details in para 5.8 & 5.9. The Secretary of the Commission is also

directed to forward a copy of the licence with the general conditions to the Government of Tamil Nadu, Central Electricity Authority and the Block Development Officers of Nanguneri and Kalakkadu, Tirunelveli District as required under section 15 of the Electricity Act, 2003 and regulation 5 of the Licensing Regulations."

78. From the above, it can be seen that the State Commission has carried out a detailed examination of the case and accepted the licence application in terms of the prevailing legal provisions, including the TNERC Regulations.

79. The State Commission has considered all the averments of the Appellant, TANGEDCO, and clarified the same before disposing of the Licence Petition. In fact, the State Commission has placed detailed terms and conditions for the grant of the Licence, as also sought by the Appellant.

80. Respondent No. 2 contended that as a co-developer of the SEZ, it is covered under the definition of "developer" under Section 2(g) of the SEZ Act, and hence, by virtue of the 03.03.2010 Notification, it automatically acquired the status of a deemed distribution licensee. It argued that the validity of the said notification has been upheld by the Hon'ble Supreme Court in ***Sesa Sterlite Ltd. v. OERC, Civil Appeal No. 5479 of 2013***, and reaffirmed in ***Sundew Properties Ltd***., and that deemed licensee status cannot be made subject to compliance with Licensing Regulations framed under a different regime. The Hon'ble Apex Court has upheld the power of the Central Government to statutorily insert a proviso to Section 14(b) of the Electricity Act, under which all notified SEZ developers (including co-developers) are deemed to be distribution licensees from the date of notification.

81. It was further argued that co-developers are not required to undergo the process applicable to entities seeking a distribution licence under Section 14, read with the sixth proviso.

82. We acknowledge that the 2010 Notification issued by the Central Government under Section 49 of the SEZ Act introduces a legal fiction by which the developer of a SEZ is treated as a deemed distribution licensee for the purposes of Section 14(b) of the Electricity Act. Further, the definition of "developer" under Section 2(g) of the SEZ Act includes co-developers, which extends the deemed licensee status to entities like Respondent No. 2. The relevant extract of the 2010 Notification is quoted as under:

> *"In clause (b) of section 14 of the Electricity Act, 2003 (36 of 2003), the following proviso shall be inserted, namely:-*
> *"Provided that the Developer of a Special Economic Zone notified under sub-section(1) of section 4 of the Special Economic Zones Act 2005, shall be deemed to be a licensee for the purpose of this clause, with effect from the date of notification of such Special Economic Zone."*

83. We, thus, agree that the State Commission has considered all the aspects before agreeing to the deemed status of the Appellant as a Deemed Distribution Licence under the provisions of the law.

84. We agree that the licensing regime continues to apply only to the extent not inconsistent with the deemed licensee notification. Undoubtedly, the State

Commission has imposed various reporting, planning, and compliance obligations on R-2, thereby satisfying its regulatory role.

85. However, the conferment of deemed licensee status does not operate in a vacuum. While the notification relieves such entities from the requirement of applying for a licence under Section 14(b), it does not and cannot divest the State Commission of its jurisdiction to ensure that any such entity is equipped to discharge the functions of a distribution licensee in accordance with the statutory framework.

86. The judgment of this Tribunal in Vedanta Aluminium squarely holds that even where deemed licensee status is granted under the notification, the State Commission retains the power and responsibility to verify whether the entity is technically and financially equipped to operate a distribution system. This view has been affirmed by the Hon'ble Supreme Court in Sundew Properties Ltd., where the Court drew a clear distinction between deemed status and regulatory oversight. It clarified that the absence of a requirement to apply for a licence does not imply a blanket exemption from all regulatory scrutiny.

87. The Electricity Act, 2003, envisages the distribution licensee as a service provider entrusted with consumer-facing obligations and public duties. Therefore, mere designation by way of a central notification without evaluating readiness, infrastructure, technical capacity, and consumer interface undermines the intent and spirit of the Act.

88. It cannot be argued that the TNERC's Impugned Order meticulously recites the legal paradigm and, notably, imposed a detailed set of obligations, including

the filing of maps, business plans, mechanisms for consumer grievance redressal, reporting, and the requirement to abide by all regulations and general licensing conditions. This approach follows the Hon'ble Supreme Court's direction that State Commissions must continue to supervise and regulate deemed licensees by setting operational conditions, but should not require them to repeat the full licensing process already addressed by the special notification.

89. **We, therefore, hold that the Commission has correctly recognized Respondent No. 2 as a Deemed Distribution Licensee; however, the grant of Distribution Licence was made ensuring compliance with necessary regulatory conditions and statutory expectations governing distribution licensees as directed in the Impugned Order.**

> **Issue No. 2:** *Whether Respondent No. 2, despite being granted deemed distribution licensee status, can continue to retain such status in the absence of any physical distribution infrastructure, consumer applications, or actual supply of electricity within the SEZ area, even after a prolonged period?*

90. The Appellant pointed out that even several years after the grant of deemed licensee status (w.e.f. 17.04.2017), Respondent No. 2 has not developed any distribution infrastructure. This fact was admitted in the Capital Investment Plan proceedings before TNERC in Petition No. 27 of 2020, where the Commission recorded that no capital expenditure had been incurred during the MYT control period from FY 2019-20 to FY 2021-22.

91. Moreover, Respondent No. 2 has conceded that it has not received a single application from any consumer within the SEZ area for electricity supply. The Appellant argued that continued recognition of licensee status in such circumstances defeats the objectives of the Electricity Act and grants undue benefit to a non-operational entity.

92. Respondent No. 2 submitted that infrastructure development had been hampered due to the COVID-19 pandemic, labour disruptions, and related restrictions. Respondent No. 2 further submitted that its Capital Investment Plan for the MYT period FY 2019-20 to FY 2021-22 had been approved by the Commission. It further contended that the deemed distribution licensee status, having been conferred through statutory notification under the SEZ Act, was not contingent upon compliance with the Licensing Regulations or actual operational performance.

93. The core question before us is whether the mere conferment of deemed distribution licensee status is sufficient to sustain the status indefinitely, even in the face of persistent non-performance. The answer must lie in the object and scheme of the Electricity Act.

94. Section 2(17) of the Electricity Act defines a “distribution licensee” as a person authorized to operate and maintain a distribution system for supplying electricity to consumers. A key component of this definition is the existence and operation of infrastructure. It is not enough to be authorized; the entity must also perform.

95. From the undisputed record, it is clear that Respondent No. 2 has failed to develop or commission any distribution infrastructure within the SEZ even after a lapse of more than eight years. The TNERC, in its order dated 23.11.2021, observed with displeasure that no capital work had been executed. Further, the Respondent's own note dated 17.02.2025 before us confirms that it has not received any consumer application for power supply.

96. Deemed licensee status is not an end in itself. It is intended to enable competition and efficiency in supply. Where the licensee fails to establish a functional network and does not serve consumers, the purpose is entirely defeated. The Electricity Act is a performance-based statute. The conferment of licensee status must be understood to carry a functional obligation to serve.

97. Therefore, continuation of deemed licensee status without any tangible distribution function- no supply, no consumers, no infrastructure is unjustified; the State Commission should evaluate the performance of the Respondent No.2 and take action to ensure compliance with its direction.

98. In fact, the State Commission, while disposing of the Licence Application, has directed as under:

> *"5.17.* ***The draft licence and the general conditions of the deemed distribution licence as approved by the Commission is annexed with this order and the Secretary of the Commission is directed to issue the Licence with the general conditions to the Petitioner on furnishing of details in para 5.8 & 5.9****. The Secretary of the Commission is also directed to forward a copy of the licence with the*

general conditions to the Government of Tamil Nadu, Central Electricity Authority and the Block Development Officers of Nanguneri and Kalakkadu, Tirunelveli District as required under section 15 of the Electricity Act, 2003 and regulation 5 of the Licensing Regulations."

99. It is clear that the grant of the Distribution Licence is subject to the compliance with the conditions as specified in the said Impugned Order.

100. The Annexure attached to the Impugned Order has specified detailed conditions to be complied with by the Appellant, inter alia, specified with the express condition that:

"PART - II GENERAL

CONDITIONS

3. TERM OF THE LICENCE

The distribution licence shall come into ***force from April 19,2017 and unless revoked earlier, in accordance with the provisions of Regulation 20 of the Commission's Licensing regulations or under section 19 of the Act, shall remain in force for 25 (Twenty five) years from the above specified date."***

101. Therefore, the State Commission has all the powers to evaluate the performance of any Licence granted by it under the legal provisions.

102. We find it appropriate to record that the annexed conditions of licence, as well as the TNERC Licensing Regulations, require the distribution licensee to

develop and maintain an efficient distribution system and effect supply to all consumers on demand. The Commission is indeed vested with the power to initiate proceedings for suspension or revocation in the event of persistent failure to meet statutory obligations, following Section 19 and Section 24 of the Act, as read with Regulation 20 of the TNERC Licensing Regulations.

103. The admitted facts establish that Respondent No. 2, despite being recognized as a deemed licensee from 19.04.2017, has failed to take any substantive steps towards the setting up of infrastructure or serving consumers for a sustained period of years, which TNERC itself has noted with displeasure. The continued absence of consumer applications, network development, or supply of power, and the failure to implement Capital Investment Plans, undermine both the premise and promise of competitive and efficient supply within SEZs.

104. However, it is also clear that the law does not provide for deemed revocation or automatic cessation of licensee status on the ground of inactivity or non-performance. Action for revocation or suspension can only be taken on the basis of a duly initiated process: identifying persistent non-compliance, providing notice and hearing, and basing any penal action on established facts. Until TNERC initiates such action and completes due process, R-2's deemed status remains intact as a matter of law.

105. **We agree with the Appellant that Respondent No. 2 cannot indefinitely retain deemed distribution licensee status in the absence of any infrastructure development, operational activity, or consumer interface. The**

status, while statutorily conferred, is not immune to scrutiny and must correspond to actual performance and readiness to serve.

Issue No. 3: *Whether the Appellant (TANGEDCO) is entitled to levy cross subsidy surcharge on account of potential migration of subsidizing consumers to the SEZ area, and whether the Commission erred in not addressing this issue in the Impugned Order?*

106. TANGEDCO contended that the potential migration of subsidizing consumers from its network to the SEZ licensee, due to lower tariffs, would erode its cross-subsidy pool. It argued that the burden of subsidizing lower-end consumers would become unsustainable unless compensated through CSS. The Appellant relied upon the Hon'ble Supreme Court's judgment in Sesa Sterlite, which held that CSS is payable even if the incumbent's network is not physically used. It was further argued that the TNERC failed to consider or adjudicate this issue altogether.

107. Respondent No. 2 maintained that CSS is applicable only when a consumer opts for open access and uses another licensee's network. Since it has its own designated area and proposes to build its own network, no CSS is payable. It denied any cherry-picking of consumers and claimed that the claim for CSS was a tactic by the Appellant to raise the cost of electricity and stifle competition.

108. The Appellant also submitted that, similar to other Distribution Licensees, it will arrange for its power and enter into appropriate Power Purchase Agreement/s (PPA) with power suppliers/generators, to meet the power requirements of the consumers who intend to avail supply from IPCTPL in its licence area. Further,

refuted that it intends to be an Open Access (OA) consumer of TANGEDCO. As IPCTPL has repeatedly clarified, IPCTPL is also a Distribution Licensee just like TANGEDCO and is connected to the transmission system of TANTRANSCO by virtue of its EHV connectivity. IPCTPL has given space in its area for the erection of an EHV sub-station, which has been constructed at the site. IPCTPL fully intends to enter into Power Purchase Agreement/s (PPA) with power suppliers/generators, to meet the power requirements in its area of supply and may not be relying on power supply from TANGEDCO for meeting its power requirement. IPCTPL will use the TANTRANSCO transmission network on payment of the applicable transmission charges and SLDC charges.

109. We agree that the above is in line with the provisions of the Electricity Act, 2003, which provides for bringing in competition to the benefit of the consumers.

110. Cross-subsidy surcharge is a statutory mechanism under Section 42(2) of the Electricity Act, 2003, designed to protect the financial stability of incumbent licensees. The Hon'ble Supreme Court in ***Sesa Sterlite Ltd. v. OERC*** has held that CSS is payable even if the open access consumer does not physically use the incumbent's wires. The key consideration is whether the consumer is situated in the area of the incumbent licensee and whether such consumer would, in the absence of open access, have contributed to the cross-subsidy pool.

111. In fact, Respondent No. 2 has not yet commenced supply, the order under challenge treats the Appellant's tariff as the ceiling tariff only, and the issue has already been considered and dealt with by the Commission.

112. Nevertheless, the Court and regulatory practice have distinguished between open access consumers and consumers supplied directly by a statutorily recognized (and parallel) distribution licensee within the same area. TNERC's ruling clarifying that CSS is not leviable on a distribution licensee or a deemed licensee, but only on open access consumers, accords with this understanding.

113. There is no material before us to suggest that consumers within the SEZ are procuring power via open access as opposed to by direct supply from a parallel licensee.

114. Further, the record establishes that, as of the date, R-2 is not supplying electricity to any consumer; the entire question thus remains, to some extent, academic in present circumstances. However, the principle is clear that CSS is not payable simply by virtue of "parallel licensing," absent open access.

115. TNERC's finding that CSS is not leviable on parallel licensees but only arises in the case of open access arrangements is consistent with prevailing law and regulatory practice. TANGEDCO is not entitled to claim CSS from R-2 for direct supply by R-2 to consumers within its SEZ area.

116. However, the issue is premature and based on perception only, the Appellant has yet not receive any application from the consumers of its area for supply, inter alia, and has yet to build the necessary infrastructure.

117. We consider keeping the issue open till such time the Appellant starts supplying power in its area of supply, and to be adjudicated by the State Commission.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 47 of 2019 does not have any merit and stands dismissed. The Impugned Order dated 21.08.2018 in L.P. No. 1 of 2017 of the Tamil Nadu Electricity Regulatory Commission is upheld in all respects.

The Captioned Appeal and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 23rd DAY OF JULY, 2025.

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

REPORTABLE / ~~NON-REPORTABLE~~

pr/mkj/kks