IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

Appeal No. 56 of 2017
&
Appeal No. 325 of 2017

Dated: 07.08.2025

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

In the matter of:

Bharat Aluminium Company Limited
Balco Nagar, Korba,
Chhattisgarh – 495684. **…Appellant(s)**

Vs.

(1) Chhattisgarh State Electricity Regulatory Commission
Irrigation Colony, Shanti Nagar,
Raipur – 492001.

(2) Chhattisgarh State Power Distribution Company Limited
Vidyut Sewa Bhawan,
Dagaria, Raipur – 492001. **…Respondent(s)**

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.
Mr. Hemant Singh
Ms. Shikha Ohri
Mr. Matrugupta Mishra
Mr. Nishant Kumar
Ms. Ananya Mohan

Counsel for the Respondent(s) : Mr. Raj Kumar Mehta

Mr. C. K. Rai
Mr. Mohit Rai for R-1

Mr. Apoorv Kurup, Sr. Adv.
Mr. Akhil Hasija
Ms. Rashmi Singh for R-2

JUDGEMENT

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

1. The captioned Appeal Nos. 56 of 2017 and 325 of 2017 have been filed by M/s. Bharat Aluminium Company Limited (in short "Appellant"/ "BALCO") challenging the Impugned Orders dated 12.06.2014 in Petition No. 7 of 2014 and 31.03.2017 in Petition No. 64 of 2016(T) passed by the Chhattisgarh State Electricity Regulatory Commission (in short "CSERC" or "Commission").

Description of the Parties

2. The Appellant, M/s. Bharat Aluminium Company Ltd. is a company incorporated under the Companies Act, 1956, inter alia, has set up a captive power plant with a capacity of 1410 MW at Korba, Chhattisgarh, and is also an Extra High Voltage (EHV) category consumer.

3. The Respondent No. 1, Chhattisgarh State Electricity Regulatory Commission, is the State Commission vested with the powers to adjudicate the dispute at hand.

4. The Respondent No. 2, Chhattisgarh State Power Distribution Company Ltd. (in short "CSPDCL") is the distribution licensee in the State of Chhattisgarh.

Factual Matrix of the Case (Appeal No. 56 of 2017) (submitted by the appellant)

5. This Appeal has been filed by Bharat Aluminium Company Limited against the Impugned Order dated 12.06.2014 passed by the Chhattisgarh State Electricity Regulatory Commission in Petition No. 7 of 2014.

6. The Respondent Commission in the impugned order has wrongly computed the retail tariff of the Chhattisgarh State Power Distribution Company Limited qua the relevant consumer category, in contravention to the mandate contained in Section 62(3) read with Section 86(4) and Clause 8.3 (2) of the National Tariff Policy (NTP) dated 06.01.2006. The said wrongful computation of retail tariff of the Respondent No. 2 is in turn resulting in a wrongful computation of Cross Subsidy Surcharge (CSS) payable by open access consumers for the FY 2014-15 against the provisions of Regulations 33(6)(b)(iii) & (iv) of the CSERC (Connectivity and Intra-State Open Access) Regulations, 2011 ("Open Access Regulations"). This is also contrary to the provisions of the third proviso to Section 42(2) read with Section 61(g) of the Electricity Act, 2003, which mandate that CSS has to progressively reduce.

7. The mandate of Section 61(g) of the Electricity Act, 2003 is to progressively reduce the applicable cross subsidies. The Open Access Regulations

promulgated by the Respondent Commission do not expressly prescribe any methodology as to how the Respondent Commission aims to achieve the aforesaid objective of the Act and the Tariff Policy. The mandate of the enabling Act qua the reduction in CSS can only be achieved if the cross subsidies are reduced. This can only be possible in the event that the retail tariffs for different categories of consumers are calculated as per the provisions of Clause 8.3 (2) of the NTP. The said clause of the NTP provides that tariffs have to be within +/- 20% of the average cost of supply for the distribution licensees. The same means that the Respondent No. 2 cannot be allowed to collect tariffs more than 20% of the average cost of supply from the subsidizing category of consumers. Similarly, the said Respondent cannot at all be allowed to supply electricity to the subsidized category of consumers below 20% of the average cost of supply. The NTP envisaged the above to be implemented by 2010-11; however, the Respondent Commission has failed to implement the same even for the year 2014-15.

8. Clause 8.3(2) of the NTP makes it incumbent upon the Respondent Commission to determine a tariff which is within the range of +/- 20% of the cost of supply. However, a perusal of the average tariff determined by the Respondent Commission for the past few years in the State of Chhattisgarh would make it evident that the same is not within the range of +/- 20%.

9. Section 86(4) of the Act provides that the Respondent Commission has to take recourse to the NTP while discharging its functions for which there are no regulations. As such, while discharging its functions qua Section 62(3), the Respondent Commission has to follow the mandate contained in Clause 8.3(2) of the NTP. Therefore, the Respondent Commission cannot at all determine retail

tariffs of the different categories of consumers with a variation of more than 120% of the average cost of supply.

10. Thus, being aggrieved by the Impugned Order dated 12.06.2014 passed by the CSERC in the Petition No. 07 of 2014, the Appellant has preferred the present Appeal.

11. The Appellant raised similar contentions in the second captioned appeal, challenging the tariff order and cross-subsidy for the FY 2017-18.

12. Considering that both the appeals are identical, Appeal No. 56 of 2017 is taken as the lead appeal.

Written Submissions of the Appellant, BALCO, dated 17.05.2024

13. The present appeal has been filed by Bharat Aluminium Company Limited challenging the order dated 12.06.2014 passed by the Chhattisgarh State Electricity Regulatory Commission in Petition No. 7 of 2014, wherein the Commission determined the Cross Subsidy Surcharge at Rs. 1.278/kWh for Extra High Voltage (EHV) consumers availing open access for the Financial Year 2014-15. BALCO, being an EHV consumer connected to the Central Transmission Utility (CTU) network, contends that the CSS so determined is inapplicable to it.

14. Alternatively, BALCO submits that the CSS determination is fundamentally flawed. These written submissions are being filed pursuant to the liberty granted by the Tribunal vide order dated 29.04.2024, reserving judgment post-hearing, and

are in continuation of the pleadings already on record. BALCO also seeks permission to submit a separate compilation of judicial precedents.

RE: CSS determined by the CSERC is not applicable upon BALCO, being an EHV consumer connected to the inter-state grid/ CTU

15. BALCO is connected to the inter-state grid (CTU) from the year 2013, and as such, the CSERC does not at all have any jurisdiction to determine such CSS, and the same can only be determined by the CERC in terms of Section 38(2)(d)(ii) of the Electricity Act, 2003 ("EA 2003").

16. It is submitted that the CSERC notified the CSERC OA Regulations, 2011 whereunder, Regulation 2 categorically states that the said Regulations shall apply to consumers using the intra-state transmission system/ distribution system of the State. However, BALCO is connected to the inter-state transmission system, viz. CTU is not at all connected to the State network. The said Regulation is set out below:

> **"2. *Extent of Application***
>
> *These regulations shall apply to open access customers for use of intra-state transmission system and/ or distribution systems of licensees in the State, including such system when it is used in conjunction with inter-state transmission system."*

17. The Appellant submits that Section 42(2) of the Electricity Act, 2003 is inapplicable in the present case, as it governs situations where a consumer avails

open access through the State distribution network, which BALCO does not use. Instead, under Section 38(2)(d)(ii), BALCO, being connected to the inter-state grid, is liable to pay Cross Subsidy Surcharge only as determined by the Central Electricity Regulatory Commission, not the State Commission. While the Hon'ble Supreme Court in ***Sesa Sterlite v. OERC & Ors., (2014) 8 SCC 444***, upheld that CSS is payable even without using the distribution licensee's network, that decision is not applicable here. In Sesa Sterlite, there was acknowledged use of intra-state lines (though not of a distribution licensee), whereas in the present case, BALCO does not use the intra-state transmission or distribution system at all.

RE: Without prejudice, CSS determined by the CSERC is completely erroneous and wrongful

18. Under the first proviso to Section 42(2) of the Electricity Act, 2003, surcharge or CSS may be levied by a distribution licensee, such as CSPDCL (Respondent No. 2), only when consumer avails open access through the distribution network to procure power from third parties. Section 61(g) mandates that tariffs reflect the cost of electricity supply and aim to reduce cross-subsidies as per regulations framed by the Appropriate Commission. Section 62(3) empowers the Commission to classify consumers and design slab-based tariffs accordingly. The recovery of a distribution licensee's cost is achieved through these slabs; wherein cross subsidies are built into high-end consumer tariffs to subsidize lower-end consumers. However, in the present case, no such regulations have been notified by CSERC under Section 62(3), resulting in arbitrary loading of cross subsidies on high-end consumers like BALCO without any regulatory framework or justification.

19. It is settled law that in the event Regulations have not been framed, or are silent on an issue, then the provisions of the Tariff Policy become binding, in terms of Section 86(4). In this context, reference is made to the following judgments:

i. Judgment dated 24.03.2015 passed in Appeal No. 103 of 2012 titled as Maruti Suzuki India Limited v. Haryana Electricity Regulatory Commission & Anr.:

"68. This Tribunal in the various judgments from the year 2006 onwards has repeatedly stated that the tariffs have to be determined considering both the overall average cost of supply of the distribution licensees and the voltage-wise cost of supply The principles laid down by this Tribunal are as under ...

69. This Tribunal in Tata Steel Ltd. gave a method for determination of cost of supply for different consumer categories. It was held that in the absence of segregated network costs, it would be prudent to work out voltage-wise cost of supply taking into account the distribution losses at different voltage levels as a first major step in the right direction. As power purchase cost is a major component of tariff, apportioning the power purchase cost at different voltage levels taking into account the distribution loss at the relevant voltage level and the upstream system will facilitate determination of voltage-wise cost of supply. Thus, a practical method was suggested to reflect the consumer wise cost of supply. However, voltage-wise cost of supply would also require determination of distribution loss at different voltage levels of the distribution system.

… … …

72. We feel that in the absence of a specific formula for cross subsidy surcharge in the Tariff Regulations, the State Commission ought to have determined the cross-subsidy surcharge using the Tariff Policy formula. No reason has been given for not using the Tariff Policy formula in the impugned order.

… … …

76. To sum up:

… … …

d) In the absence of specific formula for cross subsidy surcharge in the Tariff Regulations, the State Commission ought to have determined the cross subsidy surcharge using the Tariff Policy formula. However, the use of the Tariff Policy formula will require determination of distribution loss at different voltage levels, which would involve a fresh study to be conducted by the State Commission for determination of cross subsidy surcharge for FY 2012-13. This will bring in an element of uncertainty and will further result in delay in fructification of justice to the Appellant in the matter for a Financial Year which is long over"

ii. Judgment dated 05.07.2007 passed in Appeal No. 169 of 2005 and batch titled as RVK Energy Pvt. Ltd. vs. CPDCAPL & Ors.:

"29. The formula detailed in the policy shows the path for calculating cross subsidy surcharge from the consumers, who are permitted open access. The idea is that it should not be so hefty that consumers are discouraged from utilizing the source of

power of their choice otherwise competition will be eliminated, which will go against the very grain of the Electricity Act.

30. The Policy has been issued under Section 3 of the Act. It has a statutory flavor. The Regulatory Commission is required to abide by the National Electricity Policy and Tariff Policy issued by the Central Government as long as they are in consonance with the Act. The National Electricity Policy and Tariff Policy are prepared by the Central Government in consultation with the Authority for development of the power system based on optimal utilization of its resources such as coal, natural gas, nuclear substances and hydro and renewal resources of energy. Optimal utilization of resources will take place only when generator is assured of the use of the wires for transmitting electricity to the licensees and consumers. In this context open access assumes importance. In case open access is made available for transmitting electricity to the enduser at a cost which is higher than the cost at which the distribution licensee of the area supplies energy to the consumers, the concept of open access becomes meaningless. In case, cost to use open access is high, there cannot be optimal use of capacities and resources. The optimal use of capacities and resources is the mandate of Section 3 of the Act. Besides the emphasis placed on competition in electricity sector by the preamble to the Act would be reduced to a platitude. Such a situation would be contrary to the preamble of the Act and the very spirit of Section 3. The submission of the learned counsel for the distribution companies that the Central

Government did not have jurisdiction to lay down the method and manner for calculating the surcharge cannot be countenanced in law. The submission is accordingly rejected.

31. It is the prime need of the hour to set up new generating stations. Last year China added one lakh megawatt of electricity to its already large built up capacity. its industrial sector is thriving because of availability of infrastructure including electricity without which industry cannot be sustained. There must be no impediment for consumer, generator or a utility to utilize wires for moving the electricity to the desired destinations, without which generation would be wasted. This can be possible in case wheeling charges, cross subsidy surcharge or additional surcharge are not excessive. Every unit of electricity must be allowed to be evacuated. Country cannot afford to waste energy by restricting open access through a price mechanism which is not in consonance with the provisions of the Act.

32. In the meeting of the Chief Secretaries/Power Secretaries of the States in April, 2007, it was suggested that cross subsidy surcharge and wheeling charges should be abolished. It seems that these suggestions were given to send positive signals to the investors to set up new plants and to ensure accelerated growth of the sector so that our industry and entire economy grows from strength to strength. It also appears that the objective behind the suggestion was also to give boost to the use of open access so that competition increases and more and more generation takes place.

33. Though the suggestions cannot be implemented, it is for the Regulatory Commissions to translate the spirit of the Act into reality by imposing realistic charges for wheeling, cross subsidy surcharge and/or additional surcharge. Once the Appropriate Regulatory Commission has introduced open access within one year of the appointed date, a right vests in the consumer to ask for open access for securing electricity from a source of its choice so that it is able to access quality power. This vested right cannot and ought not to be defeated by imposing excessive charges on the consumers requiring open access. We do not agree with the learned counsel for the distribution licensees that neither the consumers nor the generators have a vested right to seek open access. This contention falls foul of the object of the Act, its context and the above provisions.

34. The order of the Regulatory authorities should incentivise generation. Factors which deter private investment for generation, transmission and distribution must be removed. The levy of wheeling charge, cross subsidy surcharge and additional surcharge ought not to be rapacious. The Regulatory Commissions have a statutory duty to levy reasonable charges so that entrepreneurs come forward to set up generation plants and distribution and transmission systems. In case the Tariff Policy relating to open access, which is in consonance with the Act, is ignored by the Regulatory Commissions, it will have injurious effect on the life of the people.

… … …

42. It appears to us that the Embedded Cost Method as adopted by the Commission shackles open access since the consumer will not be able to buy power from sources other than the distribution licensee of their area of supply. In case surcharge is worked out in the manner computed by the Commission, the consumer will have to pay more in case it wishes to utilize open access from sources other than the distribution licensee. On the other hand in case the Surcharge Formula as prescribed by the Tariff Policy is employed, the consumer is not burdened with unreasonable cross subsidy surcharge and at the same time the interest of the distribution licensee are taken care of. Therefore, we are of the view that the APERC has not applied the appropriate principle for determining cross subsidy surcharge. We find that the formula for calculating surcharge given in the Tariff Policy is in tune with the spirit of the Electricity Act and must be adopted and followed by the APERC and all the Regulatory Commissions. Even dehors the Tariff Policy, the Surcharge Formula needs to be adopted as we find that it is more in tune with the object of the Act than the Embedded Cost Method as adopted by the APERC.

… … …

44. <u>In the circumstances, therefore, we direct the APERC to compute the cross subsidy surcharge, which consumers are required to pay for use of open access in accordance with the Surcharge Formula given in para 8.5 of the Tariff Policy, for the year 2006-07 and for subsequent years.”</u>

20. In the present case, Tariff Policy, 2006 is relevant.

21. In furtherance to the aforesaid provisions of the EA 2003 and the Tariff Policy, 2006, Regulation 33(6)(b)(iii) of the CSERC OA Regulations, 2011 provides for a formula for computing CSS, as the difference between the "average tariff" of the consumer of the subsidizing category availing open access and the "average cost of supply" of the licensee.

22. It is the case of BALCO that the above formula can only be applied if the inputs contained therein *[i.e., 'average' tariff and 'average' cost of supply]* are determined in terms of the Tariff Policy, 2006. However, the CSERC has not determined the same. Even if regulations are not there, this Tribunal has held that principles of the Tariff Policy have to be followed, and determination has to be based on data/ study.

23. In this context, reliance is placed upon the judgment dated 30.05.2011 passed by this Tribunal in Appeal 102 of 2010, titled as ***Tata Steel Ltd. v. OERC & Anr***. In this judgment, this Tribunal has provided the procedure through which voltage-wise cost of service/ supply can be determined, without undertaking any physical/ hardware change in the distribution network. The relevant extract of the said judgment is as follows:

> *"41.3. The State Commission has expressed difficulties in determining cost of supply in view of non-availability of metering data and segregation of the network costs. In our opinion, it will not be prudent to wait indefinitely for availability*

of the entire data and it would be advisable to initiate a simple formulation which could take • into account the major cost elements. There is no need to make distinction between the distribution charges of identical consumers connected at different nodes in the distribution network. It would be adequate to determine the voltage-wise cost of supply taking into account the major cost element which would be applicable to all the categories of consumers connected to the same voltage level at different locations in the distribution system. We have given a practical formulation to determine voltage wise cost of supply to all category of consumers connected at the same voltage level in paragraphs 31 to 35 above. Accordingly, the State Commission is directed to determine cross subsidy for different categories of consumers within next six months from FY 2010-11 onwards and ensure that in future orders for ARR and tariff of the distribution licensees, cross subsidies for different consumer categories are determined according to the directions given in this Judgment and that the cross subsidies are reduced gradually as per the provisions of the Act.

41.4. In view of pathetic condition of consumers and distribution feeder and transformer metering, we direct the State Commission to take immediate action for preparation of a metering scheme as a project by the distribution company and its approval and implementation as per a time bound schedule to be decided by the State Commission."

24. Thus, the CSERC was required to determine the voltage-wise cost of supply/ service in line with the principle decided in the above judgment. In any event, the CSERC computed the voltage-wise cost of supply in the subsequent tariff order dated 31.03.2017 [which is impugned in Appeal No. 325 of 2017]. As such, it is clear that the CSERC can determine the voltage-wise cost of supply/ service.

25. The Appellant further contends that, under Clause 8.3(2) of the National Tariff Policy, 2006, consumer tariffs determined under Section 62(3) must lie within ±20% of the average cost of supply. However, Section 61(g) of the Electricity Act, 2003 does not use the term "average" before "cost of supply." Multiple judicial pronouncements, including P***unjab State Power Corpn. Ltd. v. Punjab State Electricity Regulatory Commission, reported in (2015) 7 SCC 387*** [Paras 13 & 14], Judgment dated 30.05.2011 passed in Appeal No. 102 of 2010 titled as ***Tata Steel Ltd. v. OERC & Anr.*** [Paras 27-34], Judgment dated 26.05.2006 passed in Appeal No. 04 of 2005 & Batch titled as ***Siel Limited v. PSERC & Ors.*** [Para 109], Judgment dated 31.05.2013 passed in Appeal No. 179 of 2012 titled as ***Kerela High Tension and Extra High Tension Industrial Electricity Consumers Association v. KSERC & Anr.*** [Paras 49, 50 & 80], Judgment dated 23.09.2013 passed in Appeal Nos. 52 & 67 of 2012 titled as **Ferro Alloys Corporation Limited v. OERC & Anr.** [Paras 64, 65, 71-74], Judgment dated 05.07.2007 passed in Appeal Nos. 169 of 2005 & Batch titled as ***RVK Energy Pvt. Ltd. v. CPDCAPL & Ors.*** [Paras 29¬34, 42 & 44]; and Judgment dated 18.02.2022 passed in Appeal No. 248 of 2018 titled as ***Abhijeet Ferrotech Limited v. APERC & Anr.*** [Paras 23, 25-27 & 29], interpret "cost of supply" to mean actual or voltage-wise cost, not a broad average.

26. Accordingly, it is submitted that under Regulation 33(6)(b)(iii) of the CSERC Open Access Regulations, 2011, the applicable cost of supply for determining tariff and Cross Subsidy Surcharge (CSS) must be voltage-specific. Further, any cross subsidy must be capped at a maximum of 20% of such actual/voltage-wise cost, thereby ensuring tariff fairness and regulatory compliance.

RE: Computation of CSS as per BALCO

27. If the average cost of supply is considered instead of the voltage-wise cost of supply [as per Clause 8.3(2) of the NTP], then also the maximum average tariff could have been Rs. 5.28/ kWh, as the average cost of supply in the State of Chhattisgarh is Rs. 4.40/ kWh for 2014-15 qua EHV and HV category of consumers.

28. This would, in turn, result in a maximum CSS of Rs. 0.792/ kWh for the EHV category of consumers, instead of Rs. 1.278/ kWh (even at the highest possible tariff of +/- 20%) as determined in the impugned order**.** The working of the CSS, so determined *(Based on "Average" Cost of supply),* is provided below:

> *The Cross Subsidy Surcharge approved by CSERC comes to <u>Rs. 1.278 per kWh</u> [which is 90% of the computed value of Rs. 1.42 per kWh as per Regulation 33(b)(6)(iii)] for EHV consumers such as BALCO.*
>
> *Considering the provisions of Clause 8.3(2) of the Tariff Policy, 2006, the CSS would be as follows:*

- *Average cost of Supply (ACOS) approved by CSERC is Rs 4.40 per kWh.*
- *Average Billing Rate (**ABR**)/ Tariff for EHV category is approved at Rs. 5.82 per kWh.*
- *As such, the loaded cross-subsidy component for EHV consumers is +32% (132%), which is computed by dividing 5.82 by 4.40.*
- *Considering ± 20% principle qua cost of supply in terms of the Tariff Policy 2006, the **Tariff/ ABR** would work out to **Rs.5.28/kWh** (4.40 x 120%).*
- *Accordingly, CSS = 5.28 minus 4.40 = 0.88 paise/kWh. Reducing the same by 90% in terms of Regulation 33(b)(6)(iii), the CSS applicable for EHV consumers would be **Rs.0.79 paise/ kWh** (Rs.0.88 x 90%).*

29. Therefore, in terms of the aforesaid detailed submissions, this Tribunal ought to set aside the impugned order in terms of the following:

a. The CSERC ought to determine voltage-wise cost of supply/ service in line with the principle set out in para 18 of the present submissions; **(Paragraph 24)**
b. Thereafter, CSS ought to be computed based on voltage-wise cost of service/ supply in terms of the submissions made in paras 11-21, read with the computation provided by BALCO in para 22, of the present submissions; and **(Paragraphs 20-26 and 27-28)**

c. Tariff for the purposes of CSS can only be determined such that tariff is + 20% of the voltage-wise cost of service/ supply, in terms as stated in para 19-20 of the present submissions. **(Paragraph 25 above)**

Additional Common Written Submissions of the Appellant, BALCO, dated 03.03.2025

30. These additional written submissions are being filed following the hearing on 17.02.2025, during which the Tribunal reserved judgment in the appeal. They supplement the earlier submissions filed on 17.05.2024 and are necessitated to respond to the reliance placed by Respondent No. 2 (CSPDCL) on the Chhattisgarh High Court's judgment dated 11.02.2020 in Writ Petition (C) No. 1084 of 2017.

31. CSPDCL argued that BALCO had previously challenged Regulation 33(6)(b)(iii) of the CSERC Open Access Regulations, 2011 before the High Court in the said writ petition, where similar grounds and contentions were raised and subsequently rejected by the Court.

32. The argument of CSPDCL that the present appeal is barred due to the earlier writ petition filed by BALCO is untenable for several reasons:

a. The writ petition before the Chhattisgarh High Court specifically challenged Regulation 33(6)(b)(iii) itself.

b. That petition sought a direction to reframe the regulation in conformity with the Tariff Policies of 2006 and 2016 and judgments of the Appellate Tribunal interpreting "average" tariff as actual or voltage-wise tariff (as

noted in paras 6 and 7 of the High Court's judgment). Importantly, the High Court's judgment is under appeal before the Hon'ble Supreme Court in SLP (C) No. 4013 of 2021.

c. In contrast, the present appeal does not challenge the validity of the Regulation, but rather seeks its interpretation consistent with past Tribunal rulings on voltage-wise cost of supply.

33. Therefore, the prior writ proceedings do not bar the present appeal. The contentions of CSPDCL are incorrect and misleading. In light of these submissions and those previously filed on 17.05.2024, the Appellant prays that the impugned order be set aside and the appeal allowed.

Written Submissions of the Respondent No. 1, CSERC (Appeal No. 56 of 2017, dated 24.10.2024)

34. The present Appeal is directed against the Order dated 12.06.2014 passed by Chhattisgarh State Electricity Regulatory Commission in Petition No. 07 of 2014 by which the commission has determined the Cross Subsidy Surcharge for FY 2014-15 in respect of Chhattisgarh State Power Distribution Co. Ltd. (CSPDCL) for FY 2014-15.

RE: Cross Subsidy Surcharge (CSS) determined by the State Commission is not applicable to BALCO since Network of BALCO is connected to Inter-State Grid/CTU and CSERC has no jurisdiction to determine such CSS which can only be determined by Central

Electricity Regulatory Commission (Central Commission) in terms of Section 38 (2) (d) (ii) of the Electricity Act, 2003*:*

35. The Respondent No. 1 asserts that Section 38(2)(d)(ii) of the Electricity Act, 2003 does not vest the Central Electricity Regulatory Commission (CERC) with the authority to determine Cross Subsidy Surcharge (CSS). Instead, under the first proviso to Section 42(2), the power to determine CSS lies exclusively with the concerned State Commission, and its utilisation is governed by the second proviso to the same section. Section 38(2)(d)(ii) only empowers the Central Commission to determine transmission charges and any surcharge thereon in situations where the Central Transmission Utility (CTU) offers open access to a consumer, but such open access is granted by a State Commission. This limited scope cannot be interpreted to include the determination of CSS, which is distinctly provided for under Section 42(2). It is a settled interpretative principle that statutory provisions must be construed harmoniously, ensuring that none are rendered redundant or meaningless.

36. Support for this interpretation is drawn from the Hon'ble Supreme Court judgment in ***Dr. Jaishri Laxmanrao Patil v. Chief Minister & Ors., (2021) 8 SCC 1*** (paras 643-652), which affirms the principle of harmoniously construing statutory provisions. Further support is found in the decision of the Hon'ble Supreme Court in ***Sesa Sterlite Ltd. v. OERC & Ors., (2014) 8 SCC 444***, which clarifies the jurisdiction of State Commissions in matters of CSS. Additionally, reference is made to CERC's own orders dated 08.06.2013 in Petition No. 245/MP/2013 and dated 06.07.2016 in Petition No. 216/MP/2015, which align with this interpretation.

Accordingly, the contention raised by BALCO, claiming CERC's jurisdiction to determine CSS, is devoid of merit.

RE: In view of Regulation 2 of CSERC Open Access Regulations, 2011, the said Regulations are not applicable to BALCO since BALCO is not connected to the State Network:

37. Regulation 2 (6) (b) (iii) of the Open Access Regulations, 2011 is quoted below:

*"**2**. **Extent of Application***

These regulations shall apply to open access customers for use of intra - State transmission system and/or the distribution systems of licensees in the State, including such system when it is used in conjunction with inter-State transmission system."

38. The methodology for the calculation of Cross Subsidy Surcharge has been specified in Regulation 33(6) of the Chhattisgarh State Electricity Regulatory Commission (Connectivity and Intra-State Open Access) Regulations, 2011. Relevant extract of Regulation 33 (6) (b) (iii) is quoted below:

"33. Open Access Charges

The licensee/SLDC providing open access shall levy only such fees and/or charges as specified by the Commission from time to time. The principles of determination of the charges shall be as under.

……

(6) Cross subsidy Surcharge –

(a) The Commission may specify cross subsidy surcharge voltage wise/slab wise /individual categories of consumers separately.

(b) The principle and procedure for determining cross-subsidy surcharge shall be as under:

(i) Every consumer requiring supply of electricity through open access in accordance with these Regulations shall be liable to pay the cross- subsidy surcharge, as may be specified. Provided that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant, for carrying the electricity to the destination of its own use. The cross subsidy surcharge shall be payable by the open access customer for the actual energy received through open access at the point of drawl.

(ii) Cross subsidy surcharge shall also be payable by such consumer who receive supply of electricity from a person other than the distribution licensee in whose area supply is located, irrespective of whether it avails such supply through transmission/ distribution network of the licensee or not.

(iii) Such surcharge shall be based on the current level of cross subsidy of the tariff category / tariff slab and / or voltage level to which such consumer, belong or are connected to, as the case may be. It is to be calculated

based on the average cost method by taking the difference between the average tariff for such supply voltage for the consumer of subsidizing category and the average cost of supply for the licensee.

(iv) For consumers procuring power through open access in first control period of MYT regime, the cross subsidy surcharge shall be levied at 90% of cross subsidy surcharge determined by the Commission for that year. The cross subsidy surcharge for subsequent control period shall be as decided by the Commission from time to time.

Illustration:

Suppose the cross subsidy surcharge worked out for 2011-12 is 75 paise per kwh. Then applicable cross 46 subsidy surcharge for consumers procuring power through open access shall be 90% of 75 paise i.e. 67.5 paise (rounded of to 68 paise) per unit for the year 2011- 12. Suppose the cross subsidy surcharge worked out for 2012-13 is 70 paise per kwh. Then applicable cross subsidy surcharge for consumers procuring power through open access shall be 90% of 70 paise i.e. 63 paise per unit for 2012-13,

(v) For consumers procuring power through renewable energy based power generating plant, the cross subsidy surcharge shall be 50% of the cross subsidy surcharge determined for that year.

…….....”

39. It is submitted that Regulation 2 of CSERC Open Access Regulations, 2011 has to be read with Regulation 33 (6) (b) (ii).

40. A combined reading of Regulation 2 of CSERC Open Access Regulations, 2011 and Regulation 33 (6) (b) (ii) clearly shows that Cross Subsidy Surcharge is payable by a Consumer who receives supply of the electricity from a person other than a Distribution Licensee in whose area of supply it is located irrespective of whether it avails such supply through Transmission/Distribution Network of the Licensee or not.

41. It is a well-settled principle of interpretation that:

i) All the provisions of an Act/Rules/Regulations have to be read in conjunction and not in isolation;

ii) A meaningful interpretation which will make the provisions of the Act/Rules/Regulations workable has to be preferred to an interpretation which will render any of the provisions otiose and redundant.

iii) Reliance in this regard is placed on the judgment of Hon'ble Supreme Court in the case of ***Dr. Jaishri Laxmanrao Patil Vs. Chief Minister and Ors. (2021) 8 SCC 1*** (Para 643-652).

42. It is thus submitted that the contention of BALCO is misconceived and untenable.

RE: Section 42 (2) of the Electricity Act, 2003 is not applicable to BALCO and consequently CSS determined by the Commission is not

applicable since it applies only if Intra - State Transmission System and/or the Distribution Systems of Licensee is used for Open Access:

43. It is contended that the Cross Subsidy Surcharge becomes payable whenever a consumer procures electricity from a source other than the local distribution licensee, regardless of whether the State's distribution or transmission network is used in the process. This position is supported by the Hon'ble Supreme Court's decision in ***Sesa Sterlite Ltd. v. OERC & Ors., (2014) 8 SCC 444***, wherein it was explicitly held that CSS is applicable even if the distribution licensee's network is not utilised. BALCO's attempt to distinguish the Sesa Sterlite judgment on the ground that the consumer in that case used intra-State lines, albeit not owned by the distribution licensee, is erroneous. The judgment does not make the applicability of CSS contingent on the ownership or usage of a particular category of wires. BALCO's interpretation runs contrary to the ratio laid down by the Hon'ble Supreme Court and is legally untenable.

44. Moreover, Regulation 33(6)(b)(ii) of the CSERC Open Access Regulations, 2011 also provides as under:

> *"**Cross subsidy surcharge shall also be payable by such consumer who receive supply of electricity from a person other than the distribution licensee in whose area supply is located**, irrespective of whether it avails such supply through transmission/ distribution network of the licensee or not."*

45. It is thus submitted that the contention of BALCO is misconceived and untenable.

RE: Since no Regulation has been framed by the Commission under Section 62 (3) of the Electricity Act, 2003 for categorizing the Consumers into different Slab Rates, Cross Subsidies are being determined in an arbitrary manner:

46. The Appellant's claim that, in the absence of specific regulations under Section 62(3) of the Electricity Act, 2003, for consumer categorization into slab rates, the determination of cross-subsidy is arbitrary, is without merit. Section 181 of the Act, which grants regulation-making power to the Commission, does not require framing of regulations under Section 62(3), even though it mentions Sections 62(2) and 62(5). Therefore, no regulatory obligation arises specifically under Section 62(3). This very contention was earlier raised and dismissed by the Hon'ble High Court of Chhattisgarh in Writ Petition (C) No. 1084 of 2017, and thus cannot be re-agitated before the Tribunal.

47. Furthermore, the Chhattisgarh State Electricity Regulatory Commission (CSERC) has already prescribed a methodology for determining Cross Subsidy Surcharge in Regulation 33(6)(b)(iii) and 33(6)(b)(iv) of its Connectivity and Open Access Regulations, 2011. Under Regulation 33(6)(b)(iii), the surcharge is to be calculated using the average cost method, specifically, the difference between the average tariff applicable to the subsidizing consumer category at the relevant voltage level and the licensee's average cost of supply. In the impugned order, the Commission has determined the surcharge for Extra High Voltage (EHV)

consumers for FY 2014-15 strictly in accordance with the Electricity Act, 2003, and the applicable CSERC regulations.

RE: Since Regulations have not been framed by the Commission under Section 62 (3) of the Electricity Act, 2003, Cross Subsidy Surcharge has to be calculated in accordance with Tariff Policy, 2006:

48. The Appellant's reliance on the Tariff Policy, 2006, to challenge the determination of Cross Subsidy Surcharge is misplaced, as Regulation 33(6)(b)(iii) of the CSERC (Connectivity and Open Access) Regulations, 2011 provides a clear and valid methodology for CSS determination. Accordingly, the judgments cited by the Appellant in this context have no relevance to the present matter. Moreover, Regulation 33(6)(b)(iii) aligns with the principles of the Tariff Policy, 2006.

49. Nevertheless, and without prejudice, it is emphasized that the Tariff Policy is only of a guiding nature and not binding on the State Regulatory Commissions. Section 61(i) of the Electricity Act, 2003 reinforces this, stating that Commissions are to be guided, not governed by the policy. The statement of objects and reasons of the Electricity Act, 2003, and judicial observations in ***PTC India Ltd. v. CERC, (2010) 4 SCC 603,*** underline that the Act sought to transfer regulatory functions from the Government to independent Commissions. Making the Tariff Policy binding would undermine this objective and reintroduce governmental influence, which is impermissible under the scheme of the Act.

50. Further, since the Tariff Policy is uniform for the entire country, it cannot be binding across States with diverse economic and regulatory conditions. In fact, the

Tariff Policy, 2016 itself acknowledges that the suggested CSS formula may not be suitable for all States and allows Commissions to modify the methodology as per State-specific needs. This interpretation is supported by the following Hon'ble Supreme Court judgments: ***PTC India Ltd. v. CERC, (2010) 4 SCC 603 (Paras 17, 18, 25, 26); Transmission Corporation of A.P. v. Sai Renewable Power, (2011) 11 SCC 34 (Para 59); Reliance Infrastructure Ltd. v. State of Maharashtra, (2019) 3 SCC 352 (Paras 29–32)***.

51. The Hon'ble Supreme Court has consistently held that the Electricity Act, 2003 is a comprehensive and self-contained code delegating extensive regulatory powers to State Commissions, including tariff-related functions. These are insulated from direct governmental control. Finally, the submission based on the Tariff Policy stands conclusively settled against the Appellant by the judgment dated 11.02.2020 of the Hon'ble High Court of Chhattisgarh. Therefore, the contention lacks merit and is unsustainable.

RE: Determination of CSS by the Commission is erroneous:

52. It is submitted that the determination of Cross Subsidy Surcharge by the Commission is in conformity with the Regulations.

53. While computing the Cross-Subsidy Surcharge, the Commission first computed the Average Billing Rate (ABR) of each Category of EHV Consumers i.e. EHV 1, EHV 2, EHV 3 and EHV 4 and the same works out to Rs. 5.57 Per Unit, Rs. 6.06 Per Unit, Rs. 5.55 Per Unit and Rs. 6.31 Per Unit respectively. Computation of the same is given in the Table below:

S. No.	Category	Estimated Sales	Revenue at Approved Tariff	Average Tariff
1	EHV 1- Railway Traction	1055	588	5.57
2	EHV 2- Heavy Industries	1040	630	6.06
3	EHV 3- Steel Industries	218	121	5.55
4	EHV 4- Other EHV Consumers	141	89	6.31
	Consolidated figures of all EHV category	**2454**	**1428**	**5.82**

54. It is evident from the above Table that the Average Tariff of all EHV Consumers is more than the Average Cost of Supply, i.e., Rs 4.40 Per Unit.

55. Therefore, as per Regulations, the Commission has computed the consolidated Average Tariff for all EHV categories as Rs. 5.82 Per Unit, which is given in the Table above.

56. Regulation provides for taking the difference between the Consolidated Average Tariff of Subsidizing Category and Average Cost of Supply and levying 90% of the aforesaid difference. Accordingly, Cross-Subsidy Surcharge has been computed as given in the Table below:

Particulars	Rs Per Unit

Average Billing Rate for Subsidizing Consumers of EHV Category.	5.82
Average Cost of Supply.	4.40
Difference of Consolidated ABR and Average Cost of Supply.	1.42
Cross Subsidy Surcharge (90% of above difference)	**1.278**

57. It is thus submitted that the CSS of Rs. 1.278 per Unit as computed by the Commission is in conformity with the applicable Regulations and is fully justified.

RE: Clause 8.3 (2) of the National Tariff Policy, 2006, stipulates that supply Tariffs have to be within the range of +20% of the Average Cost of Supply:

58. The Tariff Design of Retail Consumers depends on a number of factors. Two such important factors are the Sales Mix Pattern and Revenue Mix Pattern of the Distribution Licensee.

59. Energy Sales Pattern, Revenue Mix Pattern, and Cross-Subsidy Surcharge of CSPDCL (Distribution Licensee) for different years are as under:

Energy Sales

Year	Energy Sales (MU)			Energy Sales Mix	
	LV	HV	Total	%HV	%LV
2005-06	2,737.00	5197.00	7,934.00	66%	34%

Year	Energy Sales (MU)			Energy Sales Mix	
	LV	HV	Total	%HV	%LV
2006-07	3,007.00	5615.00	8,622.00	65%	35%
2007-08	3460.00	6414.00	9874.00	64.96%	35.04%
2008-09	4628.14	6860.00	11488.14	59.71%	40.29%
2009-10	5365.58	5945.81	11,311.00	53%	47%
2010-11	5540.78	6597.06	12,138.00	54%	46%
2011-12	6544.00	6629.00	13,173.00	50%	50%
2012-13	7483.00	6717.00	14,200.00	47%	53%
2013-14	7940.00	6849.00	14,789.00	46%	54%
2014-15	9185.00	7916.00	17,101.00	46%	54%

Revenue

Year	Revenue from Sale of Power (Rs. Crore) (Retail Sale) Category-Wise		Revenue Mix	
FY	LV	HV	%HV	%LV
2005-06	633.30	2282.93	79%	21%
2006-07	671.54	2068.55	75	25%
2007-08	703.13	2375	77%	23%
2008-09	817	2613	76%	24%
2009-10	906	2690	75%	25%
2010-11	1,105.26	2440.7	69%	31%
2011-12	1,529.08	3146.00	67%	33%
2012-13	2,002.27	3308.00	62%	38%

Year	Revenue from Sale of Power (Rs. Crore) (Retail Sale) Category-Wise		Revenue Mix	
FY	**LV**	**HV**	**%HV**	**%LV**
2013-14	2,235.62	3532.83	61%	39%
2014-15	3,062.50	4192.00	58%	42%

Cross Subsidy Surcharge

Year	ACOS	Cross Subsidy Surcharge	
		EHV (132 KV/220 KV)	**HV 33 KV**
2005-06		NA	NA
2006-07		0.46	0.8
2007-08		0.65	0.38
2008-09		0.65	0.38
2009-10		0.71	0.3
2010-11		0.71	0.3
2011-12	3.78	0.99	0.44
2012-13	4.07	0.69	0.19
2013-14	3.9	1.53	1.026
2014-15	4.4	1.278	0.909

60. The sales data reveals a significant shift in the energy sales mix over time, which has impacted cross-subsidy levels. In FY 2005-06, the ratio of energy sales between HT and LT consumers was 66% to 34%, with a corresponding revenue mix of 79% to 21%. By FY 2014-15, this had shifted to 46% HT and 54% LT in energy sales, with a revenue contribution of 58% from HT and 42% from LT consumers. Since HT consumers typically fall within the subsidizing category, the reduction in their sales share has led to a decrease in cross-subsidy contributions. The National Electricity Policy mandates a gradual and progressive reduction in cross-subsidies, avoiding tariff shocks to consumers.

61. However, changes in the energy sales mix and an increase in the average cost of supply have contributed to rising cross-subsidy levels. For example, if the average cost of supply rises from Rs. 3 to Rs. 5 per unit, and the tariff for subsidizing consumers remains within +20% of the average, the cross-subsidy increases from Rs. 0.60 to Rs. 1.00 per unit. Thus, the main factors contributing to the increase in cross-subsidy surcharge are the higher average cost of supply and a substantial change in the HT-LT energy sales ratio. These dynamics are considered in tariff determinations in line with the objective of the Tariff Policy to maintain consumer affordability and avoid tariff shocks.

RE: Section 61 (g) of Electricity Act, 2003 does not use the word "Average" as prefix before "Cost of Supply". In this regard, reliance is placed upon some judgments wherein it has been held that the word "Average" means Actual/ "Voltage-wise" Cost of Service/supply:

62. The Appellant's reliance on the ***Punjab State Power Corporation Ltd. v. PSERC*** case is misplaced. In that matter, the Hon'ble Supreme Court did not reject the use of Average Cost of Supply (ACoS) under the Electricity Act but upheld the Tribunal's direction that voltage-wise cost data should be provided in the future so that a gradual shift can be made towards determining the Voltage Cost of Supply (VCoS). The Court found no infirmity in this approach.

63. Pursuant to this, the Commission has begun transitioning from ACoS to VCoS. In the Retail Tariff Order for FY 2016-17, it attempted voltage-wise tariff determination, keeping tariffs lower for consumers drawing power at higher voltages. CSPDCL submitted VCoS data for FY 2013-14, but the Commission noted that the figures relied on assumptions and lacked realistic loss assessments, making them unsuitable for accurate conclusions.

64. Despite these limitations, the Commission followed the guiding principle that higher voltage consumers should pay lower tariffs. This rationale was applied consistently in tariff orders issued post-FY 2016-17, with care taken to prevent tariff shocks during rationalization of EHV and HV categories.

65. Accordingly, the Cross Subsidy Surcharge determined by the Commission is fully aligned with the Electricity Act, 2003, Tariff Policies of 2006 and 2016, and the CSERC Open Access Regulations, 2011. On the other hand, BALCO's CSS computation in its written submissions deviates from the applicable regulations and rests on flawed assumptions. Hence, the present appeal lacks merit and deserves to be dismissed.

Written Submissions of the Respondent No. 1, CSERC (Appeal No. 325 of 2017, dated 17.02.2025)

66. Though multiple grounds were initially raised in the Appeal, during the last hearing, the sole issue pursued by the Appellant was that the determination of Cross Subsidy Surcharge by the Commission contravened prior judgments of the Tribunal. The Appellant primarily relied on the Tribunal's Judgment dated 24.03.2015 in Appeal No. 103 of 2012 (***Maruti Suzuki India Ltd. v. Haryana Electricity Regulatory Commission & Anr.***). In Paragraph 72 of that judgment, the Tribunal held that where the Tariff Regulations do not prescribe a formula for computing CSS, the Commission must adopt the formula set out in the Tariff Policy.

67. Further, in Paragraph 76(a), the Tribunal observed that while the method under Regulation 33 aligns with the Tariff Policy, the Policy provides a formula, which the Regulation lacks. In Paragraph 76(d), it reiterated that in the absence of a formula in the Regulations, the Tariff Policy formula must be applied. Thus, the ruling in Maruti Suzuki establishes that the Tariff Policy formula governs CSS computation only when the relevant Regulations are silent on the formula.

68. Conversely, where the Regulations do provide a formula, as is the case here under Regulation 33(6)(b)(iii), the Tariff Policy formula is inapplicable. Accordingly, the Maruti Suzuki judgment does not apply to the present matter. Moreover, it is noteworthy that the said judgment has been stayed by the Hon'ble Supreme Court by order dated 07.07.2015.

69. The Appellant had earlier challenged the validity of Regulation 33(6)(b)(iii) of the CSERC (Connectivity and Open Access) Regulations, 2011 by filing W.P. (C) No. 1084 of 2017 before the Hon'ble High Court of Chhattisgarh. The challenge was on the ground that the formula prescribed for the determination of Tariff and Cross Subsidy Surcharge under the said Regulation was ultra vires the Electricity Act, 2003, and inconsistent with the Tariff Policy. The Appellant contended that since the impugned Tariff Order was passed under this Regulation, it was compelled to challenge the Regulation itself.

70. Reference was also made during the writ proceedings to the judgment in the Punjab State Power Corporation case. After hearing both parties, the Hon'ble High Court, by its judgment dated 11.02.2020, dismissed the Writ Petition and upheld the validity of Regulation 33(6)(b)(iii). Although the Appellant (BALCO) has filed a Special Leave Petition before the Hon'ble Supreme Court against this decision, no stay has been granted. In the present Tariff Order under challenge, the Commission determined CSS for Extra High Voltage (EHV) consumers for FY 2017-18 in accordance with the CSERC Open Access Regulations, 2011.

71. Specifically, CSS has been computed as per the methodology outlined in Regulation 33(6)(b)(iii) and 33(6)(b)(iv), which provide that CSS is to be calculated using the average cost method. This involves taking the difference between the average tariff for the relevant subsidizing category and the average cost of supply. Additionally, for the first control period under the MYT regime, CSS is to be levied at 90% of the computed surcharge, with future control periods subject to the Commission's discretion.

72. While computing the Cross-Subsidy Surcharge, the Commission first computed the Average Tariff of each Category of EHV Consumers, i.e., HV 2 (132 kV), HV 3 (220 kV), HV 3 (132 kV), HV 4 (220 kV), and HV 4 (132 kV). The same works out to Rs. 7.03 per Unit, Rs. 11.48 per Unit, Rs. 7.97 per Unit, Rs. 9.20 per Unit and Rs. 7.12 per Unit respectively. Computation of the same is given in the Table below:

S. No.	Category	Sales (MU) (A)	Revenue at Approved Tariff (Rs. in Crore) (B)	Average Tariff (Rs. per Unit) (C)=BX10/A
1	HV2- Mines (132 kV)	106.49	74.88	7.03
2	HV3 – Other Industries (220 kV)	229.91	263.9	11.48
3	HV3 – Other Industries (132 kV)	893.05	711.58	7.97
4	HV4 – Steel Industries (220 kV)	11.44	10.53	9.20
5	HV4 – Steel Industries (132 kV)	296.29	210.98	7.12
6	**Weighted Average of Average Tariff of 132 kV & 220 kV Consumers**			**8.27**

73. It is evident from the above Table that the Average Tariff of High Voltage (220 / 132 kV) Consumers is more than the Average Cost of Supply, i.e., Rs 6.41 per Unit.

74. As per Regulation 33 (6) (b) (iii) and Regulation 33 (6) (b) (iv) of CSERC Open Access Regulations, 2011, the Commission has computed the Average Tariff for the above HV Category as Rs. 8.27 per Unit, which is indicated in the above Table.

75. Regulation 33 (6) (b) (iii) provides for taking the difference of Average Tariff of Subsidizing Category and Average Cost of Supply and levying 90% of the aforesaid difference as Cross Subsidy Surcharge. Accordingly, Cross-Subsidy Surcharge has been computed as given in the Table below:

Particular	**Rs Per Unit**
Average Tariff for Subsidizing Consumers of 132 kV & 220 kV Consumers	8.27
Average Cost of Supply	6.41*
Difference of Weighted Average of Average Tariff and Average Cost of Supply	1.86
Cross-Subsidy Surcharge (90% of above difference i.e. 1.86)	**1.68****

76. It is thus submitted that the CSS computed by the Commission is in conformity with the Regulations.

77. Reference may also be made to Rule 13 of the Electricity Rules, 2005, inserted by way of Amendment with effect from 29.12.2022. The said Rule provides as under:

> ***"13. Surcharge payable by Consumers seeking Open Access.*** *– The surcharge, determined by the State Commission under clause (a) of sub-section (1) of section 86 of the Electricity Act, 2003 shall not exceed twenty per cent of the average cost of Supply."*

78. After Notification of Rule 13 of Electricity Rules, 2005, the Commission has amended Regulation 33 (6) (b) (iii) as under:

> *"Such surcharge shall be based on the current level of cross subsidy of the tariff category / tariff slab and / or voltage level to which such consumer, belong or are connected to, as the case may be. It is to be calculated based on the average cost method by taking the difference between the average tariff for such supply voltage for the consumer of subsidizing category and the average cost of supply for the licensee subject to the ceiling limit of 20% of adjusted average cost of supply for that year.*
>
> *Illustration: Suppose, the cross subsidy surcharge worked out for FY 2024-25 is 200 paise per kwh and adjusted average cost of supply for FY 2024-25 is Rs. 6.75/kWh.Then 20% of adjusted average cost of supply will be Rs. 1.35/kWh.Here, computed cross subsidy surcharge*

200 paise/unit is more than 20% of adjusted average cost of supply i.e.135 paise/unit. Therefore, the cross subsidy surcharge for FY 2023-24, will be 135 paise/unit."

79. As per Rule 13 of Electricity Rules, 2005, inserted by way of Amendment with effect from 29.12.2022, CSS shall not exceed 20% of the average cost of Supply (ACoS). The Commission is determining CSS on the basis of "Average Cost of Supply" as specified in CSERC (Connectivity and Open Access) Regulations, 2011. CSS determined by the Commission w.e.f 2021-22 is in the range of 9.25-19.45% of ACoS (Average Cost of Supply), which is below the 20% limit of ACoS. This would be evident from the following Table:

Cross Subsidy Surcharge in % of ACoS applicable to BALCO

Year	Cross Subsidy Charges (Rs. per kWh)	ACoS (Rs. per kWh)	Cross Subsidy Surcharge expressed in % of ACoS
2021-22	0.88	6.41	13.73%
2022-23	0.62	6.22	9.97%
2023-24	1.28	6.58	19.45%
2024-25	0.64	6.92	9.25%

80. In the above premises, it is submitted that the Appeal is devoid of any merit and is liable to be dismissed.

Additional Submissions of the Respondent No. 1, CSERC (Appeal No. 56 of 2017, dated 06.03.2025)

81. These appeals challenge the Orders dated 12.06.2014 and 31.03.2017 issued by the CSERC in Petition No. 07 of 2014 and Petition No. 64 of 2016, respectively, concerning the determination of tariff and Cross Subsidy Surcharge for CSPDCL for FY 2014-15 and FY 2017-18.

82. Although multiple grounds were raised earlier, during the hearing on 31.01.2025, the Appellant only argued that the Commission's determination of CSS was contrary to the judgment of the Appellate Tribunal, particularly the Tribunal's order dated 24.03.2015 in ***Maruti Suzuki India Ltd. v. HERC & Anr***., Appeal No. 103 of 2012. Accordingly, the Respondent Commission limited its submissions, both oral and written on 17.02.2025, to rebutting this specific argument.

83. Later, in Additional Written Submissions dated 03.03.2025, the Appellant attempted to reintroduce broader arguments from earlier submissions dated 17.05.2024. The Commission objects to this, asserting that the Appellant had confined its case during the hearing to the limited ground concerning CSS and the Maruti Suzuki judgment and cannot now expand the scope of the appeal.

84. Therefore, it is submitted that the Written Submissions filed by the Appellant on 17.05.2024 may be considered only with regard to the contention that the determination of Cross Subsidy Surcharge (CSS) by the Commission in the present case is in contravention of Judgments of the Hon'ble Tribunal in the case of Maruti Suzuki India Limited, etc.

85. The submissions contained in Written Submissions dated 17.02.2025 on behalf of the Commission with regard to the above contention of the Appellant are hereby reiterated.

Written Submissions of the Respondent No. 2, CSPDCL (Appeal No. 56 of 2017, dated 12.02.2025)

86. Bharat Aluminum Company Ltd. (BALCO) has filed the present appeal challenging the order dated 12.06.2014 passed by CSERC in Petition No. 07 of 2014. In the said order, CSERC determined the Cross-Subsidy Surcharge (CSS) for Extra High Voltage (EHV) consumers availing open access at Rs. 1.278/kWh. BALCO contends that this CSS is incorrectly calculated, and had the National Tariff Policy (NTP), particularly Clause 8.3(2), been appropriately applied, the CSS would have been Rs. 0.79/kWh.

87. The Appellant argues that the CSS was determined without proper adherence to the NTP formula and the principle that the tariff should be within ±20% of the average cost of supply. It claims that the surcharge calculation is flawed and non-compliant with policy mandates. In response, the Respondent No. 2 submits that the demand for CSS is strictly in line with Regulation 33(6)(b)(ii) of

the Open Access Regulations, 2011, framed by CSERC. According to this provision, any open-access consumer located within a distribution licensee's supply area and sourcing power from another entity is liable to pay CSS to the licensee.

88. The Respondent No. 2 further asserts that the methodology for calculating the cost of supply is based on average cost, consistent with the Open Access Regulations, NTP 2006, Electricity (Amendment) Rules 2022, and CSERC's Second Amendment Regulations, 2023 on intra-state open access. The dispute, therefore, centers around the methodology and formula adopted by CSERC for CSS calculation, with BALCO alleging non-compliance with national policy directives, and CSPDCL defending its actions as being in accordance with prevailing statutory and regulatory frameworks.

A. Cross Subsidy Surcharge:

89. Respondent No. 2 explains that within a State, consumers are categorized as either subsidizing or subsidized. Subsidizing categories pay tariffs above their cost of supply, generating surplus revenue that helps cover the deficit from supplying electricity to subsidized categories, who are charged below the cost of supply. This differential forms the basis of cross-subsidy in tariff structures. Since every tariff determination involves this cross-subsidy element, any shift by subsidizing consumers to alternate power sources disrupts this balance, resulting in financial loss for the distribution licensee and jeopardizing its capacity to continue subsidizing other consumers.

90. To compensate for this loss, a Cross-Subsidy Surcharge (CSS) is levied on consumers who move to open access and no longer contribute to cross-subsidy through the licensee's tariff. In this case, BALCO, categorized as a subsidizing consumer, has procured power from an alternative source. CSPDCL submits that the resulting CSS demand raised on BALCO is legally valid and justified, as it is intended to recover the cross-subsidy component that BALCO would have otherwise paid.

91. Respondent No. 2 further submits that the levy of CSS on open-access consumers is expressly provided for under the Electricity Act, 2003. The Act's Statement of Objects and Reasons recognizes open access in transmission as a core feature, with a mechanism to impose a surcharge to safeguard existing cross-subsidies, which are to be phased out over time. Section 39 of the Act mandates State Transmission Utilities to allow non-discriminatory open access to any licensee or generating company (on payment of transmission charges) and to consumers (as permitted by the State Commission under Section 42(2)), on payment of both transmission charges and a surcharge.

92. Section 42(2) further requires State Commissions to implement open access in a phased manner, factoring in cross-subsidy and operational constraints. The first proviso to Section 42(2) allows consumers to access alternate supply sources upon paying the surcharge and wheeling charges as determined by the Commission. The second proviso mandates that such surcharge must be used to maintain the current level of cross-subsidy within the distribution licensee's area and must be progressively reduced as per the Commission's directions. Thus, the statutory framework under the 2003 Act clearly authorizes the imposition of CSS

on open-access consumers as a transitional mechanism to support the distribution licensee in sustaining its cross-subsidy obligations.

93. Further, in the case of ***Sesa Sterlite Ltd. v. Orrisa Electricity Regulatory Commission and Others (2014) 8 SCC 444***, the Hon'ble Supreme Court has held that:

> *"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**."*

94. In view of the clear statutory mandate and the clear findings of the Hon'ble Supreme Court in the aforesaid judgment, the Appellant is not entitled to procure power from a source other than the Respondent No. 2 without discharging its obligation to pay the cross-subsidy surcharge.

B. Regulatory Framework Governing Open Access and Cross-Subsidy Surcharge

95. Respondent No. 2 submits that under Section 61 of the Electricity Act, 2003, State Commissions are required to determine tariffs in a manner that progressively reflects the actual cost of supply and ensures a phased reduction of cross-subsidies, as per guidelines issued by the Commission. Section 3 mandates the Central Government to issue the National Electricity Policy and Tariff Policy to guide the sector's optimal development.

96. Further, under Section 86(4) read with Section 61(i), State Commissions must be guided by these national policies while performing their functions. Pursuant to this, the Central Government issued the National Electricity Policy on 12.02.2005. Clause 5.3.3 of the Policy emphasizes non-discriminatory open

access in transmission and distribution to allow bulk consumers to purchase electricity directly from competitive generators, promoting competition and better availability. Clause 5.8.3 of the Policy provides that the surcharge levied on open-access consumers must not be burdensome.

97. Later, on 06.01.2006, the Tariff Policy was notified. Clause 8.3.2 mandates that State Electricity Regulatory Commissions should ensure tariffs progressively align with the actual cost of supply. It directs that each Commission must issue a roadmap within six months to ensure that by the year 2010–2011, tariffs fall within ±20% of the average cost of supply, with intermediate milestones to progressively reduce cross-subsidies. These provisions together form the legal and policy basis for both implementing open access and ensuring that the surcharge regime supports gradual cross-subsidy reduction while not imposing undue burdens on consumers.

98. Further, Clause 8.5.1 of the Tariff Policy prescribes the methodology for computing cross-subsidy surcharge and provides as follows:

> *"8.5 …*
>
> *A consumer who is permitted open access will have to make payment to the generator, the transmission licensee whose transmission systems are used, distribution utility for the wheeling charges and, in addition, the cross subsidy surcharge. The computation of cross subsidy surcharge, therefore, needs to be done in a manner that while it compensates the distribution licensee, it does not constrain introduction of competition through open access. …*

Accordingly, when open access is allowed the surcharge for the purpose of sections 38,39,40 and sub-section 2 of section 42 would be computed as the difference between (i) the tariff applicable to the relevant category of consumers and (ii) the cost of the distribution licensee to supply electricity to the consumers of the applicable class. In case of a consumer opting for open access, the distribution licensee could be in a position to discontinue purchase of power at the margin in the merit order. Accordingly, the cost of supply to the consumer for this purpose may be computed as the aggregate of (a) the weighted average of power purchase costs (inclusive of fixed and variable charges) of top 5% power at the margin, excluding liquid fuel based generation, in the merit order approved by the SERC adjusted for average loss compensation of the relevant voltage level and (b) the distribution charges determined on the principles as laid down for intra-state transmission charges.

Surcharge formula:

$$S = T – [C (1+ L / 100) + D]$$

Where

S is the surcharge

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

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

D is the Wheeling charge

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

The cross-subsidy surcharge should be brought down progressively and, as far as possible, at a linear rate to a maximum of 20% of its opening level by the year 2010-11."

99. Subsequently, in the year 2011, the Respondent Commission notified Chhattisgarh State Electricity Regulatory Commission (Connectivity and Intra-State Open Access) Regulations, 2011 ('Open Access Regulations, 2011'), wherein the methodology for calculation of cross subsidy surcharge has been prescribed by the Respondent Commission in Regulation 33(6). The same is as under:

"6) ***Cross subsidy Surcharge –***

(a) The Commission may specify cross subsidy surcharge voltage wise/slab wise /individual categories of consumers separately.

(b) The principle and procedure for determining cross-subsidy surcharge shall be as under:

(i) Every consumer requiring supply of electricity through open access in accordance with these Regulations shall be liable to pay the cross-subsidy surcharge, as may be specified.

…

(ii) Cross subsidy surcharge shall also be payable by such consumer who receive supply of electricity from a person other than the distribution licensee in whose area supply is located, irrespective of whether it avails such supply through transmission/ distribution network of the licensee or not.

(iii) Such surcharge shall be based on the current level of cross subsidy of the tariff category / tariff slab and / or voltage level to which such consumer, belong or are connected to, as the case may be. ***It is to be calculated based on the average cost method by taking the difference between the average tariff for such supply voltage for the consumer of subsidizing category and the average cost of supply for the licensee.***

(iv) For consumers procuring power through open access in first control period of MYT regime, the cross subsidy surcharge shall be levied at 90% of cross subsidy surcharge determined by the Commission for that year. The cross subsidy surcharge for subsequent control period shall be as decided by the Commission from time to time. …"

100. The Respondent Commission has stipulated that the cross-subsidy surcharge is to be determined based on the prevailing level of cross-subsidy for the relevant tariff category, tariff slab, and/or voltage level applicable to the consumer. The computation of the surcharge is to be carried out using the average cost method, wherein the surcharge is derived as the difference between the average tariff for the applicable voltage level of the subsidizing consumer category and the average cost of supply for the licensee.

101. Furthermore, the Respondent Commission has notified the Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff According to Multi-Year Tariff Principles and Methodology and Procedure

for Determination of Expected Revenue from Tariff and Charges) Regulations, 2012, wherein Regulation 68 provides as follows:

> ***"68. RECEIPTS ON ACCOUNT OF CROSS-SUBSIDY SURCHARGE***
>
> *The amount received by the Distribution Licensee by way of cross-subsidy surcharge, as approved by the Commission in accordance with the Chhattisgarh State Electricity Regulatory Commission (Connectivity and Intra-State Open Access) Regulations, 2011, as applicable and as amended from time to time, shall be deducted from the Aggregate Revenue Requirement in calculating the tariff for retail supply of electricity by such Distribution Licensee, at the time of truing up."*

102. Cross-subsidy surcharge is thus revenue receivable for the Respondent, which, as stated above, is utilized for balancing the cost of supply as between the subsidizing and the subsidized category of consumers of the Respondent.

103. It is relevant to state that the Appellant challenged the aforesaid Regulation 33 (6) of the Open Access Regulations 2011, by filing Writ Petition (Civil) No. 1084 of 2017 before the Hon'ble High Court of Chhattisgarh at Bilaspur. However, vide judgment dated 11.02.2020, the Hon'ble High Court dismissed the writ petition and upheld the validity of the said Regulation**.** Aggrieved by the said judgment, the Appellant has preferred an appeal before the Hon'ble Supreme Court by filing SLP (Civil) No. 4013 of 2021, which is presently pending adjudication.

104. Vide Notification No. No. 23/2/2005-R&R (Vol-IX) dated 28.01.2016, the Ministry of Power notified the National Tariff Policy, 2016 wherein Clause 8.3.2 prescribed that:

> *"For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the Appropriate Commission would notify a roadmap such that tariffs are brought within ±20% of the average cost of supply. The road map would also have intermediate milestones, based on the approach of a gradual reduction of cross-subsidies".*

105. Further, in the year 2022, the Ministry of Power notified the Electricity (Amendment) Rules, 2022, introducing Rule 13 in the Electricity Rules, 2005. The newly inserted Rule 13, titled *Surcharge payable by consumers seeking open access,* stipulates that the surcharge determined by the State Commission under Clause (a) of Section 86 of the Electricity Act, 2003, shall not exceed 20% of the average cost of supply. Subsequently, vide Notification No. 104/CSERC/2023 dated 26.09.2023, the Respondent Commission notified the CSERC (Inter-State Open Access in Chhattisgarh) (Second Amendment) Regulations, 2023, wherein Regulation 33(6)(iii) was amended and reads as follows:

> *"Such surcharge shall be based on the current level of cross-subsidy of the tariff category, tariff slab, and/or voltage level to which the consumer belongs or is connected to, as the case may be. It is to be calculated based on the average cost method by taking the difference between the average tariff for such supply voltage for consumers in*

the subsidizing category and the average cost of supply for the licensee, subject to a ceiling limit of 20% of the adjusted average cost of supply for that year."

106. In view of the aforementioned rules and regulations, it is pertinent to state that both the Central Government and the Respondent Commission have adopted an average cost-based methodology for calculating the cost of supply. The Respondent Commission has adhered to the principles laid down in the National Tariff Policy, treating it as a guiding framework. Consequently, the Respondent Commission amended the Open Access Regulations, 2011 to incorporate and apply the formula of ± 20% of the average cost of supply, in conformity with the mandate of the National Tariff Policy and the Electricity (Amendment) Rules, 2022.

C. Cross subsidy surcharge under Tariff Order dated 12.06.2014:

107. Based on the above methodology prescribed in the Open Access Regulations, the Respondent Commission has calculated in its Tariff Order dated 12.06.2014, a cross-subsidy surcharge for each of the subsidizing categories of consumers in the State, viz., consumers availing supply at EHV and HV levels. The calculation of the cross-subsidy surcharge applicable for the EHV category has been made by the Respondent Commission as under:

A. Calculation of average rate of EHV subsidizing category:

Consumer Category	**Energy Sales as approved**	**Applicable Tariff (Rs/Kwh)**	**Revenue (cr)**

	by the Commission (MU)		
(1)	(2)	(3)	(4)
Railway Traction	1055	5.57	588
Heavy Industry + other EHV consumers	1181	6.09	719
Steel Industry	218	5.55	121
Total	1428		2454
Average rate of EHV subsidizing consumer = 2454x10/1428 = Rs.5.82/Kwh			

B. Calculation of average cost of supply:

Total energy sales estimated by Commission (page 114)	16903 MU
Annual ARR approved by the Commission (page 135)	7435.07 Cr.
Average cost of supply= 16903x10=Rs.4.40/Kwh	

C. Calculation of cross subsidy surcharge for EHV consumers:

Particulars	**EHV**
Average rate of EHV subsidizing consumer	Rs.5.82/Kwh

Average cost of supply	Rs.4.40/Kwh
Cross subsidy surcharge	Rs.5.82-Rs.4.40= Rs.1.42/Kwh
Cross subsidy surcharge at 90% of the computed value	**Rs.1.278/Kwh**

108. Since the calculation of cross-subsidy surcharge under the Tariff Order dated 12.06.2014 has been done as per the provisions of the Open Access Regulations, 2011, there is no infirmity existing therein as has been wrongly contended by the Appellant.

109. Further, the calculation of the average cost of supply and cross-subsidy payable as per the Tariff Policy by the EHV category of consumers, such as the present Appellant, is as under:

(i) <u>Weighted average cost of supply:</u>

(a) Total approved energy to be procured by the Respondent for FY 2014-15: 30365 MU

(b) Total approved energy to be procured by the Respondent for FY 2014-15: 29176.94 MU (excluding Liquid Fuel based generation and renewable power)

(c) 5 % of total approved energy to be procured by the Respondent (5% of "B") = 1458.84 MU

(d) Weighted average of power purchase costs of top 5 % of power: (335.96 x 4.30) + (176.30 x 4.16) + (946.58 x 3.35)/1458.84 = Rs.3.66/Kwh

(e) PGCIL transmission charges (258.73 Cr/8082.46 MU) = 32.01Paise/Kwh

(f) CSPTCL transmission charges (765.64 Cr/30365 MU) = 25.21Paise/Kwh

(g) SLDC charges (14.15 Cr/30365 MU) = 0.46Paise/Kwh

(h) Weighted average cost of supply of top 5% power (D+E+F+G) = Rs. 4.23/Kwh

(ii) <u>Cross Subsidy surcharge calculation:</u>

Formula - S= T-{C(1+ L/100)+D}

Where

S – Surcharge

T – Tariff payable by relevant category of consumer (in case of the present Petitioner, the **applicable tariff is tariff for Heavy Industries which is Rs 6.09/Kwh)**

C - Weighted average cost of supply of top 5% power = Rs 4.226/Kwh

L – System Losses for applicable voltage level (4.3% losses for EHV transmission lines)

D - Wheeling charges – zero

Surcharge(S)= 6.09-{4.23(1+4.30/100)+0} = Rs.1.678/Kwh

The calculation of the cross-subsidy surcharge as submitted by the Appellant in the present matter is also erroneous for the following reasons:

(a) 5 % of total approved energy to be procured by the Respondent (5% of "29176.94 MU excluding liquid fuel-based generation and renewable power") = 1458.84 MU whereas the Appellant has considered the same as 396 MU (5% of 7925 MU);

(b) For calculation of the weighted average of the power purchase cost of the top 5% power, the Appellant has relied on the power purchase unit and its cost submitted by the Respondent in its Petition and not what has been approved by the Respondent Commission. For example, the purchase of power from NTPC MOUDA at Rs.4.94/Kwh considered by the Appellant, has not been approved by the Respondent Commission. Similarly, the purchase of power from Kahalgaon Station has been considered by the Appellant as Rs.4.37/Kwh, whereas the Respondent Commission has approved the same as Rs.4.16/Kwh only. As the Appellant has wrongly considered the total power purchase approved by the Respondent Commission as 7925 MU (in place of "29176.94 MU excluding liquid fuel-based generation and renewable power), the purchase of 5% power has also been wrongly worked out as 396 MU only (in place of 1458.84);

(c) PGCIL transmission charges have been wrongly worked out as 12 P/Kwh in place of 32.01Paise/Kwh.

(d) Similarly, CSPTCL transmission charges and SLDC charges have also been wrongly worked out as 23 P/Kwh and 0.1593 P/Kwh in place of 25.21Paise/Kwh and 0.46Paise/Kwh, respectively.

Thus, the total weighted average cost of the top 5% power has been wrongly worked out as Rs.5.02/Kwh against Rs.4.23/Kwh;

(e) The tariff applicable for EHV category, in the Cross Subsidy Formula has been wrongly worked out as Rs. 5.28/Kwh in place of Rs. 6.09/Kwh for the applicable category, which is Heavy Industries and others (average billing rate as indicated by the Respondent Commission as Rs 6.09/Kwh for Heavy Industries and others.

(f) Further, instead of considering the system losses for the applicable voltage level i.e. 4.3%, the Appellant has considered overall distribution losses of 27%.

110. Thus, considering wrong data and methodology, the Appellant has arrived at a cross-subsidy surcharge, which is completely erroneous and cannot be sustained.

D. The judgments relied upon by the Appellant are distinguishable on facts and law and are not applicable in the present case:

111. The Appellant has relied upon the judgment passed by this Tribunal in ***M/s. Maruti Suzuki India Ltd. Vs. Haryana Electricity Regulatory Commission and Anr.*** [APL No. 200 of 2011 decided on 04.10.2012], wherein this Tribunal observed that:

> *"72. In the absence of a specific formula for cross-subsidy surcharge in the Tariff Regulations, the State Commission ought to have determined the cross-subsidy surcharge using the tariff policy formula. No reason has been given for not using the tariff formula in the impugned order"*

112. Respondent No. 2 contends that the Appellant's reliance on previous judgments is misplaced, as those cases involved situations where the concerned Commissions had not framed any specific formula for determining the CSS. In contrast, the Chhattisgarh Commission has explicitly prescribed a formula for CSS calculation under Regulation 33 of the Open Access Regulations, 2011. Thus, the cited judgments, including ***R.V.K. Energy Pvt. Ltd. v. CPDCAPL & Ors,*** Appeal No. 169 of 2005, decided on 05.07.2007, are factually and legally distinguishable.

113. It is further submitted that both this Tribunal and the Hon'ble Supreme Court, including in ***PTC India Ltd. v. CERC (2020) 4 SCC 603, Reliance Infrastructure Ltd. v. State of Maharashtra (2019) 3 SCC 352, Transmission Corporation of Andhra Pradesh Ltd. v. Sai Renewable Power Pvt. Ltd. & Ors. (2011) 11 SCC 34*** have recognized that while the National Electricity Policy and Tariff Policy serve as guiding instruments, they are not binding on Regulatory Commissions. Once a Commission has framed regulations under Sections 178 or 181 of the Electricity Act, 2003, those regulations must be followed, and they hold primacy over policy documents issued under Section 3.

114. The CSERC has exercised its powers independently and lawfully in framing a detailed and specific methodology for CSS, and its actions cannot be faulted for not adhering strictly to the policies relied upon by the Appellant.

115. Therefore, the Appellant's challenge to the validity of the Commission's decision is meritless. Additionally, CSPDCL points out that operationally, most 33 kV and 11 kV feeders serve mixed-load consumers, including LT consumers and

distribution transformers (DTRs), making it difficult to capture voltage-specific consumption data. However, a smart metering project is underway, scheduled for completion by March 2026, to enable voltage-wise cost of supply determination. In conclusion, CSPDCL submits that the Impugned Order dated 12.06.2014 is legally sound, and the appeal deserves to be dismissed at the threshold.

Analysis and Conclusion

116. 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 Impugned Orders passed by the Respondent Commission in Appeal Nos. 56 of 2017 and 325 of 2017 violate the provisions of the Electricity Act, 2003, particularly with respect to the computation of retail tariffs and Cross Subsidy Surcharge (CSS), and*
ii. *Whether the Commission was bound to adhere to the mandate of Clause 8.3(2) of the Tariff Policy, 2006 read with Section 86(4) and the third proviso to Section 42(2) of the Electricity Act, 2003, in the absence of any contrary regulations, to ensure promotion of open access and prevent inflation of CSS?*

117. The Appellant herein has prayed for the following:

"a) To set aside the Impugned Order dated 12.06.2014, passed by the Respondent Commission in Petition No. 7 of 2014, to the extent challenged in the present appeal;

b) Quash the supplementary invoices/ bills dated 22.09.2016 and 13.10.2016, raised by the Respondent No. 2 on Appellant amounting to INR 67,29,58,450/-; and

b) To pass such other or further orders as this Hon'ble Tribunal may deem appropriate, keeping in view the facts and circumstances of the present."

118. The impugned orders pertain to the determination of the Retail Tariff and Cross Subsidy Surcharge (CSS) applicable to Extra High Voltage (EHV) consumers for the Financial Years 2014-15 and 2017-18, particularly those who avail electricity under the open access mechanism.

119. The Appellant challenges the methodology and reasoning adopted by the Commission in computing the CSS, alleging that it is arbitrary, excessive, and violative of the principles laid down in the Electricity Act, 2003, and the National Tariff Policy, 2006.

120. The Appellant has argued at length that the impugned CSS determinations by the State Commission are fundamentally flawed in law and substance. The central grievance advanced by the Appellant is that the determination of CSS suffers from non-application of mind to the binding statutory and policy framework.

121. It has been asserted that Section 42(2) of the Electricity Act mandates that the CSS shall be determined by the State Commission in accordance with principles specified by the Central Government in the Tariff Policy. It is important to note the relevant extract of section 42(2) as under:

> ***"Section 42. (Duties of distribution licensee and open access)****: --- (1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.*
>
> *(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:*
>
> *Provided that 1[such open access shall be allowed on payment of a surcharge] in addition to the charges for wheeling as may be determined by the State Commission:*
>
> *Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee :*

Provided also that such surcharge and cross subsidies shall be progressively reduced 2[***] in the manner as may be specified by the State Commission:"

122. We find no merit in the argument of the Appellant as section 42 does not provide that the CSS shall be determined by the State Commission in accordance with principles specified by the Central Government in the Tariff Policy.

123. Undisputedly, the Policies notified under Section 3 of the Electricity Act, 2003, cannot override the Regulations notified under the Act, and, therefore, once the Regulations are notified and provide a methodology, the cross-subsidy has to be determined accordingly.

124. Clause 8.3(2) of the National Tariff Policy, 2006 mandates that tariffs should progressively reflect the cost of supply and that cross subsidies should be reduced and maintained within a band of ±20% of the average cost of supply.

125. The Appellant has further contended that while Regulation 33(6)(b)(iii) of the CSERC (Connectivity and Open Access) Regulations, 2011 lays down a formula for determining CSS based on the difference between the average tariff and average cost of supply, the said formula fails to capture the consumer-specific voltage level costs and ignores the requirement of transparency and reasonableness embedded in Section 86(4) of the Act.

126. It is contended that by applying a simplistic average method without factoring in voltage-wise cost of supply or without assessing whether the CSS imposed

would fall within the permissible ±20% band, the Commission has committed a serious error.

127. The Appellant relied extensively on the decision of this Tribunal in ***Maruti Suzuki India Ltd. v. Haryana Electricity Regulatory Commission*** (Appeal No. 103 of 2012), wherein this Tribunal held that in the absence of a formula in the regulations, the Commission must apply the Tariff Policy formula.

128. Though CSERC had a formula, the Appellant argues that the formula used is ambiguous and fails to comply with the principles under the Act and Policy. Additionally, BALCO submitted that it had challenged the vires of Regulation 33(6)(b)(iii) before the Hon'ble High Court of Chhattisgarh in W.P. (C) No. 1084/2017. Although the High Court upheld the regulation, an SLP challenging the same is pending before the Hon'ble Supreme Court.

129. The Appellant also drew attention to the fact that the computation of CSS for FY 2014-15 resulted in a levy of ₹1.278/kWh and for FY 2017-18, ₹1.68/kWh. It was argued that such high CSS values are unjustified, especially when BALCO was not even using the state's transmission network, being connected to the CTU. In their view, such CSS is effectively penal, deters open access, and defeats the objects of competition and consumer choice under the Act.

130. The Respondents vehemently argued that the submissions made by the Appellant are identical to what has been raised by it the Appellant before the High Court of Chhattisgarh. It is also argued that the High Court, after considering such submissions, has dismissed the petition filed by the Appellant.

131. The Chhattisgarh State Electricity Regulatory Commission asserted that the determination of CSS in both impugned tariff orders was carried out strictly in accordance with its prevailing Open Access Regulations, 2011, specifically Regulation 33(6)(b)(iii) and (iv). It was submitted that the said regulation provides a clear formula for CSS computation, which is the difference between the average tariff for the subsidizing category and the average cost of supply (ACoS), with 90% of the differential being levied as CSS during the first MYT control period.

132. The Commission emphasized that, in contrast to the case in Maruti Suzuki, where no such formula existed, the CSERC had adopted a structured method consistent with regulatory provisions. It also pointed out that the said method had been upheld by the Hon'ble High Court, and no stay had been granted by the Hon'ble Supreme Court.

133. We, therefore, find it appropriate to examine the judgment passed by the High Court in WP(C) No. 1084 of 2017 filed by the Appellant. The relevant extracts are quoted as under:

> *"1. Vires of the Regulation No. 33(6)(b)(iii) of the CERC (Connectivity and Intra-State Open Access) Regulations, 2011 (Annexure P/4) (for short 'the Regulations') framed by the 1st Respondent-Chhattisgarh State Electricity Commission (for short, 'the Commission') in exercise of the power under Section 181 of the Electricity Act, 2003 (for short 'the Act, 2003') is put to challenge in this writ petition. It is contended that the said Regulation is ultra vires to the Act, 2003; contrary to the*

Tariff Policy notified by the Central Government under Section 3 of the Act, 2003 and also violative of Part III of the Constitution of India. The Petitioner also seeks to issue an appropriate writ or order directing the 1st Respondent-Commission to determine the 'voltage-wise' cost of service of the 2nd Respondent Distributor Company/Licencee in the area for the purpose of computation of Retail Supply Tariff and Cross Subsidy Surcharge.

"4. The Petitioner Company is an Extra High Voltage (EHV) consumer of electricity, also having a Captive Power Plant (CPP) with a capacity of 1410 MW at Korba in Chhattisgarh. The field of generation and supply of electricity in the pre-independence India was governed by the provisions of the Electricity Act, 1910, which also provided for growth of Electricity Industry through private licencees. After independence, the Electricity (Supply) Act, 1948 came into force, which provided for constitution of a State Electricity Board vested with the responsibility of arranging supply of electricity in the States. Later, on finding that the performance was going down and there was failure in the matter of taking decision on tariffs in an independent manner and that the cross-subsidies had reached untenable levels, Electricity Regulatory Commission Act was enacted in the year 1998. On finding the necessity to have the fields covered by all the above three enactments under a common umbrella, the 'Act, 2003' was enacted with a significant addition of newer concepts like 'power trading' and 'open access'.

5. The term 'open access' is defined under Section 2(47) of the Act, 2003. The said concept implies freedom to procure power from any source of choice of the consumer, other than the distribution licencee of the area of the consumer by using the distribution system of such distribution licencee, subject to satisfaction of wheeling charges and cross-subsidy surcharge, as specified. The scope of the said concept has been explained by the Apex Court in SESA Sterlite Limited v. Orissa Electricity Regulatory Commission & Others; {(2014) 8 SCC 444}. The Petitioner company is stated as procuring electricity from the State of Maharashtra availing the facility of open access. The 1st Respondent-Commission passed Annexure P/9 order dated 12.06.2014 determining the cross-subsidy charges (CSC) at the rate of Rs. 1.278 per kwh for EHV category of consumers like the Petitioner, in terms of Annexure P/4 Regulations. This was sought to be challenged by filing review petition under Section 94(1)(f) of the Act, 2003 before the 1st Respondent. Pursuant to the order passed by the 1st Respondent, 50% of the amount covered by CSC bills/invoices is stated as satisfied by the Petitioner. However, after considering the merits, the 1 st Respondent dismissed the review petition and upheld the cross-subsidy charges as per the order dated 27.07.2016. This has been challenged by the Petitioner by filing an appeal before the Appellate Tribunal and the appeal is stated as pending.

6. The Petitioner contends that since proper relief can be obtained by the Petitioner only by challenging the Regulation No. 33(6)(b)(iii) and hence the Petitioner is constrained to approach this Court, as there is no alternative remedy. It is also pointed out that by virtue of the law declared by the Constitution Bench of the Apex Court in PTC India Ltd. v. Central Electricity

Regulatory Commission {(2010) 4 SCC 603, paragraph 93} that the Appellate Tribunal for Electricity has no jurisdiction to decide the validity of the Regulations framed by the Regulatory Commission, it can be done only by invoking the power under Article 226 of the Constitution of India. The grievance of the Petitioner is in respect of the manner of computation of cross subsidy surcharge as provided under Regulation 33(6)(b)(iii) of the Regulations, which is to the following effect:……

----

34. Considering the pleadings and proceedings and after hearing the submissions made by the learned counsel for the parties on both sides, in the light of the relevant provisions of law and the binding precedents as referred to above, this Court is of the view that the Petitioner has not demonstrated as to how Regulation 33(6)(b)(iii) of the Regulations is ultra vires to the provisions of the Act, 2003, the Tariff Policy framed by the Government or Part III of the Constitution of India. The pleadings and prayers in this regard are rather vague or ill conceived. Since the statutory appeal preferred against the order passed by the 1st Respondent-Commission is stated as still pending before the Tribunal, the facts and figures with regard to the quantification of the amount is not subjected to scrutiny by this Court, but for considering the validity/vires of the particular regulation. We hold that the writ petition is devoid of any merit and none of the grounds raised in support of the same could be held as tenable.

35. The writ petition stands dismissed accordingly, without prejudice to the issue pending consideration in the statutory appeal preferred before the Tribunal. No costs."

134. Therefore, the issue regarding the validity of Regulation 33(6)(b)(iii) has already been settled along with the methodology specified therein.

135. On the computation, CSERC justified that for FY 2014-15, it had calculated the consolidated Average Billing Rate (ABR) of all EHV categories as ₹5.82/unit and the ACoS as ₹4.40/unit. The resulting CSS, at 90% of the differential (₹1.42), came to ₹1.278/unit. Similarly, for FY 2017-18, the average tariff for 132kV and 220kV consumers was ₹8.27/unit and ACoS ₹6.41/unit, yielding a CSS of ₹1.68/unit. The Commission maintained that these calculations were backed by data and tables in the respective tariff orders.

136. It was also contended that Clause 8.3(2) of the Tariff Policy is merely guiding in nature and cannot override the express regulation framed by the Commission under its delegated legislative authority. The Commission relied on the Hon'ble Supreme Court's decision in ***PTC India Ltd. v. CERC (2010) 4 SCC 603*** to assert that tariff policy does not bind the regulatory commissions in a mandatory fashion.

137. The Chhattisgarh State Power Distribution Company Limited (CSPDCL), appearing as Respondent No. 2, fully supported the orders of the State Commission and reinforced the rationale for imposing CSS on the Appellant. CSPDCL submitted that CSS is compensatory and essential to protect the

revenue of the licensee, which otherwise suffers a loss due to migration of subsidizing category consumers to open access.

138. The Appellant argued that the CSERC OA Regulations, 2011 (Regulation 2) categorically states that the said Regulations shall apply to consumers using the intra-state transmission system/ distribution system of the State. However, BALCO is connected to the inter-state transmission system, viz. CTU is not at all connected to the State network. The said Regulation is set out below:

> **"2. *Extent of Application***
> *These regulations shall apply to open access customers for use of intra-state transmission system and/ or distribution systems of licensees in the State, including such system when it is used in conjunction with inter-state transmission system."*

139. Also argued that the Hon'ble Supreme Court in ***Sesa Sterlite v. OERC & Ors., (2014) 8 SCC 444*** has upheld that CSS is payable even without using the distribution licensee's network, that decision is not applicable here, as in Sesa Sterlite, there was acknowledged use of intra-state lines (though not of a distribution licensee), whereas in the present case, BALCO does not use the intra-state transmission or distribution system at all.

140. It is important to note the relevant extract of the Sesa Sterlite case, as under:

> *"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****."*

141. **Therefore, the argument of the Appellant is misplaced and deserves to be rejected. The consumer of an area of supply of a distribution licensee is**

liable to pay the cross-subsidy to the licensee, even if it is not connected to its network.

142. Section 38(2)(d)(ii) of the Electricity Act, 2003 authorizes the Central Commission to determine the 'Transmission Charge' and a 'Surcharge thereon', in respect of cases in which the CTU provides Open Access to a Transmission System for use by consumer when such Open Access is granted by the State Commission and not the cross-subsidy, which falls under the domain of the State Commission under Section 42 of the Act.

143. The CSERC Open Access Regulations, 2011 (Regulation 33(6)), are applicable in the instant case, inter alia, provide that:

> ***"(6) Cross subsidy Surcharge*** –
>
> *(a) The Commission may specify cross subsidy surcharge voltage wise/slab wise /individual categories of consumers separately.*
>
> *(b) The principle and procedure for determining cross-subsidy surcharge shall be as under:*
>
> *(i) Every consumer requiring supply of electricity through open access in accordance with these Regulations shall be liable to pay the cross-subsidy surcharge, as may be specified. Provided that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant, for carrying*

the electricity to the destination of its own use. The cross subsidy surcharge shall be payable by the open access customer for the actual energy received through open access at the point of drawl.

(ii) ***Cross subsidy surcharge shall also be payable by such consumer who receive supply of electricity from a person other than the distribution licensee in whose area supply is located, irrespective of whether it avails such supply through transmission/ distribution network of the licensee or not."***

144. The Regulation clearly provides that the cross-subsidy shall be payable by consumers irrespective of whether such open access supply is through the transmission/ distribution network of the licensee.

145. It is also argued that Section 62(3) of the Act empowers the Commission to classify consumers and design slab-based tariffs accordingly. The recovery of a distribution licensee's cost is achieved through these slabs; wherein cross subsidies are built into high-end consumer tariffs to subsidize lower-end consumers. However, in the present case, no such regulations have been notified by CSERC under Section 62(3), resulting in arbitrary loading of cross subsidies on high-end consumers like BALCO without any regulatory framework or justification.

146. As already stated, the State Commission has notified the specific Regulations, which are held to be legally tenable under the law by the High Court of Chhattisgarh, inter alia, rejecting the challenge to such Regulations by the Appellant.

147. In fact, Section 181 of the Electricity Act, 2003, which deals with the Powers of the Commission to frame the Regulations, does not contain any reference to Section 62(3) even though it refers to Section 62(2) and 62(5) of the Act.

148. **Therefore, the contention of the Appellant deserves to be rejected. Accordingly, the reliance of the Appellant, stating that in the event Regulations have not been framed, or are silent on an issue, then the provisions of the Tariff Policy become binding, in terms of Section 86(4), on the following judgments is misplaced, as relevant Regulations exist during the period of dispute:**

i. This Tribunal's Judgment dated 24.03.2015 passed in Appeal No. 103 of 2012 titled as Maruti Suzuki India Limited v. Haryana Electricity Regulatory Commission & Anr,
ii. Judgment dated 05.07.2007 passed in Appeal No. 169 of 2005 and batch titled as RVK Energy Pvt. Ltd. vs. CPDCAPL & Ors, and
iii. judgment dated 30.05.2011 passed by this Tribunal in Appeal 102 of 2010, titled as Tata Steel Ltd. v. OERC & Anr.

149. The Appellant vehemently argued that CSERC was required to determine the voltage-wise cost of supply/ service in line with the principle decided in the various judgments relied upon by it. Also, submitted that the CSERC computed the voltage-wise cost of supply in the subsequent tariff order dated 31.03.2017 [which is impugned in Appeal No. 325 of 2017]. As such, it is clear that the CSERC can determine the voltage-wise cost of supply/ service.

150. **We find no merit in such arguments, as the Regulations, once notified, are binding on all, including the State Commission.**

151. As elaborated in the written submissions of the Appellant dated 17.05.2024 and 03.03.2025, and corroborated by the Additional Common Written Submissions, the CSS determined for EHV consumers for FY 2014-15 at Rs. 1.278/kWh and for FY 2017-18 at Rs. 1.68/kWh were arrived at without any voltage-wise cost of supply (VCOS) study. The Appellant has underscored that such CSS values represent an effective surcharge of over 20% of the average cost of supply (ACoS), which contravenes the ±20% cross-subsidy ceiling prescribed under Clause 8.3(2) of the Tariff Policy.

152. However, the State Commission, in compliance with the Regulations, has detailed the calculations in the Impugned Orders, and the same was also placed before us, justifying the rationale and correctness of such determination.

153. The Tribunal finds merit in the contention of the Respondents that the computation of CSS based on the difference between the average tariff and ACoS is in line with the said Regulations. The Appellant's reliance on the judgments of this Tribunal in ***Maruti Suzuki and Tata Steel Ltd. v. OERC & Anr.,*** 102 of 2010, which underscore the obligation of State Commissions to ensure that CSS does not become a barrier to open access, is placed misplaced as the said judgment has been rendered in the case where no such Regulation is notified.

154. The judgment dated 24.03.2015 passed in ***Appeal No. 103 of 2012 titled as Maruti Suzuki India Limited v. Haryana Electricity Regulatory Commission & Anr.:***

> *68. This Tribunal in the various judgments from the year 2006 onwards has repeatedly stated that the tariffs have to be determined considering both the overall average cost of supply of the distribution licensees and the voltage-wise cost of supply The principles laid down by this Tribunal are as under ...*
>
> *69. This Tribunal in Tata Steel Ltd. gave a method for determination of cost of supply for different consumer categories. It was held that in the absence of segregated network costs, it would be prudent to work out voltage-wise cost of supply taking into account the distribution losses at different voltage levels as a first major step in the right direction. As power purchase cost is a major component of tariff, apportioning the power purchase cost at different voltage levels taking into account the distribution loss at the relevant voltage level and the upstream system will facilitate determination of voltage-wise cost of supply. Thus, a practical method was suggested to reflect the consumer wise cost of supply. However, voltage-wise cost of supply would also require determination of distribution loss at different voltage levels of the distribution system.*
>
> *… … …*
>
> *72.* ***We feel that in the absence of a specific formula for cross subsidy surcharge in the Tariff Regulations, the State Commission ought to have determined the cross-subsidy***

surcharge using the Tariff Policy formula. No reason has been given for not using the Tariff Policy formula in the impugned order.

… … …

76. To sum up:

… … …

d) In the absence of specific formula for cross subsidy surcharge in the Tariff Regulations, the State Commission ought to have determined the cross subsidy surcharge using the Tariff Policy formula. However, the use of the Tariff Policy formula will require determination of distribution loss at different voltage levels, which would involve a fresh study to be conducted by the State Commission for determination of cross subsidy surcharge for FY 2012-13. This will bring in an element of uncertainty and will further result in delay in fructification of justice to the Appellant in the matter for a Financial Year which is long over."

155. **Accordingly, the aforesaid judgment is clearly differentiable from the case in hand, as Regulation 33(6)(b)(iii) provides the methodology for the determination of open access charges, including the cross-subsidy. Regulation 33 is quoted as under for clarity:**

"33. Open Access Charges

The licensee/SLDC providing open access shall levy only such fees and/or charges as specified by the Commission from time to time. The principles of determination of the charges shall be as under.

……

(6) Cross subsidy Surcharge –

(a) The Commission may specify cross subsidy surcharge voltage wise/slab wise /individual categories of consumers separately.

(b) The principle and procedure for determining cross-subsidy surcharge shall be as under:

(i) Every consumer requiring supply of electricity through open access in accordance with these Regulations shall be liable to pay the cross- subsidy surcharge, as may be specified. Provided that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant, for carrying the electricity to the destination of its own use. The cross subsidy surcharge shall be payable by the open access customer for the actual energy received through open access at the point of drawl.

(ii) Cross subsidy surcharge shall also be payable by such consumer who receive supply of electricity from a person other than the distribution licensee in whose area supply is located, irrespective of whether it avails such supply through transmission/ distribution network of the licensee or not.

(iii) Such surcharge shall be based on the current level of cross subsidy of the tariff category / tariff slab and / or voltage level to which such consumer, belong or are connected to, as the case may be. It is to be calculated

based on the average cost method by taking the difference between the average tariff for such supply voltage for the consumer of subsidizing category and the average cost of supply for the licensee.

(iv) For consumers procuring power through open access in first control period of MYT regime, the cross subsidy surcharge shall be levied at 90% of cross subsidy surcharge determined by the Commission for that year. The cross subsidy surcharge for subsequent control period shall be as decided by the Commission from time to time.

Illustration:

Suppose the cross subsidy surcharge worked out for 2011-12 is 75 paise per kwh. Then applicable cross 46 subsidy surcharge for consumers procuring power through open access shall be 90% of 75 paise i.e. 67.5 paise (rounded of to 68 paise) per unit for the year 2011- 12. Suppose the cross subsidy surcharge worked out for 2012-13 is 70 paise per kwh. Then applicable cross subsidy surcharge for consumers procuring power through open access shall be 90% of 70 paise i.e. 63 paise per unit for 2012-13,

(v) For consumers procuring power through renewable energy based power generating plant, the cross subsidy surcharge shall be 50% of the cross subsidy surcharge determined for that year.

…….....”

156. The Commission has rightly defended its methodology by citing compliance with its regulation and by pointing to its tariff orders, which contain a table showing the average billing rate and ACoS. The Respondent No. 2 (CSPDCL) has also sought to justify CSS on the ground of revenue neutrality and the compensatory nature of CSS.

157. We observe that Regulation 33(6)(b)(iii) provides that the Cross-Subsidy Surcharge has to be calculated based on the Average Cost Method by taking the difference between the Average Tariff for such Supply Voltage for the Consumer of Subsidizing Category and the Average Cost of Supply for the Licensee.

158. However, it is evident that the data relied upon by the Commission does not include VCoS analysis, and there is no explanation in the impugned orders regarding the impact of such CSS levels on open access competitiveness or consumer choice, which is now followed by the State Commission.

159. More critically, the Appellant has demonstrated, by pointing to the very orders passed by the Commission, that there is no accompanying roadmap for reduction in CSS or progressive tariff rationalization. Even the Commission's 2017 tariff order merely asserts that tariffs are "within the +20% band" without any empirical backing or reference to consumer category-specific impacts.

160. We, however, find no merit on the Appellant's argument that the CSS for renewable energy-based procurement has been reduced by 50% of the regular CSS value in the FY 2014-15 order, indicating the Commission's acknowledgment that CSS can be an impediment to certain categories of open access, claiming

that no such concession or rationalization has been considered for EHV industrial consumers, including the Appellant.

161. Undoubtedly, Renewable Power is promoted across the country, as also mandated under the Electricity Act, 2003; however, there is no such mandate for EHV industrial consumers, thus the argument of the Appellant cannot be sustained.

162. We also decline to accept the argument of the Appellant that the impugned orders do not provide a cogent or transparent explanation of the rationale for imposing the specified CSS rates, nor do they offer a mechanism for cross-subsidy reduction over time. The State Commission has explained the same with detailed calculations.

163. We, on the contrary, find that the Appellant is trying to challenge the aforesaid Regulations, after their contention was rejected by the High Court, it is a settled principle that no Regulations, notified under the Act, can be challenged before this Tribunal.

164. In light of the foregoing detailed analysis, this Tribunal concludes that the Chhattisgarh State Electricity Regulatory Commission has transparently determined the Cross Subsidy Surcharge (CSS) in a manner that is consistent with the principles enshrined in the relevant Regulations, which are held to be valid by the High Court of Chhattisgarh.

165. We hereby also note that this Tribunal vide judgment dated 01.07.2025 in Appeal No. 303 of 2019 has passed the following Order:

> *"* ***ORDER***
>
> *For the foregoing reasons as stated above, we are of the considered view that the Appeal No. 303 of 2019 has merit and is allowed to the extent as concluded herein above.*
>
> *The Impugned Order dated 28.02.2019 passed in Petition No. 05/2019(T) by the CSERC is set aside to the limited extent as concluded herein.*
>
> *The Captioned Appeal is disposed of in the above terms.*
>
> *The State Commission shall determine the tariff based on VCoS based on the methodology suggested by this Tribunal in the Tata Steel case, till the completion of the Study Report by the CSPDCL and accepted by the CSERC."*

166. However, the Appellant vide its Written Submission dated 29.04.2024 has informed that:

> *"Thus, the Ld. CSERC was required to determine voltage-wise cost of supply/ service in line with the principle decided in the above judgment.* ***In any event, the Ld. CSERC computed voltage-wise cost of supply in the subsequent tariff order dated 31.03.2017***

[which is impugned in Appeal No. 325 of 2017]. *As such, it is clear that the Ld. CSERC can determine voltage-wise cost of supply/ service."*

167. **Since the directions that were to be rendered by this Tribunal through the present judgment have already been implemented by the CSERC in the impugned order, and the matter has been adjudicated upon by the Hon'ble High Court of Chhattisgarh also, the contentions raised by the Appellant in the present Appeal stand fully addressed and, accordingly, deserve to be rejected.**

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeals No. 56 of 2017 and 325 of 2017 have no merit and stand dismissed.

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

PRONOUNCED IN THE OPEN COURT ON THIS 7th DAY OF AUGUST, 2025.

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

REPORTABLE / ~~NON-REPORTABLE~~

pr/mkj/kks