

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**Appeal No. 20 of 2019**

Dated: **06.10.2022**

Present: **Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson  
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

**In the matter of:**

**M/s. Sridevi Trading Company Private Limited .... Appellant (s)  
A/p Malebennure – 577530  
Tal – Harihar District – Davangere (Karnataka)**

**Versus**

- 1. Maharashtra Electricity Regulatory  
Commission,  
Through its Secretary  
World Trade Centre,  
Centre No.1,13th Floor, Cuffe Parade,  
Colaba, Mumbai-400005**
  
- 2. Maharashtra State Electricity  
Distribution Company Limited .... Respondent(s)  
Through its Managing Director  
5<sup>th</sup> Floor, Prakashgad  
Bandra (East), Mumbai – 400 051**

Counsel for the Appellant (s) : Mr. Anand K. Ganesan  
Ms. Swapna Seshadri  
Ms. Neha Garg

Counsel for the Respondent (s) : Mr. Anup Jain  
Mr. Akshay Goel for R-2

**J U D G E M E N T (Oral)**

**PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON**

1. The appellant is a wind power generator operating a plant with capacity of 2.45 MW in district Satara supplying electricity thereby generated to its consumers within the State of Maharashtra through Open Access. It accordingly uses the distribution network of respondent

– *Maharashtra Electricity Distribution Company Limited (MSEDCL)* and is liable to pay wheeling charge for such use.

2. It appears MSEDCL would levy wheeling charges on the basis of energy injected into its system, disallowing the claim of the appellant for the wheeling losses to be discounted, the claim of the latter (*the appellant*) being founded on Regulation 14.6 of Open Access Regulations, 2016 and certain practice directions which had been issued by the *Maharashtra Electricity Regulatory Commission* (the state Commission) governing the subject on 08.03.2017.

3. The appellant had approached the State Commission by a petition (Case no.206 of 2017) with the following prayers:-

“

1. *The Respondent be directed to follow the D.O.A. Regulations, 2016 and the Practice Directions issued by this Hon'ble Commission.*
2. *That as a consequential relief the Respondent be directed to rectify the wheeling charges and refund the excess amount wrongly recovered.*
3. *All other just and equitable reliefs be granted to the petitioner for the effective adjudication of this case.”*

4. The State Commission by its order dated 20.07.2018, declined to interfere holding, *inter alia*, that there was no infirmity in the methodology adopted by MSEDCL for levy of wheeling charges.

5. Feeling aggrieved, the appellant has come up by the appeal at hand to this Tribunal.

6. Regulation 14.6 of Open Access Regulations 2016, which is at the heart of the controversy, reads thus:-

*“14.6 Wheeling Charge*

- a. *An Open Access Consumer, Generating Station or Licensee, as the case may be, using a Distribution System shall pay to the Distribution Licensee such Wheeling Charges, on the basis of actual energy drawal at the consumption end, as may be determined under the Regulations of the Commission governing Multi-Year Tariff;*
- b. *Wheeling Charges shall not be applicable in case a Consumer or Generating Station is connected to the Transmission System directly or using dedicated lines owned by the Consumer or Generating Station.”*

*(Emphasis supplied)*

7. The State Commission had issued practice directions on the subject on 08.03.2017, the relevant part whereof would read as under:-

*“Practice Directions*

1. *A STOA Consumer, Generating Station or Licensee using a Distribution System shall pay Wheeling Charges or Transmission Charges, as the case may be, on the basis of the actual energy drawal at the consumption end on Rs/kWh basis. The Distribution Licensee shall refund any amounts recovered in excess of these stipulations within a month, with applicable interest, without requiring such refund to be applied for.”*

8. The MSEDCL, while contesting the claim before the State Commission had relied primarily on the following part of a clarificatory order styled as “*Open Access Wheeling Illustration 2010-2011*” which had been issued by the State Commission earlier:

*“Open Access Wheeling Illustration 2010-2011”, reproduced below:*

*“...7.*

*Depending on nature of open access transaction, the injection point(s) for open access and drawl point(s) for open access wheeling transaction could lead to use of distribution assets of multiple distribution licensees and/or use of intra-state transmission system. Even in case of particular distribution licensees, the wheeling charges applicable for a particular open access transaction shall depend on voltage level at injection point(s) and drawal point(s), as wheeling charges are determined in accordance with voltage level. Accordingly, transmission charges, transmission losses, wheeling charges and wheeling losses applicable for a particular transaction have to be ascertained on the basis of use of assets of concerned licensee and extent of use at a particular voltage level.”*

*(Emphasis supplied)*

9. The State Commission has referred to its observations in tariff order dated 20.10.2006 in Case no.54 of 2005 and order dated 20.11.2007 in Case No.33 of 2007 whereby the philosophy and rationale for levy of wheeling charges was explained. The prime observations of the State Commission for declining the claim of the appellant are summarised in para as under:

*“The Commission notes that MSEDCL is levying the Wheeling Charges on the remaining units after due deduction of transmission loss from the injected Units. The units get directly adjusted against consumption units of the Consumer after deduction of wheeling losses. MSEDCL is not levying wheeling charges on injected unit but is levying after deducting transmission loss i.e. units available for consumption by consumer.”*

*(Emphasis supplied)*

10. The learned counsel for the appellant has explained his contentions by an illustration which reads as under:-

- (i) “The generator injects 100 units of electricity for supply through open access.*
- (ii) The transmission losses are levied at same 4 units, and 96 units is delivered in the distribution network.*
- (iii) The distribution licensee levies distribution losses at same 6 units and 90 units are delivered to the consumer, which is the actual energy drawl at the consumption end.*

- (iv) *In terms of the regulations, the wheeling charges are payable on 90 units of electricity.*
- (v) *However, MSEDCL has levied wheeling charges on 96 units. This is sought to be justified on the ground that 96 units is available for consumption. How is it available for consumption to justify the levy of wheeling charges is not understandable.”*

**11.** In our considered view, the Open Access Wheeling illustration given for 2010-2011 by the State Commission may not be correct view of the matter particularly in the context of Regulations of 2016, as quoted above. The wheeling charge cannot be levied beyond what is calculated as the actual energy drawal at the consumption end which computation will necessarily have to take into account wheeling losses as well.

**12.** In above view, we cannot uphold the approach taken by the State Commission by the impugned order which is accordingly set aside. We remit the claim of the appellant to the State Commission for passing of the consequential orders in light of these observations.

**13.** The appeal is disposed of in above terms.

**PRONOUNCED IN THE OPEN COURT ON THIS 06<sup>TH</sup> DAY OF**  
**OCTOBER, 2022**

**(Sandesh Kumar Sharma)**  
Technical Member

*pr/mkj*

**(Justice R.K. Gauba)**  
Officiating Chairperson