IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

COURT I

RP No. 10 of 2022 & IA Nos. 2157 & 2156 of 2022
and
RP No. 11 of 2022 & IA Nos. 2165 & 2166 of 2022

Dated: 06.01.2023

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member

RP No. 10 of 2022 & IA Nos. 2157 & 2156 of 2022

In the matter of:

M/s PRISM JOHNSON LIMITED
Through Authorised Representative,
305, Laxmi Niwas Apartment,
Ameerpet, Hyderabad – 500 016 .... Review Petitioner (s)

Versus

1. **MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION**
Through its Secretary
5 th Floor, Metro Plaza, Arera Colony,
Bittan Market,
Bhopal, 462 016 … Respondent No.1

2. **MADHYA PRADESH POORVA KSHETRA VIDHYUT VITRAN COMPANY LTD.**
Through its Managing Director,
Block -7, Shakti Bhavan,

Rampur, Jabalpur,
Madhya Pradesh – 470 226 … Respondent No.2

3. **M.P. POWER MANAGEMENT COMPANY LTD.**
Through its Managing Director,
Block No. 15, Shakti Bhawan,
Rampur, Jabalpur – 482 008 … Respondent No.3

4. **M/S. BLA POWER PVT. LTD.**
Through its Managing Director
P.O Khursipar, Village Niwari,
Tehsil Gardarwara,
Dist. Narsinghpur (M.P)-487 661 … Respondent No.4

Counsel for the Petitioner (s) : Mr. Amit Kapur
Mr. Shri Venkatesh
Mr. Akshat Jain
Mr. Suhael Buttan
Mr. Abhishek Nangia

Counsel for the Respondent (s) : Mr. Shlok Chandra,
Mr. Keshav Garg for R-1

Mr. Vikas Upadhyay for R-2&3

Ms. Shikha Ohri
Mr. Ayush Agrawal for R-4

RP No. 11 of 2022 & IA Nos. 2165 & 2166 of 2022

In the matter of:

ULTRATECH CEMENT LIMITED
Through its Authorized Representative,
B Wing, Ahura Centre , 2nd Floor,
Mahakali Caves Road, Andheri (E), ... Review Petitioner (s)
Mumbai – 400 093

Versus

1. **MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION**
Through its Secretary
5th Floor, Metro Plaza, Arera Colony,
Bittan Market,
Bhopal, 462 016 … Respondent No.1

2. **MADHYA PRADESH POORVA KSHETRA VIDHYUT VITRAN COMPANY LTD.**
Through its Managing Director,
Block -7, Shakti Bhavan,
Rampur, Jabalpur,
Madhya Pradesh – 470 226 … Respondent No.2

3. **STATE LOAD DISPATCH CENTRE**
M.P. Power Transmission Company Limited
Through its Managing Director
Block No.2, Shakti Bhawan, … Respondent No.3
Rampur, Jabalpur-482008

.... Respondent(S)

Counsel for the Petitioner (s) : Mr. Amit Kapur
Mr. Malcolm Desai

Counsel for the Respondent (s) : Mr. Shlok Chandra,
Mr. Keshav Garg for R-1

Mr. Vikas Upadhyay for R-2

O R D E R

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

These Petitions are filed seeking review of the orders passed by this Tribunal in Appeal No. 295 of 2021 and Appeal No. 337 of 2021 dated 29.11.2022. In the said Order, this Tribunal had relied on the judgment of the Supreme Court in **Maharashtra State Electricity Distribution Company Limited Vs. JSW Steel Limited and Ors. (2022) 2 SCC 742**, to hold that there was some merit in the submission of the respondent Commission that, if the dedicated lines connecting the generating stations to the point of own use of the Captive Generation Plants avail of the transmission/distribution line network or associated facilities, the claim of total exemption from levy of additional surcharge under Section 42(4) of the Electricity Act, 2003 ("the Act" for short) may have to be examined afresh in light of the relevant law on the subject which would include the ratio of the decision of Supreme Court in **MSEDCL Vs. JSW Steel**; and further inquiry was needed to be conducted to ascertain facts.

This Tribunal felt it appropriate to set aside the order under challenge in Appeal Nos. 295 and 337 of 2021 dated 29.01.2022, and to remit the petitions for fresh consideration by the Commission in the light of the observations made in the order. The Commission was directed to re-hear the parties and pass fresh orders in accordance with law preferably within two months of the order. Aggrieved thereby the present Review Petitions have been filed.

I.RIVAL SUBMISSIONS:

Mr. Amit Kapur, Learned Counsel for the Review-Petitioners, would submit that the order under review suffered from an error apparent on the face of record; no inquiry was needed to be caused to ascertain whether or not the captive consumers were drawing power from its generating units through the distribution lines of the Second Respondent (ie the Madhya Pradesh Poorva Kshetra Vidyut Vitran Company Limited); in **MSEDCL Vs. JSW Steel**, the Supreme Court made

no distinction between captive consumers drawing power through dedicated power lines from its generating unit, and those drawing power from its generating unit through the distribution lines of a distribution licensee; while the Review-Petitioners were not drawing power from their Generating units through the distribution lines of the second respondent, it mattered little since the Supreme Court, in **MSEDCL Vs. JSW Steel**, had held that, as captive consumers did not fall within the ambit of Section 2 (15) of the Act, additional surcharge could not be levied on them by the distribution licensees; and failure on their part, as Counsel, to draw the attention of this Tribunal to the conclusion of the Supreme Court, in **MSEDCL Vs. JSW Steel**, that all captive consumers, irrespective of whether or not they used the distribution lines of a distribution licensee to receive power generated by their Captive Generation Plants, were not liable to pay additional surcharge, was an error apparent on the face of the record necessitating review of the Order. Learned Counsel would rely on **Lily Thomas and Others vs Union of India & others: (2000) 6 SSC 224 (2000) 6 SSC 224** in this regard.

On the other hand Mr. Vikas Upadhyay, Learned Counsel for the second Respondent, would rely on Sections 42(4) and 43 read with Section 2(76) of the Act in support of his submission that, since the Review- Petitioners are liable to pay wheeling charges, they are also liable to pay additional surcharge under Section 42 (4) irrespective of whether or not they use the distribution lines of the second Respondent; even assuming that the Counsel for the Petitioners had failed to draw the attention of this Tribunal to certain portions of the judgment of the Supreme Court, that, by itself, would not constitute an error apparent on the face of record necessitating the earlier Order of this Tribunal being reviewed; and the remedy available to the Petitioners was only to prefer an Appeal against the earlier order of this Tribunal, and not to seek review thereof. Learned Counsel would rely on **M/s. J.P. Builders vs A. Ramadas Rao & Others: 2010(3) LW 522**; **Mukesh Kumar & Ors. v. State of Haryana & Ors: 2019 (3) LawHerald**

1942; and Rajinder Singh v. Union of India and others: 2006 SCC Online Cal 713.

II.JUDGEMENT OF THE SUPREME COURT, IN *MSEDCL VS. JSW STEEL,* ON THE LIABILITY OF CAPTIVE CONSUMERS TO PAY ADDITIONAL SURCHARGE:

The question which arose for consideration before the Supreme Court, in **MSEDCL Vs. JSW STEEL,** was "whether captive consumers/captive users were liable to pay additional surcharge under Section 42(4) of the Electricity Act, 2003". In considering this question, the Supreme Court, after considering the scope of Section 42(4) and upon taking note of the definition of a consumer under Section 2(15) of the Act, observed:-

"…….14. Ordinarily, a consumer or class of consumers has to receive supply of electricity from the distribution licensee of his area of supply. However, with the permission of the State Commission such a consumer or class of consumers may receive supply of electricity from the person other than the distribution licensee of his area of supply, however, subject to payment of additional surcharge on the charges of wheeling as may be specified by the State Commission to meet the fixed cost of such distribution licensee arising out of his obligation to supply. There is a logic behind the levy of additional surcharge on the charges of wheeling in such a situation and/or eventuality, because the distribution licensee has already incurred the expenditure, entered into purchase agreements and has invested the money for supply of electricity to the consumers or class of consumers of the area of his supply for which the distribution license is issued. ***Therefore, if a consumer or class of consumers want to receive the supply of electricity from a person other than the distribution licensee of his area of supply, he has to compensate for the fixed cost and expenses of such distribution licensee arising out of his obligation to supply.*** *Therefore, the levy of additional surcharge under sub-section (4) of Section 42 can be said to be justified and can be imposed and also can be said to be compensatory in nature.*

15. However, as observed hereinabove, ***sub-section (4) of Section 42 shall be applicable only in a case where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the person – distribution licensee of his area of supply. So far as captive consumers/captive users are***

concerned, no such permission of the State Commission is required and by operation of law namely Section 9 captive generation and distribution to captive users is permitted. Therefore, so far as the captive consumers / captive users are concerned, they are not liable to pay the additional surcharge under Section 42(4) of the Act, 2003. In the case of the captive consumers/captive users, they have also to incur the expenditure and/or invest the money for constructing, maintaining or operating a captive generating plant and dedicated transmission lines. Therefore, as such the Appellate Tribunal has rightly held that so far as the captive consumers/captive users are concerned, the additional surcharge under sub-section (4) of Section 42 of the Act, 2003 shall not be leviable.

16. Even otherwise, it is required to be noted that ***the consumers defined under Section 2(15) and the captive consumers are different and distinct and they form a separate class by themselves. So far as captive consumers are concerned, they incur a huge expenditure/invest a huge amount for the purpose of construction, maintenance or operation of a captive generating plant and dedicated transmission lines. However, so far as the consumers defined under Section 2(15) are concerned, they as such are not to incur any expenditure and/or invest any amount at all. Therefore, if the appellant is held to be right in submitting that even the captive consumers, who are a separate class by themselves are subjected to levy of additional surcharge under Section 42(4), in that case, it will be discriminatory and it can be said that unequals are treated equally. Therefore, it is to be held that such captive consumers/captive users, who form a separate class other than the consumers defined under Section 2(15) of the Act, 2003, shall not be subjected to and/or liable to pay additional surcharge leviable under Section 42(4) of the Act, 2003……" (emphasis supplied).***

It is clear from the afore-extracted portion of the Judgement of the Supreme Court, in **MSEDCL Vs. JSW STEEL,** that all captive consumers/captive users were held to fall outside the scope of the definition of the consumers under Section 2(15) of the Act, and all of them were held not liable to pay additional surcharge under Section 42(2) of the Act as they formed a separate class distinct from the consumers as defined under Section 2(15) of the Act.

We agree with the submission of Mr. Amit Kapur, Learned Counsel for the Review-Petitioners, that the Supreme Court, in **MSEDCL Vs. JSW STEEL**, has held that all captive users/captive consumers, who receive power exclusive from their Captive Generation Plants, are not liable to pay, and the distribution licensees are not entitled to levy on them, additional surcharge under Section 42(4) of the Act. It was not necessary, therefore, to have an inquiry to be caused by the Commission.

III. OTHER CONTENTIONS:

In the light of law declared by the Supreme Court, in **MSEDCL Vs. JSW STEEL** which is binding on this Tribunal under Article 141 of the Constitution of India, it would be wholly inappropriate for us to again examine the statutory provisions, on which reliance has been placed by Shri Vikas Upadhyaya, Learned Counsel for the second respondent.

Mr. Amit Kapur, Learned Counsel for the Review-Petitioners, would also draw our attention to the Review Petition filed before the Supreme Court by MSEDCL, against the judgment in **MSEDCL Vs. JSW STEEL**, in support of his submission that all the contentions now raised before us by Shri Vikas Upadhyaya, learned counsel for the second respondent, find place in the said Review Petition; and the Supreme Court, by its order dated 22.02.2022, had rejected the said review petition. On the other hand, Shri Vikas Upadhyaya, learned counsel for the second respondent, would contend that the Supreme Court did not examine any of the contentions raised by MSEDCL, in the Review Petition, on its merits; and had only rejected the said Review Petition holding that the Order under review did not suffer from any error apparent on the face of record. We see no reason to delve on this aspect since the law declared by the Supreme Court, in **MSEDCL Vs. JSW STEEL**, is binding on this Tribunal.

IV. DOES THE EARLIER ORDER OF THIS TRIBUNAL SUFFER FROM AN ERROR APPARENT ON THE FACE OF THE RECORD?

We must, however, consider the submission of Shri Vikas Upadhyaya, learned counsel for the second respondent, that no review lies against the earlier Order of this Tribunal as it does not suffer from an error apparent on the face of the record, and the judgments cited by him in this regard, as the scope of interference in review proceedings is extremely limited and, among other grounds, it is only if the earlier Order of this Tribunal suffers from an error apparent on the face of the record, would interference be justified.

In **M/s. J.P. Builders vs A. Ramadas Rao & Others: 2010(3) LW 522**, a Division Bench of the Madras High Court observed:-

",,,,,,,,,,,9. ***The review proceeding is not by way of an appeal. Holding that the review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence on record for finding the error would amount to exercise of Appellate Jurisdiction, which is not permissible,*** *in Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170, the Supreme Court held as under:*

> *"8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma ((1979 (4) SCC 389), speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3).*
>
> *"It is true as observed by this Court in Shivdeo Singh v. State of Punjab (AIR 1963 SC 1909), there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate*

power which may enable an appellate court to correct all manner of errors committed by the subordinate court."

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that ***an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions.*** *We may usefully refer to the observations of this Court in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale (AIR 1960 SC 137), wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:*

An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured *by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.*

10. Considering the scope of review jurisdiction and holding "mistake or error apparent on the face of the record must be self evident and does not require a process of reasoning, in Parsion Devi v. Sumitri Devi, ((1997) 8 SCC 715), the Supreme Court has held as under:

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P.(AIR 1964 SC 1372 = (1964) 5 SCR 174) (SCR at p. 186) this Court opined:

What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record"). The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a

distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". ***A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."***
(emphasis ours)
.....
9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. ***An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected".*** *A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise……." (emphasis supplied)*

As held by the Division Bench of the Madras High Court, in **M/s. J.P. Builders vs A. Ramadas Rao & Others: 2010(3) LW 522**, exercise of the power of review is confined to an error apparent on the face of the record, and re-appraisal of the entire evidence on record to find the error would amount to the exercise of Appellate Jurisdiction. We have only applied the law declared by the Supreme Court, in **MSEDCL Vs. JSW STEEL**, to the facts of the present case, and are satisfied that failure of the Counsel to draw the attention of this Tribunal, to the relevant part of the said judgement of the Supreme Court, would constitute an error apparent on the face of the record.

In **Mukesh Kumar & Ors. v. State of Haryana & Ors: 2019 (3) LawHerald 1942,** the Punjab & Haryana High Court held:-

"…….We have heard learned counsel for the rival parties at length in the present review applications. At the outset, we find that the judgment dated 19.12.2018 under review, was put to challenge before the Apex Court and the SLP was dismissed as withdrawn. Nevertheless, we have heard the learned counsel for the rival parties to find out if there is error apparent on the fact of record. It is not in dispute that prior to the amendment w.e.f. 23.06.2017, i.e. the Haryana State Education School Cadre (Group B) Service (Amendment) Rules, 2017, the qualification was not recognized as equivalent qualification. It is for the first time this court had made order in the form of directions

dated 05.08.2016 and steps to make amendment to the Rule were taken by the Government of Haryana which issued notification dated 23.06.2017. The said notification does not say that the amended Rule would be retrospective in operation. Secondly, we find that the word "substituted" in the amendment was the matter of contest. But then this Court found that the dictum laid down by the Apex Court, in Para 14, of its judgment in the case of Gottumukkala Venkata Krishamraju versus Union of India and others, 2018 LawSuit (SC) 866, could be applied and therefore, it was held that Rule would be read prospectively. This Court found that there was no equivalence recognized by the Government of Haryana prior to coming into force of amended Rule. The notification amending the Rule does not anywhere say that it would be retrospective. The object sought to be achieved, obviously, was to make equivalence of those from the date when the notification was issued in the wake of order dated 05.08.20216 made for the first time. Thus, taking into consideration the object for which the Rule was amended coupled with the fact that the Rules itself does not say that it would be having retrospective effect in ordinary course, the interpretation was required to be made that it was having prospective effect. We, therefore, made interpretation accordingly. If according to the review applicants, the interpretation made by this Court is wrong and illegal, the same cannot be the matter of error on the fact of record as the question of law by making interpretation also considering order/direction dated 05.08.2016 the said direction has been decided by this Court. But then that cannot be the ground for review of the impugned judgment."

In **Mukesh Kumar,** the Punjab and Haryana High Court held that an erroneous interpretation of a government circular did not constitute an error apparent on the face of the record. Unlike an erroneous construction of a government circular, failure of the Counsel to draw the attention of this Tribunal to the ratio in a binding judgement of the Supreme Court, would undoubtedly constitute an error apparent necessitating review.

In **Rajinder Singh v. The Union of India and others: 2006 SCC Online Cal 713,** a Division Bench of the Calcutta High Court opined:-

"…….9. In our view, we cannot decide, in exercise of powers of review, whether their Lordships deciding the writ petition finally gave a correct interpretation to the division bench order dated November 5,

2003. It is apparent on the fact of the judgment and that the contention received their Lordships' consideration. Even if the interpretation given by their Lordships is wrong, in our view, we cannot examine the contention once again by entertaining an application for review. The wrong interpretation, if any, could be correct only by the apex court. Hence we are of the view that the contention regarding requirement of a fresh advertisement cannot be a ground to admit the review application."

In the present case, we are not concerned with the interpretation to be placed on the judgement of the Supreme Court, in **MSEDCL Vs. JSW STEEL**, as the law declared therein is clear and categorical that all captive consumers/captive users, who receive electricity from their Captive Generation Plants, are not liable to pay additional surcharge under Section 42(4) of the Act. Unlike statutes which may call for interpretation, the ratio of a binding judgement has only to be followed. In view of what has been held by the Calcutta High Court, even if we were to proceed on the premise, that it is permissible for a Court/Tribunal lower in hierarchy to do so, we have no hesitation in holding that neither does the said judgement of the Supreme Court, in **MSEDCL Vs. JSW STEEL**, call for, nor have we undertaken any such exercise of, interpretation.

Suffice it in conclusion to note the law declared by the Supreme Court, in **Lily Thomas and Others vs Union of India & others: (2000) 6 SSC 224:-**

"……52. The dictionary meaning of the word "review" is "the act of looking; offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyunman singh ji Arjun singh ji held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. ***It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of Justice. Law has to bend before Justice. If the***

Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error. *This Court in* ***S. Nagaraj. v. State of Karnataka*** *held (SCC pp. 619-20, para 19)*

> *"19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In Raja Prithwi Chand Law Choudhury v. Sukhraj Rai the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in Rajunder Narain Rae v. Bijai Govind Singh (1836) 1 Moo PC 117 that an order made by the Court was final and could not be altered:*
>
> > *...neverthless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common Law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in....The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.*

Basis for exercise of the power was stated in the same decision as under:

'It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.'

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And Clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength……..." (emphasis supplied).

V.CONCLUSION:

The error in the earlier order of this Tribunal, (caused as a result of the failure of Counsel to draw attention of this Tribunal to the relevant part of the judgement of the Supreme Court), is an error which is evident on a mere re-

look at the Judgement in **MSEDCL Vs. JSW STEEL**, and does not require a long-drawn process of reasoning. As the earlier Order of this Tribunal necessitates being reviewed and set aside, consequently the Appeals must be, and are accordingly, allowed in terms of the law declared by the Supreme court in **MSEDCL Vs. JSW STEEL**.

We also make it clear that the appeals are allowed only on the ground that the Appellants, who are captive consumers/ captive users of electricity generated by their Captive Generation Plants, are not liable to pay additional surcharge under Section 42(4) of the Act, and not on any of the other questions which fell for consideration before, and was decided by, the Commission.

PRONOUNCED IN OPEN COURT ON THIS 6th DAY OF JANUARY, 2023.

(Sandesh Kumar Sharma)
Technical Member

(Justice Ramesh Ranganathan)
Chairperson

mk/tp/mkj