APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)

APPEAL NO. 214 of 2017

Dated : 28th August, 2019

PRESENT: HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER

In the matter of:

Haryana Vidyut Prasaran Nigam Limited
Shakti Bhavan, Sector – 6
Panchkula, Haryana – 134109 **…. Appellant**

VERSUS

Haryana Electricity Regulatory Commission
Through Secretary
Bays 33-36, Sector-4
Panchkula, Haryana – 134109 **…. Respondents**

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

Counsel for the Respondent(s): Mr. Nishant Ahlawat

J U D G M E N T

PER HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER

1. Haryana Vidyut Prasaran Nigam Limited (in short, the "**Appellant**") has filed the present Appeal, under Section 111 of the Electricity Act, 2003 ("**Electricity Act**") assailing the correctness of the Order dated 08.11.2016 passed by the Haryana Electricity Regulatory Commission (hereinafter called the '**State Commission**') in Review Petition being Case No. HERC/RA-2 of

2016 as merged in the Order dated 31.03.2016 in Case No. HERC/PRO -31 of 2015 whereby the State Commission has conducted true up for FY 2014-15, Annual (Mid Year) Performance Review for FY 2015-16 and determined the Transmission Tariff and SLDC Charges for the FY 2016-17. The Appellant had moved a review petition before the State Commission being Case No. HERC/RA-2 of 2016 seeking review of the Order dated 31.03.2016. The State Commission has partly allowed the review petition vide its Order dated 08.11.2016. In the circumstances, the tariff itself has been modified and there is a merger of the Order dated 31.03.2016 in the Order dated 08.11.2016

2. Brief facts of the Appeal:

2.1 Haryana Vidyut Prasaran Nigam Limited, Appellant herein, is a company incorporated under the provisions of the Companies Act, 1956 and functions as the State Transmission Utility (STU) in terms of Section 39 (1) of the Electricity Act, 2003 and the State Load Despatch Centre (SLDC) in terms of Section 31 of the Act.

2.2 Haryana Electricity Regulatory Commission, sole Respondent herein, is the State Electricity Regulatory Commission for the State of Haryana, exercising powers and discharging duties under the provisions of the Electricity Act, 2003.

2.3 For determination of tariff for the Transmission licensees in the State of Haryana, the State Commission has framed the HERC (Terms and Conditions

for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi Year Tariff Framework) Regulations, 2012 (hereinafter referred to as '**MYT Regulations'**). In accordance with the above MYT Regulations, the Appellant is required to file each year an Annual Performance Review Petition for true-up of past year and review of estimates for the ensuing year as per the MYT Order for the Control Period, in accordance with Regulation 11 of the MYT Regulations

2.4 The Appellant, on 26.11.2015, filed its true-up petition for the Aggregate Revenue Requirement (ARR) for Transmission Business and State Load Dispatch Centre (SLDC) charges for FY 2014-15, Annual (Mid Year) Performance Review for the FY 2015-16 and determination of Transmission Tariff and SLDC Charges for the FY 2016-17.

2.5 The Appellant published its petition to invite comments from all the stakeholders/general public in accordance with the provisions of Section 64 of the Electricity Act, 2003. During the course of public hearing on 15.02.2016, the Appellant made its submission before the State Commission. The State Commission vide Order dated 31.03.2016 passed a tariff order in Case No. HERC/PRO -31 of 2015. The State Commission did not consider certain elements of True-up of ARR for Transmission Business and SLDC for the FY 2014-15, Annual (Mid-Year) Performance Review for FY 2015-16 and Determination of Transmission Tariff for the FY 2016-17.

2.6 In view of the above, the Appellant moved a Review Petition being Case No. HERC/RA-2 of 2016 before the State Commission on 17.05.2016 seeking review of the Order dated 31.03.2016 on the aspect of truing up elements for FY 2014-15, Annual (Mid Year) Performance Review for FY 2015-16 and Determination of Transmission Tariff and SLDC Charges for the FY 2016-17. The State Commission heard the matter on 31.08.2016 and has partly allowed the review petition vide Order dated 08.11.2016. However, the State Commission has estimated Short Term Open Access charges (STOA Charges) based on the energy drawl by the Distribution Licensees, instead of energy sales.

2.7 The State Commission in its previous tariff orders has considered the energy sales, while determining STOA charges instead of energy drawl by the Distribution Licensee. Aggrieved by the wrongful determination of STOA charges in the Main Order dated 31.03.2016 as merged in the Order dated 08.11.2016, the Appellant has filed the present appeal before this Tribunal.

3. The instant appeal has been filed by the Appellant under Section 111 of the Electricity Act, 2003 on the following questions of law.

A. Whether the Impugned Order has been passed by the State Commission in consonance with the MYT Regulations?

B. Whether the MYT Regulations are not binding on the State Commission?

4. Written submissions filed by the learned counsel, Ms. Swapna Seshadri, appearing for the Appellant are as under:

4.1 The Appellant is a transmission licensee in the State of Haryana and its revenue requirements and tariff is being determined by the State Commission as the regulator.

4.2 The only aspect which arises for consideration is the error committed by the State Commission in the impugned order by considering the energy drawl by Distribution Licensees while determining the Short Term Open Access Charges ('**STOA Charges**'), which is contrary to methodology prescribed in the MYT Regulations which clearly provides as under:

> *"Provided also that the transmission charges shall be payable by the short term open access consumers for the scheduled energy drawl at per kWh rate as worked out by dividing the annual transmission charges by the total volume of energy sales by the distribution licensee(s) during the previous year"*.

Therefore, the relevant consideration for arriving at the STOA Charges is the energy sale instead of energy drawl by DISCOMs. The State Commission ought to have determined STOA Charges for the Appellant taking into account energy sales approved for the FY 2015-16 or the actual sales of FY 2015-16 of the Distribution Licensees.

4.3 The State Commission has consistently followed the above practice and considered the energy sales approved for the State Distribution Licensees approved for previous years while determining STOA Charges. In this regard, the following Orders are relevant –

Tariff Order dated 29.05.2014 in Case No. HERC/PRO – 6 OF 2014:

*"**3.4 Transmission tariff***

The Commission, for determining transmission tariff, has considered the fact that entire cost allocated to the transmission business is of 'fixed' nature as already stated. Hence, it would be reasonable to recover the entire cost through a demand charge based on the ratio of the projected transformation capacity of the distribution licensees and long- term open access customer i.e. TPTCL. Considering the above factors, the Commission approves monthly fixed charges (Rs. million) for the transmission of power by HVPNL and transmission tariff for short term open access consumers for FY 2014-15 as per details given in the Table 3.4:-.

Table 3.4 - Determination of Transmission Tariff (FY 2014-15)

Particulars	
Transmission Cost (Rs. millions)	*10099.22*
Projected Transformation Capacity (MVA)	*19614.28*
UHBVNL's Share (MVA)	*9476.0*
DHBVNL's Share (MVA)	*10000.5*
TPTCL's Share (MVA) *(124 MW divided by 0.90 power factor)*	*137.8*
Ratio of Average Transformation Capacity	
UHBVNL (%)	*48.31%*
DHBVNL (%)	*50.99%*
TPTCL (%)	*0.70%*
Transmission Charges Recoverable from UHBVNL (Rs. millions)	*4879.109*
Transmission Charges Recoverable from DHBVNL (Rs. millions)	*5149.170*
Transmission Charges Recoverable from TPTCL (Rs. millions)	*70.941*
Monthly Transmission Charge UHBVNL(Rs. millions)	*406.592*
Monthly Transmission Charge DHBVNL (Rs. millions)	*429.097*
Monthly Transmission Charge TPTCL (Rs. millions)	*5.912*
Transmission Tariff for short term open access customers based on energy sales of 35189 MUs (Rs / kWh)	*0.29*

The short term open access customers will be subject to a single rate of Rs. 0.29/kWh (rounded off) as determined above. As the entire cost of transmission system including renovation, modernization and augmentation under the present tariff design is borne by the distribution companies and long term open access consumers, the Commission in line with regulation 47 (b) of HERC Regulations, 2012 allows 25% of the charges collected from the short – term open access consumers for use of intra – state transmission system to be retained by HVPNL and the balance shall be adjusted towards reducing the transmission charges payable by the existing long term / medium term users.".

Tariff Order dated 29.03.2013 in Case No. HERC/PRO–29 of 2012

The transmission tariff & SLDC charges approved by the Commission in the tariff order for 2012-13 are presented in the Table 3.1

Table 3.1 - HERC approved transmission tariff & SLDC charges for FY 2012-13

for FY 2012-13

Tariff	UHBVNL	DHBVNL
Transmission Charges (Rs. million / month)	266.22	259.28
SLDC Charges (Rs. million / month) to be recovered from UHBVNL and DHBVNL in 50:50 proportion.	9.4775	
Transmission Tariff for Short term Customers (Rs./ kWh) based on energy sales.	0.21	

4.4 Further, it is submitted that the State Commission is bound by its own Regulations and the State Commission ought to have followed methodology prescribed in MYT Regulations. The Hon'ble Supreme Court in the

constitutional bench decision of PTC India Limited v. Central Electricity Regulatory Commission, (2010) 4 SCC 603 has held as under –

> ***"54.*** *As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as it mandates establishment of an independent and transparent Regulatory Commission entrusted with wide-ranging responsibilities and objectives inter alia including protection of the consumers of electricity. Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76(1) and 79(1) one finds that the Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79(1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-State transmission of electricity, to issue licences, to adjudicate upon disputes, to levy fees, to specify the Grid Code, to fix the trading margin in inter-State trading of electricity, if considered necessary, etc. These measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under Section 178.*
>
> ***55.*** *To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a precondition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178. This principle flows from various judgments of this Court which we have discussed hereinafter. For example, under Section 79(1)(g) the Central Commission is required to levy fees for the purpose*

of the 2003 Act. An order imposing regulatory fees could be passed even in the absence of a regulation under Section 178. If the levy is unreasonable, it could be the subject-matter of challenge before the appellate authority under Section 111 as the levy is imposed by an order/decision-making process. Making of a regulation under Section 178 is not a precondition to passing of an order levying a regulatory fee under Section 79(1)(g). However, if there is a regulation under Section 178 in that regard then the order levying fees under Section 79(1)(g) has to be in consonance with such regulation.

56. *Similarly, while exercising the power to frame the terms and conditions for determination of tariff under Section 178, the Commission has to be guided by the factors specified in Section 61. It is open to the Central Commission to specify terms and conditions for determination of tariff even in the absence of the regulations under Section 178. However, if a regulation is made under Section 178, then, in that event, framing of terms and conditions for determination of tariff under Section 61 has to be in consonance with the regulations under Section 178.*

57. *One must keep in mind the dichotomy between the power to make a regulation under Section 178 on the one hand and the various enumerated areas in Section 79(1) in which the Central Commission is mandated to take such measures as it deems fit to fulfil the objects of the 2003 Act. Applying this test to the present controversy, it becomes clear that one such area enumerated in Section 79(1) refers to fixation of trading margin. Making of a regulation in that regard is not a precondition to the Central Commission exercising its powers to fix a trading margin under Section 79(1)(j), however, if the Central Commission in an appropriate case, as is the case herein, makes a regulation fixing a cap on the trading margin under Section 178 then whatever measures the Central Commission takes under Section 79(1)(j) have to be in conformity with Section 178."*

(Emphasis Supplied)

4.5 Further, this Tribunal has laid down that as and when Regulations are framed, the tariff should be determined in accordance with the Regulations and not dehors the same in several judgments. The Appellant is placing reliance on the following–

(A) Haryana Vidyut Prasaran Nigam Limited *v.* Haryana Electricity Regulatory Commission, 2012 SCC OnLine APTEL 83 : [2012] APTEL 83

"40. *Next issue requiring our consideration is related to* ***Return on Equity.***

41. *The Commission had allowed return on equity @ 10% to the appellant as against its claim of return on equity @ 15.5% as per CERC Regulations 2009 with the following observation in Tariff order dated 16.4.2010:*

> *"The entire equity of HVPNL is contributed by the State Government; any ROE allowed has cascading effect on the distribution companies who are not being allowed any return. Also, while consumer's appetite for any increases in already low, retail tariff is very high. Besides burdening the retail consumers, the ROE allowed increases the tax liability of HVPNL while the Distribution companies who bear the burden of transmission/SLDC charges are in deep financial distress as they are unable to absorb or pass on any additional financial burden. Consequently, in view of the above facts as well as the massive financial impact of FSA during the current year, the Commission restricts the return on equity to 10% during FY 2010-11."*

42. *The appellant in its review petition before the Commission prayed for the return on equity @ 15.5 % as per CERC Tariff Regulations 2009. The Commission has rejected the prayer of the appellant for allowing return on equity @ 15.5% along with the income tax thereon as against the return equity @ 10% allowed by the Commission holding that "the return on equity to the transmission licensee has been restricted as the Commission was mindful to the fact that the return on equity would only add to the financial burden of the distribution licensee which are already carrying huge losses. The Commission had also brought out the fact that the Power Utilities in Haryana are State owned and the equity portion of*

the Capital Expenditure was funded by the State Govt. through its Annual Plan Expenditure."

43. *The learned Counsel for the Appellant argued that HERC Regulations issued in Dec., 2008 called HERC (Terms & Conditions for Determination of Transmission Tariff) Regulation, 2008 provides that return on equity shall be computed @ 14% p.a. The above Regulations of the Commission were based on the CERC Regulations on Determination of Transmission tariff issued in the year 2004 which were applicable for the period 1.4.2004 to 31.3.2009. However, the Central Commission has issued revised Regulations on Terms & Conditions for Determinations of Transmission Tariff in the year 2009 which are applicable for the period 1.4.2009 to 31.3.2014, which provides return on equity @ 15.5% p.a. Accordingly, the appellant has claimed return on equity @ 15.5% p.a. in its ARR for the FY 2010-11, which is a legitimate claim of the appellant.*

44. *The Learned Counsel for the 2nd and 3rd Respondents supported the view taken by the Commission and made following contentions;*

i) *the Appellant had been claiming ROE @ 8% in the previous ARR filings. In terms of the Regulation 17 of the HERC (Terms and conditions for determination of transmission tariff) Regulations, 2008, the return on equity shall be computed on the equity base determined in accordance with Regulation 14 @ 14% per annum or as determined by the Commission from time to time. The ROE is payable to the Equity Share Holders to cover the following :—*

a. *Interest on the equity amount to be paid as dividend*

b. *Premium for risk in respect of capital involved*

ii) *The Appellant is not paying any dividend to the Govt. of Haryana from the return of equity earned by it. It is further submitted that in case of the Appellant, there is no risk involved for equity shares as all the expenses are passed through items and both the Discoms are bound to pay all the expenses under the orders of the HERC. Thus there is no risk to equity portion of transmission business. Considering the present interest rate and the previous claim of the Appellant @ 8% as well as the enabling provision, the ROE allowed by the State Commission is in order. As such, the entire equity of the company is contributed by the State Government and thus, allowing a higher return on equity will only add to the financial burden on the consumers of power.*

45. *The learned Counsel for the Commission reiterated the view of the Commission taken in the impugned order and further added that the Commission has determined Return on Equity at 10% as per Regulation 17 of Tariff Regulations 2008 which provides for Return on Equity @ 14% or as determined by the Commission from time to time. Regulation 17 of Tariff Regulations 2008 read as under:*

> *"17.* ***Return on Equity****. — (1) Return on equity shall be computed on the equity base determined in accordance with Regulation 14 @ 14% per annum or as determined by the Commission from time to time.*
>
> *Provided that equity invested in foreign currency shall be allowed a return up to the prescribed limit in the same currency and the payment on this account shall be made in Indian Rupees based on the exchange rate prevailing on the due date of billing.*
>
> *(2) The premium raised by the transmission licensee while issuing share capital and investment of internal resources created out of free reserve of the transmission licensee, if any, for the funding of the project, shall also be reckoned as paid up capital for the purpose of computing return on equity, provided such premium amount and internal resources are actually utilized for meeting the capital expenditure of the project and forms part of the approved financial package."*

46. *In this Case the Commission's decision to allow RoE @ 10% lacks transparency. In case the Commission had decided to allow RoE at less/higher rate than 14%, it should have declared before hand and sought comments on the same. In this case the Commission's decision to allow ROE @ 10% is contrary to the Regulations, and we must direct the Commission to allow Return on Equity @ 14% in accordance with Tariff regulations 2008. Once the Regulations have been framed the Commission has to act in accordance therewith."*

(Emphasis Supplied)

(B) Chhattisgarh State Power Distribution Co. Ltd*. v.* Chhattisgarh State Power Generation Co. Ltd., 2012 SCC OnLine APTEL 140 : [2012] APTEL 139

"7. The third issue is regarding interest on working capital for the FYs 2006-07 to 2009-10:

7.1 According to the learned counsel for the Appellant, the State Commission did not allow any interest on working capital for the years 2006-07 to 2009-10 contrary to Clause 21 of the 2006 Regulations. Respondent nos. 1,2& 5 have supported the contentions of the Appellant.

7.2. The learned counsel for the State Commission has argued that the interest on working capital has not been allowed in true up as the same was not allowed as a separate element of expenditure in the Tariff Order.

7.3 We notice that Clause 15 of Tariff Regulations 2006 stipulates the determination of working capital for the distribution licensee. Clause 21 stipulates that the interest on working capital shall be on normative basis even when the licensee has not taken working capital loan from any outside agency or his working capital loan exceeds the normative figures. Thus, the Regulations clearly provide for interest on working capital on normative basis, irrespective of the actual interest on working capital. The Appellant in the true up application had sought interest on working capital but the same was not allowed by the State Commission on the plea that interest on working capital was not allowed as a separate component in the respective Tariff Orders.

7.4 The learned counsel for the Appellant has relied on this Tribunal's finding in its Judgment dated 21.4.2011 reported as 2011 ELR (APTEL) 0830 July-Aug.,2011 in the matter of Madhya Pradesh Power Generation Co. vs. Madhya Pradesh State Electricity Regulatory Commission (Appeal No. 24 of 2010). In this Judgment, the Tribunal has held that if in the main order an error has been committed by the State Commission by not following the Regulations without assigning any reasons, the same error cannot be perpetuated and is required to be corrected in the true up. This decision of the Tribunal squarely applies in the present case. When the Regulation provide for interest on working capital, the same ought to have been allowed. Accordingly, this issue is decided in favour of the Appellant."

4.6 In all previous tariff orders, the State Commission has computed the STOA charges based on scheduled energy to arrive at energy sales. However, in the order impugned, the State Commission has changed its

position and divided the ARR of the Appellant by the estimated units to be delivered during FY 2016-17 instead of the energy sales of the Distribution Companies in the previous years. This is unsustainable and ought to be set aside. Therefore, it is submitted that the appeal deserves to be allowed and the matter remitted to the State Commission for redetermination of STOA charges in terms of the MYT Regulations.

5. On the other hand, learned counsel, Mr. Nishant Ahlawat, appearing for the Respondent State Commission/HERC submitted that the impugned Order dated 08.11.2016 passed by the Respondent State Commission/HERC in Review Petition being Case No. HERC/RA-2 of 2016 as merged in the Order dated 31.03.2016 in Case No. HERC/PRO -31 of 2015 is correct and a well reasoned Order and interference by this Appellate Tribunal does not call for.

6. We have heard learned Counsel appearing for the Appellant and the learned Counsel appearing for the Respondent Commission/HERC at considerable length of time and gone through the written submissions carefully and after critical evaluation of the relevant material available on records, the only issue that arises for our consideration in the instant appeal is:

Whether the impugned Order has been passed by the State Commission/HERC in consonance with the MYT Regulations?

7. Our Consideration & Findings:-

7.1 Learned counsel for the Appellant submitted that the State Commission has erroneously computed the Short Term Open Access (STOA) charges for FY 2016-17 by considering the energy drawal by the Distribution Licensees instead of energy sales which was being followed by the Commission in all previous years. Learned counsel, further, submitted that this is contrary to the methodology prescribed in the MYT Regulations which reads as under:

> *"Provided also that the transmission charges shall be payable by the short term open access consumers for the scheduled energy drawl at per kWh rate as worked out by dividing the annual transmission charges by the total volume of energy sales by the distribution licensee(s) during the previous year"*.

7.2 To strengthen the facts of the case regarding erroneous computation carried out by the State Commission for FY 2016-17, learned counsel made references to various previous tariff orders of the State Commission such as Order dated 29.05.2014 in Case No. HERC/PRO-6 of 2014 and Order dated 29.03.2013 in Case No. HERC/PRO-29 of 2012 in which the State Commission has computed STOA charges based on the energy sales by the Distribution Licensees for the previous year strictly in line with the stipulations of the MYT Regulations.

7.3 Learned counsel for the Appellant vehemently submitted that the Hon'ble Supreme Court and this Tribunal have laid down principles that as

and when Regulations are framed, the tariff should be determined in accordance with the Regulations and not dehors the same in several judgments, some of them are as under:-

(i) PTC India Limited v Central Electricity Regulatory Commission (2010)4 SCC 603

(ii) Haryana Vidyut Prasaran Nigam Limited v Haryana Electricity Regulatory Commission 2012 SCC OnLine APTEL 83 : (2012) APTEL 83

(iii) Chhattisgarh State Power Distribution Co. Ltd. v Chhattisgarh State Power Generation Co. Ltd 2012 OnLine ;APTEL 140 : (2012) APTEL 139

7.4 Learned counsel for the Appellant was quick to submit that when the State Commission has been determining the STOA charges as per its MYT Regulations for the previous years, the sudden change in its methodology for FY 2016-17 is beyond comprehension and unsustainable. As such, learned counsel for the Appellant submitted that the instant Appeal deserves to be allowed and the matter remitted to the State Commission for redetermination of STOA charges as per MYT Regulations.

7.5 ***Per-contra*****,** learned counsel appearing for the Respondent State Commission submitted that the impugned Order dated 08.11.2016 passed by the State Commission in Review Petition, being Case No. HERC/RA-2 of 2016 as merged in the Order dated 31.03.2016 in Case No.

HERC/PRO-31 of 2015, is a well reasoned order and interference by this Tribunal does not call for.

8. Our Findings:

8.1 We have carefully analyzed the contentions of learned counsel for the Appellant as well as learned counsel for the Respondent State Commission and also taken note of the various judgments relied upon by both the parties.

8.2 It is not in dispute that prior to FY 2016-17, the State Commission had been determining the STOA charges by dividing annual transmission charges by the total volume of energy sales by the Distribution Licensees during the previous year. However, for FY 2016-17, the State Commission has made a shift in its methodology by considering the energy drawal in place of energy sales, which has led to present dispute. The State Commission in its impugned Order has ruled as under:

> *"The Commission has analyzed the submission of the Petitioner with reference to the provision of the MYT Regulations and is of the view that Open Access Consumers is the affected party who is billed for transmission charges on the basis of the schedule of drawl given by the SLDC on day-to-day basis. This schedule is measured at the interface point between the STU (HVPN) and DISCOMs (two Nigams). Further, the transmission charges billed to the STOA consumers is equal to the number of units scheduled (measured at STU sub-stations i.e. the interface point of STU and the DISCOMs) multiplied by the transmission tariff. Therefore, it is appropriate to determine the transmission tariff by dividing the ARR of the FY 2016-17 of the*

transmission licensee by the estimated units (kWh) to be delivered by the transmission licensee during the FY 2016-17 instead of energy sales of the DISCOMs for the previous year.

Hence, the Commission has considered it appropriate to estimate the transmission tariff for STOA consumers on the basis of number of units estimated to be delivered by the transmission licensee (for the FY 2016-17) i.e. 46827.56 MUs instead of sales of DISCOMS for the FY 2015-16.

In view of the above discussions, the review sought by the Petitioner on this issue is rejected."

8.3 It is relevant to note from the findings of the State Commission that it has acknowledged the shift in methodology for computation of STOA charges for the year 2016-17 and has supported the same with rationale. It is, however, noticed that the reasoning given by the State Commission goes contrary to the provisions of the MYT Regulations regarding computation of STOA charges. In the host of judgments of the Hon'ble Supreme Court as well as this Tribunal, it has been categorically held that when a Regulation is made under section 178, then in that event, framing of terms and conditions for determination of tariff has to be in consonance with the Regulations. In other words, when Regulations have been framed by the Commission for tariff determination, the tariff would have to be determined strictly in accordance with the Regulations and not dehors the same. It is evident from the impugned Order that the State Commission has determined the STOA charges for FY 2016-17 in contravention of its own MYT Regulations.

8.4 In view of these facts, we are of the opinion that the State Commission ought to have determined the STOA charges for the year in question as per its MYT Regulations and not otherwise.

O R D E R

For the forgoing reasons, we are of the considered opinion that the issue pressed in the present appeal, being Appeal No. 214 of 2017, has merits and, hence, the Appeal is allowed.

The impugned Order dated 08.11.2016 passed by the Haryana Electricity Regulatory Commission in Review Petition, being Case No. HERC/RA-2 of 2016 as merged in the Order dated 31.03.2016 in Case No. HERC/PRO -31 of 2015, is hereby set aside to the extent challenged in the appeal by the Appellant.

The matter stands remitted back to the State Commission with a direction to re-determine the STOA charges in accordance with law within a period of three months from the date of this judgment and order.

No order as to costs.

Pronounced in the Open Court on this **28th day of August, 2019**.

(S.D. Dubey)
Technical Member

(Justice Manjula Chellur)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

Vt