



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**  
4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

SATURDAY, THE TWENTY FIFTH DAY OF MAY  
TWO THOUSAND NINETEEN

:Present:  
**Justice G. Bhavani Prasad, Chairman**  
**Sri P. Rama Mohan, Member**

**I.A.No.4 of 2019, I.A.No.5 of 2019 & I.A.No.8 of 2019 in O.P.No.1 of 2013**

**(1) I.A.No.4 of 2019 in O.P.No.1 of 2013**

**Between:**

M/s. Andhra Ferro Alloys Limited (Unit-I) ... Applicant/Respondent

**A N D**

1. Eastern Power Distribution Company of Andhra Pradesh Limited
2. The Superintending Engineer, Operation Circle  
Vizianagaram ... Respondents/Petitioners

**(2) I.A.No.5 of 2019 in O.P.No.1 of 2013**

**Between:**

M/s. Jayalakshmi Ferro Alloys Private Limited ... Applicant/Respondent

**A N D**

Andhra Pradesh Eastern Power Distribution Company Limited  
... Respondent/Petitioner

**(3) I.A.No.8 of 2019 in O.P.No.1 of 2013**

**Between:**

M/s. Abhijeet Ferrotech Limited ... Applicant/Respondent

**A N D**

1. Eastern Power Distribution Company of Andhra Pradesh Limited
2. The Superintending Engineer, Operation Circle  
Visakhapatnam ... Respondents/Petitioners

All these three Interlocutory Applications have come up for hearing finally on 10-05-2019 in the presence of Sri M. Sridhar, Advocate representing Sri Challa Gunaranjan, learned counsel for the applicants/respondents and Sri P. Shiva Rao, learned Standing Counsel for the respondents/petitioners. After carefully considering the material available on record and after hearing the arguments of the learned counsel, the Commission passed the following:

## **COMMON ORDER**

Interlocutory Applications to revisit the terms and conditions of H.T. tariff as mentioned in clause 7 (2) (H.T. Supply Specific Conditions) and consequently declare the action of the respondents in demanding deemed consumption charges in pursuance of the Guaranteed Energy Off-take at 6701 KVAH per kVA per annum on Contracted Maximum Demand for the financial year 2014-15 and continued for the financial year 2014-15 as contrary to the Tariff Order dated 30-03-2013 of the erstwhile Andhra Pradesh Electricity Regulatory Commission in O.P.No.1 of 2013 and hence illegal and unenforceable. The applicants consequently request to set aside the demands in Lr.No.SE/O/VZM/SAO/HT/JAO/Sr.Asst./D.No.869/18 dated 01-12-2018 and Lr.No.SE/O/VZM/SAO/HT/JAO/Sr.Asst./D.No.582/18 dated 14-08-2018 to the extent of deemed consumption charges for the financial year 2014-15 in respect of Units I & II of the applicant in I.A.No.4 of 2019, Lr.No.SE/O/VZM/SAO/HT/JAO/Sr.Asst./D.No.364/17 dated 10-05-2017 and Lr.No.SE/O/VZM/SAO/HT/JAO/Sr.Asst./D.No.647/18 dated 11-09-2018 to the extent of deemed consumption charges for the financial year 2014-15 in respect of applicant in I.A.No.5 of 2019 and Lr.No.SE/O/VSP/SAO/JAO/HT/SA.4/D.No.350/16 dated 22-03-2016 to the extent of deemed consumption charges for the financial year 2014-15 in respect of the applicant in I.A.No.8 of 2019.

**2.** The case of the applicants is that their companies incorporated under the Companies Act, 1956 are owning Ferro Alloy units for manufacture and sale of Ferro Alloys availing power from Eastern Power Distribution Company of Andhra Pradesh Limited, which is the distribution licensee for the area in which the applicants' units are located. The applicants were under HT Category-1 (B) and they require

continuous and uninterrupted power supply, as the electricity is a major input for the highly power intensive manufacture of Ferro Alloys. 40-70% of the manufacturing cost is only the cost of electricity. As per the orders of the erstwhile Andhra Pradesh Electricity Regulatory Commission in I.A.No.10 of 2002 in O.P.Nos.29 to 33 of 2002 dated 26-09-2002, the tariff for the Ferro Alloys units was fixed as separate category without demand and minimum charges subject to their drawing entire requirement of power from the distribution companies alone while maintaining the minimum load factor of 85% of an annual basis. They were liable to pay deemed consumption charges to the extent of shortfall from 85%. It was presumed that there would be continuous and uninterrupted power supply and the tariff which continued on the same formula upto the financial year 2008-09 was clarified in the financial year 2009-10 stating that Guaranteed Energy Off-take shall be 6701 units per kVA per annum (at 85% Annual Load Factor) on Average Contracted Maximum Demand or Average Actual Demand, whichever is higher and any shortfall will be billed as deemed consumption. It continued upto 2014-15 and in the Tariff Order for FY 2014-15, the erstwhile Andhra Pradesh Electricity Regulatory Commission did not accept the proposal of the licensees for merging HT-1 (B) category with HT-1 (A) Industry, as the Ferro Alloy Units have no choice in energy usage unlike other consumers and also assure revenue to the Licensees. In FY 2012-13, Eastern Power Distribution Company of Andhra Pradesh Limited imposed power cuts under intimation to the applicants and at the request of the Licensees, the erstwhile Andhra Pradesh Electricity Regulatory Commission by its order dated 07-09-2012 imposed restrictions from 12-09-2012 under Section 23 of the Electricity Act, 2003, which were extended from time to time upto September, 2013. However, the erstwhile Andhra Pradesh Electricity Regulatory Commission lifted the restrictions from

01-08-2013 by an order dated 31-07-2013 under which no deemed consumption charges were to be levied during the R & C measures. The distribution companies, however, indulged in number of scheduled and unscheduled outages deviating from supply hours causing commercial loss to the applicants. In fact, the load shedding went unregulated after R & C measures were withdrawn varying the hours of supply at the choice and convenience of the distribution companies. The principle laid down by the Hon'ble Supreme Court in *Amalgamated Electricity Co. Ltd. Vs Jalgaon Borough Municipality (1975) AIR 2235* makes no liability accrued to the applicants, if the distribution company is not in a position to supply power whenever needed. This Commission in I.A.No.23 of 2015 in O.P.No.2 of 2013 ordered on 06-04-2016 that the Ferro Alloy units were not liable to pay any deemed consumption charges, as the distribution companies were neither ready and willing to supply power for the entire period nor had suffered any loss due to non-consumption of electricity by the Ferro Alloy units. Though R & C measures were lifted from 01-08-2013, load restrictions by way of Emergency Load Relief and Load Relief continued throughout the remaining period of the FY 2013-14 and the FY 2014-15. Extra weekly power holidays in addition to regular weekly offs were imposed and due to power deficit situation in the FY 2014-15, the unconsumed power by the applicants was sold to and consumed by others, thus causing no consequential loss to the distribution companies. For the furnace being brought back to the working temperature after a power cut, 48 to 72 hours are required and in RP (SR) No.78 of 2013 in O.P.No.1 of 2013, the erstwhile Commission has clarified that this deemed consumption is a penal provision and it is with an estimated quantity and hence there is no loss of revenue. In O.P.No.4 of 2013, in the order dated 13-08-2013, the erstwhile Commission noted the inability of the distribution companies to ensure continuous

supply of 100% power. The applicants were therefore disabled from procuring the imported raw material or book export orders operating at full capacity, achieving 85% load factor in the FY 2014-15. The applicants suffered loss of market and financial losses for no fault of theirs and any imposition of deemed consumption charges will be a death blow. This Commission considered the issue in I.A.No.7 of 2017 in O.P.Nos.1 and 2 of 2013, I.A.No.1 of 2017 in O.P.No.1 of 2013 and in I.A.No.5 of 2018 in O.P.No.2 of 2013. Hence, the Interlocutory Applications.

**3.** The respondents opposed the Interlocutory Applications contending that seeking a review of the order passed in O.P.No.1 of 2013 after five years is not maintainable. The continuous power supply was extended to the units except a few and negligible outages. The deemed consumption charges notices were issued to the applicants for the FY 2014-15 excluding the days of restrictions, power holidays and interruptions. Due to power shortage during FY 2014-15 i.e., from April, 2014 to September, 2014, power restrictions and power holidays were maintained as per the lists submitted by the respondents with prior intimation to the consumers and the deemed consumption charges for that FY were calculated duly excluding the power restriction days and power holidays. When charges were not paid, reminders were issued. Only two power holidays were issued for VZM092 (Unit II) during the FY 2014-15 and the remaining interruptions were caused due to tripping due to Hud Hud cyclone from 12-10-2014 to 21-10-2014 and I/c fail etc., which were excluded while calculating the deemed consumption charges. Deemed consumption charges for the FY 2013-14 were withdrawn as per the orders of the Commission. In case of the applicant in I.A.No.5 of 2019, the period of disconnection due to non-payment of CC charges was also excluded from the deemed consumption charges. The applicant in I.A.No.8 of 2019 failed to consume the guaranteed off take may be due to its

internal problems, which are not known to the respondent, but definitely not due to interruption in power supply as seen from the comparative consumption pattern of M/s. Anjaneya Alloys Limited and the applicant in I.A.No.8 of 2019, which are similar units in the same area and drawing power from the same sources. Therefore, the respondents desired that the Interlocutory Applications be dismissed.

**4.** The point for consideration in all the Interlocutory Applications is whether the applicants are respectively entitled to be relieved from payment of deemed consumption charges for failure to have the guaranteed energy off-take during the FY 2014-15?

**5.** The subject matter of the present Interlocutory Applications is identical to the fact situation dealt with in the orders dated 06-04-2016 in I.A.No.1 of 2016 in O.P.No.4 of 2011, I.A.No.21 of 2015 in O.P.No.1 of 2012, I.A.No.22 of 2015 in O.P.No.1 of 2013, I.A.No.23 of 2015 in O.P.No.3 of 2012 & I.A.No.24 of 2015 in O.P.No.2 of 2013, order dated 25-02-2017 in I.A.No.1 of 2017 in O.P.No.1 of 2013, order in I.A.No.7 of 2017 in O.P.Nos.1 and 2 of 2013 dated 26-08-2017 and order dated 02-06-2018 in I.A.No.5 of 2018 in O.P.No.2 of 2013. All the said matters also involve Ferro Alloys manufacturing units. In the orders dated 06-04-2016, the demand for deemed consumption charges for the FYs 2011-12, 2012-13 and 2013-14 respectively was challenged and it was found on contest that during the Restriction & Control periods of the FYs 2012-13 and 2013-14, the percentage of days with interruptions in power supply even went upto 67% and that deficit power supply was significant during the relevant periods. The orders dated 25-02-2017, 26-08-2017 and 02-06-2018 relate to FY 2014-15. It was noted that the proceedings of the then Andhra Pradesh Electricity Regulatory Commission in Proceedings No.504/Secy /EAS/S-96/2014 dated 29-03-2014 directed that existing tariffs shall

continue from 01-04-2014 until further orders and that the benchmark for compliance of the tariff order of the Commission for the FY 2014-15 also was the tariff order of the Commission for the FY 2013-14. In all the three orders, it was found that interruptions in power and restrictions imposed during FY 2014-15 were evident from the statement of load reliefs and Memos issued by the distribution companies and their officers including the power interruptions specifically communicated and the Hud Hud cyclone period. It was also found that there were 126 days of power cuts leaving the days to be reviewed for deemed consumption at 239. It was further noticed that a feeble attempt was made in the counter affidavits to plead the bar of limitation in support of which plea, no provision or principle or authority has been placed before the Commission. The demand in question in these Interlocutory Applications being on 01-12-2018 and 14-08-2018 in I.A.No.4 of 2019, 10-05-2017 and 11-09-2018 in I.A.No.5 of 2019 and 22-03-2016 and 03-04-2019 in I.A.No.8 of 2019, the Interlocutory Applications cannot ex facie be considered to be barred by time. The counters of the respondents in all the three Interlocutory Applications admitted the Ferro Alloys industry to be a highly power intensive industry. The counters also admitted the Restrictions & Control measures during the relevant periods. Non-supply of power during Hud Hud cyclone was admitted. In so far as the applicant in I.A.No.8 of 2019 is concerned, the comparative consumption pattern of his industry in contrast to the other similar industry was only suspected to be possibly due to internal problems of the said applicant, but it was specifically admitted that they were not known to the respondents therein. Suspicion cannot be equated to proof, more so to fasten any civil liability. As observed in the earlier orders, the distribution licensees who could not supply power for significant periods during the relevant periods cannot claim to be deprived of any maintenance

expenditure during the relevant periods due to non-payment of deemed consumption charges. Imposition of deemed consumption charges was observed to be dependent on consumption of power for 8760 hours and as no loss due to non-consumption of energy was proved and as the actual consumption charges were admittedly paid, the consumers covered by the earlier orders were declared as not liable to pay any deemed consumption charges during the relevant periods. The principle laid down by the Hon'ble Supreme Court in *Amalgamated Electricity Co. Ltd. Vs Jalgaon Borough Municipality (1975) 2 SCC 508* holding that if the basic premise of readiness to supply energy is absent, as a logical consequence, the person receiving energy may not be liable to be burdened with an obligation of paying any minimum charges, is squarely applicable to the facts of the present Interlocutory Applications also. The principle of the earlier orders of the Commission therefore squarely applies to the facts and circumstances in these Interlocutory Applications also. Hence, the contentions of the applicants have to be accepted and the Interlocutory Applications have to succeed in respect of the questioned demand in respect of the FY 2014-15. This consideration is no adjudication concerning the deemed consumption charges in respect of any other Financial Year.

6. Accordingly the Interlocutory Applications are allowed in respect of the respective demands against the applicants in respect of the deemed consumption charges for the FY 2014-15 only. No costs.

This order is corrected and signed on this the **25<sup>th</sup> day of May, 2019.**

**Sd/-**  
**P. Rama Mohan**  
Member

**Sd/-**  
**Justice G. Bhavani Prasad**  
Chairman