



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4thFloor, Singareni Bhavan, Red Hills, Hyderabad 500004

WEDNESDAY, THE NINETEENTH DAY OF AUGUST
TWO THOUSAND AND TWENTY

:Present:

Justice C.V. Nagarjuna Reddy, Chairman
Sri P. Rajagopal Reddy, Member
Sri Thakur Rama Singh, Member

I.A.No.9 of 2019 in O.P.No.2 of 2015 & I.A.No.10 of 2019 in O.P.No.1 of 2015

I.A.No.9 of 2019 in O.P.No.2 of 2015

1. Andhra Pradesh Ferro Alloys Producers Association
2. Abhijeet FerroTech Limited
3. M/s. Andhra Ferro Alloys Ltd. **...Petitioners**

A N D

1. Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL)
2. Government of Andhra Pradesh
Energy, Infrastructure & Investment (Power), Department **...Respondents**

I.A.No.10 of 2019 in O.P.No.1 of 2015

1. Andhra Pradesh Ferro Alloys Producers Association
2. M/s. Sai Laxmi Tulasi Ferros Pvt. Ltd. **...Petitioners**

A N D

1. Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL)
2. Government of Andhra Pradesh
Energy, Infrastructure & Investment (Power), Department **...Respondents**

Both the Interlocutory Applications have come up for hearing finally on 28-07-2020 in the presence of Sri C.V. Mohan Reddy, learned senior counsel for the petitioners and Sri P. Shiva Rao, learned standing counsel for the respondents at the web hearing. After carefully considering the material available on record and after

hearing the arguments of the learned counsel for both parties, the Commission passed the following:

COMMON ORDER

In both these Applications a similar relief is claimed, viz., to revisit the terms and conditions of the H.T. Tariff as mentioned in Clause 6(2) (H.T. Supply Specific Conditions) and declare the action of the 1st respondent in demanding deemed consumption charges pursuant to the Guaranteed Energy Offtake of 6701 kVAh per kVA per annum on contracted Maximum Demand for the financial year 2015-16 as contrary to the Tariff Order dated 23.03.2015 passed by this Commission in O.P.No.1/2015 for the financial year 2015-2016, as illegal and unenforceable and consequently to set aside the demands raised.

2. The brief facts leading to the filing of these applications are that the applicants are engaged in the business of manufacture and sale of Ferro Alloys in the State of Andhra Pradesh. Initially, the Ferro Alloy industries in the State were drawing power from NTPC & APGPCL.

3. The petitioners stated that the Commission by its order dated 26-09-2002 in I.A.No.10/2002 in O.P.Nos.29-33/2002 fixed the tariff for the ferro alloys units as a separate category by itself without demand and minimum charges subject to the condition that the ferro alloy units draw entire requirement of power from DISCOMs alone and surrender their other sources of cheaper power from NTPC & APGPCL and also maintain load factor of 85% on annual basis. In case, the annual load factor is less than 85%, the units have to pay deemed consumption charges to the extent of shortfall.

4. The petitioners further stated that the Commission was aware of the situation that APTRANSCO/DISCOMS were having surplus power and even in its order dated 22-03-2002 (Para 283 of the Tariff Order 2002-03), the same was dealt with for sale to out-side State and that the Commission continued with the same formula for determining the tariff to these units till the financial year 2008-09. From the financial year 2009-10, though the Commission retained the very same formula, it has changed the format which reads as under:

"Guaranteed energy off-take at 6701 units per kVA per annum (at 85% annual load factor) on Average Contracted Maximum Demand or Average Actual Demand whichever is higher. The energy falling short of 6701 units per kVA per annum will be billed as deemed consumption".

5. That subsequently, for the financial year 2010-11 and upto 2013-14, a similar condition has been stipulated by the Commission. In the Tariff Order for the financial year 2013-14, the Commission has made the following decision:

"If the Licensees' proposal is approved, the tariff applicable for HT-1 (A): Industry will be applicable for Ferro Alloy units also. At present, Ferro Alloy Units are covered under HT-I(B) category with specific tariff conditions, viz. minimum offtake of 6701 kVAh per kVA/annum (at 85% load factor per annum), no demand charges, no tariff and energy charges less by Rs. 0.32/kVAh compared with HT-I(A): Industry General. The consumers, whether they consume or not, pay for 6701 units per kVA during the year. Accordingly these consumers have no choice in energy usage unlike other consumers and also assure revenue to Licensees. The Commission has not seen any merits

in Licensees' proposal and hence not accepted the proposal of merging HT-I(B) Ferro Alloy units with HT-I(A) industry”.

6. The petitioners further stated that the 1st Respondent has raised huge demands on them claiming deemed consumption charges for the financial years 2012-13, 2013-14 and 2014-15. The petitioners, who by then, closed their units due to severe financial and adverse market conditions, have approached this Commission praying to revisit the said condition imposed in the respective Tariff Orders, which enables the 1st respondent to levy such huge artificial charges on account of deemed consumption. This Commission by its order dated 06.04.2016 in I.A.No.1/2016 in O.P.No.4/2011, I.A.No.21/2015 in O.P.No.1/2012, I.A.No.22/2015 in O.P.No.1/2013, I.A.No.23/2015 in O.P.No.3/2012 & I.A.No.24/2015 in O.P.No.2/2013 while allowing the applications declared that the petitioners are not liable to pay any deemed consumption charges during the relevant periods and hence the 2nd respondent is not entitled to raise any demands against the petitioners for the same. While holding so the Hon'ble Commission observed as follows:

"as the respondents admittedly could not supply power for significant periods during the relevant years and as the formula on which the Commission based the imposition of deemed consumption charges is dependent on consumption of power for 8,760 hours, the distribution companies cannot claim to be deprived of any maintenance expenses during the relevant years due to petitioners not paying the deemed consumption charges. When energy intensive industries like Ferro Alloys cannot be subjected to vagaries in supply and when such industries cannot suddenly re-gain their ability to consume the

contracted load of power or their capacity to achieve optimum production on any sudden uninformed resumption of power supply, the request of the petitioners to be exempted from the liability to pay the deemed consumption charges is but just. Apart from the distribution companies not projecting or proving any actual loss due to non-consumption of energy by the petitioners during the relevant period and when the distribution companies realized actual consumption charges for the power supplied to the petitioners even during the relevant periods, the deemed consumption charges ought not to have been imposed and collected from the petitioners."

7. The petitioners further stated that despite granting power subsidy and orders of this Commission doing away with deemed consumption from 2016-17 and relieving the petitioners from the liability of these charges for the years 2012-13 to 2014-15, as petitioners were still struggling to revive their units, the 2nd respondent, Government of Andhra Pradesh issued G.O.Ms.No.133 dated 17.10.2016 announcing further concessions like payment of arrears of electricity dues in 24 instalments, adjustment of power subsidy of Rs.1.50 ps in the monthly CC bills besides supporting the petitioners to seek waiver of deemed consumption charges for 2015-16 before this Hon'ble Commission. The 2nd respondent subsequently issued G.O.Ms.No.148 dated 31.10.2016 in exercise of the powers conferred under Section 108 of the Electricity Act, 2003 directing this Commission to pass suitable orders for implementation of the concessions mentioned therein. The 2nd respondent while granting concessions and benefits to the Ferro Alloy industries has specifically ordered that it would support the request of the industry for waiver of deemed consumption charges up to March, 2016 before this Commission. The object behind

issuance of the said orders was to bail out the industry from reeling difficulties and restore the operations to normalcy in larger public interest, as so many people and families are dependent directly and indirectly. That as mentioned earlier, this Commission for the FY 2016-17 amended clause 7.2 of General Terms of HT Supply by deleting the deemed consumption clause and stipulating only energy charges. Thus, except for the year 2015-16, deemed consumption charges are made inapplicable.

8. It is the further case of the petitioners that demand notices were issued to them to pay deemed consumption charges for the year 2015-16. The 2nd petitioner was demanded to pay the same vide Letter dated 05.07.2018, for which it has submitted a reply dated 16.06.2018 and requested to withdraw the same, in view of the reasons mentioned therein. It was also brought to their notice that this Commission in the Tariff Order for the year 2017-18, has categorically stated that even for that year no deemed consumption charges are imposed as the Ferro Alloys industry is coming back to normalcy from total sickness. Therefore since the same circumstances continue to exist, the orders of the Commission for the year 2015-16 deserve to be revisited. The financial position of the petitioners and other members continues to be still under tremendous pressure and they are hardly able to run the units. But for the timely incentives or concessions offered by the 2nd respondent and as supported by the 1st respondent and eventual orders of this Commission, doing away with the condition/clause of deemed consumption from the Tariff Orders from 2016-17 onwards and exonerating the petitioners from the said liability of the previous years of 2012-13 to 2014-15, the petitioners could not have survived. But continuing the same condition for the year 2015-16, would virtually demolish the

earlier efforts and helping hand offered by the respondents and this Commission. There would be no rationale in continuing and enforcing the same, when this Commission thought it fit to do away with the same currently and revisited for the earlier years.

9. The petitioners also stated that the units of energy not consumed by the petitioners have already been sold and used by other consumers in a power deficit situation and revenue for the same has been already realised by the 2nd respondent. Therefore, there is no consequential loss to the 1st respondent by non-consumption of the said units. It will therefore not be equitable, proper or just to try to earn further revenue by charging the deemed consumption charges. That this Commission had clarified in RP (SR) No. 78 of 2013 in O.P.No.1 of 2013 that *"this deemed consumption is a penal provision and it is an estimated quantity and hence there is no loss of revenue."* Therefore, the respondents are not entitled to claim the deemed consumption charges. Accordingly, the petitioners sought for revisiting the terms and conditions of the H.T. Tariff as mentioned in clause 6(2) (H.T. Supply Specific Conditions) and consequently to declare the action of the 1st respondent in demanding deemed consumption charges in pursuance of the Guaranteed Energy Offtake at 6701 kVAH per kVA per annum on contracted Maximum Demand for the financial year 2015-16 as contrary to the Tariff Order dated 23.03.2015 passed by the Hon'ble Commission in O.P.No.1 of 2015 for the financial year 2015-2016.

10. Responding to the averments of the petitioners, the respondents in their counter admitted grant of relief of waiver of deemed consumption charges by the Commission for the years except for the year 2015-16 and also the issuance of

G.O.Ms.No.133 dated 17.10.2016 and G.O.Rt.No.148, dated 31-10-2016. It has been stated that the Government while issuing orders did not agree with the request of Ferro Alloy industries for waiver of deemed consumption charges for the past period; that, during the FY 2015-16, APEPDCL has not imposed any kind of power holidays or R&C measures and supplied continuous and uninterrupted power to Ferro Alloy Units. Hence, Deemed Consumption Charges for FY 2015-16 ought to be paid by the Ferro Alloy Units as per the tariff order issued by the Commission for FY 2015-16. The 1st Respondent further stated that as per the Tariff Order for Retail Sale of Electricity for FY 2015-16, the petitioners are liable to pay deemed consumption charges. Hence it sought dismissal of the application.

11. The 2nd Respondent adopted the counter filed by the 1st Respondent.

12. The petitioners filed their rejoinder stating that the actual sale was more than the allowable sale and stated that the 1st respondent had achieved their sales target. That the actual power purchase was more than the allowable power purchase thereby signifying the fact that the 1st respondent had to in fact purchase more power to meet the power demand of its consumers. The above results thus clearly establish that the AP DISCOMs had not been put to any losses due to less power consumed by the Ferro Alloy Units during FY 2015-16 and reiterated the contents stated in the affidavit.

13. The petitioners further stated that this Commission also took note of the fact that most of the Ferro Alloy units had closed down and the State Government was making all out efforts to revive such units. Realizing that the continuation of obligation to pay the Deemed Consumption charges will be further onerous and

unbearable, this Commission vide order dated 04.04.2016 ordered for waiver of Deemed Consumption charges to Ferro Alloy units from FY 2016-17 and onwards. That in the said order the 1st respondent was directed to bill energy charges to such consumers on the basis of actual energy consumption or 50 kVAh/kVA per month of contracted demand, whichever was higher. It is pertinent to mention that the same procedure was continued for the years 2017-18, 2018-19 and 2019-20.

14. The petitioners also stated that the State Government has been keenly supporting the cause of Ferro Alloy industries since long, as this category of industries has been facing various problems, including those related to electricity costs, which has prompted the State Government to provide subsidy in electricity charges for FY 2016-17. The 1st petitioner on behalf of the other petitioners has been continuously following up with the State Government for extending such subsidy for further periods as well. The Government has been sensitive to such demands and the matter regarding extending subsidy for subsequent periods has been under process. That it was in this background that vide G.O.Ms No. 133, dated 17.10.2016 the State Government had ordered to support the request of Ferro Alloy industries for waiver of Deemed Consumption charges for FY 2015-16 before this Commission. The petitioners further submitted that the Ferro Alloys Association approached the 2nd respondent vide letter no.APFAPA 1 dated 10.04.2019 requesting for advice to the 1st respondent to withdraw notices in respect of Deemed Consumption charges for FY 2015-16 raised on the members of the Association. In the said letter, it has been stated that the Deemed Consumption charges for Ferro Alloy units for FY 2016-17 and onwards has been revised by this Commission as 50 units per kVA per month. This Commission had issued the said order after examining

the precarious financial position of Ferro Alloy units and various other problems being faced by them and while requesting for the same indulgence, petitioners prayed for granting the reliefs, as prayed for.

15. Having regard to the respective pleadings of the parties the only point that arises for consideration is whether the petitioners have made out a case for waiver of deemed consumption charges by revisiting the tariff order for the FY 2015-16?

16. The petitioners' plea for waiver of deemed consumption charges is mainly based on:

- a. Order dated 06.04.2016 in I.A.No.1 of 2016 in O.P.No.4 of 2011 and batch of this Commission.
- b. Order dated 26.08.2017 in I.A No. 7 of 2017 in O.P.No. 1 of 2013.
- c. Order dated 02.06.2018 in I.A.No.5 of 2018 in O.P.No. 2 of 2013
- d. G.O.Ms.No.133, Industries and Commerce (Policy and Investment) Department dated.17.10.2016 and
- e. Tariff Order dated 10.02.2020.

17. Sri C.V. Mohan Reddy, learned senior counsel appearing for Sri Challa Gunaranjan learned counsel for the petitioners submitted that having regard to the severe problems faced by the Ferro Alloy industries, the state Government stepped in and extended various concessions, by issuing G.O.Ms No.133 dated 17.10.2016, such as extending power cost reimbursement @1.50ps per unit for Ferro Alloy industries in the state for FY 2016-17 as a special case, permitting the Ferro Alloy units to pay arrears in 24 monthly instalments, to support the request of Ferro Alloy

industries for waiver of deemed consumption charges upto march 2016 before this Commission and to adjust the power incentive of Rs.1.50 ps per unit in the CC bills itself and the Industries Department will in turn pay the required budget to DISCOMs. Learned Senior Counsel further submitted that considering the severe constraints faced by Ferro Alloy industries as a whole, this Commission has relieved all the Ferro Alloy units in the State from the obligation of payment of deemed consumption charges by passing orders for all the years commencing from 2011-12 till FY 2016-17 except for FY 2015-16, that as the representation for FY 2015-16 was pending with the Government, the issue of payment of deemed consumption charges for FY 2015-16 could not be raised earlier and that therefore a similar order for the said year was not passed by this Commission. The learned Senior Counsel further submitted that G.O.Ms No.133 issued by the Government of Andhra Pradesh is binding on the DISCOMs and that therefore they cannot oppose the petitioners' request for waiver of the deemed energy consumption charges. The learned Senior Counsel also submitted that even in the Tariff Order dated 10.02.2020, this Commission has considered the continuing problems faced by the Ferro Alloy units in the State and declined the request of the DISCOMs for reintroduction of condition of maintenance of Annual Load Factor of 85% and that therefore there is no justification to deny relief to the petitioners for FY 2015-16. The learned Senior Counsel lastly submitted that recovery of huge amounts in the name of deemed consumption charges just for one year will cause unbearable burden on the two units in question.

18. Opposing the above submissions, Sri P. Shiva Rao, learned Standing Counsel for the respondents submitted that while there is no dispute on the facts

pleaded by the petitioners, during FY 2015-16 there were no power cuts, unlike in previous years and that therefore the orders passed by this Commission relied upon by the petitioners are of no avail to the petitioners. The learned Standing Counsel further submitted that while there is no doubt about the direction in G.O.Ms.No.133 concerning the DISCOMs' extension of support to the Ferro Alloy units seeking waiver of deemed consumption charges before this Commission, G.O.Rt.No.148, Energy, Infrastructure and Investment (Power-I) Department dated 31.10.2016 omitted this issue while giving directions under Section 108 of the Electricity Act, 2003. In view of this omission, the petitioners cannot derive support from G.O.Ms.No.133.

19. We have carefully considered the respective submissions of the learned counsel for the respective parties. The issue of deemed consumption charges is being raised by the Ferro Alloy industries time and again. The Ferro Alloys industries have filed their first batch of 4 petitions seeking revisiting of Tariff orders for FY 2011-12 (I.A.No.1 of 2016) for FY 2012-13 (I.A.No.21 of 2015 and I.A.No.23 of 2015) and for FY 2013-14 (I.A.No.22 of 2015 and I.A.No.24 of 2015). This batch of IAs was disposed of by this Commission vide its order dated 06.04.2016. This Commission has taken note of the fact that Ferro Alloy industries was specified as a separate category from 2002-03, that from 2009-10 the Commission fixed the format as "Guaranteed energy Off-take at 6701 units per kVA per annum (@85 % annual load factor) on Average Contracted Maximum Demand or Average Actual Demand whichever is higher. "The energy falling short of 6701 units per kVA per annum will be billed as deemed consumption."

20. The Commission further observed that from the FY 2011-12 the respondents imposed power cuts on the petitioners under intimation as per the General Terms and Conditions of Supply and that the respondents later got restrictions under Section 23 of the Electricity Act 2003 imposed by this Commission which ordered that during the R & C measures, no deemed consumption charges should be levied and that the respondents deviated even from the supply hours fixed by R & C hours with a number of scheduled and unscheduled outages causing commercial loss to the petitioners. After distinguishing the judgement of Apex court in Amalgamated Electricity Company Limited Vs The Jalgaon Borough Municipality (1975(2) SCC 508) wherein the right of the supplier to collect minimum charges from its consumers was upheld, this Commission felt that when the respondents are not in a position to supply power for a significant period of the year including during restriction and control periods and the power cuts periods, they are not entitled to collect minimum charges. Another reason which weighed with this Commission in waiving deemed consumption charges was that the respondents neither projected nor proved the actual loss with non consumption of the energy by the petitioners therein during the relevant periods and that when the distribution companies realised actual consumption charges for the power supplied to the petitioners, the deemed consumption charges ought not to have been imposed and collected from the petitioners. On these premises, this Commission declared that the petitioners before it were not liable to pay any deemed consumption charges to the respondents.

21. A similar order came to be passed on 25.02.2017 in I.A.No.1 of 2017 in O.P. No.1 of 2013 and order dated 26.08.2017 in I.A.No.7 of 2017 in O.P.Nos.1 and 2 of

2013, in the case of Andhra Pradesh Ferro Alloys Association and 12 Others for FY 2014-15. Following the order dated 06.04.2016 in I.A.No.1 of 2016 and batch referred to above, this Commission has granted relief in favour of the petitioners therein. In respect of FY 2016-17 the original tariff order incorporated the deemed consumption charges. However on the representation of Ferro Alloy Industries Association, this Commission has amended the Tariff Order vide its order dated 04.04.2016 as under:

“AP Ferro Alloys Producer’s Association (APFAPA) made a representation to the Commission vide letter dated 02-04-2016, seeking removal of deemed consumption charges prescribed in the latest tariff order for FY 2016-17 and requested to replace the same with minimum energy charges clause.

The Commission has examined the request of the Ferro Alloy Industry and decided to delete the para under the heading ‘7.2 HT-I (B) Energy Intensive Industries’ of page no.255 and replace with minimum energy charges clause and accordingly issues the following order:

The para under the heading ‘7.2 HT-I (B) Energy Intensive Industries’ of page no.255 of Tariff Order FY 2016-17 shall stand deleted and be substituted with the following clause. The substituted clause also shall be deemed to take effect from 01-04-2016.

“Energy charges will be billed on the basis of actual energy consumption or 50 kVAh/kVA per Month of Contracted Demand, whichever is higher”.

22. The Tariff Order for FY 2017-18 dealt with deemed consumption charges of Ferro Alloys industries as under:

Sri P.S.R.Raju, Vice-Chairman, AP Ferro Alloys Producers Association, Hyderabad Sri Lakshmi Tulasi Ferros Industry, Prakasam Dist.; Sri Vijaya Gopala Reddy, AP Ferro Alloys Association have stated that when the Ferro Alloy industry is trying to come back to normalcy and stand on its feet with all the help extended by the Govt. of AP and the Commission, the proposed deemed consumption clause will take away the past hard work and closure of industries will be imminent. The Commission is requested not to accept the deemed energy clause proposed by DISCOMs.

Sri Vijaya Gopala Reddy, AP Ferro Alloys Association stated that deemed consumption charges must be withdrawn.

Discoms Response: The Commission has created a separate category for Ferro Alloy with an objective to promote Energy Intensive Industries in the State and create employment opportunities, enable the industries to remain competitive in the national as well as global scale, make the DISCOMs tariff competitive against captive generation.

GoAP has provided the subsidy of Rs.1.5 / kWh to Ferro Alloy Industries to make them competitive in the national as well as global scale.

The inherent high load factors of industry made the licensees to offer the tariffs at minimum cross subsidy. To minimize the downside risk of the DISCOMS, the deemed consumption clause was introduced which is a win-win situation for both the licensees and the consumers. If the same is removed, the licensees, in addition to charging a reduced tariff would also be facing significant downside risk, which would defeat the whole purpose of having a separate Energy Intensive category.

Also Section 26(7) of the Andhra Pradesh Electricity Reform Act, 1998, inter-alia, reads as under:

"Any tariff implemented under this section shall not show undue preference to any consumer of electricity, but may differentiate according to the consumer's load factor or power factor, the consumer's total consumption of energy during any specified period, or the time at which supply is required or paying capacity of a category of consumers and need for cross-subsidization"

Hence, it is proposed that HT-I (B) shall have guaranteed energy off-take at 7008 kVAh per kVA per annum (80% Load Factor) on Average Contracted Maximum Demand or Average Actual Demand whichever is higher. The energy falling short of 7008 kVAh per kVA per annum will be considered as deemed consumption.

Commission's View: Ferro Alloys Industries coming back to normalcy from total sickness is taken into account in not imposing any deemed consumption charges this year also.

23. For FY 2020-21 when the DISCOMs proposed reintroduction of the condition of 85% of minimum load factor by power intensive Industries, there was a huge opposition from not only the industrial sector but also from people from different walks of life. Having considered various views of the stakeholders, this Commission has decided to reject the proposal of the DISCOMs to prescribe a minimum of 85% of load factor for this category of industries. In the process this Commission observed as under:

“Having regard to the volatile market conditions of the Ferro Alloy Industries and the various other problems projected by this sector through the objections noted above, the Commission does not find any reason to vary the existing condition and accordingly, it has decided to reject the proposal of DISCOMs to prescribe minimum of 85% load factor for category III(C) energy intensive Industries.”

24. From a conspectus of the facts narrated above, it is quite evident that the Commission has relieved the Ferro Alloy units in the state of Andhra Pradesh of the obligation to pay deemed consumption charges from the years 2011-12 onwards except for the FY 2015-16. The fact that the problems of Ferro Alloy units are continuing unabated from 2011 onwards is undisputed, nay, undeniable. Indeed, keeping this in view the State Government had stepped in by issuing G.O.Ms.No.133 and G.O.Rt.No.148 by even going to the extent of bearing the subsidy @ Rs.1.50 ps

per unit consumed by the Ferro Alloy units. This being the admitted position, we do not find any justification whatsoever to insist on payment of deemed consumption for one intermittent year of only 2015-16 despite the fact that no power cuts were imposed during that year. While there cannot be any doubt over the entitlement of the licensee to recover minimum charges when it is in a state of readiness to supply power and a consumer could not utilise for their own reasons as held in Amalgamated case (Supra), the case on hand is unique, in that, the State Government has itself recognised the problems faced by the Ferro Alloy units and issued G.O.Ms.No.133 dated 17.10.2016 the operative portion of which reads as under:

“...

5. Keeping in view of the recommendations of the Group of Ministers in the matter and after careful examination of the matter, Government hereby order the following:

- (1) Energy Department to permit payment of arrears mounted during the closure period of the Ferro Alloy Units in instalments within 24 months;*
- (2) support the request of Ferro Alloy Industries for waiver of Deemed Consumption charges upto March, 2016 in APERC; and*
- (3) adjust the power incentive @ Rs. 1.50 Ps. in the CC Bills itself and the Industries Department in turn will pay the required budget to DISCOMs.*

...”

(Emphasis is ours)

26. No doubt while issuing a policy direction to this Commission u/s 108 of the Act, the State Government has omitted the aspect of deemed consumption charges. Such omission at best could be termed as absence of any binding directive on this Commission with regard to waiver of deemed consumption charges. But the respondents cannot wriggle out of the directive contained in G.O.Ms.No.133 about supporting the request of Ferro Alloy industries for waiver of deemed consumption charges upto March 2016 if such claims are made before this Commission. A perusal of this GO shows that the directives contained therein were issued considering the recommendations made by the group of ministers. Therefore the said directive commands great sanctity. Moreover recovery of deemed consumption charges for 2015-16, while sparing the Ferro Alloy units from such liability for earlier and later periods destroys the spirit of the alleviative measures taken by this Commission and the State government all these years to protect this line of industry from ruination. Such an action, in our opinion, amounts to whipping a dying horse. We may however add that in the event of any loss being sustained by the respondents on account of waiver of deemed consumption charges, they shall be free to approach the Government for reimbursement of such loss.

For the aforementioned reasons, the Interlocutory Applications are allowed as prayed for and the 2nd petitioner in I.A.No.10 of 2019 in O.P.No.1 of 2015 and 2nd and 3rd petitioners in I.A.No.9 of 2019 in O.P.No.2 of 2015 are relieved of deemed consumption charges for FY 2015-16. It is however made clear that any observations made in this order shall not affect the general right of the licensees to

recover minimum charges from their consumers as per the extant General Terms and Conditions of Supply.

sd/-

Thakur Rama Singh
Member

Sd/-

Justice C.V. Nagarjuna Reddy
Chairman

sd/-

P. Rajagopal Reddy
Member

