Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 57, 67,68, 69, 70, 71, 72 & 73 of 2011

Dated: 2nd September, 2011

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. V.J Talwar, Technical Member,

Appeal No.57 of 2011

In The Matter Of

1. **M/s Vishal Ferro Alloys Ltd**
   Village Balanda, PO Kalunga
   Rourkela – 770031, Orissa

2. **Maruti Steel Moulding Pvt. Ltd.**
   Sarandamal, Via-Padampur, Kurarmonda,
   Rourkela – 769039, Orissa

3. **Chunchun Ispat Pvt. Ltd.**
   Usra Road, Kuarmonda,
   Rourkela – 769039, Orissa

4. **Kisan Alloys Pvt. Ltd.**
   Bijahahal Kuarmonda,
   Rourkela – 769039, Orissa

5. **Shubh Ispat Limited, Jaibahal,**
   Post – Kalunga,
   Dist – Sundargarh – 770073, Orissa

6. **Satguru Metals & Power Pvt. Ltd.**
   401/577, Bamra, Bargaon,

Sundargarh – 770073, Orissa

7. **Banjrangbali Re-Rollers Pvt. Ltd.**
   A/3, Industrial Estate, Kalunga,
   Rourkela, Sundargarh – 770073, Orissa

8. **Scan Steel Limited**
   Vill- Ramabahal, P.O. Kesramal,
   Dist: Sundargarh – 770073, Orissa

9. **Scan Steel Limited**
   Vill: Budhakatal, P.O. Biringatoli,
   Sundargarh – 770073, Orissa

10. **Scan Steel Limited**
    Vill: Bai-Bai, P.O.Tudalaga,
    Sundargarh – 770073, Orissa

11. **M/s Bee Pee Rollers Pvt. Limited**
    Vill-Chiktmati, kalunga,
    Sundargarh – 770073, Orissa

12. **Bajrang Steel & Alloys Ltd.**
    Plt No. 31, Gobhanga,
    Kalunga – 770073, Orissa

13. **Deo Ispat alloys Ltd.**
    Plot No. 201/1, 202 and 1173
    Bhawanipur,
    PO – Kirai, Sundargarh – 770073, Orissa

14. **Attitude Alloys Pvt. Ltd.**
    Y-11, Civil Township,
    Rourkela 769004, Orissa

15. **21st Century Ferro & Alloy (P) Ltd.**
    Vill- Arakaikela, PO – Tumkela,

Tehsil – Bonai – 770 040, Orissa

16. **Top Tech Steels Private Limited**
    Hatibari Road, Kumarmunda,
    Dist.Sundargarh – 770047, Orissa

17. **Maa Laxmi Steels Private Limited**
    San-Nuagaon, Chikatmati,
    Dist- Sundargarh – 770031, Orissa

18. **Maa Tarini Industries Limited**
    Vill-Blanda, Kalunga,
    Sundargarh – 770031, Orissa

19. **Kalinga Sponge Iron Limited,**
    A/82, Industrial Estate, Kalunga,
    Rourkela - Sundargarh – 770031, Orissa

20. **Arun Steel Industrial Pvt. Ltd.**
    Jiabahal, Kalunga,
    Rourkela – 770031, Orissa

21. **Shri Radha Krishana Ispat Pvt. Ltd.**
    Vill – Goibhana, Kalunga – 770031, Orissa

22. **Sri Jagannath Alloys (P) Limited**
    Plot No. 6/1, Ushra Road,
    PO- Kuarmunda – 770039,Orissa

23. **Rexon Strips Ltd.**
    Kamla Complex, Power House Road,
    Rourkela – 770031, Orissa

24. **Maa Girja Ispat (P) Ltd.**
    Bijabahal Kuarmunda
    Rourkela – 770039, Orissa

... Appellant(s)

Versus

1. Orissa Electricity Regulatory Commission
Bidyut Niyamak Bhawan, Unit – VIII
Bhubaneswar – 751012

2. Western Eastern Electricity Supply Company
Of Orissa Limited, Nayapalli,
Bhubaneswar - 751015

...Respondent(s)

Counsel for Appellant(s): Mr. M.G. Ramachandran,
Mr. Mr. Anand K. Ganesan,
Ms. Swapna Seshadri,

Counsel for Respondent(s):Mr. Rutwik Panda for R.1
Mr. Buddy A. Ranganathan,
Mr. Hasan Murtaza

Appeal No.67 of 2011 & IA 108 of 2011

In The Matter Of

M/s Balasore Alloys Limited

... Appellant(s)

Versus

1. Orissa Electricity Regulatory Commission
Bidyut Niyamak Bhawan, Unit – VIII
Bhubaneswar – 751012

2. North Eastern Electricity Supply Company
Of Orissa Limited, Regd. Office – Plot No. N/22
IRC Village, Nayapalli, Bhubaneswar - 751015

...Respondent(s)

Counsel for Appellant(s): Mr. Ashok K. Parija, Sr Adv.
Mr. M.G. Ramachandran,
Mr. R.M. Patnaik,
Mr. P.P. Mohanty

Counsel for Respondent(s):Mr. Rutwik Panda for R.1
Mr. Buddy A. Ranganathan,
Mr. Hasan Murtaza

Appeal No.68 of 2011 & IA 109 of 2011

In The Matter Of

M/s Tata Steels Limited

... Appellant(s)

Versus

1. Orissa Electricity Regulatory Commission
Bidyut Niyamak Bhawan, Unit – VIII
Bhubaneswar – 751012

2. North Eastern Electricity Supply Company
Of Orissa Limited, Regd. Office – Plot No. N/22
IRC Village, Nayapalli, Bhubaneswar - 751015

...Respondent(s)

Counsel for Appellant(s): Mr. Ashok K. Parija, Sr Adv.
Mr. M.G. Ramachandran,
Mr. R.M. Patnaik,
Mr. P.P. Mohanty

Counsel for Respondent(s):Mr. Rutwik Panda for R.1

Mr. Buddy A. Ranganathan,
Mr. Hasan Murtaza

Appeal No.69 of 2011 & IA 110 of 2011

In The Matter Of

M/s Ferro Alloys Corporation Limited

... Appellant(s)

Versus

1. Orissa Electricity Regulatory Commission
Bidyut Niyamak Bhawan, Unit – VIII
Bhubaneswar – 751012

2. North Eastern Electricity Supply Company
Of Orissa Limited, Regd. Office – Plot No. N/22
IRC Village, Nayapalli, Bhubaneswar - 751015

...Respondent(s)

Counsel for Appellant(s): Mr. Ashok K. Parija, Sr Adv.
Mr. M.G. Ramachandran,
Mr. R.M. Patnaik,
Mr. P.P. Mohanty

Counsel for Respondent(s):Mr. Rutwik Panda for R.1
Mr. Buddy A. Ranganathan,
Mr. Hasan Murtaza

Appeal No.70 of 2011 & IA 114 of 2011

In The Matter Of

M/s O.C.L. India Ltd.,

... Appellant(s)

Versus

1. Orissa Electricity Regulatory Commission
Bidyut Niyamak Bhawan, Unit – VIII
Bhubaneswar – 751012

2. Western Electricity Supply Company
Of Orissa Limited, Regd. Office – Plot No. N/22
IRC Village, Nayapalli, Bhubaneswar - 751015

...Respondent(s)

Counsel for Appellant(s): Mr. Ashok K. Parija, Sr Adv.
Mr. R.M. Patnaik,
Mr. P.P. Mohanty

Counsel for Respondent(s):Mr. Rutwik Panda for R.1
Mr. Buddy A. Ranganathan,
Mr. Hasan Murtaza

Appeal No.71 of 2011 & IA 115 of 2011

In The Matter Of

M/s Adhunik Metaliks Limited

... Appellant(s)

Versus

1. Orissa Electricity Regulatory Commission
Bidyut Niyamak Bhawan, Unit – VIII
Bhubaneswar – 751012

2. Western Electricity Supply Company
Of Orissa Limited, Regd. Office – Plot No. N/22
IRC Village, Nayapalli, Bhubaneswar - 751015

...Respondent(s)

Counsel for Appellant(s): Mr. Ashok K. Parija, Sr Adv.
Mr. R.M. Patnaik,
Mr. P.P. Mohanty

Counsel for Respondent(s):Mr. Rutwik Panda for R.1
Mr. Buddy A. Ranganathan,
Mr. Hasan Murtaza

Appeal No.72 of 2011 & IA 116 of 2011

In The Matter Of

1. M/s Shree Salasar Casting (P) Limited
Balanda, Kalunga – 770031

2. M/s Sardha Saburi Steel Pvt. Ltd.
Rajgangpur, District: Sundergarh, Orissa

3. M/s Refulgent Ispat (P) Limited
Chikatmati, P.O. Beldihi
District: Sundergarh, Orissa

4. M/s Shri Radha Raman Alloys Limited
P4/20, Civil Township, Rourkela – 769004

And works at Jharbeda, P.O. Jharbeda
District: Sundergarh, Orissa

5. **M/s Sharda Rerollers Pvt. Limited**
D/3, Seth Deokarandass Commercial Complex,
Kachery Road, Rourkela – 769012
And works at Beidihi, Kalunga – 770031
District: Sundergarh, Orissa

6. **M/s D.D. Iron and Steel Pvt. Ltd.**
H/4/5, Civil Township, Rourkela
And works at Padajampali, Rajganpur,
District: Sundergarh, Orissa

7. **M/s Shreeram Sponge and Steels Pvt. Ltd.**
Bilaigarh, P.O. Laing,
District: Sundergarh, Orissa

8. **M/s Jagannath Sponge Pvt. Limited**
Subash Chowk, Main Road, P.O. Rajganpur
District: Sundergarh, Orissa

9. **M/s Omkar Steels Pvt. Limited**
Bijabahal, P.O. Kumjharia,
District: Sundergarh, Orissa

10. **M/s Shree Austabinayak Steels (P) Ltd.**
Lamloi, Rajganpur – 770017
District: Sundergarh, Orissa

... Appellant(s)

Versus

1. **Orissa Electricity Regulatory Commission**
Bidyut Niyamak Bhawan, Unit – VIII
Bhubaneswar – 751012

2. Western Eastern Electricity Supply Company Of Orissa Limited, Nayapalli, Bhubaneswar - 751015

...Respondent(s)

Counsel for Appellant(s): Mr. Ashok K. Parija, Sr Adv.
Mr. M.G. Ramachandran,
Mr. R.M. Patnaik,
Mr. P.P. Mohanty

Counsel for Respondent(s): Mr. Rutwik Panda for R.1
Mr. Buddy A. Ranganathan,
Mr. Hasan Murtaza

Appeal No.73 of 2011 & IA 117 of 2011

In The Matter Of

1. M/s Sourav Alloys & Steel (P) Limited Laxmi Bazar, P.O./Dist – Angul and Works at Bahandei, P.O. Gunudei District: Dhenkanal, Orissa

2. M/s Bajrangbali Alloys (P) Ltd. Malgodown, College Square, Cuttack And workds at N.H.5, Manguli Chack, Choudwar, Cuttack – 754025, Orissa

3. M/s New Laxmi Steel & Power (P) Ltd. Plot No. M-61, Madhusudan Nagar, Bhubaneswar -1 and works at A-22/25, IDCO Industrial Area, Sarva Industrial Area, Khurda, Orissa

4. M/s Auro Ispat (I) Pvt Ltd.

Plot No. 13-14, Govind Vihar,
Bhubaneswar, District – Khurda
And works at Khuntuni, Cuttack, Orissa

5. M/s Jay Jagannath Casting Pvt. Ltd.
6th Lane, Amalapada, Dist – Angul
And works at Bhagirathipur, P.O. Jarpada,
Dist: Angul, Orissa

6. M/s IPISTEEL Limited
Plot No. 380, Bomikhal, Bhubaneswar
And works at Gundichapada, Dhenkanal,
Orissa.

7. M/s Sree Metaliks Limited
Plot No. 546, Vivekananda Marg,
Old Town, Bhubaneswar – 751002
And works at Makunda Pur, P.O. Paranga
Dist: Angul, Orissa

8. M/s Hind Metal & Industries Limited
546, Vivekananda Marg, Old Town,
Bhubaneswar – 751002 and works at
Kharagprasad, P.O. Meramundali,
Dist: Dhenkanal, Orissa

9. M/s Satyam Casting Pvt. Ltd.
Choudwar, Cuttack – 754027 and works at
Plot No. A-2, Industrial Estate, Choudwar,
Cuttack- 754027, Orissa.

... Appellant(s)

Versus

1. Orissa Electricity Regulatory Commission
Bidyut Niyamak Bhawan, Unit – VIII
Bhubaneswar – 751012

2. Central Electricity Supply Utility of Orissa
2nd Floor, IDCO Towers, Janapath
Bhubaneswar - 751022

...Respondent(s)

Counsel for Appellant(s): Mr. Ashok K. Parija, Sr Adv.
Mr. R.M. Patnaik,
Mr. P.P. Mohanty

Counsel for Respondent(s):Mr. Rutwik Panda for R.1
Mr. R.K Mehta,
Mr. Antaryami Upadhyay for R-2

JUDGMENT

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON

1. Since the issue in all these Appeals is the same, a common judgment is being rendered.
2. The Appellants on being aggrieved over the methodology adopted by the State Commission while calculating the cross subsidy, without taking into account the cost of supply to HT Consumers, have filed these Appeals.
3. This issue has already been dealt by this Tribunal in Appeal No.102, 103 and 112 of 2010

dated 30th May, 2011. On the basis of the findings on this issue to the effect that methodology used by the State Commission for determination of cross subsidy was not in accordance with the law, this Tribunal set aside the order passed by the State Commission, in respect of FY-2010-11 and remanded the matter with suitable direction for fresh consideration.

4. In our view, the findings rendered by this Tribunal in above decision would squarely apply to these Appeals also. We will now quote the relevant portion of the findings of this Tribunal in the above judgments:

"41.3. The State Commission has expressed difficulties in determining cost of supply in view of non-availability of metering data and segregation of the network costs. In our opinion, it will not be prudent to wait indefinitely for availability of the entire data and it would be advisable to initiate a simple formulation which could take into account the major cost elements. There is no need to make distinction between the

distributions charges of identical consumers connected at different nodes in the distribution network. ***It would be adequate to determine the voltage-wise cost of supply taking into account the major cost element which would be applicable to all the categories of consumers connected to the same voltage level at different locations in the distribution system.*** *We have given a practical formulation to determine voltage wise cost of supply to all category of consumers connected at the same voltage level in paragraphs 31 to 35 above.* ***Accordingly, the State Commission is directed to determine cross subsidy for different categories of consumers within next six months from FY 2010-11 onwards and ensure that in future orders for ARR and tariff of the distribution licensees, cross subsidies for different consumer categories are determined according to the directions given in this Judgment and that the cross subsidies are reduced gradually as per the provisions of the Act"***

5. The crux of the findings given in the above paragraphs are as follows:

(a) The State Commission is required to determine voltage wise cost of supply.

(b) The cross subsidy is to be calculated on the basis of cost of supply to the consumer category.

(c) The cross subsidy is not to be increased but reduced gradually.

(d) The tariff of each of the consumer categories is to be within ±20% of the average cost of supply.

(e) The State Commission is to determine cross subsidy for different categories of consumers within next six months from Financial Year 2010-11 onwards and ensure that in future tariff orders, cross subsidies for different consumer categories are determined according to the directions given in the judgment and that the cross subsidies are reduced gradually as per the provisions of the Act.

6. In addition to above findings, this Tribunal found flaw in the methodology used for calculating cross subsidy for industrial consumers and gave another methodology to be adopted for determining the cross subsidy.

7. In view of the above directions given by this Tribunal to the Commission to determine cross subsidy for different categories of consumers within next six months from Financial year 2010-11 onwards and to ensure that in future orders for ARR and tariff of the distribution licensees, cross subsidies are reduced gradually as per the provisions of the Act, the impugned tariff order for the year 2011-12 which is a subject matter in the present Appeals is also required to be set-aside and remanded back.

8. Accordingly, the impugned order of the Commission is set-aside and remanded back for fresh consideration of the Commission in the light of the directions given by this

Tribunal in Appeals No.102, 103 and 112 of 2010 dated 30th May, 2011. While remanding the matter to the State Commission, as requested by the Counsel for the parties, we have to consider the impact of setting aside the impugned order on the revenues of distribution licensees of the State.

9. The Learned Counsel for the Distribution Licensees submitted that if the impugned order which is a Retail Supply Tariff (RST) order is set-aside and Bulk Supply Tariff (BST) order is kept intact, their revenue would suffer. It is also submitted that in case they are made to pay higher costs in terms of BST and made to recover lower tariff, the revenues are bound to suffer. On the other hand, it is stated that if BST order is also kept in abeyance, then revenues of GRIDCO bound to suffer and GRIDCO may not be in position to procure power from generating stations. Under both scenarios, consumers would be the sufferers.

10. Therefore, it would be appropriate to direct the Commission to re-determine the tariff on cross subsidy the said exercise must be completed by 30th November,2011 i.e. six months from the date of the earlier judgment i.e. 30th May, 2011 positively and till then the tariff of any category is not disturbed.

11. Accordingly, the State Commission is directed to give priority to this case and complete the process within time stipulated as mentioned above.

12. With these observations, the Appeals are allowed.

13. There is no order as to cost.

(V. J. Talwar) **Justice M. Karpaga Vinayagam)**
Technical Member **Chairperson**

Dated: 2nd September, 2011

REPORTABLE/NON-REPORTABALE