

No.: N/18/16

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**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,  
BENGALURU**

**Dated : 30<sup>th</sup> March, 2017**

**Present:**

Shri M.K. Shankaralinge Gowda	..	Chairman
Shri H.D. Arun Kumar	..	Member
Shri D.B. Manival Raju	..	Member

**OP No.14 / 2016**

**BETWEEN:**

Star Metallics and Power Private Limited,  
Metal & Ferroalloys Plant,  
Vyasankere,  
Mariyammanahalli – 583 222,  
Hospet Taluk,  
Ballari District.

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**PETITIONER**

*[Represented by Shri T.K. Chandrasekhar Rao,, Advocate]*

**AND:**

1) The Additional Chief Secretary to Government,  
Government of Karnataka,  
Energy Department,  
Vikas Soudha,  
Bengaluru - 560 001

2) Gulbarga Electricity Supply Company Limited,  
Station Road,  
Kalaburagi – 585 101.

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**RESPONDENTS**

*[Respondent-2 is represented by Just Law, Advocates]*

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**ORDERS**

- 1) In essence, the reliefs sought for by the Petitioner in this Petition are:
  - (a) for declaration that, for ascertaining its 'Captive Consumption' as defined in Section 2(1A) of the Karnataka Electricity (Taxation on Consumption and Sale) Act, 1959 (hereinafter, referred to as the 'Act, 1959'), the quantum of energy generated beyond 22 Mega Watts (MW) capacity of its Generating Plant and injected into the State Grid as per the Government Order dated 16.9.2015 issued by the Government of Karnataka under Section 11 of the Electricity Act, 2003, be excluded; and
  - (b) for declaration that, the Petitioner is entitled to seek offset of the adverse financial impact, in the event the Petitioner has to pay any higher tax under the Act, 1959 as a consequence of supply of energy to the maximum exportable capacity of the Generating Plant under section 11 of the Electricity Act, 2003.
  
- 2) The material facts as stated by the Petitioner in support of its reliefs mentioned above may be stated as follows :
  - (a) The Petitioner owns a Ferroalloys plant with two submerged Electric Arc Furnaces, comprising of one 15 MVA Furnace and another 20 MVA Furnace, commissioned in the years 1968 and 1977, respectively and the same are located at Vyasanakere near Hospet in Bellary District, for production of Manganese alloys such as Siliconmanganese, Ferromanganese, etc.

- (b) The Petitioner, with a view to meeting the energy requirement and also to ensure stable and continuous power to its Furnaces, has established a 32 MW maximum rated capacity Captive Coal-based Thermal Power Plant at the same location. The minimum operational capacity of the said Power Plant is 22 MW.
- (c) The Petitioner was running both submerged electric furnaces for production of Manganese alloys such as Siliconmanganese, Ferromanganese when the business was thriving. The Petitioner states that, in recent years, it is unable to operate economically both furnaces due to market constraints, as there is a severe drop in demand of Ferroalloys. Therefore, the Petitioner proposed to restrict its production by operating only one Furnace by reducing its captive consumption of electricity, so that the Petitioner could retain the 'captive' status of its Generating Plant by consuming not less than 51% of the aggregate electricity generated in such Plant, determined on an annual basis.
- (d) In a previous proceeding in OP No.15/2015 decided on 19.11.2015, this Commission has taken the view that:

*“After considering the facts of the case and the relevant provisions, we are of the view that there is no bar legally to run the generating plant with a minimum operational capacity with a view to maintain consumption of electricity of not less than 51% of the aggregate quantum of electricity generated in such plant determined on annual basis. “*

- (e) During the pendency of OP No.15/2015, the Government of Karnataka issued a Government Order dated 16.9.2015 under Section 11 of the Electricity Act, 2003, directing all the generators in the State of Karnataka to operate and maintain their Generating Stations to the maximum exportable capacity and supply the energy to the State Grid. Pursuant to the said Government Order, the Petitioner herein was compelled to generate electricity to its maximum capacity of 32 MW and supply the whole energy over and above the quantum of energy required for its captive use. It is stated that, the Karnataka Power Transmission Corporation Limited (KPTCL) had also reminded the Petitioner (ANNEXURE – A) to supply the whole of the exportable power to the State Grid, with immediate effect.
- (f) The Petitioner apprehends that, the authorities under the Act, 1959 might consider the total generation of energy generated in compliance with the Government Order dated 16.9.2015, issued under Section 11 of the Electricity Act, 2003, while determining the status of 'Captive Consumption' of the Petitioner and in that event, the Petitioner might not reach the captive consumption to the extent of not less than 51% of the entire electricity generated by it.
- (g) The Petitioner has stated that, the tax on consumption being levied on the Captive Consumer is less than the tax being levied on the other consumers.

- (h) The Petitioner has stated that, under Section 11(2) of the Electricity Act, 2003, this Commission has to offset the adverse financial impact of the directions issued by the Government under Sub-Section (1) of Section 11 of the Electricity Act, 2003, on any Generating Company, as considered appropriate. Therefore, the Petitioner has filed the present Petition seeking appropriate orders from this Commission in this regard.
- 3) The 2<sup>nd</sup> Respondent has appeared through its counsel and filed the Statement of Objections, opposing the reliefs sought for by the Petitioner, on the following grounds :
- (a) That this Commission lacks jurisdiction to decide the issue pertaining to tax on consumption of electricity involved in this case;
- (b) That the tax on consumption of electricity is a statutory levy governed by the Act, 1959 and it cannot be modified to suit the convenience of the Petitioner;
- (c) Insofar as the relief sought for by the Petitioner to offset the adverse financial impact by virtue of Section 11 Order it is contended that, this Commission had conducted a public hearing of all the stakeholders and passed the Order dated 18.8.2016 determining the tariff payable for the electricity supplied under Section 11 of the Electricity Act, 2003, to offset the adverse financial impact. Therefore, it is contended that, the Petitioner ought to have challenged the orders passed by this Commission on 18.8.2016 and the Petitioner cannot claim any

direction in the present proceedings to offset any adverse financial impact. Therefore, the 2<sup>nd</sup> Respondent contended that the present Petition is liable to be rejected.

- 4) Notice to the 1<sup>st</sup> Respondent was not issued as the 2<sup>nd</sup> Respondent would contest the case with all the available defences, even to protect the interest of the 1<sup>st</sup> Respondent.
- 5) We have heard the learned counsel for the parties. From the pleadings of the parties, the following issues would arise for our consideration :
  - (1) Whether this Commission has jurisdiction to decide the relief (a) framed in paragraph-1 of this Order?
  - (2) Whether the Petitioner is entitled to the relief (b) framed in paragraph-1 of this Order?
  - (3) What Order?
- 6) **ISSUE No.(1)** : *Whether this Commission has jurisdiction to decide the relief (a) framed in paragraph-1 of this Order?*

- (a) The prayer sought for by the Petitioner, as stated in the Petition, is as follows :

*“WHEREFORE, for the reason stated above, the Petitioner prays that this Hon'ble Commission to direct Respondent No.1 to adhere to Order of the Commission dated 19.11.2015 to limit the consumption pertaining to Captive status of 22 MW in the 32 MW Plant, since Electricity Tax*

*are borne by the end consumers for power supplied to ESCOMs. It is respectfully further submitted that Hon'ble Commission issue direction to the Respondent No.1 not to consider energy supplied to the grid under Section 11 of the Electricity Act, 2003 for calculating tax. On the orders of the Government of Karnataka invoking the Section 11 of the Electricity Act, 2003 on the Petitioner's Plant, adverse financial impact is caused and therefore the Petitioner is before this Hon'ble Commission to offset the adverse financial impact on the Petitioner under Section 11(2) of the Electricity Act, 2003."*

- (b) The relief sought against the 1<sup>st</sup> Respondent does not arise, because the liability to compute the quantum of tax payable and to pay the same is on the Petitioner itself, as provided in Section 4(3) of the Act, 1959. The Inspecting Officer appointed under Section 6 of the said Act, 1959 may verify the correctness of such computation of tax, if he is so authorized by the Rules that may be prescribed under the Act, 1959. We believe that, there may be such power for the Inspecting Officer to verify the correctness of the computation of the Electricity Tax by the Petitioner. In case, the Inspecting Officer gives an adverse finding, by holding that the Petitioner is not a 'Captive Consumer', by not excluding the quantum of energy supplied over and above 22 MW capacity, the Petitioner has the option of preferring Appeals against the finding of the Inspecting Officer, as provided in Section 9A of the Act, 1959. Therefore, issuing of a direction to the 1<sup>st</sup> Respondent, as prayed for in the Petition does not arise.
- (c) The subsequent prayer made by the Petitioner in the Petition, in essence, would amount to the relief as framed by us in

paragraph-1(a) of this Order. We are of the considered view that, the quantum of energy generated beyond 22 MW capacity of the Petitioner's Generating Station and injected into the State Grid, as per the Government Order issued under Section 11 of the Electricity Act, 2003, could not be considered for ascertaining the status of the Petitioner as 'Captive User / Captive Consumer'. The quantum of energy that would be supplied by the Petitioner beyond 22 MW capacity would be under the compulsion of the Order passed under Section 11 of the Electricity Act, 2003, to supply to the maximum exportable capacity.

- (d) In spite of the above observations made by us, we desist from giving a finding in this case that, for ascertaining the 'Captive Consumption' of the Petitioner, as defined under Section 2(1A) of the Act, 1959, the electricity generated from the Generating Plant of the Petitioner beyond 22 MW be excluded. This is so, because under the Act, 1959, this Commission is not shown as the 'Competent Authority' to make such declaration. Whether a person falls under the definition of 'Captive User' or not, as understood in the Act, 1959, is to be decided as provided by the Authority as stated in the said Act, 1959, alone. Therefore, the relief sought for by the Petitioner in this regard cannot be decided by this Commission for want of jurisdiction. Accordingly, we answer Issue No.(1) in the negative.



7) **ISSUE No.(2)**: *Whether the Petitioner is entitled to the relief (b) framed in paragraph-1 of this Order?*

(a) The last part of the prayer as shown in the Petition would conform to the relief stated in Issue No.(2) above.

(b) The 2<sup>nd</sup> Respondent has contended that, this Commission had already conducted a public hearing and thereafter gave a finding to offset the adverse financial impact on the Generating Companies by an Order issued under Sub-Section (2) of Section 11 of the Electricity Act, 2003, fixing the tariff payable to all the generators who have supplied energy to the State Grid. Further, it is contended that, the Petitioner ought to have placed its grievances before this Commission during the public hearing or by way of filing a separate Petition, and in the absence of it, the Petitioner cannot claim any direction in the present proceedings to offset any adverse financial impact.

(c) It is submitted by the Petitioner that, the Petitioner is not yet declared as a 'Non-Captive Consumer' by any Authority under the Act, 1959. The case of the Petitioner is that, rightly or wrongly, if it is declared as a 'Non-Captive Consumer', it would be liable to pay higher Electricity Tax and that should be reimbursed to it under Section 11(2) of the Electricity Act, 2003. Therefore, it is clear that, the cause of action for claiming to offset such adverse financial impact had not really arisen to the Petitioner till the date of filing of the present Petition. As and when such cause of action arises in future, the Petitioner is entitled to

approach this Commission, for seeking relief under Section 11(2) of the Electricity Act, 2003. The mere fact that, the Petitioner has not placed such a contention during the public hearing or by way of filing a separate Petition before this Commission does not bar the Petitioner to approach this Commission as and when it incurs such adverse financial impact. Even if the Petitioner had made a claim during the public hearing or by way of filing a separate Petition before this Commission, it should have been held that, such a claim was premature. Therefore, we hold that, as and when a cause of action arises in future for claiming reimbursement of the adverse financial impact, the Petitioner can move this Commission, afresh. This Commission alone can grant such a relief.

(d) Therefore, we answer Issue No.(2) in the affirmative, by holding that the Petitioner can approach this Commission as and when a cause of action arises for claiming this relief.

8) **ISSUE No.(3)** : *What Order?*

For the foregoing reasons, we pass the following :

**ORDER**

The above Petition is partly allowed in the above terms.

Sd/-  
(M.K. SHANKARALINGE GOWDA)  
CHAIRMAN

Sd/-  
(H.D. ARUN KUMAR)  
MEMBER

Sd/-  
(D.B. MANIVAL RAJU)  
MEMBER