

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act 2003)
(Central Act 36 of 2003)

PRESENT:-

Thiru.K.Venugopal **Member**
and
Thiru.S.Nagalsamy **Member**

D.R.P.No.11 of 2012
and
I.A.Nos.1 & 2 of 2012
in
D.R.P. No. 11 of 2012

Sree Rengaraaj Ispat Industries Pvt Ltd.
(Formerly known as Sree Rengaraaj Power India (P) Ltd.)
Plot No.MM1 (Part-1)
SIPCOT Industrial Growth Centre
Perunthurai 638 052
Erode District
Rep. by its Managing Director
P.Sampath Kumar

... Petitioner
(Thiru Seshadri,
Advocate for Petitioner)

Vs.

1. The Chairman-cum-Managing Director
Tamilnadu Electricity Board
144, Anna Salai
Chennai – 600 002.
2. The Chief Engineer/PPP
Tamil Nadu Electricity Board
144, Anna Salai
Chennai 600 002.
3. The Superintending Engineer
The Tamilnadu Generation & Distribution
Corporation (Ltd), TANGEDCO
Erode Electricity Distribution Circle
Erode – 9.

.... Respondents
(Thiru P.H.Vinod Pandian,
Standing Counsel for Respondents)

**D.R.P.No.12 of 2012
and
I.A.Nos.1 & 2 of 2012
in
D.R.P. No. 12 of 2012**

Sree Rengaraaj Ispat Industries Pvt Ltd.
(Formerly known as Sree Rengaraaj Power India (P) Ltd.)
Plot No.MM1 (Part-1)
SIPCOT Industrial Growth Centre
Perunthurai 638 052
Erode District
Rep. by its Managing Director
P.Sampath Kumar

... Petitioner
(Thiru Seshadri.
Advocate for Petitioner)

Vs.

1. The Chairman-cum-Managing Director
Tamilnadu Electricity Board
144, Anna Salai
Chennai – 600 002.
2. The Chief Engineer/PPP
Tamil Nadu Electricity Board
144, Anna Salai
Chennai 600 002.
3. The Superintending Engineer
The Tamilnadu Generation & Distribution
Corporation (Ltd), TANGEDCO
Erode Electricity Distribution Circle
Erode – 9.

.... Respondents
(Thiru P.H.Vinod Pandian
Standing Counsel for Respondents)

**Date of hearing: 21-05-2012, 28-11-2012, 08-01-2013
and 12-02-2013**

Date of Order: 11-07-2013

The above D.R.P.No.11 of 2012, D.R.P.No.12 of 2012 and I.A.Nos.1 and 2 of 2013 in the said D.R.P.No.11 of 2012 and D.R.P.No.12 of 2012 came up for final hearing before the Commission on 12-02-2013. The Commission, upon perusing the above petitions and the connected records and after hearing both sides passes the

following order. The issues in both the D.R.Ps being identical a common order is passed by the Commission.

COMMON ORDER

1. Prayer in D.R.P.No.11 of 2012:-

The prayer of the petitioner in D.R.P.No.11 of 2012 is to direct the Respondents to implement the Order No.2 dated 12-05-2006 in which, the start-up power charges is fixed at 621.81 paise per unit and direct them to refund the excess charges of Rs.81,74,304/- collected in the name of excess demand charges from the petitioner.

2. Prayer in D.R.P.No.12 of 2012:-

The prayer of the petitioner in D.R.P.No.12 of 2012 is to direct the Respondents to implement the Order No.2 dated 12-05-2006 in which, the start-up power charges is fixed at 621.81 paise per unit and direct them to refund the excess charges of Rs.12,62,601/- collected in the name of excess demand charges from the petitioner.

3. Interim Prayer in I.A.No.1 of 2012 and I.A.No.2 of 2012 in D.R.P.No.11 of 2012:-

The interim prayer of the petitioner in I.A.Nos.1 and 2 of 2012 is to

- (i) grant interim stay against the levy and collection of excess demand charges from the petitioner ignoring the provisions as contained in Order No.2 dated 12-05-2006 of the Commission according to which the petitioner is liable to pay start-up power charges of 621.81 paise only per unit, pending disposal of the above petition.

- (ii) grant interim injunction restraining the respondents, from levying or collecting the start-up power charges, more than the charges fixed by the Commission, pending disposal of the above petition.

4. Interim Prayer in I.A.No.1 of 2012 and I.A.No.2 of 2012 in D.R.P.No.12 of 2012 :-

The interim prayer of the petitioner of D.R.P.No.12 of 2012 in I.A.Nos.1 and of 2012 in D.R.P.No.12 of 2012 is to-

- (i) grant interim stay against the levy and collection of excess demand charges from the petitioner ignoring the provisions as contained in Order No.2 dated 12-05-2006 of the Commission according to which the petitioner is liable to pay start-up power charges of 621.81 paise only per unit, pending disposal of the above petition.
- (ii) grant interim injunction restraining the respondents, from levying or collecting the start-up power charges, more than the charges fixed by the Commission, pending disposal of the above petition.

5. Facts of the Case in D.R.P.No.11 of 2012:-

- a. The petitioner is a company registered under the Indian Companies Act, 1956 involved in the generation of power through waste heat emanated from the manufacture of sponge iron, which is the raw material for manufacture of steel. The petitioner's power plant has installed capacity of 8 MW and has wheeling approval from the 3rd respondent to the extent of 7 MW through the grid of respondent Board. The petitioner's power plant is categorized as fossil fuel based co-generation plant commissioned in December 2005.

- b. The petitioner has entered into HT agreement with the 3rd respondent for receiving the start-up power to the extent of 200 KVA through HT SC No.249. From the date of commissioning of its power plant, the 3rd respondent is levying and collecting energy charges and demand charges separately under HT Tariff III (Commercial)
- c. The petitioner has also been permitted to wheel energy to the captive users on and from March 2006 as per Intra State Open Access Regulations, 2005 framed by the Commission and parallel operation was also accorded by the 1st respondent on 21-12-2005.
- d. The 3rd respondent was charging the petitioner power plant at HT Tariff III (Commercial) for the energy consumed as start-up power and separate demand charges was also billed by the 3rd respondent,
- e. From the date of commissioning of the petitioner's plant, the 3rd respondent is levying and collecting charges at commercial rate under HT Tariff III towards energy charges and 90% of the sanctioned demand as demand charges.
- f. After raising of protest by the petitioner, the 3rd respondent had started levying energy charges and energy charges equated demand charges as stipulated in Order No.2 by the Commission at 621.81 paise per unit. However, after imposition of power cut, the 3rd respondent started imposing extra charges at the rate of Rs.600/- per KVA towards excess demand charges whenever the sanctioned demand of 200 KVA exceeded.
- g. The petitioner has approached the respondents 1 & 2 to instruct the 3rd respondent to implement the Order No.2 dated 12-05-2006 in letter and spirit. However, the respondents have not taken any steps to stop the levy of extra demand charges on the petitioner power plant.

- h. Though the petitioner has sent various representations to follow the Order No.2 for the collection of start-up power charges at the rate of 621.81 paise per unit, the respondents have not given any response for the same.
- i. It was also requested to refund the demand charges along with the Electricity Tax and Meter Rent collected from the petitioner. The petitioner has also requested the respondents to cancel the HT service connection since the petitioner is a captive generation power plant which does not require any separate HT service connection.
- j. Repeated requests to the respondents for refund of excess amount collected from the petitioner towards start-up power charges has not yielded any fruitful results.
- k. The 3rd respondent has been issuing current consumption bills at 621.81 paise per unit towards energy charges and excess demand charges treating the petitioner as a HT consumer for exceeding quota demand.

6. Facts of the Case in D.R.P.No.12 of 2012:-

- a. The petitioner is a company registered under the Indian Companies Act, 1956 involved in the generation of power through waste heat emanated from the manufacture of sponge iron, which is the raw material for manufacture of steel. The petitioner's captive power plant has installed capacity of 30 MW and has wheeling approval from the 3rd respondent to the extent of 30 MW through the grid of respondent Board. The petitioner's power plant is categorized as fossil fuel based generating plant commissioned in January 2012.

- b. The petitioner has entered into HT agreement with the 3rd respondent for receiving the start-up power to the extent of 1000 KVA through HT SC No.379. From the date of commissioning of its power plant, the 3rd respondent is levying and collecting energy charges and demand charges separately under HT Tariff III (Commercial)
- c. The petitioner has also been permitted to wheel energy to the captive users on and from 09-02-2012 as per Intra State Open Access Regulations, 2005 framed by the Commission and parallel operation was also accorded by the 1st respondent on 20-01-2012. On 10-02-2012, an Undertaking has also been executed by the petitioner to sell power of 13.22 MW to the HT consumers within the State of Tamil Nadu under Intra State Open Access Regulations.
- d. The 3rd respondent was charging the petitioner power plant at HT Tariff III (Commercial) for the energy consumed as start-up power and separate demand charges was also billed by the 3rd respondent.
- e. From the date of commissioning of the petitioner's plant, the 3rd respondent is levying and collecting charges at commercial rate under HT Tariff III towards energy charges and 90% of the sanctioned demand as demand charges.
- f. After raising protest by the petitioner, the 3rd respondent had started levying energy charges and energy charges equated demand charges as stipulated in Order No.2 by the Commission at 621.81 paise per unit. However, after imposition of power cut, the 3rd respondent started imposing extra charges at the rate of Rs.600/- per KVA towards excess demand charges whenever the sanctioned demand of 1000 KVA exceeded.

- g. The petitioner has approached the respondents 1 & 2 to instruct the 3rd respondent to implement the Order No.2 dated 12-05-2006 in letter and spirit. However, the respondents have not taken any steps to stop the levy of extra demand charges on the petitioner power plant.
- h. Though the petitioner has sent various representations to follow the Order No.2 for the collection of start-up power charges at the rate of 621.81 paise per unit, the respondents have not given any response for the same.
- i. It was also requested to refund the demand charges along with the Electricity Tax and Meter Rent collected from the petitioner. The petitioner has also requested the respondents to cancel the HT service connection since the petitioner is a captive generation power plant which does not require any separate HT service connection.
- j. Repeated requests to the respondents for refund of excess amount collected from the petitioner towards start-up power charges has not yielded any fruitful results.
- k. The 3rd respondent has been issuing current consumption bills at 621.81 paise per unit towards energy charges and excess demand charges treating the petitioner as a HT consumer for exceeding quota demand.

6. Contentions of the Petitioner in D.R.P.No.11 of 2012:-

- a. The petitioner has to pay outage charges and start-up power charges as stipulated under clause 5.22.3 of Order No.2 dated 12-5-2006 issued by the Commission.
- b. Since the petitioner's power plant cannot be treated as a HT consumer and the petitioner is not liable to pay any penalty for exceeding the quota

demand on par with the HT consumers, the petitioner company sent a letter on 18-10-2010 to refund the excess demand charges collected from it.

- c. Though Order No.2 specifically deals with various charges payable by the captive generator, the 3rd respondent, ignoring the statutory provisions has been collecting energy charges and demand charges from the petitioner treating it as a HT consumer. The act of the 3rd respondent is against the orders of the Commission and is unsustainable and untenable in law.
- d. The petitioner is liable to pay start-up power charges at 621.81 paise per unit only as fixed by the Commission under Order No.2 dated 12-05-2006.
- e. The Petitioner's co-generation power plant is liable to pay start-up power charges as fixed by the Commission under Order No.2 dated 12-05-2006, viz. 621.81 paise per unit.
- f. The respondents have no authority to revise the charges upwards and impose penalty treating the petitioner's CGP as a HT consumer unilaterally without the consent of the Commission. Hence the bills raised by the 3rd respondent every month are liable to be quashed in limini.
- g. In a similar matter, the Commission has passed orders for the payment of start-up power charges at 621.81 paise per unit and directed to refund the excess amount collected by the respondents therein vide D.R.P.No.10 of 2009 and I.A.No.9 and 10 dated 29-06-2009.

7. Contentions of the Petitioner in D.R.P.No.12 of 2012:-

- a. The petitioner has to pay outage charges and start-up power charges as stipulated under clause 5.22.3 of Order No.2 dated 12-5-2006 issued by the Commission.
- b. Since the petitioner's power plant cannot be treated as a HT consumer and the petitioner is not liable to pay any penalty for exceeding the quota

demand on par with the HT consumers, the petitioner company sent a letter on 25-02-2012 to refund the excess demand charges collected from it.

- c. Though Order No.2 specifically deals with various charges payable by the captive generator, the 3rd respondent, ignoring the statutory provisions has been collecting energy charges and demand charges from the petitioner treating it as a HT consumer. The act of the 3rd respondent is against the orders of the Commission and is unsustainable and untenable in law.
- d. The petitioner is liable to pay start-up power charges at 621.81 paise per unit only as fixed by the Commission under Order No.2 dated 12-05-2006.
- e. The Petitioner's co-generation power plant is liable to pay start-up power charges as fixed by the Commission under Order No.2 dated 12-05-2006, viz. 621.81 paise per unit.
- f. The respondents have no authority to revise the charges upwards and impose penalty treating the petitioner's CGP as a HT consumer unilaterally without the consent of the Commission. Hence the bills raised by the 3rd respondent every month are liable to be quashed in limini.
- g. In a similar matter, the Commission has passed orders for the payment of start-up power charges at 621.81 paise per unit and directed to refund the excess amount collected by the respondents therein vide D.R.P.No.10 of 2009 and I.A.No.9 and 10 dated 29-06-2009.

8. Contention of the Respondent in D.R.P.No.11 of 2012:-

- a. The application for start-up power was registered on 23-05-2006 for a sanctioned demand of 200 KVA in 33 KV voltage line as per the request of the petitioner. Accordingly, the start-up power for 200 KVA was effected on 07-07-2006.

- b. Admittedly, the petitioner by his letter dated 13-07-2010 has intimated its intention to surrender the said HT S.C.No.249 on the ground that there is no need for the same. In the course of said request, it came to light that arrears of amount are to be collected from the petitioner and its sister concern. As the arrears of amount was much higher than the then existing deposits, the consumer was requested to pay the remaining arrear amount of Rs.62,36,476/- taking into account the available deposit amount of Rs.20,72,275/-. The petitioner has sought for instalments to pay the same and it was granted. The petitioner has paid a few instalments.
- c. The petitioner vide its letter dated 22-02-2012 made a request for additional start-up power of 1000 KVA and for that purpose it has withdrawn its earlier request to surrender 200 KVA demand sanctioned to the said HT S.C.No.249.
- d. The petitioner exceeded the maximum demand from time to time. The petitioner has paid the penalty amounts under protest.
- e. When a person draws power from the licensee, irrespective of the purpose for which it is drawn then such a person becomes a “consumer” within the meaning of section 2 (15) of the Electricity Act, 2003. When a person becomes a consumer, then sanctioning of load, collection of applicable charges and billing procedures etc. will be obviously applicable.
- f. As per the clause 1 (d) of the Tamil Nadu Electricity Supply Code, 2004 “Connected Load” means the aggregate of the manufacturers rating of all equipments connected to the consumer’s installation and of all portable equipments and also the capacity of the power source required to test manufactured products and repaired equipments in the installation.

According to the explanation thereunder, the connected load may be converted to and mentioned in terms of KVA or KW. Further, as per clause 2 (e) of the Supply code, “Contracted Load” means the load specified in the agreement between the consumer and licensee engaged in the business of supplying electricity to him. As per clause 2(f) “Contracted Demand” means the demand specified in the agreement between the consumer and the licensee engaged in the business of electricity to him. As per clause 2 (r) of the Supply Code “Supply” in relation to electricity means the sale of electricity to a licensee or consumer.

- g. Clause 17 (1) of the Supply code, inter-alia provides that every consumer shall pay to the licensee, from the date of commencement of supply till the agreement is terminated, security deposit, minimum monthly charges, fixed charges, if any, and other charges as provided in Tariff Orders, Supply Code and any other orders in this regard by the Commission from time to time.
- h. Once a person draws power from the licensee, such a person becomes a “consumer” of the licensee supplying power. Further, a consumer can draw power from the licensee for the “contracted load” and “contracted demand” only and for that purpose such load should be sanctioned / approved by the licensee, based on the requirement of such consumers after detailed examination of the proposal submitted by the person requiring supply from the licensee. Hence there must be a sanctioned load which may be in terms of KW or KVA demand, as the case may be, for every consumer and a consumer can be identified by a service connection number assigned.

- i. In the instant case of availing start-up power, taking into account the facts mentioned above, a demand of 200 KVA was sanctioned for availing supply by the petitioner and is permitted to draw the energy from the TANGEDCO's grid only upto the sanctioned demand of 200 KVA on payment of applicable charges as determined by the Commission for start-up power. The maximum ceiling limit to avail demand is necessary so as to ensure the stability of the grid to prevent damages to the grid and connected infrastructure.
- j. The charge at Rs.6.2181 per unit was recovered for normal course of consumption i.e. for the consumption within the sanctioned demand of 200 KVA, as applied for by the petitioner themselves for the start-up and outage conditions.
- k. The petitioner had exceeded the sanctioned demand during the month from 10/2011 to 02/2012.
- l. The petitioner is having another 30 MW captive generation plant at Plot No.MM5 SIPCOT Perundurai bearing H.T.S.C.No.379. During inspection by the Executive Engineer / O&M/Perundurai on 08-03-2012, it was detected that there was an inter linking cable between the H.T.S.C.No.249 and H.T.S.C.No.379 at 11 KV level. It is evident that the petitioner has used the H.T.S.C.No.249 power supply for the start-up, testing and auxiliary purpose of the captive generation plant of 30 MW for their H.T.S.C.No.379.
- m. There is an abnormal rise in recorded demand as the petitioner has interlinked both the power plants and used the power of the respondents from H.T.S.C.No.249 for some other purpose other than the authorized purpose of start-up. Hence, it can be said that the supply could have been

utilized for running their industrial unit also when their generation plant was in outage. Normally, during January to June, TANGEDCO is having severe power crisis due to the poor generation of hydel and wind. During this period the excess drawal by consumers will affect the system stability grid safety, power management, enforcement of unscheduled load shedding etc. which cause severe hardship to the public.

- n. The consumer should limit his consumption, within his sanctioned demand of 200 KVA and if the recorded demand exceeds the sanctioned demand of 200 KVA, the consumer has to pay the excess demand charges (penal charges) as determined by the Commission in the Supply Code.
- o. The Commission in Regulation 5 (2) (i) of the Tamil Nadu Electricity Supply Code enables the TANGEDCO to levy the excess demand charges.
- p. As permitted in the Tamil Nadu Electricity Supply Code, the excess demand charges @ Rs.600/- per KVA (double the normal rate) has been levied for the demand over and above the sanctioned demand.
- q. Whenever the consumer limits his consumption within the sanctioned demand, the charges have been levied at the rate of Rs.6.2181 per unit and if the recorded demand exceeds the sanctioned demand, the charges have been levied as below:-
 - (i) for the demand upto sanctioned demand – at Rs.6.2181 per unit which is inclusive of demand and energy charges.
 - (ii) for the demand over and above the sanctioned demand – double the normal demand charges as excess demand charges.
- r. The excess demand charges already levied and collected from the petitioner is as per the Commission orders and the regulations in force.

- s. Even otherwise the petitioner's claim for refund of the excess demand charges for the past years is not tenable. The provisions of law and / or the principles of delay and latches will apply. The petitioner has approached the Commission with inordinate unexplained delay for the relief. The allegations stated in para 3,4 and 5 may be denied as false and misleading.
- t. The petitioner, keeping his eyes wide open, has entered into the agreement with the respondents as early as on 12-06-2006 for the purpose of drawing start-up power. Therefore, the petitioner is now estopped from saying that the agreement was made at the instance of the third respondent. The allegations stated in para 6 and 7 of the petition may be denied as false and misleading.
- u. The third respondent has been charging demand charges at the appropriate rate for the quantum of demand exceeded over and above the sanctioned demand as per the stipulations of the Commission.
- v. In order to avail supply from the respondent, the petitioner has to apply and get a HT service and as per the stipulations of the Commission has to make payment as and when sanctioned demand is exceeded. Inasmuch as the penalty was imposed in terms of the stipulations of the Commission, there is no question or making payment under protest or a claim for refund from the respondents. The averment that the petitioner has been paying other charges has no relevance to the case on hand inasmuch as the penalty was imposed in terms of the HT agreement and the provisions of the Supply Code.
- w. Admittedly, for start-up power, the respondents are bound to charge at the rate fixed by the Commission. However, in this case, the sanctioned

demand was only 200 KVA, but the petitioner has, on many times, exceeded the sanctioned load that too, in one instance, more than 18 times (3672 KVA).

- x. Admittedly, the petitioner has made representations to follow Order No.2 dated 15-05-2006 for collection of start-up power charges at the rate fixed by the Commission. In fact, the respondent has also been charging energy charges at the rates fixed by the Commission at all occasions when the petitioner has not exceeded the demand. There is no need to refund the charges collected.
- y. The petitioner has made a representation to cancel the HT service connection on certain grounds. When the same was under consideration, the petitioner company in its letter, dated 22-02-2012 withdrew its earlier request to surrender the demand of 200 KVA and in fact, sought for additional demand of 1000 KVA on a perfect understanding of the provisions of the regulations, codes, orders etc. and to meet the requirement.
- z. The Order No.2 is to be read with all other provisions in law governing the subject including the Tamil Nadu Electricity Supply Code and as the bills were raised in accordance with law, the petitioner is not entitled to any relief.
- aa. The three Judges Bench of the Hon'ble Supreme Court of India headed by the Hon'ble Chief Justice of India in the Executive Engineer & Anr. – Vs. M/s.Sri Seetaram Rice Mill (Civil Appeal No.8859 of 2011) in its decision dated 20-10-2011 has categorically held in paragraph 58 of the judgment, inter-alia that, wherever the consumer commits the breach of the terms of the agreement, regulations and the provisions of the Act by consuming

electricity in excess of the sanctioned and connected load, such consumer would be “in blame and under liability” within the ambit and scope of section 126 of the Electricity Act, 2003; that the expression “unauthorized use of electricity” means as appearing in section 126 of the Electricity Act, 2003 is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation while keeping in mind the object and purpose of the Act; that the excess load consumption than the connected load inter-alia would fall under Explanation (b) (iv) to section 126 of the Electricity Act, 2003 besides it being in violation of regulations 82 and 106 of the regulations and terms of the agreement. The facts and circumstances of the case in the said case will squarely be applicable to the case on hand. Therefore, there is no illegality or irregularity in imposing penalty for the act of exceeding the contracted load by the petitioner.

- bb. Hence, considering all the above and more particularly the acts of commissions and omissions, illegalities and irregularities on the part of the petitioner, the above petition is liable to be dismissed with cost.

9. Contention of the Respondent in D.R.P.No.12 of 2012:-

- a. The application for start-up power was registered on 21-01-2012 for a sanctioned demand of 1000 KVA in 110 KV voltage line as per the request of the petitioner. Accordingly, the start-up power for 1000 KVA was effected on 25-01-2012.
- b. The petitioner vide its letter dated 09-02-2012 has made a request for additional start-up power of 1000 KVA to the said HT SC No.379. The

petitioner has exceeded the maximum demand from time to time. The petitioner has paid the penalty amounts but under protest.

- c. When a person draws power from the licensee irrespective of the purpose for which it is drawn then such a person becomes a “consumer” within the meaning of sec.2 (15) of the Electricity Act, 2003. When a person becomes a consumer then sanctioning of load, collection of applicable charges and billing procedure etc. will be obviously applicable.
- d. As per the clause 1 (d) of the Tamil Nadu Electricity Supply Code, 2004 “Connected Load” means the aggregate of the manufacturers rating of all equipments connected to the consumer’s installation and of all portable equipments and also the capacity of the power source required to test manufactured products and repaired equipments in the installation. According to the explanation thereunder, the connected load may be converted to and mentioned in terms of KVA or KW. Further, as per clause 2 (e) of the Supply code, “Contracted Load” means the load specified in the agreement between the consumer and licensee engaged in the business of supplying electricity to him. As per clause 2(f) “Contracted Demand” means the demand specified in the agreement between the consumer and the licensee engaged in the business of electricity to him. As per clause 2 (r) of the Supply Code “Supply” in relation to electricity means the sale of electricity to a licensee or consumer.
- e. Clause 17 (1) of the Supply code, inter-alia provides that every consumer shall pay to the licensee, from the date of commencement of supply till the agreement is terminated, security deposit, minimum monthly charges, fixed charges, if any, and other charges as provided in Tariff Orders, Supply Code and any other orders in this regard by the Commission from time to time.

- f. Once a person draws power from the licensee, such a person becomes a “consumer” of the licensee supplying power. Further, a consumer can draw power from the licensee for the “contracted load” and “contracted demand” only and for that purpose such load should be sanctioned / approved by the licensee, based on the requirement of such consumers after detailed examination of the proposal submitted by the person requiring supply from the licensee. Hence there must be a sanctioned load which may be in terms of KW or KVA demand, as the case may be, for every consumer and a consumer can be identified by a service connection number assigned.
- g. In the instant case of availing start-up power, taking into account the facts mentioned above, a demand of 1000 KVA was sanctioned for availing supply by the petitioner and is permitted to draw the energy from the TANGEDCO’s grid only upto the sanctioned demand of 1000 KVA on payment of applicable charges as determined by the Commission for start-up power. The maximum ceiling limit to avail demand is necessary so as to endure the stability of the grid to prevent damages to the grid and connected infrastructure.
- h. The charge at Rs.6.2181 per unit was recovered for normal course of consumption i.e. for the consumption within the sanctioned demand of 1000 KVA, as applied for by the petitioner themselves for the start-up and outage conditions.
- i. The petitioner is having another 8 MW captive generation plant at Plot No.MM1 (Part 1) SIPCOT Perundurai bearing H.T.S.C.No.249. During inspection by the Executive Engineer / O&M/Perundurai on 08-03-2012, it was detected that there was an interlinking cable between the H.T.S.C.No.379 and H.T.S.C.No.249 at 11 KV level. It is evident that the petitioner has used the H.T.S.C.No.379 power supply for the start-up, testing and auxiliary purpose of

the captive generation plant of 8 MW for their H.T.S.C.No.249 has been provided.

- j. There is an abnormal rise in recorded demand as the petitioner has interlinked both the power plants and used the power of the respondents from H.T.S.C.No.379 for some other purpose other than the authorized purpose of start-up. Hence, it can be said that the supply could have been utilized for running their industrial unit also when their generation plant was in outage. Normally, during January to June, TANGEDCO is having severe power crisis due to the poor generation of hydel and wind. During this period the excess drawal by consumers will affect the system stability grid safety, power management, enforcement of unscheduled load shedding etc. which cause severe hardship to the public.
- k. The consumer should limit his consumption, within his sanctioned demand of 1000 KVA and if the recorded demand exceeds the sanctioned demand of 1000 KVA, the consumer has to pay the excess demand charges (penal charges) as determined by the Commission in the Supply Code.
- l. The Commission in Regulation 5 (2) (i) of the Tamil Nadu Electricity Supply Code enables the TANGEDCO to levy the excess demand charges.
- m. As permitted in the Tamil Nadu Electricity Supply Code, the excess demand charges @ Rs.600/- per KVA (double the normal rate) has been levied for the demand over and above the sanctioned demand.
- n. Whenever the consumer limits his consumption within the sanctioned demand, the charges have been levied at the rate of Rs.6.2181 per unit and if the recorded demand exceeds the sanctioned demand, the charges have been levied as below:-

- (i) for the demand upto sanctioned demand – at Rs.6.2181 per unit for both demand and energy.
 - (ii) for the demand over and above the sanctioned demand – double the normal demand charges as excess demand charges.
- o. The excess demand charges already levied and collected from the petitioner is as per the Commission's orders and the regulations in force.
- p. Even otherwise the petitioner's claim for refund of the excess demand charges for the past years is not tenable. The provisions of law and / or the principles of delay and laches will apply. The petitioner has approached the Commission with inordinate unexplained delay for the relief.
- q. The allegations stated in para 3,4 and 5 may be denied as false and misleading.
- r. The petitioner, keeping his eyes wide open, has entered into the agreement with the respondents as early as on 24-01-2012 for the purpose of drawing start-up power. Therefore, the petitioner is now estopped from saying that the agreement was made at the instance of the third respondent.
- s. The allegations stated in para 6 and 7 of the petition may be denied as false and misleading.
- t. The third respondent has been charging demand charges at the appropriate rate for the quantum of demand exceeded over and above the sanctioned demand as per the stipulations of the Commission.
- u. In order to avail supply from the respondent, the petitioner has to apply and get a HT service and as per the stipulations of the Commission has to make payment as and when sanctioned demand is exceeded. Inasmuch as the penalty was imposed in terms of the stipulations of the Commission, there is no question or making payment under protest or a claim for refund from the

respondents. The averment that the petitioner has been paying other charges has no relevance to the case on hand inasmuch as the penalty was imposed in terms of the HT agreement and the provisions of the Supply Code.

- v. Admittedly, for start-up power, the respondents are bound to charge at the rate fixed by the Commission. However, in this case, the sanctioned demand was only 1000 KVA, but the petitioner has, on many times, exceeded the sanctioned load that too, in one instance, more than 2.5 times (2536 KVA).
- w. Admittedly, the petitioner has made representations to follow Order No.2 dated 15-05-2006 for collection of start-up power charges at the rate fixed by the Commission. In fact, the respondent has also been charging energy charges at the rates fixed by the Commission at all occasions when the petitioner has not exceeded the demand. There is no need to refund the charges collected.
- x. The petitioner has made a representation to cancel the HT service connection on certain grounds. No application for reduction of demand of 1000 KVA was received from the petitioner as far as the HT SC No.379 and in fact, sought for additional demand of 1000 KVA on a perfect understanding of the provisions of the regulations, codes orders etc. and to meet the requirement. However, the petitioner has conveniently omitted to state the same in the petition perhaps for unjust enrichment by illegal means and by abuse of process.
- y. The Order No.2 is to be read with all other provisions in law governing the subject including the Tamil Nadu Electricity Supply Code and as the bills were raised in accordance with law, the petitioner is not entitled to any relief.
- z. The three Judges Bench of the Hon'ble Supreme Court of India headed by the Hon'ble Chief Justice of India in the Executive Engineer & Anr. – Vs. M/s.Sri Seetaram Rice Mill (Civil Appeal No.8859 of 2011) in its decision dated

20-10-2011 has categorically held in paragraph 58 of the judgment, inter-alia that, wherever the consumer commits the breach of the terms of the agreement, regulations and the provisions of the Act by consuming electricity in excess of the sanctioned and connected load, such consumer would be “in blame and under liability” within the ambit and scope of section 126 of the Electricity Act, 2003; that the expression “unauthorized use of electricity” means as appearing in section 126 of the Electricity Act, 2003 is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation while keeping in mind the object and purpose of the Act; that the excess load consumption than the connected load inter-alia would fall under Explanation (b) (iv) to section 126 of the Electricity Act, 2003 besides it being in violation of regulations 82 and 106 of the regulations and terms of the agreement. The facts and circumstances of the case in the said case will squarely be applicable to the case on hand. Therefore, there is no illegality or irregularity in imposing penalty for the act of exceeding the contracted load by the petitioner.

- aa. Hence, considering all the above and more particularly the acts of commissions and omissions, illegalities and irregularities on the part of the petitioner, the above petition is liable to be dismissed with cost.

10. Contentions of the Petitioner in the Additional Affidavit in D.R.P.No.11 filed on 14-12-2012:-

- a. As far as this co-generation plant is concerned, the petitioner company requires 10% of the capacity for the total auxiliaries towards start-up power.

b. Power was not connected for any industrial use and to start the kiln, generator with 2 x 1000 K.V.A. available in the plant premises was used. In some months, the maximum demand has shot up, but energy was less when comparing with the recorded demand. The meter should have recorded excess demand due to fluctuations in supply and frequent load shut-down, which are not under control.

c. The interlinking of two service connection through 11 K.V. Line was made ready for getting approval from the Chief Electrical Inspector to Government, to use the power generated from the 8 MW plant to 30 MW. power in emergency circumstances. 11 K.V. line was not used for transmitting start-up power from this plant to 30 MW plant or vice-versa. Even during the inspection by the Executive Engineer (O & M), Perundurai, the cable was idle and no power was passing through it. However, the cable will be used after getting approval from the C.E.I.G.

11. Contentions of the Petitioner in the Additional Affidavit in D.R.P.No.12 filed on 14-12-2013:-

a. As far as this co-generation plant is concerned, the petitioner company requires 10% (3000 K.V.A.) of the capacity for the total auxiliaries towards start-up power.

b. Power was not connected for any industrial use and excessive load is not used from start –up power. In some months, the maximum demand has shot up, but energy was less when comparing with the recorded demand. The meter should have recorded excess demand due to fluctuations in supply and frequent load shut-down, which are not under control.

c. The interlinking of two service connection through 11 K.V. Line was made ready for getting approval from the Chief Electrical Inspector to Government, to use the power generated from the 8 MW plant to 30 MW. power in emergency circumstances. 11 K.V. line was not used for transmitting start-up power from this plant to 30 MW plant or vice-versa. Even during the inspection by the Executive Engineer (O & M), Perundurai, the cable was idle and no power was passing through it. However, the cable will be used after getting approval from the C.E.I.G.

12. Contentions of the Respondents in the Additional Counter Affidavit in D.R.P.No.11 of 2012:-

- a. The consumer has not only exceeded the sanctioned demand in some months, but also consumed the energy abnormally in 07/2006, 11/06, 02/07, 05/07, 11/07, 04/08, 08/08, 11/08, 05/09, 10/09, 11/09, 01/10 and 10/2010.
- b. The demand recorded in some months mentioned in para 3 above are more than the requirement of 10% of the capacity of the generator i.e. $8 \text{ MW} \times 10\% = 800 \text{ KW}$.
- c. This clearly shows that the petitioner has utilized the power drawn from the grid for some other purpose other than the authorized start-up purpose. Hence, it can be said that the supply could have been utilized for running their industrial unit also when their generation plant was in outage.
- d. The definition of the “consumer” as per Tamil Nadu Electricity Supply Code is reproduced below:-
“Consumer” means any person who is supplied with electricity for his own use by a licensee, the Government or by any other person engaged in the

business of supplying electricity to the public under the Act or any other law for the time being in force and includes any person whose premises are for time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be”.

- e. When the petitioner draws power for start-up power, when the generator is in outage condition, he becomes the consumer of the licensee and he is liable to pay the charges applicable to the consumer.
- f. The petitioner had used the imported power continuously for number of days which may not be warranted for start-up purpose. The petitioner has utilized the power drawn from the grid for some other purposes other than the authorized start-up purpose. It can be said that the supply could have been utilized for running their industrial unit also when their generation plant was in outage.

13. Contentions of the Respondents in the Additional Counter Affidavit in D.R.P.No.12 of 2012:-

- a. The consumer has not only exceeded the sanctioned demand in some months, but also consumed the energy abnormally in 03/2012, 06/2012, and 10/2012.
- b. The petitioner has utilized the power drawn from the grid for some other purpose other than the authorized start-up purpose. Here, it can be said that the supply could have been utilized for running their industrial unit also when their generation plant was outage.
- c. The definition of the “consumer” as per Tamil Nadu Electricity Supply Code is reproduced below:-

“Consumer” means any person who is supplied with electricity for his own use by a licensee, the Government or by any other person engaged in the business of supplying electricity to the public under the Act or any other law for the time being in force and includes any person whose premises are for time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be”.

- d. When the petitioner draws power for start-up power, when the generator is in outage condition, he becomes the consumer of the licensee and he is liable to pay the charges applicable to the consumer.

14. Hearings held by the Commission:-

a. Hearing held on 28-11-2012 in D.R.P. No. 11 and 12 of 2012:-

Arguments of both sides were heard by the Commission on 28-11-2012. The parties were directed to file details regarding start-up power requirement for the individual generators covered under the two petitions, reason for excessive consumption during certain months, inter-linking of two service connections by 11 KV cable and action taken with regard to the inter-connection with any other additional information required to establish whether the petitioner is a generator eligible for start-up power or he is a consumer, within a fortnight.

b. Hearing held on 08-01-2013 in D.R.P.No.11 and 12 of 2012:-

Arguments of Learned Counsel for the petitioner and the Additional Chief Engineer, Erode Electricity Distribution Circle and other officials of TANGEDCO were also heard by the Commission on 08-01-2013. While the petitioner argued that he

was only a generator and not a consumer, it was certain that during certain months the demand has crossed the sanctioned demand of 200 KVA or 1000 KVA as the case may be in the two petitions. In some months the energy consumption has also been on the higher side. The petitioner has also placed on record, the judgment of the APTEL in Appeal No.47 of 2011 dated 17th April 2012, to ascertain whether the petitioner is a generator or has used the power for the purpose other than start up. It was thought necessary to examine additional details such as meter down loaded data which were directed to be placed by the respondents. The petitioner was also given liberty to furnish if any additional information justifying the drawal beyond 200 KVA or higher energy consumption for both the petitions within 15 days.

c. Hearing held on 12-02-2013 in D.R.P.No.11 and 12 of 2012:-

Counsel for both sides were present. The parties were again heard on 12-02-2013 at length. After hearing both the parties, the orders were reserved.

15. Finding of the Commission in D.R.P.No.11 of 2012 and I.A.No.1 and 2 of 2012 in D.R.P No.11 of 2012:-

a. The petitioner is involved in the manufacture of sponge iron, which is the raw material for manufacture of steel. The petitioner is also involved in generation of power with a capacity of 8 MW through waste heat emanated from his manufacturing process. He obtained a HT service connection No.249 on 12-06-2006 with a contracted demand of 200kVA for the reported startup power of his generator.

b. The main prayer of the petitioner is to refund the excess charges of Rs.81,74,304/- collected in the name of excess demand charges from the petitioner. Before getting into the prayer of the case, the Commission would like to discuss the

criteria for supplying startup power to generator which will help to take forward the case.

c. It is a fact that the startup supply is generally availed in HT / EHT category and in this present case it is in HT. It is a known fact that the requirement of startup supply is for the station / unit auxiliary consumption of the generator. The auxiliary supply norms have been specified in regulation 37(V) of the Commission's Tariff Regulation 2005 which is reproduced below.

“(V) Auxiliary Energy Consumption

(a) Coal-based generating station.

	<i>With cooling Tower</i>	<i>Without Cooling tower</i>
<i>(i) 200 MW series</i>	<i>9.00%</i>	<i>8.50%</i>
<i>(ii) 500 MW series</i>		
<i>Steam driven boiler feed pumps</i>	<i>7.50%</i>	<i>7.00%</i>
<i>Electrically driven boiler feed pumps</i>	<i>9.00%</i>	<i>8.50%</i>

(b) Gas-based and Naphtha-based Generating Stations :

(i) Combined Cycle : 3%

(ii) Open Cycle : 1%

(c) Lignite fired Thermal Power Station

The auxiliary consumption norms shall be 0.50 percentage point more than the auxiliary energy consumption norms for coal based Generating Stations indicated in a (i) and (ii) above.

(d) During stabilization period, normative auxiliary consumption shall be reckoned at 0.50 percentage point more than the norms indicated at (a), (b) and (c) above”.

d. The norms specified in the regulation are not covering the small generator or waste heat recovery unit like that of the petitioner. The auxiliary consumption of a coal based thermal plant will be around 7 to 9% of the installed capacity depending upon the capacity of the generator, type of cooling, type of feed pump etc. The

petitioner's generator is a small capacity waste heat based generator. However as stated by the petitioner himself in his petition, the auxiliary consumption generally may not exceed 10% of the installed capacity. Though 10% of the generator capacity works out to 800 kVA, the petitioner obtained startup power for 200 kVA only. It is up to the petitioner to decide about his specific requirement of startup power. To summarize, following are the criteria for the startup supply.

- (i) The startup supply is meant for the generator auxiliaries.
- (ii) It shall not exceed 10% of the generator capacity.

e. Having discussed the norms for the startup supply, the next issue is to find out whether the petitioner complied with the norms. This is because the petitioner repeatedly submitted that he is only a generator and he used the power only for the startup purpose and therefore he should be charged accordingly. As discussed supra, the first criteria for startup power is that the power shall be utilized for the generator auxiliaries. However, in this case, as per the schematic diagram submitted by the respondent, both the startup supply and the sponge iron plant load of the petitioner are found to be connected through an 11 kV bus. As reported by the respondents in their counter affidavit, the petitioner has exceeded the contracted demand of 200kVA during the following months.

Sl.No	Month	Recorded Demand
1	11/2007	1314 kVA
2	4/2008	369 kVA
3	8/2008	216 kVA
4	5/2009	211.50 kVA
5	9/2010	279 kVA
6	10/2010	333 kVA
7	10/2011	306 kVA
8	11/2011	1098 kVA
9	12/2011	2034 kVA
10	01/2012	2889 kVA
11	02/2012	3672 kVA

f. As seen from the Table, during 2007 itself, the consumer reached a maximum demand of 1314 kVA. This is 1.6 times more than the requirement of the maximum start up power of 800 kVA. It clearly shows that the petitioner used the power drawn from the distribution licensee not only for the startup power of his generator but also for other purposes. Further, the petitioner has also exceeded the startup power requirement of 800 kVA in the months as tabulated below.

Sl.No	Month	Recorded Demand
1	11/2007	1314 kVA
2	11/2011	1098 kVA
3	12/2011	2034 kVA
4	01/2012	2889 kVA
5	02/2012	3672 kVA

During the month of February 2012, the startup power drawn by the petitioner was 3672kVA which is around 46% of the installed capacity and 4.6 times of the maximum startup requirement. In the inspection report dated 08-03-2012, signed by both the petitioner and respondent, it has been reported that the supply obtained in the HTSC 249 was used for the startup purpose of the another 30MW generator of the petitioner. That could be the reason for the abnormal increase of 4.6 times of the requirement. The question of using power for other purpose will be dealt with separately in this order. From the above discussion, the following observations are made:

- (i) The petitioner has exceeded his contracted demand of 200 kVA many a times.
- (ii) The petitioner has exceeded his maximum start up requirement of 800 kVA many a times.
- (iii) The petitioner has used the power drawn from the TANGEDCO for the purpose other than the startup of his generator.

g. The main prayer of the petitioner is to refund the excess charges of Rs.81,74,304/- collected in the name of excess demand charges from the petitioner. The interim prayer are to grant interim injunction restraining the respondents, from levying or collecting the start-up power charges and collection of excess demand charges. To answer this claim clauses 1 and 3 of the agreement signed between the petitioner and the respondent are reproduced below.

“1. Load Maximum Demand:

*Subject to the provisions herein after contained, the Licensee shall supply and the consumer shall take from the Licensee electrical energy for a **maximum demand not exceeding 200 KVA which shall be its contracted demand** for its exclusive use for the purpose above mentioned at the premises of its M/s. Sree Rengaraaj Power India (P) Ltd., Plot No.MMI (Part -1), Sipcot Industrial Growth Centre, Perundurai – 638 052. The connected load shall be 200 KVA. The consumer shall not effect any change in the maximum demand or connected load.*

4. To comply with requirements of Acts and Terms and Conditions of Distribution Code and Supply Code:

The consumer hereby undertakes to comply with all the requirements of the applicable Acts, Regulations, etc., and Grid Code, Distribution Code and Supply Code and of any amendments, modifications or reenactment thereof or of any other enactment to be passed in relation to supply made under this agreement from time to time and the rules, regulations or orders etc., made thereunder from time to time, provision of the Tariffs, Scale of Miscellaneous and other charges and the terms and conditions of supply prescribed from time to time, and the consumer hereby agrees not to dispute their applicability to this agreement”.

Clauses 1 and 4 of the agreement dated 12-06-2006 signed by both the parties clearly states that the consumer shall avail electrical energy for a maximum demand not exceeding 200 kVA. Here the words “maximum demand not exceeding 200 kVA” is relevant. In clause 4, the consumer has also agreed to comply with the requirements of Act and terms and conditions of Distribution Code and Supply Code. Inasmuch as the agreement has been made between the Distribution Licensee and the petitioner for supplying certain quantum of contracted demand, the Commission is of the view that the petitioner shall pay the “excess demand charges” as specified

in the Supply Code, as and when he exceeds such permitted contracted demand. The claim of the petitioner that he is only a generator and not a consumer is also not acceptable for the following reasons.

(i) Throughout the agreement the petitioner is addressed as a consumer and he has not challenged this classification for the past 6 years.

(ii) In this present case he could have used the TANGEDCO's power for the purpose other than the generator startup.

(iii) His plant load also has been connected along with the generator auxiliaries.

h. The other contention of the petitioner is that he shall be charged at the start up charges as specified in the commission's order No:2 dated 15-05-2006. Inasmuch as the petitioner cannot be treated as a generator and the power drawn by him might not have been used only for the purpose of startup as discussed above, the petitioner is not eligible to be charged under the above said order.

i. In light of the facts concluded supra, the commission clarifies the applicable charges / tariff for the petitioner for the power drawn through HTSC 249.

Period	Charges	Applicable Order of the Commission
From 12-06-2006 to 31-07-2010	Both demand and energy Charges under HT tariff III	Retail Tariff Order dated 15-3-2003.
From 01-08-2010 to 31-03-2012	Both demand and energy Charges under HT tariff III	Order No.3 of 2010 dated 31-07-2010.
From 01-04-2012 to 20-06-2013	Both demand and energy Charges under HT tariff V.	Order No.1 of 2012 dated 30-3-2012.
From 21-06-2013	Both demand and energy Charges under HT tariff V.	T.P.No.1 of 2013 dated 20-06-2013.

The above charges have been ordered as specified in the Commission's codes and retail tariff orders issued from time to time. Para 8.5.6 of the National Tariff policy stipulates that in case of outages of generator supplying to a consumer on open

access, standby arrangements should be provided by the licensee on payment of tariff for temporary connection to that consumer category as specified by the Appropriate Commission. In view of this, the energy charges equivalent to the temporary supply tariff has been ordered for the grid support given by the TANGEDCO to the petitioner. Till 31-03-2012, no separate tariff for the temporary supply was fixed by the Commission. Therefore, HT Tariff III, the tariff specified for such purpose has been ordered for the period before 31-03-2012.

j. It is not clear whether the TANGEDCO charged the petitioner taking into account the norms and charges as stated in the above Table. Therefore the respondent TANGEDCO is directed to redraw the billing of the petitioner HTSC 249 on the above lines and settle the issue accordingly. If the revised charges as per this order is less than the charges already collected from the Petitioner, the same shall be adjusted / paid to the petitioner by the TANGEDCO as per the supply code. If such revised charge worked out by the TANGEDCO as per this order is more than the charges already collected from the petitioner, the same shall be paid by the petitioner within 15 days from the issuance of such demand notice by the TANGEDCO. No interest is payable in either case.

16. Finding of the Commission in D.R.P.No.12 of 2012 and I.A.No.1 and 2 of 2012 in D.R.P.No.12 of 2012:-

a. The petitioner has submitted that he has a fossil fuel based captive generating power plant with a capacity of 30 MW commissioned in January 2012. He entered into HT supply agreement with TANGEDCO to the extent of 1000 kVA and the HT supply has been numbered as HTSC No:379. The main prayer of the petitioner is to:

“ Direct the Respondents to implement the Order No.2 dated 12.05.2006 in which, the start-up power charges is fixed at 621.81 paise per unit and direct them to refund the excess charges of Rs.12,62,601/- collected in the name of excess demand charges”.

The interim prayers are:

“(1) Granting interim stay against the levy and collections of excess demand charges from the petitioner ignoring the provisions as contained in Order No.2 dated 12.05.2006 of this Hon’ble Commission according to which the petitioner is liable to pay start-up power charges of 621.81 paise only per unit, pending disposal of the above petition;

(2) Granting interim injunction restraining the respondents, from levying or collecting the start up power charges, more than the charges fixed by this Hon’ble Commission, pending disposal of the above petition;”

b. The criteria for supplying startup power has already been explained by the Commission in Para No.15.d which is applicable for this case also. Similarly the agreement signed by the petitioner and the TANGEDCO has a similar clause which states that the consumer shall avail electrical energy for a maximum demand not exceeding 1000kVA. In clause 4 both the parties have agreed to comply with the requirements of codes and terms and conditions of Distribution Code and Supply Code. In the same analogy, the petitioner shall abide by the provisions of the Supply Code on excess demand and shall pay the excess demand charges as and when he exceeds such permitted contracted demand.

c. Though the 10% limit of auxiliary consumption works out to 3000kVA for the 30 MW generator, the petitioner obtained the contracted demand of only 1000 kVA. It is up to the petitioner to obtain a particular quantum of contracted demand according to his specific requirement. As reported by the respondent, the petitioner has exceeded the contracted demand of 1000kVA in its HT SC 379 on the following months as tabulated below.

Sl.No	Month	Sanctioned Demand	Recorded Demand
1	Jan-12	1000	2044
2	Feb-12	1000	1960
3	Mar-12	1000	1800

4	Apr-12	1000	2536
5	May-12	1000	1620
6	Jun-12	1000	1900
7	Jul-12	1000	1504
8	Aug-12	1000	1132
9	Sep-12	1000	1816
10	Oct-12	1000	2016
11	Nov-12	1000	1576
12	Dec-12	1000	0

Further, as per the schematic diagram submitted by the respondent both the auxiliaries of the petitioner's power plant and the load of the petitioner's sponge iron plant have been connected to the grid so as to receive supply from the TANGEDCO. Therefore, it is not known whether the supply drawn by the petitioner from TANGEDCO has been utilized for the consumption of his sponge iron plant. At the same time, the Commission cannot conclude that the power drawn by the petitioner in HTSC 379 is used only for the startup purpose of the generator. In the above circumstances, as discussed in the case of D.R.P.No.11 of 2012, following the same logic, the Commission has no option except to allow the levy of the following charges for the use of power in HTSC 379 taking into account the retail Tariff Order in force.

Period	Charges	Applicable Order of the Commission
From 25-01-2012 to 31-03-2012	Both demand and energy Charges under HT tariff III	Order No.3 of 2010 dated 31-07-2010.
From 01-04-2012 to 20-06-2013	Both demand and energy Charges under HT tariff V.	Order No.1 of 2012 dated 30-3-2012.
From 21-06-2013	Both demand and energy Charges under HT tariff V.	T.P.No.1 of 2013 dated 20-06-2013.

d. It is not clear whether the TANGEDCO charged the petitioner taking into account the norms and charges as stated in the above Table. Therefore the respondent TANGEDCO is directed to redraw the billing of the petitioner HTSC 379 on the above lines and settle the issue accordingly. If the revised charges as per this order is less than the charges already collected from the Petitioner, the same shall be

adjusted / paid to the petitioner by the TANGEDCO as per the supply code. If such revised charge worked out by the TANGEDCO as per this order is more than the charges collected from the petitioner, the same shall be paid by the petitioner within 15 days from the issuance of such demand notice by the TANGEDCO. No interest is payable in either case.

17. Issues common to DRP 11&DRP 12:-

a. During the course of hearing, the Commission observed some intriguing aspects in this case. Both the petitioner and the respondent submitted that the supply was provided for startup. The Petitioner could have used the power for the purpose other than the reported purpose of startup since the drawal is far in excess of startup requirements. The drawal of power by the petitioner to the extent of 46% of installed capacity clearly shows that the supply might have been utilized for the purpose other than the startup power of the generator. In the inspection report dated 08-03-2012, signed by both the petitioner and respondent, it has been reported that the supply obtained in the HTSC 249 was used for the startup purpose of the another 30MW generator of the petitioner. It has also been reported in the inspection report that both HTSC 249 and HTSC 379 of the petitioner have been interconnected by a 11 kV cable. These facts show a prima facie case of:

- (i) Using the electricity for the purpose other than the purpose for which it is provided.
- (ii) Extending power from one premise to other premise in violation of Distribution code.

b. Such alleged violations by the generator warrant definite action by the TANGEDCO under relevant provisions of the Act / Regulation / Orders. Though the TANGEDCO itself reported such violations in their counter, distribution licensee has

not reported any action taken on such violations. Throughout the hearing, the petitioner stuck to his argument that he is only a generator and not used supply for the purpose other than the startup, contrary to the facts discussed above. However, Commission is of the view that there is a prima facie case where both the generator and the TANGEDCO have violated some of the provisions of the Act / Regulation / Orders in this case. Though this is not the subject matter of this petition, having come to the knowledge of the Commission, it warrants follow-up action by the Commission. Therefore the Commission desires that the CMD, TANGEDCO get this issue examined in detail, if necessary by ordering an enquiry, and submit a detailed report within one month of the issue of this order, covering the following points:

- i. Alleged violations of the provisions of the Act/Regulations/Orders of the Commission.
- ii. Action taken by TANGEDCO under appropriate provisions of the Act/Regulations/Orders against the petitioner for violation of provisions of Act / Regulation / Order.

c. The Commission reserves the right to take appropriate action based on the report under section 142 of the Electricity Act 2003.

18. Appeal:-

An appeal against this order lies before the Appellate Tribunal for Electricity under section 111 of the Electricity Act 2003, within a period of 45 days from the date of receipt of a copy of this order by the aggrieved person.

(Sd.....)
(S.Nagalsamy)
Member

(Sd.....)
(K.Venugopal)
Member

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission