

**Present : Shri S. P. Nanda, Chairperson**  
**Shri A. K. Das, Member**

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1. The present petition has been filed by M/s. Sesa Sterlite Ltd. as a consequence of a notice of disconnection received from Respondent WESCO. The said Respondent had asked the present petitioner to pay a sum of Rs.24.39 Cr. towards cross-subsidy surcharge for availing Open Access. The Petitioner has agitated before us that the demand has been made basing on erroneous calculation of cross-subsidy surcharge in violation of Commission's order and relevant Regulation. They have further submitted that in its order in Case No. 70/2011 dtd. 17.09.2012 the Commission had held that cross-subsidy surcharge was payable by erstwhile VAL-SEZ to the Respondent. But the said calculation of cross-subsidy surcharge has been done at 50-60% load factor instead of a load factor of 100% contrary to what has been prescribed by the Commission. Since disconnection notice has been served on the basis of a erroneous demand notice, therefore, it should be quashed. They further brought to our notice that M/s. Sesa Sterlite Ltd. has been formed on amalgamation of inter alia Vedanta Aluminium Ltd. (VAL) and Sterlite Energy Ltd. (SEL) as per the order of the Hon'ble High Court of Madras w.e.f. 01.01.2011. Therefore, the status of SEL, which was an Independent

Power Producer (IPP) should be re-examined after the said amalgamation. They submitted that in case the Petitioner is found to be a CGP then recovery of cross-subsidy surcharge is illegal and uncalled for. Since the demand letter is based on cross-subsidy surcharge payable for a period after May, 2013 the same is to be recalculated basing on the status of the Petitioner.

2. The Respondent WESCO stated that demand letters for payment of cross-subsidy surcharge had been issued to the Petitioner soon after the direction of the Commission in Case No. 70/2011 dtd. 17.09.2012. The Petitioner preferred an appeal against the order of the Commission in the same case before Hon'ble ATE. The Hon'ble Tribunal dismissed the appeal of the Petitioner with observation that the appellant being a consumer of the Respondent, therefore, is liable to pay cross-subsidy surcharge. Instead of paying cross-subsidy surcharge the Petitioner preferred an appeal again before Hon'ble Apex Court in CA No. 5479 / 2013 but the Hon'ble Court confirmed the order of Hon'ble ATE. Accordingly, the demand letter of payment of cross-subsidy surcharge has been issued.
3. WESCO further submitted that the issue of merger of M/s. SEL with holding company has been raised at a belated stage. The said issue could have been raised by the Petitioner during the hearing in Case No. 70/2012 before the Commission which has also been confirmed by the Apex Court in CA No. 5479/2013 filed by the Petitioner. But the Petitioner did not raise the said issue in the previous proceeding. Thus the said action of the Petitioner operates as *res judicata* under explanation iv, section 11 of CPC. The Petitioner can't raise this issue now since doctrine of estoppel strictly applies in the present case. Therefore, the present petition should be dismissed in limine only on the sole ground of constructive *res judicata*.
4. The main issue of dispute is methodology of calculation of cross-subsidy surcharge i.e. whether it is to be calculated on the basis of 50-60% load factor or 100% load factor. After hearing the parties and after perusal of case record on 13.06.2014 we had directed both the Petitioner and Respondent to sit with the Director (RA) and Director (Tariff) of OERC for re-computation and re-conciliation of claim on cross-subsidy surcharge and other related issues raised during hearing. Accordingly, a meeting was held between both the disputing parties in the presence of officials of OERC. As per the minutes of the said meeting it was concluded that the calculation of cross-subsidy surcharge of WESCO has been made as per the Order of the Commission for FY 2010-11 and 2012-13 and both the parties agreed to it. Since both the parties agreed in this point the issue of methodology of calculation of cross-subsidy surcharge does not survive. However, we don't offer any comment on the amount of cross-subsidy surcharge in rupees term payable in this transaction. The bill on cross-subsidy

surcharge should be made strictly as per meter reading following the order of the Commission in this regard.

5. Then we come to the second point of dispute regarding the status of IPP in post-merger scenario when subsidiaries were merged with holding company of M/s. SEL on the approval of Hon'ble High Court. The conversion of M/s. SEL IPP into a CGP depends on various factors such as amalgamation of accounts of different entities involved, modification in PPA with GRIDCO and conformation to the Electricity Rules, 2005 etc. in this regard. Therefore, this issue can't be resolved in the present proceeding/application. Therefore, the Petitioner is advised to raise the issue after compliance of relevant provisions in said Rules in an appropriate manner, if deemed proper.
6. With the above observations the case is disposed of.

Sd/-

**(A .K. Das)**  
**Member**

Sd/-

**(S. P. Nanda)**  
**Chairperson**