
generated by that CGP was being supplied to the Cement manufacturing unit through a dedicated 11 kV line constructed by M/s. OCL at its own cost. The OCL was drawing power from WESCO (presently TPWODL) since March, 2005 at 132 kV level. After its demerger the Sponge Iron and Steel Manufacturing unit and Cement Manufacturing unit became separate entities namely OCL Iron and Steel Ltd. (OISL) and OCL India Limited. The CGP and the associated 11 kV line remained with OISL after demerger. In Case No. 10/2008 the Commission had directed that for the purpose of availing CGP power, after demerger, OCL India would be treated as an open access customer and would pay Cross Subsidy Surcharge (CSS) to the then WESCO. Basing on the order of the Commission WESCO raised demand of Rs.84,35,826/- towards wheeling charges and Rs.1,56,284 towards Cross Subsidy Surcharge on OCL for the period from 30.03.2008 to 29.03.2009. M/s. OCL had paid the wheeling charges of Rs.84,35,826/- under protest. This action of WESCO was challenged by OCL before GRF in Case No.172/2009 and subsequently before Ombudsman-II. The Ld. Ombudsman-II, vide its order dated 27.11.2009 through C.R. Case No.23 of 2009, had held that M/s. OCL was not liable to pay the wheeling charges. Similarly, in Case No. 139/2009 of the Commission on 26.08.2010 it was held that the 11 KV line running between OISL and OCL is a part of the distribution system of WESCO and, therefore, for exporting power under Open Access through this line, M/s. OISL is to pay wheeling charges to WESCO. This was also confirmed by the Hon'ble APTEL in their order dated 05.08.2011 in Appeal No. 187/2010 where Hon'ble APTEL had held as under at Paragraph 89:

“89. Therefore we are of the view that the 2nd respondent the Steel Company (OISL) is liable to pay the wheeling charges for usage of this line for export of its power to GRIDCO.”

3. The above order of Ombudsman II was challenged before the Hon'ble High Court in WP(C) No. 6923/2010 by WESCO. However, the Hon'ble Court dismissed the petition on 16.09.2021 as infructuous. Simultaneously, when the above order of Ombudsman-II was not implemented by WESCO, the Petitioner had approached OERC in Case No. 39/2010. The Commission had disposed of the matter on 31.05.2010 without allowing the petition stating that WESCO had already challenged the Order of the Ombudsman-II before the Hon'ble High Court. Thereafter, the said order of the Commission was challenged before the Hon'ble High Court in WP(C) No. 12451/2010 by the Petitioner and the Hon'ble Court directed as follows:

- “1. There are two prayers in the present writ petition. Learned counsel for the Petitioner does not want to press the first prayer. As regards the second prayer regarding refund of wheeling charges, counsel for the Petitioner states that the Petitioner will make a representation to the Opposite Party No.1 in accordance with law.*
- 2. If such a representation is made not later than 1st November, 2021, the same shall be examined in accordance with law by the authority concerned and a reasoned order will be passed thereon within two months thereafter.*
- 3. The writ petition is disposed of in the above terms.”*
4. The Petitioner states that in view of the above fact that the Writ Petition challenging the order of Ld. Ombudsman-II in WP(C) No. 6923/2010 has been dismissed by the Hon’ble High Court of Orissa, the order of the Ombudsman-II is restored to its full force and holds the field. By virtue of Ombudsman-II order, the demand of the wheeling charges by WESCO on the Petitioner has become ineffective and the same has to be refunded to him. Accordingly, the Petitioner had approached TPWODL on the basis of order of the Hon’ble High Court in WP(C) No. 12451/2010 with a prayer for refund of wheeling charges but the same has been rejected.
5. The Petitioner states that by the order of this Commission in Case No. 139/2009 and order of Hon’ble APTEL in Appeal No. 187/2010 M/s. OISL is liable to pay the wheeling charges in respect of power exported through 11 kV line to M/s. OCL (DCBL). The Petitioner further states that the present demand was raised for the period 30.03.2008 to 29.03.2009 which is subsequent to the appointed date i.e. 01.01.2007 in the scheme sanctioning demerger approved by the Hon’ble High Court of Orissa on 27.11.2007. It is submitted that the aforesaid CGP and 11 kV line stood transferred to OISL w.e.f. the appointed date i.e. 01.01.2007 and consequently liability of payment of wheeling charges for using that line rest on OISL. Therefore, Rs.84,35,826/- received by M/s. TPWODL towards wheeling charges from OCL (DCBL) is to be refunded.
6. The Respondent TPWODL states that the primary argument before Ld. Ombudsman-II by the Petitioner was that since the 11 kV line had been constructed by M/s. OCL whether wheeling charges was payable by OCL or not for using that line. The issue of demerger was never agitated before the Ombudsman. However, the very issue of the status of 11 kV line was set at rest by the Commission in Case No. 139/2009 and also had been confirmed by APTEL in their judgement dated 05.08.2011 passed in Appeal No.

171 & 187 of 2010. Therefore, since the issue was settled by the Commission as well as by Hon'ble APTEL the findings of Ombudsman has become infructuous.

7. Heard the parties at length through virtual mode. Relevant portion of Clause 4.8 of the Scheme of Arrangement approved by the Hon'ble High Court of Orissa is stated as follows:

“Where any of the liabilities and obligations of OCL as on the Appointed Date deemed to be transferred to OISL have been discharged by OCL after the Appointed Date and prior to the Effective Date, such discharge shall be deemed to have been for and on account of OISL. Further, all loans, liabilities and obligations utilized by OCL for the operations of Demerged Undertaking 1 after the Appointed Date and prior to the Effective Date, to the extent they are outstanding on the Effective Date, shall also without any further act or deed be and stand transferred to OISL and shall become its liabilities and obligations.”

8. Further, all loans, liabilities and obligations utilized by M/s. OCL for the operations of demerged undertaking after the appointed day and prior to the effective date to the extent they are outstanding on the effective date shall also without any further act or Deed be and stand transferred to OISL and shall become its liabilities and obligations.
9. It is doubtful if the petitioner has invoked the clauses 4.7, 4.8 and 4.16 of the Scheme of Agreement.
10. Though it is averred by the petitioner company that the amount of Rs.84,35,826/- towards wheeling charge has been deposited by it with the WESCO in two installments on 07.05.2009 and on 20.09.2009, it cannot be brushed aside that OCL had filed application before this Commission registered as Case No.10 of 2008 seeking approval for availing surplus power of M/s. OISL from its CGP as an open access customer.
11. At this juncture, it cannot be brushed aside that Hon'ble APTEL while disposing of the Appeal No.171 of 2010 and Appeal No.187 of 2010 made authoritative pronouncement that the 11 kV line from the CGP of the Steel Company to the premises of Cement Company is part of the distribution system of the Distribution Licensee, the WESCO.
12. The petitioner M/s.OCL might have deposited the amount of Rs.84,35,826/- with the WESCO as wheeling charges fearing disconnection as averred in the petition, but the said amount can be legally recovered from M/s. OSIL but not from the WESCO (Subsequent Assignee TPWODL)

13. After enunciation of liabilities of OISL for payment towards wheeling charges in the judgment rendered by Hon'ble APTEL in Appeal No.187 of 2010, there appears little scope before the Commission for issuing direction to the Respondent (TPWODL) for refund of the amount deposited towards wheeling charges.
14. The aforesaid being the position, the petition filed by the Petitioner, therefore, stands rejected as not maintainable.

Sd/-
(S.K. Ray Mohapatra)
Member

Sd/-
(G. Mohapatra)
Chairperson (Officiating)